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PHILIPPINE REPORTS
CONTENTS

PHILIPPINE REPORTS

Page

Page

Page

Page

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. No. 147723. August 22, 2008]

PRESIDENTIAL *AD HOC* FACT-FINDING COMMITTEE ON BEHEST LOANS AND/OR PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG), *petitioners, vs.* **HON. ANIANO DESIERTO, ALICIA LL. REYES, LOURDES M. MONTENEGRO, SERAFIN M. MONTENEGRO, BASILIO LIRAG and FELIX LIRAG,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; THE ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. 3019); TWO ENTRENCHED PRINCIPLES IN THE PROSECUTION OF BEHEST LOAN CASES, REITERATED.— Our jurisprudence governing the prosecution of behest loan cases reveals two entrenched principles: first, that the prescription of the crime for violation of R.A. No. 3019 is reckoned from not from the time of the commission of the offense but from the time of the discovery of the commission and second, that the Ombudsman has discretion to determine whether a criminal case, given its facts and circumstances, should be filed or not, with the Court adopting a policy of non-interference in the Ombudsman's exercise of his investigating and prosecutory powers absent good and compelling reasons.

2. ID.; ID.; PRESCRIPTION OF THE CRIME FOR VIOLATION OF R.A. 3019 IS RECKONED FROM THE TIME OF THE DISCOVERY OF THE OFFENSE; APPLICATION.— That first principle is beyond contention in this case, even as Reyes offers a minimal effort to assert that the offense has already prescribed. She concedes that prescription is reckoned from the time of the discovery of the offense, but argues that there was "clear and indubitable proof that discovery of the alleged behest loans was made, at the latest, on February 27, 1987, when the Republic and the [DBP] entered into a Deed of Transfer whereby DBP ceded to the Government its assets," including Midland Cement. Thus, she believes that the ten (10)-year prescriptive period should run from the date of execution of the deed of transfer and that accordingly, the period expired more than a year before the filing of the charges on 11 March 1998. Considering that Midland Cement was merely one of the 283 non-performing accounts transferred by DBP to the Republic through the 1987 Deed of Transfer, it is difficult to elicit that the execution of the said deed *ipso facto* bears the imputed anomalous history of transactions between the bank and the corporation. Given the facts, the more reasonable conclusion as to when the offense was discovered would be anywhere within the period following the constitution of the *Ad Hoc* Committee on 8 October 1992 through Administrative Order No. 13. After all, it is this committee that engaged itself in the thorough examination on which the charges are based. Absent any more definitive proof that the alleged anomalous transactions have been uncovered at an earlier date, there is no basis for us to conclude that the discovery was made prior to 8 October 1992.

3. ID.; ID.; ELEMENTS OF THE CRIME OF VIOLATION OF SECTIONS 3 (e) AND (g) OF R.A. 3019.— Respondents are charged with violation of Section 3(e) and (g) of R.A. No. 3019. Under Section 3(e), the elements of the offense are: (1) that the accused are public officers or private persons charged in conspiracy with them; (2) that said public officers commit the prohibited acts during the performance of their official duties or in relation to their public positions; (3) that they cause undue injury to any party, whether the Government or a private party; (4) that such injury is caused by giving unwarranted benefits, advantage or preference to such parties; and (5) that the public officers have acted with manifest partiality, evident

bad faith or gross inexcusable negligence. To determine the culpability of an accused in relation, in turn, to Section 3(g) of the law, it needs to be established (1) that the accused is a public officer; (2) that he entered into a contract or transaction on behalf of the government; and (3) that such contract or transaction is grossly and manifestly disadvantageous to the government.

4. ID.; ID.; ID.; CRITERIA FOR VIOLATION OF SECTIONS 3 (e) AND (g) OF R.A. 3019, APPLIED.— Using the earlier stated criteria for violations of Section 3(e) and (g) of R.A. No. 3019, it is apparent that in theory there can be liability for violating both sections with respect to the pre-takeover transactions, but there can be liability only for violating Section 3(g) insofar as the post-takeover transactions are concerned. A material element of Section 3(e) violation is that the injury is caused by giving unwarranted benefits, advantage or preference to the private parties who conspired with the public officers. Such element could no longer exist after DBP's takeover of Midland Cement. The takeover eliminated the prospect of benefits, advantages or preferences to the stockholders in their private capacity since they had been already shunted aside in the management of the corporation they previously controlled. Nonetheless, under Section 3(g) the supply of benefits, advantages or preferences to private parties is not apposite, the core element being the engagement in a transaction or contract that is grossly and manifestly disadvantageous to the government.

5. ID.; ID.; ID.; *PRIMA FACIE* EVIDENCE, NECESSARY IN THE PROSECUTION OF BEHEST LOAN CASES.— The transactions or contracts entered into by the DBP Board of Governors after the takeover may, in theory, form the basis of liability of the board, yet the standard for initiating criminal prosecutions in this jurisdiction is not confined to the theoretical plausibility that the accused committed the crime alleged. There must exist *prima facie* evidence that the accused is guilty of the crime with which he is charged. A *prima facie* case is one which is supported by sufficient evidence and will support a finding of guilt in the absence of controverting evidence. Our analysis of the level of *prima facie* evidence with respect to the behest loan cases is strongly guided by the recent wealth of cases that have charted the necessary standard to pursue

prosecution. To repeat, the Ombudsman has discretion to determine whether a criminal case, given its facts and circumstances, should be filed or not, with the Court adopting a policy of non-interference in the Ombudsman's exercise of his investigating and prosecutory powers absent good and compelling reasons. In short, the Court would be ill-advised to institute a finding of *prima facie* evidence if the Ombudsman concludes that none exists.

6. ID.; ID.; BAD BUSINESS JUDGMENT OF DBP OFFICERS DOES NOT NECESSARILY TRANSLATE TO CRIMINAL LIABILITY UNDER R.A. 3019.— It is evident that among the designated missions of DBP is to finance private enterprises in starting up their businesses, in the expectation that the success of the business will redound to the benefit of national growth. This function inherently bears risks since not all enterprises actually become successful and quite a number of them ultimately flame out. In the same way that there is no guarantee that every business will end up profitable, there is no certainty that DBP will not sustain losses resulting from its loan transactions with a particular company. It would be foolhardy to impute criminal liability against the DBP officers because of the damage sustained from such unsuccessful loan transactions. Distressing as may be the ultimate loss to the Government resulting from DBP's loan transactions with Midland Cement, bad business judgment on the part of the DBP officers does not necessarily translate to criminal liability under R.A. No. 3019. To warrant prosecution, there must be evident deliberation on the part of the bank officials to unlawfully dispense favors or relax regulations for the benefit of those private individuals or enterprises who transact with DBP. Absent evidence to that effect, the Ombudsman cannot be faulted for not finding a *prima facie* case against respondents.

APPEARANCES OF COUNSEL

Trio & Regalado for A.Ll. Reyes.

D E C I S I O N

TINGA, *J.*:

Respondents Lourdes M. Montenegro, Serafin M. Montenegro, Basilio Lirag and Felix Lirag were all officers or stockholders of Midland Cement Corporation (Midland Cement), a corporation which was registered with the Securities and Exchange Commission on 14 June 1963. On 18 January 1968, Midland Cement obtained a foreign guarantee loan from the Development Bank of the Philippines (DBP) in the amount of USD 18.5M, or an equivalent of ₱110M. The loan was secured to finance the acquisition of a brand new cement plant to be supplied and installed by French contractor Fives Lille-Cail on a turn-key basis. The loan was approved by DBP in Board Resolution No. 539. At the time the loan was secured in 1968, Basilio and Felix Lirag, as well as Serafin Montenegro, were among the directors or officers of Midland Cement.

Between 1971 and 1982, Midland Cement and DBP entered into ten successive agreements for the obtention of additional loans and/or for restructuring of accounts. In 1972, DBP became the majority stockholder of Midland Cement, and by 1981, it was already the owner of 92.89% of the shares in the corporation.[1] In 1986, the properties of Midland Cement were sold by the Assets Privatization Trust (APT) for ₱171,825,000.00, even though the outstanding balance of the corporation at that point was over a billion pesos.[2]

On 8 October 1992, then President Fidel Ramos created the *Ad Hoc* Fact-finding Committee on Behest Loans (*Ad Hoc* Committee), petitioner herein, through Administrative Order No. 13, and broadened the scope of its powers through Memorandum Order No. 61 dated 9 November 1992. Among the functions tasked by the said memorandum order to the Ad Hoc Committee is the investigation, inventory and study of all non-performing loans, including both behest and non-behest loans. It also established an eight (8)-point criterion for possible

[1] *Rollo*, p. 29.

[2] *Id.* at 27.

utilization "as a frame of reference in determining a behest loan," namely: (a) it is undercollateralized; (b) the borrower corporation is under-capitalized; (c) direct or indirect endorsement by high government officials like the presence of marginal notes; (d) stockholders, officers or agents of the borrower corporation are identified as cronies; (e) deviation of use of loan proceeds from the purpose intended; (f) use of corporate layering; (g) non-feasibility of the project for which financing is being sought; and (h) extraordinary speed in which the loan release was made.[3] It also stipulated that behest loans may likewise entail criminal liability in addition to civil liability.[4]

On 25 February 1998, the *Ad Hoc* Committee referred to then Ombudsman Aniano Desierto (Ombudsman Desierto) the accounts of Midland Cement, along with those of two other corporations, "for preliminary investigation to determine the existence of probable cause of violation of R.A. No. 3019, banking laws/regulations and/or other penal statutes."[5] The referral letter was accompanied by the Complaint-affidavit [6] executed by Atty. Orlando L. Salvador (Atty. Salvador), a Presidential Commission on Good Government (PCGG) consultant detailed at the *Ad Hoc* Committee. The complaint was docketed as OMB-0-98-0563.

Atty. Salvador averred that at the time the initial loan of ₱110M was procured from DBP in 1968, Midland Cement had no sufficient capital to be entitled to that large a loan since its total assets then amounted to only ₱77M and its paid-up capital amounted to only around ₱9.15M.[7] Allegedly, the loan itself was without sufficient collateral.[8] Atty. Salvador observed that despite these facts, Midland Cement was able to obtain additional loans from DBP until 1981.[9]

[3] *Id.* at 60-61.

[4] *Id.* at 61.

[5] *Id.* at 56.

[6] *Id.* at 52-57.

[7] *Id.* at 53.

[8] *Id.*

[9] *Id.* at 54.

According to Atty. Salvador, as of 30 June 1986, Midland Cement had an outstanding and unpaid balance of ₱1,027,376,000.00 with a property appraised value of ₱329,479,000.00. As the properties of Midland Cement were sold by the APT sometime in 1987 for only ₱171,825,000.00, the Philippine government incurred a loss amounting to ₱855,551,000.00.[10] He further recounted that the cement plant that was constructed following the loan was leased to the Construction and Development Corporation of the Philippines for a minimal consideration of ₱2.00/40-kilogram bag of cement produced, and that Midland Cement committed misrepresentation when unknown to DBP, it entered with Fives Lille-Cail into a side agreement whereby Midland Cement bound itself to sub-contract the civil works on the plant with a local contractor even though DBP had already guaranteed the supply/construction of the plant on a turn-key basis.[11]

From these premises, Atty. Salvador asseverated that the loans extended to Midland Cement were behest loans based on the following criteria:

1. It is under collateralized. That at the time the ₱110.00 million loan was granted, total assets including to be acquired amounted to ₱77,000,000 only;
2. The borrower corporation is under capitalized. That as of December 31, 1967 the paid-up capital amounted to ₱9,158,180.00 only;
3. The borrower corporation grossly violated the loan agreement by entering a side agreement unknown to DBP.
4. The stockholders and/or officers are known cronies of Ex-Pres. F.E. Marcos.[12]

Atty. Salvador further concluded that the transactions had been entered into in violation of Republic Act (R.A.) No. 3019

[10] *Id.* at 56-57.

[11] *Id.* at 54.

[12] *Id.* at 55.

(The Anti-graft and Corrupt Practices Act), particularly Section 3(e) and (g) thereof:

> Sec. 3. *Corrupt Practice 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.
>
> xxx xxx xxx
>
> e. Causing any undue injury to any party, including the Government or giving any private party any unwarranted benefit, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.
>
> xxx xxx xxx
>
> 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.

Atty. Salvador identified eight (8) persons who could be made liable for violation of the loan terms and conditions. Four of them—G.S. Licaros,[13] J.V. de Ocampo, Leonides Virata and respondent Alicia Ll. Reyes (Reyes)—were members of the DBP Board of Governors. The other four—respondents Lourdes M. Montenegro, Serafin M. Montenegro, Basilio Lirag and Felix Lirag —were officers and principal stockholders of Midland Cement.[14]

In its 25 August 1998 Resolution,[15] the Evaluation and Preliminary Investigation Bureau (EPIB) of the Office of the Ombudsman concluded that the loans extended to Midland

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[13] Misspelled as "Licaroz" in Atty. Salvador's sworn statement.

[14] *Rollo*, p. 56.

[15] Records, pp. 418-423. Penned by GIO II Roline M. Ginez-Jabalde.

Cement could not be considered behest loans as the proceeds thereof were used for a business purpose—the construction of the cement plant—and that there was no deviation of use of the said proceeds from the intended purpose. The EPIB also observed that based on the allegations in the complaint, the government did not bear the burden of satisfying the loan obligation of Midland Cement; that there was no unwarranted benefit or preference accorded to the respondents since the loan was collateralized; and that the process of loan evaluation and investigation had been rigorously followed before the application was finally approved.[16]

The EPIB Resolution was elevated for review to the Office of the Special Prosecutor of the Office of the Ombudsman. On 5 October 1998, Special Prosecution Officer III Orlando I. Ines issued a Memorandum[17] for Ombudsman Desierto containing his assessment of the complaint. The memorandum recounted the allegations of Atty. Salvador in the latter's sworn statement, and determined:

> [T]here is no doubt that the loans of Midland Cement Corporation are behest loan[s] based on the following criteria, as follows:
>
> 1. It is under collateralized. That at the time the ₱110.00 million loan was granted, total assets including those to be acquired amounted only to ₱77M;
> 2. The borrower corporation is [under capitalized]. As of December 31, 1967 the [paid-up] capital amounted only to ₱9.758M;
> 3. The borrower corporation grossly violated the loan agreement by entering a side agreement unknown to DBP;
> 4. The stockholders and/or officers are known cronies of Ex-Pres. F.E. Marcos.
>
> It appearing from the foregoing facts and circumstances on record, it is beyond doubt that the respondents violated Secs. 3(e) and (g) of [R.A. No.] 3019.

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[16] *Id.* at 421.

[17] *Rollo*, pp. 34-39.

But could the State still prosecute the offense considering the illegal acts were committed way back 1968 up to 1982 or more than fifteen (15) years ago? The complaint was only filed in 1998.

All offenses punishable under the Anti-Graft and Corrupt Practices Act shall prescribe in FIFTEEN (15) years. In the case under review, there is no doubt that the offenses have been committed longer than fifteen (15) years, the earliest began in 1967 and the latest in 1982 x x x By prescription of the crime, it means the forfeiture or loss of the right of the State to prosecute the offender after the lapse of a certain period. Moreover, except for Ms. Alice Reyes, all the other respondent [*sic*] – DBP officials, namely [*sic*] Gregorio Licaros, J.V. de Ocampo, and Leonides Virata, are already dead. Reliable reports though not yet confirmed indicate that many of the private respondents are now dead.

In view of the foregoing circumstances, the undersigned recommends the dismissal of the instant case.[18]

The recommendation for the dismissal of the complaint on the basis of prescription was approved by Ombudsman Desierto on 29 January 1999.[19]

On 11 July 2000, the *Ad Hoc* Committee, represented by Atty. Salvador, filed before the EPIB a Motion to Revive/ Reinstate[20] the instant criminal complaint, citing the 25 October 1999 Decision of this Court in *Presidential Ad Hoc Fact-finding Committee v. Hon. Desierto*[21] where, according to the *Ad Hoc* Committee, it was held that it should be given the fair chance to prove that prescription has not barred the filing of charges against the respondents.[22]

It appears that the EPIB issued an order requiring the public and private respondents to file their counter-affidavits on 4 September 2000.[23] Only Reyes among the respondents filed

[18] *Id.* at 37-39.

[19] *Rollo*, p. 39.

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

[21] 375 Phil. 697 (1999).

[22] *Rollo*, p. 41.

[23] See *id.* at 27.

a Counter-affidavit,[24] wherein she stated that she was a member of the DBP Board of Governors only from 1980 until 1986,[25] or thus long after the loan was first extended to Midland Cement in January 1968. She nevertheless asserted that the DBP guarantee was secured by: (a) a first mortgage on all the assets of Midland Cement worth at least ₱77M; (b) an assignment to the DBP of Midland Cement's mining claims and quarry rights; (c) the pledge to the DBP of common shares of Midland Cement's stockholders worth at least ₱9M; (d) the assignment of subscription receivables worth ₱10M; and (e) the joint and several signatures with Midland Cement of its stockholders. Thus, claimed Reyes, DBP was sufficiently protected when it approved the guarantee in favor of Midland Cement.[26]

Reyes likewise averred that DBP had taken over Midland Cement in 1972, that it had became the owner of 92.89% of the corporation's shares in 1981, and that the succeeding loan transactions after the takeover had been in fact approved by DBP as the owner of Midland Cement and consummated in order to protect the interests of both entities.[27] She further stated that nothing in the transactions adverted to in the complaint manifested that she herself had committed any of the acts sanctioned under Section 3(e) and (g) of R.A. No. 3019.[28]

On 25 October 2000, the EPIB promulgated the now-assailed Resolution[29] recommending the dismissal of the complaint for insufficiency of evidence.[30] Ombudsman Desierto approved the recommendation on 24 November 2000.[31] Petitioners filed a motion for reconsideration with the EPIB, but this was denied

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[24] Records (Vol. II), pp. 12-22.

[25] *Id.* at 12.

[26] *Id.* at 16.

[27] *Id.* at 17.

[28] *Id.*

[29] *Rollo*, pp. 25-31. Penned by GIO II Roline M. Ginez-Jabalde.

[30] *Id.* at 30.

[31] *Id.*

for lack of merit in a Resolution[32] dated 6 February 2001, which was also subsequently approved by Ombudsman Desierto on 16 February 2001.[33]

Hence, the present petition.

Petitioners point out that in the 1998 Resolution, the Ombudsman categorically asserted that "it is beyond doubt that respondents violated Section 3(e) and (g) of [R.A. No.] 3019,"[34] even as the complaint was dismissed on the ground of prescription, yet in the 2000 Resolution, "completely deviated, ignored and disregarded his previous resolution"[35] when he ruled that the evidence was insufficient to prosecute respondents. Such *volta face*, petitioners claim, constitutes not only grave but palpable gross and excessive abuse of discretion on the part of the Ombudsman. Petitioners adduce as compelling reason to prosecute respondents the fact that as of 30 June 1986, Midland Cement had an outstanding and unpaid balance of over ₱1B, with a property appraisal value of only around ₱329M.[36]

This Court directed respondents to file their respective comments[37] but the resolution containing the said directive could not be served on respondents Basilio Lirag, Felix Lirag, Lourdes Montenegro and Serafin Montenegro despite repeated and diligent efforts on the part of the PCGG to ascertain their present addresses.[38] Thus, only the Office of the Ombudsman and Reyes were able to file their respective comments.

In its Comment, the Office of the Ombudsman adverts to the rule that "it is beyond the ambit of [the] Court to review the exercise of discretion of the Ombudsman in prosecuting or

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[32] *Id.* at 32-33. Resolution penned by GIO I Myrna A. Corral.

[33] *Id.* at 33.

[34] *Id.* at 8.

[35] *Id.* at 17.

[36] *Id.* at 18.

[37] *Id.* at 480.

[38] See *id.* at 532-587.

dismissing a complaint before it."[39] It defends its finding that the loans were not "behest" in nature and character, citing its findings in the assailed resolution that the initial loan had been sufficiently collateralized and that the subsequent loans were approved by DBP in its new capacity as the owner of Midland Cement, to protect the interests of the two corporations.[40] It points out that after DBP had taken over Midland Cement, there resulted a merger or confusion of rights whereby the financial institution assumed not only the management but also the obligations of Midland Cement; accordingly, the subsequent loans were not really in the nature or character of loans, much less "behest loans," but transactions necessary to infuse fresh capital into the newly acquired Midland Cement already being managed by DBP.[41] Reyes, for her part, defends these findings of the Ombudsman and reiterates her claim that she had joined DBP long after the initial loan was procured and also after the bank had taken over Midland Cement. Additionally, she argues that prescription has already barred the prosecution of the imputed offenses.[42]

Our jurisprudence governing the prosecution of behest loan cases reveals two entrenched principles: first, that the prescription of the crime for violation of R.A. No. 3019 is reckoned from not from the time of the commission of the offense but from the time of the discovery of the commission[43] and second, that the Ombudsman has discretion to determine whether a criminal case, given its facts and circumstances, should be filed or not, with the Court adopting a policy of non-interference in the Ombudsman's exercise of his investigating and prosecutory powers absent good and compelling reasons.[44]

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[39] *Rollo*, p. 486.

[40] *Id.* at 487-488.

[41] *Id.* at 489-490.

[42] *Id.* at 493-502.

[43] See *Presidential Ad Hoc Committee v. Desierto*, 375 Phil. 697, 723-724 (1999).

[44] See *e.g., Presidential Commission on Good Government v. Hon. Desierto*, 400 Phil. 1368, 1378 (2000).

That first principle is beyond contention in this case, even as Reyes offers a minimal effort to assert that the offense has already prescribed. She concedes that prescription is reckoned from the time of the discovery of the offense, but argues that there was "clear and indubitable proof that discovery of the alleged behest loans was made, at the latest, on February 27, 1987, when the Republic and the [DBP] entered into a Deed of Transfer whereby DBP ceded to the Government its assets,"[45] including Midland Cement. Thus, she believes that the ten (10)-year prescriptive period should run from the date of execution of the deed of transfer and that accordingly, the period expired more than a year before the filing of the charges on 11 March 1998.

Considering that Midland Cement was merely one of the 283 non-performing accounts transferred by DBP to the Republic through the 1987 Deed of Transfer, it is difficult to elicit that the execution of the said deed *ipso facto* bears the imputed anomalous history of transactions between the bank and the corporation. Given the facts, the more reasonable conclusion as to when the offense was discovered would be anywhere within the period following the constitution of the *Ad Hoc* Committee on 8 October 1992 through Administrative Order No. 13. After all, it is this committee that engaged itself in the thorough examination on which the charges are based. Absent any more definitive proof that the alleged anomalous transactions have been uncovered at an earlier date, there is no basis for us to conclude that the discovery was made prior to 8 October 1992.

Nonetheless, the question of prescription is ultimately immaterial to the case at bar. The Ombudsman has concluded that the filing of the criminal charges was not warranted, and following the second principle that governs the behest loan cases, we are wont to uphold the Ombudsman's conclusions.

Respondents are charged with violation of Section 3(e) and (g) of R.A. Act No. 3019. Under Section 3(e), the elements of the offense are: (1) that the accused are public officers or private

[45] *Rollo*, p. 501.

persons charged in conspiracy with them; (2) that said public officers commit the prohibited acts during the performance of their official duties or in relation to their public positions; (3) that they cause undue injury to any party, whether the Government or a private party; (4) that such injury is caused by giving unwarranted benefits, advantage or preference to such parties; and (5) that the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence. To determine the culpability of an accused in relation, in turn, to Section 3(g) of the law, it needs to be established (1) that the accused is a public officer; (2) that he entered into a contract or transaction on behalf of the government; and (3) that such contract or transaction is grossly and manifestly disadvantageous to the government.[46]

There are two clear phases that demarcate the challenged acts, the demarcation line pertaining to the legal relationship that evolved between DBP and Midland Cement. The first phase encompasses the obtention and approval of the loan by respondents, excepting Reyes who joined DBP only twelve (12) years after the loan was extended. This phase covered the period prior to DBP's takeover of Midland Cement, when the two entities possessed clearly segregate identities and interests. The second phase began when DBP assumed ownership over Midland Cement, thereby incorporating the latter's assets and obligations into its own. At that point, DBP's interest in Midland Cement was no longer confined to seeing to it that the latter repay its loan obligations, but rather, such interest has expanded to making it a profitable venture.

Using the earlier stated criteria for violations of Section 3(e) and (g) of R.A. No. 3019, it is apparent that in theory there can be liability for violating both sections with respect to the pre-takeover transactions, but there can be liability only for violating Section 3(g) insofar as the post-takeover transactions are concerned. A material element of Section 3(e) violation is that the injury is caused by giving unwarranted benefits, advantage

[46] *Valencia v. Sandiganbayan*, G.R. No. 141336, 29 June 2004, 433 SCRA 88, 96.

or preference to the private parties who conspired with the public officers. Such element could no longer exist after DBP's takeover of Midland Cement. The takeover eliminated the prospect of benefits, advantages or preferences to the stockholders in their private capacity since they had been already shunted aside in the management of the corporation they previously controlled. Nonetheless, under Section 3(g) the supply of benefits, advantages or preferences to private parties is not apposite, the core element being the engagement in a transaction or contract that is grossly and manifestly disadvantageous to the government.

The transactions or contracts entered into by the DBP Board of Governors after the takeover may, in theory, form the basis of liability of the board, yet the standard for initiating criminal prosecutions in this jurisdiction is not confined to the theoretical plausibility that the accused committed the crime alleged. There must exist *prima facie* evidence that the accused is guilty of the crime with which he is charged. A *prima facie* case is one which is supported by sufficient evidence and will support a finding of guilt in the absence of controverting evidence.

Our analysis of the level of *prima facie* evidence with respect to the behest loan cases is strongly guided by the recent wealth of cases[47] that have charted the necessary standard to pursue prosecution. To repeat, the Ombudsman has discretion to determine whether a criminal case, given its facts and circumstances, should be filed or not, with the Court adopting a policy of non-interference in the Ombudsman's exercise of his investigating and prosecutory powers absent good and compelling reasons. In short, the Court would be ill-advised to institute a finding of *prima facie* evidence if the Ombudsman concludes that none exists.

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[47] See *e.g.*, *PCGG v. Hon. Desierto*, 400 Phil. 1368, 1378 (2000); *Presidential Commission on Good Government v. Hon. Desierto*, 402 Phil. 621, 831-832 (2001); *PAFFC on Behest Loans v. Hon. Desierto*, 418 Phil. 715, 721 (2001); *Pres. Ad Hoc Fact Finding Com. on Behest Loans v. Ombudsman Desierto*, 415 Phil. 135, 152 (2001); *Atty. Salvador v. Hon. Desierto*, 464 Phil. 988, 996-997 (2004); *Presidential Commission on Good Government v. Desierto*, G.R. No. 139675, 21 July 2006, 496 SCRA 112, 122.

The 2000 Resolution provides a detailed explanation behind the Ombudsman's determination that the evidence was wanting to sustain the prosecution of respondents, to wit:

After careful review of the records of the instant case, the undersigned finds the factual allegations in the sworn statement of Orlando Salvador and its supporting documents wanting of sufficient evidence to establish probable cause to indict the respondents for violation of Sections 3(e) and (g) of R.A.[No.] 3019, as amended.

Complaint endorsed the loan account of borrower-firm Midland Cement Corporation (MCC) primarily because it is under-collateralized and under-capitalized. As to the issue of collateral, the initial foreign guarantee loan in the amount of $18.5 million or an equivalent of ₱110.00 million was sufficiently secured as shown in the Board Resolution approving the said loan. It is stated there in no uncertain terms that the said DBP guarantee loan would be secured by the following: (a) a first mortgage on all the assets of MCC worth at least ₱77,000,000.00; (b) an assignment to the DBP of MCC's mining claims and quarry rights; (c) by pledge to the DBP of common shares of MCC's stockholders worth at least ₱9 million; (d) by assignment of subscription receivables worth ₱10 million; and (e) by the joint and several signatures put up by the borrower corporation, we reached the conclusion that these are more than enough to ensure for the amount of the foreign guarantee loan applied for, hence, it cannot be said that it is under-collateralized.

It can not also be said that the borrower-corporation is under-capitalized at the time the foreign guarantee loan was approved on January 18, 1968. It is true that the paid-up capital of MCC as of December 31, 1968 amounted only to ₱9,158,180.00. However, the assets of the borrower corporation at the time was already worth ₱77,000,000.00, hence the gap between the foreign guaranteed loan in the amount of ₱110,000,000.00 and the amount of the capital of the borrower-corporation at the time is not that substantial so as to qualify said loan to be undercapitalized.

The additional loan obtained by MCC from DBP to restructure its loan accounts for the period covering 1972 up to August 25, 1981 were also alleged to be without sufficient collaterals and adequate capital. It is worth to note that as early as 1972, DBP already took –over MCC. As a result of which DBP became its major stockholder. In fact, by 1981, DBP's ownership over MCC was already 92.89%.

Thus, the so called additional loans obtained by MCC in order to restructure its loan accounts were in fact transactions approved by DBP not in its capacity as a lending institution but as owner of MCC to protect both the interest of DBP and MCC. In other words, these additional loans are no longer loans in its strictest sense, so there are no more behest loans to talk about in this case.

From the foregoing, it is established that the MCC project which was financed by the foreign guaranteed loan was established to be a viable project, adequately secured and capitalized in accordance with DBP's lending guidelines thereby negating any violations of Sections 3(e) and (g) or R.A. [No.] 3019, as amended.[48]

In a number of cases also involving behest loans as alleged by the very same petitioners, this Court has upheld the Ombudsman's determination that the loans questioned therein were not, in fact, undercollateralized, based upon an examination of the various securities that had been offered to secure the respective loans.[49] To take one example, in *Presidential Commission on Good Government v. Desierto*,[50] the Court accepted the analysis of the Ombudsman that there was no undercollateralization in the instance where the borrowing corporation offered as collateral a mortgage on its existing assets and assets still to be acquired, and its mining claims, lease contracts and/or patents. The Ombudsman in the said case similarly considered the fact that Midland Cement had offered, as collateral for the initial loan, a mortgage on all its assets, an assignment of all its mining rights and claims, the pledge of common shares of its stockholders and the assignment of subscription receivables. There really is no basis for the Court to countermand the Ombudsman's finding of sufficient collateralization when it has accepted similar findings in the past.

These cases reveal that this Court has repeatedly yielded to the determination of the Ombudsman of whether the imputed

[48] *Rollo*, pp. 28-30.

[49] See *Pres. Ad Hoc Fact Finding Com. on Behest Loans v. Ombudsman Desierto*, *supra*; *PAFFC on Behest Loans v. Ombudsman Desierto*, 418 Phil. 715, 722 (2001); *Presidential Commission on Good Government v. Hon. Desierto*, 402 Phil. 821, 830 (2001).

[50] *Supra* note 46.

behest loans were indeed undercollateralized. In order to grant the present petition, the Court will have to deviate from its consistent deferential stance on this issue. In short, there must exist a satisfactory justification that warrants the treatment of this case differently from that accorded to previous similar cases wherein we upheld the Ombudsman. No such justification is offered, and we are not inclined to chart a different course here.

Petitioners' arguments are further weakened by the fact that in 1972, DBP acquired majority ownership over Midland Cement. That development significantly changed the complexion of the previous and succeeding loan transactions. It would be incorrect to invoke the Civil Code provisions on confusion or merger, as the Ombudsman does in his comment, since DBP and Midland Cement retained their separate juridical personality even after the takeover. But what cannot be denied is that DBP, as the new owner of Midland Cement, indirectly assumed responsibility for the outstanding obligations of the company. It could thus not allow Midland Cement to simply flounder without causing prejudice to its own interests. At this point, the infusion of fresh capital by DBP into Midland Cement cannot be deemed as a reckless hand-out designed to favor a private enterprise at the expense of the public coffers. Instead, it can be reasonably seen as an attempt by DBP to salvage its investment, which could not stand a chance to earn a return unless it is sustained as it were by new capital. If petitioners seriously believe that the only lawful thing DBP could have done was to leave Midland Cement to flounder by itself and not avail of a viable opportunity to recoup the extant losses to the government, it would only go to show that their position is divorced from the realities in the business world. It would be arbitrary even.

Indeed, any accountability on the part of the respondents for violation of R.A. No. 3019 will have to stem from the initial extension of the loan in 1968 (the original sin, as it were), an act which created the legal relationship between DBP and Midland Cement and ultimately, tied DBP to the fortunes of Midland Cement. This conclusion would necessarily exonerate respondent Reyes from liability, as she had no hand at all in binding DBP to Midland Cement and her subsequent participation was limited

only to the attempts to salvage DBP's investment in the failing company.

Petitioners make hay over the fact that in the 1998 Resolution of the Office of the Ombudsman, it was asserted that "it is beyond doubt that the respondents violated Sec. 3(e) and (g) of [R.A. No.] 3019,"[51] yet in the 2000 Resolution of the same Office, the contrary conclusion was reached that there was "wanting of sufficient evidence to establish probable cause to indict the respondents for violation of Section 3(e) and (g) of [R.A. No.] 3019, as amended."[52] But there is a manifest difference between the facts in hand leading to the 1998 Resolution and those which informed the 2000 Resolution. As the Ombudsman admits, his "initial evaluation was premised only on petitioner's complaint-affidavit and its supporting annexes. The complexion of OMB-0-98-0563, however, changed when private respondent Reyes submitted her counter-affidavit and controverting evidence."[53]

Under our rules of criminal procedure, respondents to criminal charges are allowed to submit counter-affidavits executed by themselves and by their witnesses, as well as other supporting documents relied upon for defense.[54] Similarly, under the Rules of Procedure of the Office of the Ombudsman,[55] the investigating officer tasked with evaluating a criminal complaint can refer said complaint to the respondent for comment,[56] or subject the same to a preliminary investigation wherein the respondent would be similarly directed to comment.[57] It is hardly beyond the pale that the submission of controverting evidence by a person charged with a criminal offense could cause the prosecutor to reverse

[51] *Supra* note 33.

[52] *Rollo*, p. 28.

[53] *Id.* at 488.

[54] See 2000 RULES OF CRIMINAL PROCEDURE, Sec. 3(c).

[55] Office of the Ombudsman, Administrative Order No. 07 (1990).

[56] RULES OF PROCEDURES OF THE OFFICE OF THE OMBUDSMAN, Rule II, Sec. 2(b).

[57] RULES OF PROCEDURES OF THE OFFICE OF THE OMBUDSMAN, Rule II, Sec. 4(b).

an initial finding of probable cause. In fact, a prosecution that is pursued only after the respondent has been allowed to air his side before the prosecuting officer is more assured in footing than one that is pursued without the respondent having had the opportunity yet to air his defenses.

We observe that the 1998 Resolution upon which petitioners heavily rely has taken into account only the allegations submitted by the *Ad Hoc* Committee, and no other contrary version or theory, when the initial conclusion was reached that "it is beyond doubt that the respondents violated Section 3(e) and (g) of R.A. No. 3019."[58] It is quite easy to reach such a conclusion if only the side of the complainant is heard, as what appears to have happened prior to the rendition of the 1998 Resolution. The fact that Reyes filed a counter-affidavit is by no means determinative of the case, or of such coercive character as to impel the dismissal of the complaint. What it does is provide additional context which should guide the Ombudsman in his determination of whether the criminal complaint should be pursued. The admission in the assailed resolution that Reyes's counter-affidavit did bear influence in its recommendation is hardly basis to impugn the findings therein, respondents being precisely entitled under the rules and as part of due process to explain their side towards securing a favorable factual determination or adjudication.

Finally, it is worth taking into account the legal mandate of DBP in order to supply the fuller context of its loan arrangements with Midland Cement. DBP was constituted in 1946 as the Rehabilitation Finance Corporation, and subsequently reorganized as a bank, with the mandate of "providing credit facilities for the rehabilitation and development and expansion of agriculture and industry," and "the broadening and diversification of the national economy."[59] It is empowered to grant loans "for the rehabilitation, establishment or development of any agricultural

[58] *Supra* note 33.

[59] See Republic Act No. 85 (1946), Sec. 1, as amended by Republic Act No. 2081 (1958).

and/or industrial enterprise, including public utilities, mining, livestock [and] industry…."[60]

It is evident that among the designated missions of DBP is to finance private enterprises in starting up their businesses, in the expectation that the success of the business will redound to the benefit of national growth. This function inherently bears risks since not all enterprises actually become successful and quite a number of them ultimately flame out. In the same way that there is no guarantee that every business will end up profitable, there is no certainty that DBP will not sustain losses resulting from its loan transactions with a particular company. It would be foolhardy to impute criminal liability against the DBP officers because of the damage sustained from such unsuccessful loan transactions.

Distressing as may be the ultimate loss to the Government resulting from DBP's loan transactions with Midland Cement, bad business judgment on the part of the DBP officers does not necessarily translate to criminal liability under R.A. No. 3019. To warrant prosecution, there must be evident deliberation on the part of the bank officials to unlawfully dispense favors or relax regulations for the benefit of those private individuals or enterprises who transact with DBP. Absent evidence to that effect, the Ombudsman cannot be faulted for not finding a *prima facie* case against respondents.

WHEREFORE, the petition is *DISMISSED*. No pronouncement as to costs.

SO ORDERED.

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

[60] See Republic Act No. 85 (1946), Sec. 2, as amended by Republic Act No. 2081 (1958).

THIRD DIVISION

[G.R. No. 151402. August 22, 2008]

BENGUET CORPORATION, DENNIS R. BELMONTE, EFREN C. REYES and GREGORIO A. FIDER, *petitioners, vs.* **CESAR CABILDO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; COURTS; REGIONAL TRIAL COURT; FINALITY OF THE FACTUAL FINDINGS; EXCEPTIONS THERETO, NOT APPLICABLE.— It is a well-entrenched doctrine that factual findings of the trial court, especially when affirmed by the appellate court, are accorded the highest degree of respect and are conclusive between the parties and even on this Court. Nonetheless, jurisprudence recognizes highly meritorious exceptions, such as: (1) when the findings of a trial court are grounded entirely on speculations, surmises or conjectures; (2) when a lower court's inference from its factual findings is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion in the appreciation of facts; (4) when the findings of the appellate court go beyond the issues of the case or fail to notice certain relevant facts which, if properly considered, will justify a different conclusion; (5) when there is a misappreciation of facts; and (6) when the findings of fact are conclusions without mention of the specific evidence on which they are based, are premised on the absence of evidence, or are contradicted by evidence on record. It is noteworthy that none of these exceptions which would warrant a reversal of the assailed decision obtains herein.

2. CIVIL LAW; CONTRACTS; INTERPRETATION; INTERPRETATION OF AMBIGUOUS WORDINGS SHALL NOT FAVOR THE PARTY WHO CAUSED THE AMBIGUITY.— In the case at bench, the Contract of Work leaves no room for equivocation or interpretation as to the exact intention of the parties. We also note that Benguet Corporation's counsel drafted and prepared the contract. Undoubtedly, the petitioners' claimed ambiguity in the wordings of the contract, if such an ambiguity truly exists, cannot give rise to an interpretation favorable to Benguet Corporation.

Article 1377 of the Civil Code provides: Art. 1377. The interpretation of obscure words or stipulations in a contract shall not favor the party who caused the obscurity.

3. ID.; ID.; BREACH OF CONTRACT, COMMITTED.— From the foregoing, it is crystal clear that the petitioners breached the Contract of Work with Cabildo by awarding Velasco a contract covering the same subject matter, quite understandably, because Velasco offered a price schedule lower than Cabildo's. We completely agree with the uniform findings of the lower courts that the petitioners waylaid Cabildo and prevented him from performing his obligation under the Contract of Work.

4. ID.; ID.; A PARTY CANNOT UNILATERALLY SUSPEND THE CONTRACT OF WORK FOR REASONS NOT STATED THEREIN.— With respect to the painting of the Bunkhouses, the petitioners claim that Cabildo was not allowed to paint them due to the rainy season and because of the financial difficulties of Benguet Corporation. Suffice it to state that the Contract of Work did not provide for a suspension clause. Thus, Benguet Corporation cannot unilaterally suspend the Contract of Work for reasons not stated therein.

APPEARANCES OF COUNSEL

Reynaldo P. Mendoza and *Julio C. Elamparo* for petitioners.
Gorospe & De Villa-Gorospe Law Office for respondent.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari* assailing the Court of Appeals (CA) decision[1] in CA-G.R. CV No. 37123 which affirmed with modification the decision[2] of the Regional Trial Court (RTC), Branch 6, Baguio City in Civil Case No. 593-R.

[1] Penned by Associate Justice Marina L. Buzon, with Associate Justices Eubulo G. Verzola and Bienvenido L. Reyes, concurring; *rollo*, pp. 82-100.

[2] Penned by Judge Ruben C. Ayson, *id.* at 49-80.

Petitioner Benguet Corporation is a mining company with three (3) mining sites: Balatoc, Antamok and Acupan. Petitioners Dennis R. Belmonte,[3] Efren C. Reyes,[4] and Gregorio A. Fider[5] are all officers and employees of Benguet Corporation.[6] On the other hand, respondent Cesar Cabildo and Rolando Velasco, defendant before the lower courts, were former employees of Benguet Corporation.

At the time of his retirement on August 31, 1981, Cabildo was Department Manager of Benguet Corporation's Transportation and Heavy Equipment Department and had worked there for twenty-five (25) years. Thereafter, Cabildo became a service contractor of painting jobs.

Sometime in February 1983, Cabildo submitted his quotation and bid for the painting of Benguet Corporation's Mill Buildings and Bunkhouses located at Balatoc mining site. He then negotiated with petitioners Reyes and Fider, the recommending approval and approving authority, respectively, of Benguet Corporation, on the scope of work for the Balatoc site painting job which included necessary repairs. Reyes and Cabildo discussed the price schedule, and the parties eventually agreed that Benguet Corporation would provide the needed materials for the project.

Upon approval of his quotation and bid, Cabildo forthwith wrote Reyes on March 5, 1983 requesting the needed materials, so that he could immediately commence work. On March 7, 1983, even without a written contract, Cabildo began painting the Mill Buildings at Balatoc.

On March 9, 1983, Cabildo again wrote Reyes requesting the assignment of a representative by Benguet Corporation to closely monitor the daily work accomplishments of Cabildo and his workers. According to Cabildo, the request was made in

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[3] Vice-President and General Manager of Benguet Gold Operations of Benguet Corporation at the time material to the complaint before the RTC.

[4] Department Manager of the Construction Department.

[5] Division Manager of Technical Services.

[6] The petitioners, collectively.

order to: (1) preclude doubts on claims of payment; (2) ensure that accomplishment of the job is compliant with Benguet Corporation's standards; and (3) guarantee availability of the required materials to prevent slowdown and/or stoppage of work.

On even date, Cabildo submitted his first work accomplishment covering carpentry work and installation of the scaffolding for which he received a partial payment of ₱10,776.94.

Subsequently, on March 23, 1983, Cabildo and Benguet Corporation, represented by petitioner Belmonte, formally signed the Contract of Work for the painting of the Mill Buildings and Bunkhouses at the Balatoc mining site including the necessary repair works thereon. The Contract of Work, in pertinent part, reads:

(1) [Cabildo] shall paint the Mill Buildings at Balatoc Mill and all the bunkhouses at Balatoc, Itogon, Benguet, including certain repair works which may be necessary.

(2) For and in consideration of the work to be done by [Cabildo], [Benguet Corporation] shall pay [Cabildo] at the rate herein provided, as follows:

(a) Painting

	Steel & Concretes	Wood
1st coat	₱ 2.90/sq. m.	₱2.50/sq. m.
2nd coat	2.50/sq. m.	2.10/sq. m.

(b) Scrapping and Cleaning

₱1.85/sq. m.

(c) Scaffolding

₱0.50/sq. m.

(d) De-zincing

₱1.25/sq. m.

(e) Dismantling of sidings & ceilings

₱2.50/sq. m.

(f) Installation of sidings & ceilings

₱5.50/sq. m.

(g) Handling of Lumber & installation

₱275.00/cu. m.

(3) [Cabildo] shall employ his own workers and employees, and shall have the sole and exclusive obligation to pay their basic wage, overtime pay, ECOLA, medical treatment, SSS premiums, and other benefits due them under existing Philippine laws or other Philippine laws which might be enacted or promulgated during the life of this Contract. If, for any reason, BENGUET CORPORATION is made to assume any liability of [Cabildo] on any of his workers and employees, [Cabildo] shall reimburse [Benguet Corporation] for any such payment.

(4) [Cabildo] shall require all persons before hiring them in the work subject of this Contract to obtain their clearance from the Security Department of Baguio District Gold Operations of BENGUET CORPORATION.

(5) BENGUET CORPORATION shall retain 10% of every performance payment to [Cabildo] under the terms and conditions of this Contract. Such retention shall be cumulative and shall be paid to [Cabildo] only after thirty (30) days from the time BENGUET CORPORATION finally accepts the works as fully and completely finished in accord with the requirements of [Benguet Corporation]. Before the 10% retention of performance payments will, however, be fully paid to [Cabildo], all his workers and employees shall certify under oath that they have been fully paid their wages, SSS, medicare, and ECC premiums, ECOLA, overtime pay, and other benefits due them under laws in force and effect and that they have no outstanding claim against [Cabildo]. BENGUET CORPORATION has the right to withhold from the 10% retention any amount equal to the unsatisfied claim of any worker against [Cabildo] until the claim of the worker is finally settled.

(6) [Cabildo] shall not be allowed to assign or subcontract the works, or any phase thereof, and any violation of this provision will entitle BENGUET CORPORATION the sole and exclusive right to declare this Contract as cancelled and without any further force and effect.

(7) [Cabildo] and his heirs shall be solely and directly liable – to the exclusion of BENGUET CORPORATION, its stockholders, officers, employees, and agents and representatives – for civil damages for any injury or death of any of his employees, workers, officers, agents and representatives or to any third person and for any damage to any property due to faulty or poor workmanship or negligence or willful act of [Cabildo], his workers, employees, or representatives in the course of, during or when in any way connected with, the works and construction. If for any reason BENGUET CORPORATION is made to assume any liability of [Cabildo], his workers, employees, or representatives in the course of, during or when in any way connected with, the works and construction. If for any reason BENGUET CORPORATION is made to assume any liability of [Cabildo], his workers, employees, or agents or representatives under this provision, [Cabildo] and his heirs shall reimburse the CORPORATION for any payment.

(8) [Cabildo] hereby undertakes to complete the work subject of this Contract within (no period fixed) excluding Sundays and Holidays, otherwise, [Benguet Corporation] shall have the sole and exclusive right to cancel this Contract.

IN WITNESS WHEREOF, the parties have hereunto affixed their signatures on this 23rd day of March, 1983 at Itogon, Benguet Province.

BENGUET CORPORATION
By:

(sgd.)	(sgd.)
DENNIS R. BELMONTE	CESAR Q. CABILDO
Vice-President	Contractor
Benguet Gold Operations	

SIGNED IN OUR PRESENCE:

sgd Witnesses sgd[7]

Apart from the price schedule stipulated in the Contract of Work, which only reproduced the quotation and bid submitted by Cabildo, and the preliminary discussions undertaken by the

[7] Annex "A", records, pp. 6-9.

parties, all the stipulations were incorporated therein by Benguet Corporation which solely drafted the contract.

To undertake the project, Cabildo recruited and hired laborers– thirty-three (33) painters and carpenters – including petitioner Velasco as his general foreman.

The succeeding events, narrated by the trial court as echoed by the appellate court in their respective decisions, led to the parties' falling out:

> [I]t must be pointed out that the Mill Buildings in Balatoc were about 28 buildings in all interconnected with each other grouped into 9 areas with some buildings very dangerous since it housed the machineries, agitators and tanks with cyanide solutions to mill the ores while the bunkhouses, which housed the laborers, were about 38 buildings in all averaging about 30 to 35 meters in height or more than 100 feet and thus would take sometime to paint and repair probably for about one and a half (1½) years.
>
> Thus, the need for scaffoldings to paint the Mill buildings and bunkhouses so that the workers would be safe, can reach the height of the buildings and avoid the fumes of cyanide and other chemicals used in the Milling of the ores.
>
> Payment was to be made on the basis of work accomplished at a certain rate per square meter in accordance with the prices indicated in the Contract. The procedure followed was that [Cabildo] requested the office of Reyes for measurement; then Reyes assign[s] an employee to do the measurement; the employee was accompanied by [Cabildo] or his authorized representative for the measurement; upon completion of the measurement, the computations were submitted to Engr. Manuel Flores, the Supervisor assigned to the work area; if Engr. Flores approved the computation, it was then recommended to Reyes for liquidation; and Reyes thereafter issued the Liquidation Memo to schedule payment of work accomplished.
>
> [Cabildo] was represented in the measurement by either his foreman or his son while Mr. Licuben was assigned to do the measurement for the company.
>
> xxx xxx xxx

On May 30, 1983, Velasco left [Cabildo] as the latter's general foreman and went on his own as contractor, offering his services for painting jobs.

On June 6, 1983, Velasco entered into a Contract of Work with [Benguet Corporation], represented by Godofredo Fider, to paint the Breakham bridge at Antamok Mine, Barangay, Loakan, Itogon Benguet for the sum of ₱2,035.00.

x x x Apparently, the above contract of work of Velasco is in Antamok while the Contract of Work of [Cabildo] is in Balatoc.

On June 9, 1983 (6/9/83), Reyes recommended approval of the Quotation of Velasco for the painting of the inner mill compound of Balatoc for Areas 2, 3, 5, 6 & 7 and approved by Fider on June 13, 1983 at a lower price schedule per sq. meter than that of [Cabildo].

Hence, on June 13, 1983, Rolando Velasco entered into another Contract of Work with [Benguet Corporation], represented by Godofredo Fider, to paint the underneath of Mill Buildings No. 702 at Balatoc Mill, Barangay Virac, Itogon, Benguet and install the necessary scaffoldings for the work for the sum of ₱5,566.60.

On the same date of June 13, 1983, Velasco entered into another Contract of Work with [Benguet Corporation], represented by Godofredo Fider, to scrape, clean and paint the structural steel members at the Mill crushing plant at Balatoc Mill, Barangay Virac, Itogon, Benguet and install the necessary scaffoldings for the purpose for the consideration of ₱8,866.00.

xxx xxx xxx

[Cabildo] complained and protested but Reyes said the Contract of Work of [Cabildo] covers only the painting of exterior of the Mill Buildings in Balatoc but not the interior although the same was not expressly stated in the Contract. This caused the souring of relationship of [Cabildo] and [petitioners] because at that time [Cabildo] had already painted the top roof and three (3) sidings both interior and exterior of Mill Building 702.[8]

Because of these developments, Cabildo enlisted the services of Atty. Galo Reyes, who wrote both Fider and Jaime Ongpin, President of Benguet Corporation, regarding the ostensibly overlapping contracts of Cabildo and Velasco.

[8] *Rollo*, pp. 84-87.

Parenthetically, at some point in June 1983, Cabildo was allowed to paint the **interiors** of various parts of the Mill Buildings, specifically, the Mill and Security Office, Electrical Office, Baldemor Office, and Sala Shift Boss.

On June 30, 1983, Cabildo was prevented from continuing work on the job site, as Fider and Reyes were supposedly investigating Cabildo's participation in the incident where a galvanized iron sheet fell on one of the agitator tanks. For three (3) months, Cabildo was not allowed to perform work stipulated in the agreement and complete painting of the Mill Buildings and Bunkhouses at Balatoc. He was only allowed to do repairs for previously accomplished work. Further, Benguet Corporation continued to withhold payment of Cabildo's last work accomplishment for the period from June 16 to 30, 1983.

On July 2, 1983, Benguet Corporation's Group Manager for Legal and Personnel, Atty. Juanito Mercado, who prepared and notarized the Contract of Work, responded to Cabildo's counsel, declaring that Benguet Corporation's Contract of Work with Cabildo only covered exterior painting of the Mill Buildings and Bunkhouses, whereas the contract with Velasco covered interior painting of the Mill Buildings, steel structures and underneath the GI Roofing.

Eventually, upon his visit to Benguet Corporation accompanied by counsel, Cabildo was paid for the June 16 to 30, 1983 work accomplishment. In this regard, petitioner Reyes issued Liquidation Memo dated July 25, 1983 which, curiously, had an intercalation that payment made was for the **exterior painting** of the Mill Buildings in Balatoc.

As regards the repairs of defects and leaks of previous work accomplishments, which were the only job Cabildo was allowed to work on, these were repaired satisfactorily and Cabildo was paid the previously withheld amount of ₱19,775.00.

Once again, in August of the same year, Cabildo wrote petitioner Belmonte appealing his preclusion from continuing the Contract of Work and the overlapping contracting jobs continuously given to Velasco. Yet, Cabildo was still disallowed to perform the job

under the Contract of Work for the month of September up to December 1983.

With respect to the Bunkhouses, the petitioners did not require Cabildo to paint them. Neither did petitioners provide the materials needed therefor. The petitioners simply claimed that Cabildo was not at all allowed to perform work on the Bunkhouses due to the rainy season and because of the financial difficulties Benguet Corporation was then experiencing.

Thus, Cabildo filed a complaint for damages against the petitioners and Velasco before the RTC, claiming breach by Benguet Corporation of their Contract of Work. Further, Cabildo sought damages for the petitioner's harassment and molestation to thwart him from performing the job under the Contract of Work. Lastly, Cabildo prayed for damages covering lack of payments and/or underpayments for various work accomplishments.

The RTC rendered a decision in favor of Cabildo and found the petitioners, as well as Velasco, defendant before the RTC, jointly and severally liable to Cabildo for: (1) ₱27,332.60 as actual damages; (2) ₱300,000.00 as indemnification for unrealized profit; (3) ₱100,000.00 as moral damages; (4) ₱50,000.00 as exemplary damages; (5) ₱30,000.00 as attorney's fees; and (6) costs of suit.

On appeal, the CA affirmed with modification the RTC's ruling. The appellate court excluded Velasco from liability for the foregoing damages.

Hence, this appeal by the petitioners positing the following issues:

WHETHER [OR NOT] THERE IS BREACH OF CONTRACT AS BASIS FOR AWARD OF DAMAGES AND ATTORNEY'S FEES[?]

WHETHER [OR NOT] THE COUNTERCLAIM OF PETITIONERS SHOULD BE GRANTED[?] [9]

We deny the petition. We see no need to disturb the findings of the trial and appellate courts on the petitioners' liability for breach of the subject Contract of Work.

[9] Petitioners' Memorandum, p. 5; *rollo*, p. 194.

It is a well-entrenched doctrine that factual findings of the trial court, especially when affirmed by the appellate court, are accorded the highest degree of respect and are conclusive between the parties and even on this Court.[10] Nonetheless, jurisprudence recognizes highly meritorious exceptions, such as: (1) when the findings of a trial court are grounded entirely on speculations, surmises or conjectures; (2) when a lower court's inference from its factual findings is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion in the appreciation of facts; (4) when the findings of the appellate court go beyond the issues of the case or fail to notice certain relevant facts which, if properly considered, will justify a different conclusion; (5) when there is a misappreciation of facts; and (6) when the findings of fact are conclusions without mention of the specific evidence on which they are based, are premised on the absence of evidence, or are contradicted by evidence on record.[11] It is noteworthy that none of these exceptions which would warrant a reversal of the assailed decision obtains herein.

The petitioners insist that the CA erred in awarding Cabildo damages because his Contract of Work with Benguet Corporation only covered painting of the exterior of the Mill Buildings and Bunkhouses at the Balatoc mining site. In effect, petitioners claim that their respective contracts with Cabildo and Velasco cover separate and different subject matters, *i.e.*, painting of the exterior and interior of the Mill Buildings, respectively.

We cannot agree with the petitioners' obviously strained reasoning. The Contract of Work with Cabildo did not distinguish between the exterior and interior painting of the Mill Buildings. It simply stated that Cabildo "shall paint the Mill Buildings at Balatoc Mill and all the Bunkhouses at Balatoc, Itogon, Benguet." There is nothing in the contract which will serve as a basis for the petitioners' insistence that Cabildo's scope of work was merely confined to the painting of the exterior part of the Mill Buildings.

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[10] *Philippine Health-care Providers, Inc. v. Estrada*, G.R. No. 171052, January 28, 2008, 542 SCRA 616, 621.

[11] *Id.*

To bolster their position, the petitioners contend that there is an apparent conflict between the wording of the contract and the actual intention of the parties on the specific object of the painting job. The petitioners argue that Cabildo knew of Benguet Corporation's practice to have only the exterior of buildings painted and was, therefore, aware that the Contract of Work referred only to the exterior painting of the Mill Buildings, excluding the interior portion thereof. Thus, the petitioners submit that when there is a conflict as regards the interpretation of a contract, the obvious intention of the parties must prevail.

We reject the petitioners' flawed contention. Apart from the petitioners' self-serving assertion, nothing in the record points to the parties' intention different from that reflected in the Contract of Work. To the contrary, the records reveal an unequivocal intention to have both the exterior and interior of the Mill Buildings painted.

Article 1370 of the Civil Code sets forth the first rule in the interpretation of contracts. The article reads:

> Art. 1370. If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.
>
> If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former.

In the recent case of *Abad v. Goldloop Properties, Inc.*,[12] we explained, thus:

> The cardinal rule in the interpretation of contracts is embodied in the first paragraph of Article 1370 of the Civil Code: "*[i]f the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control*." This provision is akin to the "plain meaning rule" applied by Pennsylvania courts, which assumes that the intent of the parties to an instrument is "embodied in the writing itself, and when the words are clear and unambiguous the intent is to be discovered only from the express language of the agreement." It also resembles

[12] G.R. No. 168108, April 13, 2007, 521 SCRA 131, 143.

the "four corners" rule, a principle which allows courts in some cases to search beneath the semantic surface for clues to meaning. A court's purpose in examining a contract is to interpret the intent of the contracting parties, as objectively manifested by them. The process of interpreting a contract requires the court to make a preliminary inquiry as to whether the contract before it is ambiguous. A contract provision is ambiguous if it is susceptible of two reasonable alternative interpretations. Where the written terms of the contract are not ambiguous and can only be read one way, the court will interpret the contract as a matter of law. If the contract is determined to be ambiguous, then the interpretation of the contract is left to the court, to resolve the ambiguity in the light of the intrinsic evidence.

In our jurisdiction, the rule is thoroughly discussed in *Bautista v. Court of Appeals*:

> The rule is that where the language of a contract is plain and unambiguous, its meaning should be determined without reference to extrinsic facts or aids. The intention of the parties must be gathered from that language, and from that language alone. Stated differently, ***where the language of a written contract is clear and unambiguous, the contract must be taken to mean that which, on its face, it purports to mean, unless some good reason can be assigned to show that the words should be understood in a different sense. Courts cannot make for the parties better or more equitable agreements than they themselves have been satisfied to make, or rewrite contracts because they operate harshly or inequitably as to one of the parties, or alter them for the benefit of one party and to the detriment of the other, or by construction, relieve one of the parties from the terms which he voluntarily consented to, or impose on him those which he did not***.

In the case at bench, the Contract of Work leaves no room for equivocation or interpretation as to the exact intention of the parties. We also note that Benguet Corporation's counsel drafted and prepared the contract. Undoubtedly, the petitioners' claimed ambiguity in the wordings of the contract, if such an ambiguity truly exists, cannot give rise to an interpretation favorable to Benguet Corporation. Article 1377 of the Civil Code provides:

> Art. 1377. The interpretation of obscure words or stipulations in a contract shall not favor the party who caused the obscurity.

Still, the petitioners insist that the parties' intention was different, and that Cabildo knew of, and acquiesced to, the actual agreement.

We remain unconvinced. Even if we were to patronize the petitioners' stretched logic, the supposed intention of the parties is not borne out by the records. Article 1371 of the same code states:

> Art. 1371. In order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered.

In stark contrast to the petitioners' assertions are the following:

First, the procedure for work accomplishments and payments followed by the parties required representatives and/or employees of Benguet Corporation to closely monitor Cabildo's performance of the job. Notably, when Cabildo painted both the exterior and interior of the Mill Buildings except for the interior of the refinery buildings where gold is being minted, he was under the close supervision of petitioners Reyes and Fider. If, as the petitioners claim, the intention was only to paint the exterior of the Mill Buildings, then Reyes and Fider, or any of Benguet Corporation's representatives assigned to monitor the work of Cabildo, should have, posthaste, stopped Cabildo from continuing the painting of the interiors.

Moreover, the materials for the painting work were provided by Benguet Corporation as listed and requested by Cabildo. The petitioners had the opportunity to disapprove Cabildo's requests for materials needed to paint the interiors of the Mill Buildings, but they failed to do so.

Second, although Cabildo concedes that he knew of Benguet Corporation's practice to have only the exteriors of buildings painted, he refutes the petitioners' claim that the aforesaid practice extended to the painting of the Mill Buildings. Cabildo asseverates that the practice of painting only the exterior of buildings was confined to the Bunkhouses. Evidently, Cabildo's knowledge of the claimed practice, as qualified by Cabildo himself, does not translate to an inference that the parties had intended something

other than what is written in the Contract of Work.

Lastly, a singular document, the Liquidation Memo dated July 25, 1983 issued by petitioner Reyes, further highlights the petitioners' lame attempt to paint an intention different from the specific language used in the Contract of Work. This belated qualification in the Liquidation Memo stating that payment was being made for the exterior painting of the Mill Buildings speaks volumes of the parties' actual intention captured in the Contract of Work, as none of the Liquidation Memos issued by the petitioners for Cabildo's previous work accomplishments qualified the painting performed by Cabildo on the Mill Buildings.

From the foregoing, it is crystal clear that the petitioners breached the Contract of Work with Cabildo by awarding Velasco a contract covering the same subject matter, quite understandably, because Velasco offered a price schedule lower than Cabildo's. We completely agree with the uniform findings of the lower courts that the petitioners waylaid Cabildo and prevented him from performing his obligation under the Contract of Work.

With respect to the painting of the Bunkhouses, the petitioners claim that Cabildo was not allowed to paint them due to the rainy season and because of the financial difficulties of Benguet Corporation. Suffice it to state that the Contract of Work did not provide for a suspension clause. Thus, Benguet Corporation cannot unilaterally suspend the Contract of Work for reasons not stated therein.

Consequent to all these disquisitions, we likewise affirm the lower courts' dismissal of the petitioners' counterclaim.

WHEREFORE, premises considered, the petition is hereby *DISMISSED*. The Court of Appeals decision in CA-G.R. CV No. 37123 is *AFFIRMED*. Costs against the petitioners.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 154096. August 22, 2008]

IRENE MARCOS-ARANETA, DANIEL RUBIO, ORLANDO G. RESLIN, and JOSE G. RESLIN, *petitioners, vs.* **COURT OF APPEALS, JULITA C. BENEDICTO, and FRANCISCA BENEDICTO-PAULINO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS AND PRACTICE; VERIFICATION; NOT A JURISDICTIONAL BUT MERELY A FORMAL REQUIREMENT. — Verification is, under the Rules, not a jurisdictional but merely a formal requirement which the court may *motu proprio* direct a party to comply with or correct, as the case may be. As the Court articulated in *Kimberly Independent Labor Union for Solidarity, Activism and Nationalism (KILUSAN)-Organized Labor Associations in Line Industries and Agriculture (OLALIA) v. Court of Appeals*: [V]erification is a formal, not a jurisdictional requisite, as it is mainly intended to secure an assurance that the allegations therein made are done in good faith or are true and correct and not mere speculation. The Court may order the correction of the pleading, if not verified, or act on the unverified pleading if the attending circumstances are such that a strict compliance with the rule may be dispensed with in order that the ends of justice may be served. Given this consideration, the CA acted within its sound discretion in ordering the submission of proof of Francisca's authority to sign on Julita's behalf and represent her in the proceedings before the appellate court.

2. ID.; ID.; ID.; CERTIFICATION OF NON-FORUM SHOPPING; SIGNATURE THEREIN OF ANY PRINCIPAL PARTIES IS SUBSTANTIAL COMPLIANCE; RELEVANT RULINGS, CITED. — Regarding the certificate of non-forum shopping, the general rule is that all the petitioners or plaintiffs in a case should sign it. However, the Court has time and again stressed that the rules on forum shopping, which were designed to promote the orderly administration of justice, do not interdict

substantial compliance with its provisions under justifiable circumstances. As has been ruled by the Court, the signature of any of the principal petitioners or principal parties, as Francisca is in this case, would constitute a substantial compliance with the rule on verification and certification of non-forum shopping. It cannot be overemphasized that Francisca herself was a principal party in Civil Case No. 3341-17 before the RTC and in the *certiorari* proceedings before the CA. Besides being an heir of Benedicto, Francisca, with her mother, Julita, was substituted for Benedicto in the instant case after his demise. And should there exist a commonality of interest among the parties, or where the parties filed the case as a "collective," raising only one common cause of action or presenting a common defense, then the signature of one of the petitioners or complainants, acting as representative, is sufficient compliance. We said so in *Cavile v. Heirs of Clarita Cavile*. Like Thomas Cavile, Sr. and the other petitioners in *Cavile*, Francisca and Julita, as petitioners before the CA, had filed their petition as a collective, sharing a common interest and having a common single defense to protect their rights over the shares of stocks in question.

3. ID.; ID.; ID.; COMPLAINT; AMENDMENT, WHEN PROPER. — As may be recalled, the CA veritably declared as reversibly erroneous the admission of the amended complaint. The flaw in the RTC's act of admitting the amended complaint lies, so the CA held, in the fact that the filing of the amended complaint on July 17, 2000 came after the RTC had ordered with finality the dismissal of the original complaints. According to petitioners, scoring the CA for its declaration adverted to and debunking its posture on the finality of the said RTC order, the CA failed to take stock of their motion for reconsideration of the said dismissal order. We agree with petitioners and turn to the governing Sec. 2 of Rule 10 of the Rules of Court which provides: SEC. 2. *Amendments as a matter of right*. — A party may amend his pleading once as a matter of right at any time before a responsive pleading is served or in the case of a reply, at any time within ten (10) days after it is served. As the aforequoted provision makes it abundantly clear that the plaintiff may amend his complaint once as a matter of right, *i.e.*, without leave of court, before any responsive pleading is filed or served. Responsive pleadings are those which seek affirmative relief

and/or set up defenses, like an answer. A motion to dismiss is not a responsive pleading for purposes of Sec. 2 of Rule 10. Assayed against the foregoing perspective, the RTC did not err in admitting petitioners' amended complaint, Julita and Francisca not having yet answered the original complaints when the amended complaint was filed. At that precise moment, Irene, by force of said Sec. 2 of Rule 10, had, as a matter of right, the option of amending her underlying reconveyance complaints. As aptly observed by the RTC, Irene's motion to admit amended complaint was not even necessary. The Court notes though that the RTC has not offered an explanation why it saw fit to grant the motion to admit in the first place. It may be argued that the original complaints had been dismissed through the June 29, 2000 RTC order. It should be pointed out, however, that the finality of such dismissal order had not set in when Irene filed the amended complaint on July 17, 2000, she having meanwhile seasonably sought reconsideration thereof. Irene's motion for reconsideration was only resolved on August 25, 2000. Thus, when Irene filed the amended complaint on July 17, 2000, the order of dismissal was not yet final, implying that there was strictly no legal impediment to her amending her original complaints.

4. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI,* NOT PROPER REMEDY; MERITS OF THE CASE CANNOT BE RESOLVED IN *CERTIORARI* UNDER RULE 65.— Petitioners' posture on the second issue is correct. As they aptly pointed out, the CA, in the exercise of its *certiorari* jurisdiction under Rule 65, is limited to reviewing and correcting errors of jurisdiction only. It cannot validly delve into the issue of trust which, under the premises, cannot be judiciously resolved without first establishing certain facts based on evidence. Whether a determinative question is one of law or of fact depends on the nature of the dispute. A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain given 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 obtains when the doubt or difference arises as to the truth or falsehood of facts or when the query invites the 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. Clearly then, the CA overstepped its boundaries when, in disposing of private respondents' petition for *certiorari*, it did not confine itself to determining whether or not lack of jurisdiction or grave abuse of discretion tainted the issuance of the assailed RTC orders, but proceeded to pass on the factual issue of the existence and enforceability of the asserted trust. In the process, the CA virtually resolved petitioner Irene's case for reconveyance on its substantive merits even before evidence on the matter could be adduced. Civil Case Nos. 3341-17 and 3342-17 in fact have not even reached the pre-trial stage. To stress, the nature of the trust allegedly constituted in Irene's favor and its enforceability, being evidentiary in nature, are best determined by the trial court. The original complaints and the amended complaint certainly do not even clearly indicate whether the asserted trust is implied or express. To be sure, an express trust differs from the implied variety in terms of the manner of proving its existence. Surely, the onus of factually determining whether the trust allegedly established in favor of Irene, if one was indeed established, was implied or express properly pertains, at the first instance, to the trial court and not to the appellate court in a special civil action for *certiorari*, as here. In the absence of evidence to prove or disprove the constitution and necessarily the existence of the trust agreement between Irene, on one hand, and the Benedicto Group, on the other, the appellate court cannot intelligently pass upon the issue of trust. A pronouncement on said issue of trust rooted on speculation and conjecture, if properly challenged, must be struck down. So it must be here.

5. ID.; CIVIL PROCEDURE; VENUE; WAIVER OF THE DEFENSE OF IMPROPER VENUE, NOT A CASE OF. — Petitioners maintain that Julita and Francisca were effectively precluded from raising the matter of improper venue by their subsequent acts of filing numerous pleadings. To petitioners, these pleadings, taken together, signify a waiver of private respondents' initial objection to improper venue. This contention is without basis and, at best, tenuous. Venue essentially concerns a rule of procedure which, in personal actions, is fixed for the greatest convenience possible of the plaintiff and his witnesses.

The ground of improperly laid venue must be raised seasonably, else it is deemed waived. Where the defendant failed to either file a motion to dismiss on the ground of improper venue or include the same as an affirmative defense, he is deemed to have waived his right to object to improper venue. In the case at bench, Benedicto and Francisca raised at the earliest time possible, meaning "within the time for but before filing the answer to the complaint," the matter of improper venue. They would thereafter reiterate and pursue their objection on venue, first, in their answer to the amended complaints and then in their petition for *certiorari* before the CA. Any suggestion, therefore, that Francisca and Benedicto or his substitutes abandoned along the way improper venue as ground to defeat Irene's claim before the RTC has to be rejected.

6. ID.; ID.; ACTIONS; PERSONAL AND REAL ACTIONS, DISTINGUISHED. — In a personal action, the plaintiff seeks the recovery of personal property, the enforcement of a contract, or the recovery of damages. Real actions, on the other hand, are those affecting title to or possession of real property, or interest therein. In accordance with the wordings of Sec. 1 of Rule 4, the venue of real actions shall be the proper court which has territorial jurisdiction over the area wherein the real property involved, or a portion thereof, is situated. The venue of personal actions is the court where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff.

7. ID.; ID.; ID.; *IN PERSONAM*; AN ACTION SEEKING TO RECOGNIZE A STOCK ARRANGEMENT BETWEEN PERSONS IS AN ACTION *IN PERSONAM*. — In the instant case, petitioners are basically asking Benedicto and his Group, as defendants *a quo*, to acknowledge holding in trust Irene's purported 65% stockownership of UEC and FEMII, inclusive of the fruits of the trust, and to execute in Irene's favor the necessary conveying deed over the said 65% shareholdings. In other words, Irene seeks to compel recognition of the trust arrangement she has with the Benedicto Group. The fact that FEMII's assets include real properties does not materially change the nature of the action, for the ownership interest of a stockholder over corporate assets is only inchoate as the corporation, as a juridical person, solely owns such assets. It

is only upon the liquidation of the corporation that the stockholders, depending on the type and nature of their stockownership, may have a real inchoate right over the corporate assets, but then only to the extent of their stockownership. The amended complaint is an action *in personam*, it being a suit against Francisca and the late Benedicto (now represented by Julita and Francisca), on the basis of their alleged personal liability to Irene upon an alleged trust constituted in 1968 and/or 1972. They are not actions *in rem* where the actions are against the real properties instead of against persons. We particularly note that possession or title to the real properties of FEMII and UEC is not being disputed, albeit part of the assets of the corporation happens to be real properties.

8. ID.; ID.; SECTIONS 2 AND 3 OF RULE 3 *VIS-À-VIS* SECTION 2 OF RULE 4, CONSTRUED; CASE AT BAR. — We point out at the outset that Irene, as categorically and peremptorily found by the RTC after a hearing, is not a resident of Batac, Ilocos Norte, as she claimed. The Court perceives no compelling reason to disturb, in the confines of this case, the factual determination of the trial court and the premises holding it together. Accordingly, Irene cannot, in a personal action, contextually opt for Batac as venue of her reconveyance complaint. As to her, Batac, Ilocos Norte is not what Sec. 2, Rule 4 of the Rules of Court adverts to as the place "where the plaintiff or any of the principal plaintiffs resides" at the time she filed her amended complaint. That Irene holds CTC No. 17019451 issued sometime in June 2000 in Batac, Ilocos Norte and in which she indicated her address as Brgy. Lacub, Batac, Ilocos is really of no moment. Let alone the fact that one can easily secure a basic residence certificate practically anytime in any Bureau of Internal Revenue or treasurer's office and dictate whatever relevant data one desires entered, Irene procured CTC No. 17019451 and appended the same to her motion for reconsideration following the RTC's pronouncement against her being a resident of Batac. Petitioners, in an attempt to establish that the RTC in Batac, Ilocos Norte is the proper court venue, asseverate that Batac, Ilocos Norte is where the principal parties reside. Pivotal to the resolution of the venue issue is a determination of the status of Irene's co-plaintiffs in the context of Secs. 2 and 3 of Rule 3 in relation to Sec.

2 of Rule 4. There can be no serious dispute that the real party-in-interest plaintiff is Irene. As self-styled beneficiary of the disputed trust, she stands to be benefited or entitled to the avails of the present suit. It is undisputed too that petitioners Daniel Rubio, Orlando G. Reslin, and Jose G. Reslin, all from Ilocos Norte, were included as co-plaintiffs in the amended complaint as Irene's new designated trustees. As trustees, they can only serve as mere representatives of Irene. Upon the foregoing consideration, the resolution of the crucial issue of whether or not venue had properly been laid should not be difficult. Sec. 2 of Rule 4 indicates quite clearly that when there is more than one plaintiff in a personal action case, the residences of the **principal** parties should be the basis for determining proper venue. According to the late Justice Jose Y. Feria, "the word 'principal' has been added [in the uniform procedure rule] in order to prevent the plaintiff from choosing the residence of a minor plaintiff or defendant as the venue." Eliminate the qualifying term "principal" and the purpose of the Rule would, to borrow from Justice Regalado, "be defeated where a nominal or formal party is impleaded in the action since the latter would not have the degree of interest in the subject of the action which would warrant and entail the desirably active participation expected of litigants in a case." Before the RTC in Batac, in Civil Case Nos. 3341-17 and 3342-17, Irene stands undisputedly as the principal plaintiff, the real party-in-interest. Following Sec. 2 of Rule 4, the subject civil cases ought to be commenced and prosecuted at the place where Irene resides. As earlier stated, no less than the RTC in Batac declared Irene as not a resident of Batac, Ilocos Norte. Withal, that court was an improper venue for her conveyance action. The Court can concede that Irene's three co-plaintiffs are all residents of Batac, Ilocos Norte. But it ought to be stressed in this regard that not one of the three can be considered as principal party-plaintiffs in Civil Case Nos. 3341-17 and 3342-17, included as they were in the amended complaint as trustees of the principal plaintiff. As trustees, they may be accorded, by virtue of Sec. 3 of Rule 3, the right to prosecute a suit, but only on behalf of the beneficiary who must be included in the title of the case and shall be deemed to be the real party-in-interest. In the final analysis, the residences of Irene's co-plaintiffs cannot be made the basis in determining the venue of the subject suit. This conclusion becomes all the more

forceful considering that Irene herself initiated and was actively prosecuting her claim against Benedicto, his heirs, assigns, or associates, virtually rendering the impleading of the trustees unnecessary. And this brings us to the final point. Irene was a resident during the period material of Forbes Park, Makati City. She was not a resident of Brgy. Lacub, Batac, Ilocos Norte, although jurisprudence has it that one can have several residences, if such were the established fact. The Court will not speculate on the reason why petitioner Irene, for all the inconvenience and expenses she and her adversaries would have to endure by a Batac trial, preferred that her case be heard and decided by the RTC in Batac. On the heels of the dismissal of the original complaints on the ground of improper venue, three new personalities were added to the complaint doubtless to insure, but in vain as it turned out, that the case stays with the RTC in Batac. Litigants ought to bank on the righteousness of their causes, the superiority of their cases, and the persuasiveness of arguments to secure a favorable verdict. It is high time that courts, judges, and those who come to court for redress keep this ideal in mind.

APPEARANCES OF COUNSEL

Britanico Sarmiento & Franco Law Offices for petitioners.
Dominador R. Santiago for private respondents.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This Petition for Review on *Certiorari* under Rule 45 assails and seeks to nullify the Decision[1] dated October 17, 2001 of the Court of Appeals (CA) in CA-G.R. SP No. 64246 and its Resolution[2] of June 20, 2002 denying petitioners' motion for

[1] *Rollo*, pp. 306-317. Penned by Associate Justice Elvi John S. Asuncion and concurred in by Associate Justices Perlita J. Tria Tirona and Amelita G. Tolentino.

[2] *Id.* at 341-341A.

reconsideration. The assailed CA decision annulled and set aside the Orders dated October 9, 2000, December 18, 2000, and March 15, 2001 of the Regional Trial Court (RTC), Branch 17 in Batac, Ilocos Norte which admitted petitioners' amended complaint in Civil Case Nos. 3341-17 and 3342-17.

The Facts

Sometime in 1968 and 1972, Ambassador Roberto S. Benedicto, now deceased, and his business associates (Benedicto Group) organized Far East Managers and Investors, Inc. (FEMII) and Universal Equity Corporation (UEC), respectively. As petitioner Irene Marcos-Araneta would later allege, both corporations were organized pursuant to a contract or arrangement whereby Benedicto, as trustor, placed in his name and in the name of his associates, as trustees, the shares of stocks of FEMII and UEC with the obligation to hold those shares and their fruits in trust and for the benefit of Irene to the extent of 65% of such shares. Several years after, Irene, through her trustee-husband, Gregorio Ma. Araneta III, demanded the reconveyance of said 65% stockholdings, but the Benedicto Group refused to oblige.

In March 2000, Irene thereupon instituted before the RTC two similar complaints for *conveyance of shares of stock, accounting and receivership* against the Benedicto Group with prayer for the issuance of a temporary restraining order (TRO). The first, docketed as Civil Case No. 3341-17, covered the UEC shares and named Benedicto, his daughter, and at least 20 other individuals as defendants. The second, docketed as Civil Case No. 3342-17, sought the recovery to the extent of 65% of FEMII shares held by Benedicto and the other defendants named therein.

Respondent Francisca Benedicto-Paulino,[3] Benedicto's daughter, filed a Motion to Dismiss Civil Case No. 3341-17, followed later by an Amended Motion to Dismiss. Benedicto,

[3] She admitted in the motion to be defendant Franscisca De Leon referred to in the first complaint.

on the other hand, moved to dismiss[4] Civil Case No. 3342-17, adopting *in toto* the five (5) grounds raised by Francisca in her amended motion to dismiss. Among these were: (1) the cases involved an intra-corporate dispute over which the Securities and Exchange Commission, not the RTC, has jurisdiction; (2) venue was improperly laid; and (3) the complaint failed to state a cause of action, as there was no allegation therein that plaintiff, as beneficiary of the purported trust, has accepted the trust created in her favor.

To the motions to dismiss, Irene filed a Consolidated Opposition, which Benedicto and Francisca countered with a Joint Reply to Opposition.

Upon Benedicto's motion, both cases were consolidated.

During the preliminary proceedings on their motions to dismiss, Benedicto and Francisca, by way of bolstering their contentions on improper venue, presented the Joint Affidavit[5] of Gilmia B. Valdez, Catalino A. Bactat, and Conchita R. Rasco who all attested being employed as household staff at the Marcos' Mansion in Brgy. Lacub, Batac, Ilocos Norte and that Irene did not maintain residence in said place as she in fact only visited the mansion twice in 1999; that she did not vote in Batac in the 1998 national elections; and that she was staying at her husband's house in Makati City.

Against the aforesaid unrebutted joint affidavit, Irene presented her PhP 5 community tax certificate[6] (CTC) issued on "11/07/99" in Curimao, Ilocos Norte to support her claimed residency in Batac, Ilocos Norte.

In the meantime, on May 15, 2000, Benedicto died and was substituted by his wife, Julita C. Benedicto, and Francisca.

On June 29, 2000, the RTC dismissed both complaints, stating that these partly constituted "real action," and that Irene did

[4] *Rollo,* pp. 98-99.

[5] *Id.* at 143.

[6] *Id.* at 128, CTC No. 12308513.

not actually reside in Ilocos Norte, and, therefore, venue was improperly laid. In its dismissal order,[7] the court also declared "all the other issues raised in the different Motions to Dismiss x x x moot and academic."

From the above order, Irene interposed a Motion for Reconsideration[8] which Julita and Francisca duly opposed.

Pending resolution of her motion for reconsideration, Irene filed on **July 17, 2000** a Motion (to Admit Amended Complaint),[9] attaching therewith a copy of the Amended Complaint[10] dated July 14, 2000 in which the names of Daniel Rubio, Orlando G. Reslin, and Jose G. Reslin appeared as additional plaintiffs. As stated in the amended complaint, the added plaintiffs, all from Ilocos Norte, were Irene's new trustees. Parenthetically, the amended complaint stated practically the same cause of action but, as couched, sought the reconveyance of the FEMII shares only.

During the August 25, 2000 hearing, the RTC dictated in open court an order denying Irene's motion for reconsideration aforementioned, but deferred action on her motion to admit amended complaint and the opposition thereto.[11]

On October 9, 2000, the RTC issued an Order[12] entertaining the amended complaint, dispositively stating:

> WHEREFORE, the admission of the Amended Complaint being tenable and legal, the same is GRANTED.
>
> Let copies of the Amended Complaint be served to the defendants who are ordered to answer within the reglementary period provided by the rules.

The RTC predicated its order on the following premises:

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[7] *Id.* at 152.

[8] *Id.* at 153-157.

[9] *Id.* at 345-346.

[10] *Id.* at 347-357.

[11] *Id.* at 165-166.

[12] *Id.* at 167-171.

(1) Pursuant to Section 2, Rule 10 of the Rules of Court,[13] Irene may opt to file, as a matter of right, an amended complaint.

(2) The inclusion of additional plaintiffs, one of whom was a Batac, an Ilocos Norte resident, in the amended complaint setting out the same cause of action cured the defect of improper venue.

(3) Secs. 2 and 3 of Rule 3 in relation to Sec. 2 of Rule 4 allow the filing of the amended complaint in question in the place of residence of any of Irene's co-plaintiffs.

In time, Julita and Francisca moved to dismiss the amended complaint, but the RTC, by Order[14] dated December 18, 2000, denied the motion and reiterated its directive for the two to answer the amended complaint.

In said order, the RTC stood pat on its holding on the rule on amendments of pleadings. And scoffing at the argument about there being no complaint to amend in the first place as of October 9, 2000 (when the RTC granted the motion to amend) as the original complaints were dismissed with finality earlier, *i.e.*, on August 25, 2000 when the court denied Irene's motion for reconsideration of the June 29, 2000 order dismissing the original complaints, the court stated thusly: there was actually no need to act on Irene's motion to admit, it being her right as plaintiff to amend her complaints absent any responsive pleading thereto. Pushing its point, the RTC added the observation that the filing of the amended complaint on July 17, 2000 *ipso facto* superseded the original complaints, the dismissal of which, per the June 29, 2000 Order, had not yet become final at the time of the filing of the amended complaint.

Following the denial on March 15, 2001 of their motion for the RTC to reconsider its December 18, 2000 order aforestated, Julita and Francisca, in a bid to evade being declared in default, filed on April 10, 2001 their Answer to the amended

[13] Sec. 2. Amendments as a matter of right. — A party may amend his pleading once as a matter of right at any time before a responsive pleading is served x x x.

[14] *Rollo*, pp. 358-365A.

complaint.[15] But on the same day, they went to the CA via a petition for *certiorari*, docketed as CA-G.R. SP No. 64246, seeking to nullify the following RTC orders: the first, admitting the amended complaint; the second, denying their motion to dismiss the amended complaint; and the third, denying their motion for reconsideration of the second issuance.

Inasmuch as the verification portion of the joint petition and the certification on non-forum shopping bore only Francisca's signature, the CA required the joint petitioners "to submit xxx either the written authority of Julita C. Benedicto to Francisca B. Paulino authorizing the latter to represent her in these proceedings, or a supplemental verification and certification duly signed by xxx Julita C. Benedicto."[16] Records show the submission of the corresponding authorizing Affidavit[17] executed by Julita in favor of Francisca.

Later developments saw the CA issuing a TRO[18] and then a writ of preliminary injunction[19] enjoining the RTC from conducting further proceedings on the subject civil cases.

On October 17, 2001, the CA rendered a Decision, setting aside the assailed RTC orders and dismissing the amended complaints in Civil Case Nos. 3341-17 and 3342-17. The *fallo* of the CA decision reads:

> WHEREFORE, based on the foregoing premises, the petition is hereby GRANTED. The assailed Orders admitting the amended complaints are SET ASIDE for being null and void, and the amended complaints *a quo* are, accordingly, DISMISSED.[20]

Irene and her new trustees' motion for reconsideration of the assailed decision was denied through the equally assailed

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[15] *Id.* at 238-245 & 246-253, for Civil Case Nos. 3341-17 and 3342-17, respectively.

[16] *Id.* at 261.

[17] *Id.* at 258.

[18] *Id.* at 262, CA Resolution.

[19] *Id.* at 300-301.

[20] *Supra* note 1, at 316.

June 20, 2002 CA Resolution. Hence, this petition for review is before us.

The Issues

Petitioners urge the setting aside and annulment of the assailed CA decision and resolution on the following submissions that the appellate court erred in: (1) allowing the submission of an affidavit by Julita as sufficient compliance with the requirement on verification and certification of non-forum shopping; (2) ruling on the merits of the trust issue which involves factual and evidentiary determination, processes not proper in a petition for *certiorari* under Rule 65 of the Rules of Court; (3) ruling that the amended complaints in the lower court should be dismissed because, at the time it was filed, there was no more original complaint to amend; (4) ruling that the respondents did not waive improper venue; and (5) ruling that petitioner Irene was not a resident of Batac, Ilocos Norte and that none of the principal parties are residents of Ilocos Norte. [21]

The Court's Ruling

We affirm, but not for all the reasons set out in, the CA's decision.

First Issue: Substantial Compliance with the Rule on Verification and Certification of Non-Forum Shopping

Petitioners tag private respondents' petition in CA-G.R. SP No. 64246 as defective for non-compliance with the requirements of Secs. 4[22] and 5[23] of Rule 7 of the Rules of Court at least

[21] *Rollo*, p. 677.

[22] SEC. 4. *Verification*. — x x x A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records. x x x

[23] SEC. 5. *Certification against forum shopping*. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, [or] tribunal x x x and, to the best of his knowledge, no such other action or claim

with regard to Julita, who failed to sign the verification and certification of non-forum shopping. Petitioners thus fault the appellate court for directing Julita's counsel to submit a written authority for Francisca to represent Julita in the *certiorari* proceedings.

We are not persuaded.

Verification not Jurisdictional; May be Corrected

Verification is, under the Rules, not a jurisdictional but merely a formal requirement which the court may *motu proprio* direct a party to comply with or correct, as the case may be. As the Court articulated in *Kimberly Independent Labor Union for Solidarity, Activism and Nationalism (KILUSAN)-Organized Labor Associations in Line Industries and Agriculture (OLALIA) v. Court of Appeals*:

> [V]erification is a formal, not a jurisdictional requisite, as it is mainly intended to secure an assurance that the allegations therein made are done in good faith or are true and correct and not mere speculation. The Court may order the correction of the pleading, if not verified, or act on the unverified pleading if the attending circumstances are such that a strict compliance with the rule may be dispensed with in order that the ends of justice may be served.[24]

Given this consideration, the CA acted within its sound discretion in ordering the submission of proof of Francisca's authority to sign on Julita's behalf and represent her in the proceedings before the appellate court.

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is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact x x x to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing.

[24] G.R. Nos. 149158-59, July 24, 2007, 528 SCRA 45, 60.

Signature by Any of the Principal Petitioners is Substantial Compliance

Regarding the certificate of non-forum shopping, the general rule is that all the petitioners or plaintiffs in a case should sign it.[25] However, the Court has time and again stressed that the rules on forum shopping, which were designed to promote the orderly administration of justice, do not interdict substantial compliance with its provisions under justifiable circumstances.[26] As has been ruled by the Court, the signature of any of the principal petitioners[27] or principal parties,[28] as Francisca is in this case, would constitute a substantial compliance with the rule on verification and certification of non-forum shopping. It cannot be overemphasized that Francisca herself was a principal party in Civil Case No. 3341-17 before the RTC and in the *certiorari* proceedings before the CA. Besides being an heir of Benedicto, Francisca, with her mother, Julita, was substituted for Benedicto in the instant case after his demise.

And should there exist a commonality of interest among the parties, or where the parties filed the case as a "collective," raising only one common cause of action or presenting a common defense, then the signature of one of the petitioners or complainants, acting as representative, is sufficient compliance. We said so in *Cavile v. Heirs of Clarita Cavile*.[29] Like Thomas Cavile, Sr. and the other petitioners in *Cavile*, Francisca and Julita, as petitioners before the CA, had filed their petition as a collective, sharing a common interest and having a common

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[25] *Enopia v. Court of Appeals*, G.R. No. 147396, July 31, 2006, 497 SCRA 211, 219.

[26] *Heirs of Venancio Bajenting v. Ibanez*, G.R. No. 166190, September 20, 2006, 502 SCRA 531, 547-548; citing *Cavile v. Heirs of Clarita Cavile*, G.R. No. 148635, April 1, 2003, 400 SCRA 255.

[27] *Calo v. Villanueva*, G.R. No. 153756, January 30, 2006, 480 SCRA 561, 567.

[28] *Condo Suite Travel, Inc. v. NLRC*, G.R. No. 125671, January 28, 2000, 323 SCRA 679, 687.

[29] *Supra* note 26, at 262.

single defense to protect their rights over the shares of stocks in question.

Second Issue: Merits of the Case cannot be Resolved on *Certiorari* under Rule 65

Petitioners' posture on the second issue is correct. As they aptly pointed out, the CA, in the exercise of its *certiorari* jurisdiction under Rule 65, is limited to reviewing and correcting errors of jurisdiction only. It cannot validly delve into the issue of trust which, under the premises, cannot be judiciously resolved without first establishing certain facts based on evidence.

Whether a determinative question is one of law or of fact depends on the nature of the dispute. A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain given 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 obtains when the doubt or difference arises as to the truth or falsehood of facts or when the query invites the 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.[30]

Clearly then, the CA overstepped its boundaries when, in disposing of private respondents' petition for *certiorari*, it did not confine itself to determining whether or not lack of jurisdiction or grave abuse of discretion tainted the issuance of the assailed RTC orders, but proceeded to pass on the factual issue of the existence and enforceability of the asserted trust. In the process, the CA virtually resolved petitioner Irene's case for reconveyance on its substantive merits even before evidence on the matter could be adduced. Civil Case Nos. 3341-17 and 3342-17 in fact have not even reached the pre-trial stage. To stress, the nature of the trust allegedly constituted in Irene's favor and its

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[30] *Estate of the Late Encarnacion Vda. de Panlilio v. Dizon*, G.R. No. 148777, October 18, 2007, 536 SCRA 565, 587; citing *Heirs of Cipriano Reyes v. Calumpang*, G.R. No. 138463, October 30, 2006, 506 SCRA 56, 70.

enforceability, being evidentiary in nature, are best determined by the trial court. The original complaints and the amended complaint certainly do not even clearly indicate whether the asserted trust is implied or express. To be sure, an express trust differs from the implied variety in terms of the manner of proving its existence.[31] Surely, the onus of factually determining whether the trust allegedly established in favor of Irene, if one was indeed established, was implied or express properly pertains, at the first instance, to the trial court and not to the appellate court in a special civil action for *certiorari*, as here. In the absence of evidence to prove or disprove the constitution and necessarily the existence of the trust agreement between Irene, on one hand, and the Benedicto Group, on the other, the appellate court cannot intelligently pass upon the issue of trust. A pronouncement on said issue of trust rooted on speculation and conjecture, if properly challenged, must be struck down. So it must be here.

Third Issue: Admission of Amended Complaint Proper

As may be recalled, the CA veritably declared as reversibly erroneous the admission of the amended complaint. The flaw in the RTC's act of admitting the amended complaint lies, so the CA held, in the fact that the filing of the amended complaint on July 17, 2000 came after the RTC had ordered with finality the dismissal of the original complaints. According to petitioners, scoring the CA for its declaration adverted to and debunking its posture on the finality of the said RTC order, the CA failed to take stock of their motion for reconsideration of the said dismissal order.

We agree with petitioners and turn to the governing Sec. 2 of Rule 10 of the Rules of Court which provides:

SEC. 2. *Amendments as a matter of right*. — A party may amend his pleading once as a matter of right at any time before a

[31] Art. 1443 of the Civil Code provides that no express trust concerning an immovable property may be proved by parol evidence, while Art. 1446 of the Code requires that the beneficiary of an express trust must accept the trust if it imposes onerous conditions.

responsive pleading is served or in the case of a reply, at any time within ten (10) days after it is served.

As the aforequoted provision makes it abundantly clear that the plaintiff may amend his complaint once as a matter of right, *i.e.*, without leave of court, before any responsive pleading is filed or served. Responsive pleadings are those which seek affirmative relief and/or set up defenses,[32] like an answer. A motion to dismiss is not a responsive pleading for purposes of Sec. 2 of Rule 10.[33] Assayed against the foregoing perspective, the RTC did not err in admitting petitioners' amended complaint, Julita and Francisca not having yet answered the original complaints when the amended complaint was filed. At that precise moment, Irene, by force of said Sec. 2 of Rule 10, had, as a matter of right, the option of amending her underlying reconveyance complaints. As aptly observed by the RTC, Irene's motion to admit amended complaint was not even necessary. The Court notes though that the RTC has not offered an explanation why it saw fit to grant the motion to admit in the first place.

In *Alpine Lending Investors v. Corpuz*, the Court, expounding on the propriety of admitting an amended complaint before a responsive pleading is filed, wrote:

> [W]hat petitioner Alpine filed in Civil Case No. C-20124 was a motion to dismiss, not an answer. Settled is the rule that a motion to dismiss is not a responsive pleading for purposes of Section 2, Rule 10. As no responsive pleading had been filed, respondent could amend her complaint in Civil Case No. C-20124 **as a matter of right**. Following this Court's ruling in *Breslin v. Luzon Stevedoring Co*. considering that respondent has the right to amend her complaint, it is the correlative duty of the trial court to accept the amended complaint; otherwise, *mandamu*s would lie against it. In other words, the trial court's duty to admit the amended complaint was purely

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[32] *Fernandez v. International Corporate Bank*, G.R. No. 131283, October 7, 1999, 316 SCRA 326, 335; citing *Diaz v. Adiong*, G.R. No. 106847, March 5, 1993, 219 SCRA 631, 637.

[33] *Alpine Lending Investors v. Corpuz*, November 24, 2006, 508 SCRA 45, 48; citations omitted.

ministerial. In fact, respondent should not have filed a motion to admit her amended complaint.[34]

It may be argued that the original complaints had been dismissed through the June 29, 2000 RTC order. It should be pointed out, however, that the finality of such dismissal order had not set in when Irene filed the amended complaint on July 17, 2000, she having meanwhile seasonably sought reconsideration thereof. Irene's motion for reconsideration was only resolved on August 25, 2000. Thus, when Irene filed the amended complaint on July 17, 2000, the order of dismissal was not yet final, implying that there was strictly no legal impediment to her amending her original complaints.[35]

Fourth Issue: Private Respondents did not Waive Improper Venue

Petitioners maintain that Julita and Francisca were effectively precluded from raising the matter of improper venue by their subsequent acts of filing numerous pleadings. To petitioners, these pleadings, taken together, signify a waiver of private respondents' initial objection to improper venue.

This contention is without basis and, at best, tenuous. Venue essentially concerns a rule of procedure which, in personal actions, is fixed for the greatest convenience possible of the plaintiff and his witnesses. The ground of improperly laid venue must be raised seasonably, else it is deemed waived. Where the defendant failed to either file a motion to dismiss on the ground of improper venue or include the same as an affirmative defense, he is deemed to have waived his right to object to improper venue.[36] In the case at bench, Benedicto and Francisca raised at the earliest time possible, meaning "within the time for but

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[34] *Id.* at 48-49.

[35] See *Bautista v. Maya-Maya Cottages, Inc.*, G.R. No. 148361, November 29, 2005, 476 SCRA 416, 419; citing *Salazar v. Bartolome*, G.R. No. L-43364, September 30, 1976, 73 SCRA 247, 250.

[36] *Davao Light & Power Co., Inc. v. Court of Appeals*, G.R. No. 111685, August 20, 2001, 363 SCRA 396, 400.

before filing the answer to the complaint,"[37] the matter of improper venue. They would thereafter reiterate and pursue their objection on venue, first, in their answer to the amended complaints and then in their petition for *certiorari* before the CA. Any suggestion, therefore, that Francisca and Benedicto or his substitutes abandoned along the way improper venue as ground to defeat Irene's claim before the RTC has to be rejected.

Fifth Issue: The RTC Has No Jurisdiction on the Ground of Improper Venue

Subject Civil Cases are Personal Actions

It is the posture of Julita and Francisca that the venue was in this case improperly laid since the suit in question partakes of a real action involving real properties located outside the territorial jurisdiction of the RTC in Batac.

This contention is not well-taken. In a personal action, the plaintiff seeks the recovery of personal property, the enforcement of a contract, or the recovery of damages.[38] Real actions, on the other hand, are those affecting title to or possession of real property, or interest therein. In accordance with the wordings of Sec. 1 of Rule 4, the venue of real actions shall be the proper court which has territorial jurisdiction over the area wherein the real property involved, or a portion thereof, is situated. The venue of personal actions is the court where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff.[39]

In the instant case, petitioners are basically asking Benedicto and his Group, as defendants *a quo*, to acknowledge holding in trust Irene's purported 65% stockownership of UEC and FEMII,

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[37] RULES OF COURT, Rule 16, Sec. 1.

[38] *Regner v. Logarta*, G.R. No. 168747, October 19, 2007, 537 SCRA 277, 293; citing *Hernandez v. Rural Bank of Lucena, Inc.*, No. L-29791, January 10, 1978, 81 SCRA 75, 84.

[39] RULES OF COURT, Rule 4, Sec. 2.

inclusive of the fruits of the trust, and to execute in Irene's favor the necessary conveying deed over the said 65% shareholdings. In other words, Irene seeks to compel recognition of the trust arrangement she has with the Benedicto Group. The fact that FEMII's assets include real properties does not materially change the nature of the action, for the ownership interest of a stockholder over corporate assets is only inchoate as the corporation, as a juridical person, solely owns such assets. It is only upon the liquidation of the corporation that the stockholders, depending on the type and nature of their stockownership, may have a real inchoate right over the corporate assets, but then only to the extent of their stockownership.

The amended complaint is an action *in personam*, it being a suit against Francisca and the late Benedicto (now represented by Julita and Francisca), on the basis of their alleged personal liability to Irene upon an alleged trust constituted in 1968 and/or 1972. They are not actions *in rem* where the actions are against the real properties instead of against persons.[40] We particularly note that possession or title to the real properties of FEMII and UEC is not being disputed, albeit part of the assets of the corporation happens to be real properties.

Given the foregoing perspective, we now tackle the determinative question of venue in the light of the inclusion of additional plaintiffs in the amended complaint.

Interpretation of Secs. 2 and 3 of Rule 3; and Sec. 2 of Rule 4

We point out at the outset that Irene, as categorically and peremptorily found by the RTC after a hearing, is not a resident of Batac, Ilocos Norte, as she claimed. The Court perceives no compelling reason to disturb, in the confines of this case, the factual determination of the trial court and the premises holding it together. Accordingly, Irene cannot, in a personal action, contextually opt for Batac as venue of her reconveyance complaint. As to her, Batac, Ilocos Norte is not what Sec. 2,

[40] *Asiavest Limited v. Court of Appeals*, G.R. No. 128803, September 25, 1998, 296 SCRA 539, 552.

Rule 4 of the Rules of Court adverts to as the place "where the plaintiff or any of the principal plaintiffs resides" at the time she filed her amended complaint. That Irene holds CTC No. 17019451[41] issued sometime in June 2000 in Batac, Ilocos Norte and in which she indicated her address as Brgy. Lacub, Batac, Ilocos is really of no moment. Let alone the fact that one can easily secure a basic residence certificate practically anytime in any Bureau of Internal Revenue or treasurer's office and dictate whatever relevant data one desires entered, Irene procured CTC No. 17019451 and appended the same to her motion for reconsideration following the RTC's pronouncement against her being a resident of Batac.

Petitioners, in an attempt to establish that the RTC in Batac, Ilocos Norte is the proper court venue, asseverate that Batac, Ilocos Norte is where the principal parties reside.

Pivotal to the resolution of the venue issue is a determination of the status of Irene's co-plaintiffs in the context of Secs. 2 and 3 of Rule 3 in relation to Sec. 2 of Rule 4, which pertinently provide as follows:

Rule 3
PARTIES TO CIVIL ACTIONS

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.

SEC. 3. *Representatives as parties.* — Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal.

[41] *Rollo,* p. 157.

Rule 4
VENUE OF ACTIONS

SEC. 2. *Venue of personal actions*. — All other actions may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff.

Venue is Improperly Laid

There can be no serious dispute that the real party-in-interest plaintiff is Irene. As self-styled beneficiary of the disputed trust, she stands to be benefited or entitled to the avails of the present suit. It is undisputed too that petitioners Daniel Rubio, Orlando G. Reslin, and Jose G. Reslin, all from Ilocos Norte, were included as co-plaintiffs in the amended complaint as Irene's new designated trustees. As trustees, they can only serve as mere representatives of Irene.

Upon the foregoing consideration, the resolution of the crucial issue of whether or not venue had properly been laid should not be difficult.

Sec. 2 of Rule 4 indicates quite clearly that when there is more than one plaintiff in a personal action case, the residences of the **principal** parties should be the basis for determining proper venue. According to the late Justice Jose Y. Feria, "the word 'principal' has been added [in the uniform procedure rule] in order to prevent the plaintiff from choosing the residence of a minor plaintiff or defendant as the venue."[42] Eliminate the qualifying term "principal" and the purpose of the Rule would, to borrow from Justice Regalado, "be defeated where a nominal or formal party is impleaded in the action since the latter would not have the degree of interest in the subject of the action which would warrant and entail the desirably active participation expected of litigants in a case."[43]

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[42] 1 CIVIL PROCEDURE ANNOTATED 261 (2001).

[43] 1 REMEDIAL LAW COMPENDIUM 108 (8th ed., 2002).

Before the RTC in Batac, in Civil Case Nos. 3341-17 and 3342-17, Irene stands undisputedly as the principal plaintiff, the real party-in-interest. Following Sec. 2 of Rule 4, the subject civil cases ought to be commenced and prosecuted at the place where Irene resides.

Principal Plaintiff not a Resident in Venue of Action

As earlier stated, no less than the RTC in Batac declared Irene as not a resident of Batac, Ilocos Norte. Withal, that court was an improper venue for her conveyance action.

The Court can concede that Irene's three co-plaintiffs are all residents of Batac, Ilocos Norte. But it ought to be stressed in this regard that not one of the three can be considered as principal party-plaintiffs in Civil Case Nos. 3341-17 and 3342-17, included as they were in the amended complaint as trustees of the principal plaintiff. As trustees, they may be accorded, by virtue of Sec. 3 of Rule 3, the right to prosecute a suit, but only on behalf of the beneficiary who must be included in the title of the case and shall be deemed to be the real party-in-interest. In the final analysis, the residences of Irene's co-plaintiffs cannot be made the basis in determining the venue of the subject suit. This conclusion becomes all the more forceful considering that Irene herself initiated and was actively prosecuting her claim against Benedicto, his heirs, assigns, or associates, virtually rendering the impleading of the trustees unnecessary.

And this brings us to the final point. Irene was a resident during the period material of Forbes Park, Makati City. She was not a resident of Brgy. Lacub, Batac, Ilocos Norte, although jurisprudence[44] has it that one can have several residences, if such were the established fact. The Court will not speculate on the reason why petitioner Irene, for all the inconvenience and expenses she and her adversaries would have to endure by a Batac trial, preferred that her case be heard and decided by the RTC in Batac. On the heels of the dismissal of the original complaints on the ground of improper venue, three new

[44] *Romualdez-Marcos v. Commission on Elections*, G.R. No. 119976, September 18, 1995, 248 SCRA 300, 324.

personalities were added to the complaint doubtless to insure, but in vain as it turned out, that the case stays with the RTC in Batac.

Litigants ought to bank on the righteousness of their causes, the superiority of their cases, and the persuasiveness of arguments to secure a favorable verdict. It is high time that courts, judges, and those who come to court for redress keep this ideal in mind.

WHEREFORE, the instant petition is hereby *DISMISSED*. The Decision and Resolution dated October 17, 2001 and June 20, 2002, respectively, of the CA in CA-G.R. SP No. 64246, insofar as they nullified the assailed orders of the RTC, Branch 17 in Batac, Ilocos Norte in Civil Case Nos. 3341-17 and 3342-17 on the ground of lack of jurisdiction due to improper venue, are hereby *AFFIRMED*. The Orders dated October 9, 2000, December 18, 2000, and March 15, 2001 of the RTC in Civil Case Nos. 3341-17 and 3342-17 are accordingly *ANNULLED* and *SET ASIDE* and said civil cases are *DISMISSED*.

Costs against petitioners.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 159130. August 22, 2008]

ATTY. GEORGE S. BRIONES, *petitioner, vs.* **LILIA J. HENSON-CRUZ, RUBY J. HENSON, and ANTONIO J. HENSON,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; INTERLOCUTORY ORDERS; AN ORDER OF THE TRIAL COURT TO CONDUCT AN AUDIT OF THE ADMINISTRATION BY A CERTAIN PERSON OF AN ESTATE IS INTERLOCUTORY; CASE AT BAR.— The terms of the trial court's order with respect to the appointment or "designation" of the accounting firm is clear: "*to immediately conduct an audit of the administration by Atty. George S. Briones of the estate of the late Luz J. Henson, the expenses of which shall be charged against the estate.*" To audit, is "to examine and verify (as the books of account of a company or a treasurer's accounts)." An audit is the "formal or official examination and verification of books of account (as for reporting on the financial condition of a business at a given date or on the results of its operations for a given period)." Black's Law Dictionary defines it no differently: "a systematic inspection of accounting records involving analyses, tests and confirmations; a formal or official examination and authentication of accounts, with witnesses, vouchers, *etc*." Given that the subject matter of the audit is Atty. Briones' Final Report in the administration of the estate of the decedent, its *preparatory* character is obvious; it is a prelude to the court's final settlement and distribution of the properties of the decedent to the heirs. In the context of what the court's order accomplishes, the court's designation of an auditor does not have the effect of ruling on the pending estate proceeding on its merits (*i.e.*, in terms of finally determining the extent of the net estate of the deceased and distributing it to the heirs) or on the merits of any independently determinable aspect of the estate proceeding; it is only for purposes of confirming the accuracy of the Special Administrator's Final Report, particularly of the reported charges against the estate. In other words, the designation of the auditor did not resolve Special Proceedings No. 99-92870 or any independently determinable issue therein, and left much to be done on the merits of the case. **Thus, the April 3, 2002 Order of the RTC is interlocutory in so far as it designated an accounting firm to audit the petitioner's special administration of the estate**.

2. ID.; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE; A SPECIAL ADMINISTRATOR'S COMMISSION IS NO

LESS A CLAIM AGAINST THE ESTATE.— From an estate proceeding perspective, the Special Administrator's commission is no less a claim against the estate than a claim that third parties may make. Section 8, Rule 86 of the Rules recognizes this when it provides for "Claim of Executor or Administrator Against an Estate." Under Section 13 of the same Rule, the action of the court on a claim against the estate "is appealable as in ordinary cases." **Hence, by the express terms of the Rules, the ruling on the extent of the Special Administrator's commission — effectively, a claim by the special administrator against the estate — is the lower court's last word on the matter and one that is appealable**.

3. ID.; CIVIL PROCEDURE; APPEALS; WHERE MULTI-APPEALS ARE ALLOWED; RATIONALE; CASE AT BAR.— Rulings abound on when an appeal or a petition for *certiorari* is the appropriate recourse to take from a lower court ruling. The *twist* in the present case is that the losing party took two available recourses from the same Order of the lower court: an appeal was made with respect to that portion of the Order that is final in character, and a petition for *certiorari* was taken against the portion that, again by its nature, is interlocutory. It was under these circumstances that the petitioner posited that forum shopping had been committed as the respondents should have simply appealed, citing the interlocutory aspect as an error in the appeal of the final aspect of the Order of April 3, 2002. While the petitioner's position may be legally correct as a general rule, it is not true in the present case considering the unique nature of the case that gave rise to the present petition. The petitioner is the special administrator in a settlement of estate, a special proceeding governed by Rules 72 to 109 of the Revised Rules of Court. x x x The rationale behind allowing more than one appeal in the same case is to enable the rest of the case to proceed in the event that a separate and distinct issue is resolved by the court and held to be final. In this multi-appeal mode, the probate court loses jurisdiction only over the subject matter of the appeal but retains jurisdiction over the special proceeding from which the appeal was taken for purposes of further remedies the parties may avail of. Where multi-appeals are allowed, we see no reason why a separate petition for *certiorari* cannot be allowed *on an interlocutory aspect of the case that is separate and distinct as an issue from the aspect of the case that has*

been adjudged with finality by the lower court. To reiterate, the matter appealed was the special administrator's commission, a charge that is effectively a claim against the estate under administration, while the matter covered by the petition for *certiorari* was the appointment of an auditor who would pass upon the special administrator's final account. By their respective natures, these matters can exist independently of one another and can proceed separately as envisioned by the Rules under Rule 109.

4. ID.; ID.; FORUM SHOPPING, DEFINED; TEST TO DETERMINE WHETHER A PARTY VIOLATED THE RULE ON FORUM SHOPPING, REITERATED.— Forum shopping is the act of a litigant who "repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising *substantially the same issues* either pending in or already resolved adversely by some other court to increase his chances of obtaining a favorable decision if not in one court, then in another." It is directly addressed and prohibited under Section 5, Rule 7 of the 1997 Rules of Civil Procedure, and is signaled by the presence of the following requisites: **(1)** identity of parties, or at least such parties who represent the same interests in both actions, **(2)** identity of the rights asserted and the relief prayed for, the relief being founded on the same facts, and **(3)** identity of the two preceding particulars such that any judgment rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other. In simpler terms, the test to determine whether a party has violated the rule against forum shopping is where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the other.

5. ID.; ID.; FORUM SHOPPING, NOT A CASE OF.— We see no forum shopping after considering these standards as neither *litis pendentia* nor *res judicata* would result in one case from a ruling in the other, notwithstanding that the appeal that subsequently became the subject of CA-G.R. SP No. 71844 and the petition for *certiorari* in CA-G.R. SP No. 70439 both stemmed from the trial court's Order dated April 3, 2002. The simple reason — as already discussed above — is that the petition and the appeal involve two different and distinct issues

so that a ruling in either one will not affect the other. Forum shopping is further negated when the nature of, and the developments in, the proceedings are taken into account – *i.e.*, an estate proceedings where the Rules expressly allow separate appeals and where the respondents have meticulously distinguished what aspect of the RTC's single Order could be appealed and what could not. Thus, the petitioner cannot take comfort in the cases it cited relating to forum shopping; these cases, correct and proper in their own factual settings, simply do not apply to the attendant circumstances and special nature of the present case where the issues, although pertaining to the same settlement of estate proceedings and although covered by the same court order, differ in substance and in stage of finality and can be treated independently of one another for the purposes of appellate review.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & De Los Angeles for respondents.

D E C I S I O N

BRION, *J.*:

We review in this petition[1] the Decision of the Court of Appeals (Fifteenth Division) dated February 11, 2003[2] in CA-G.R. SP No. 71844.

THE ANTECEDENTS

Respondent Ruby J. Henson filed on February 23, 1999 a petition for the allowance of the will of her late mother, Luz J. Henson, with the Regional Trial Court (*RTC*) of Manila, docketed as Special Proceedings No. 99-92870.

[1] Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court.

[2] *Rollo*, pp. 44-51; penned by Associate Justice Marina L. Buzon, with Associate Justice Josefina Guevara-Salonga and Associate Justice Danilo B. Pine concurring.

Lilia Henson-Cruz, one of the deceased's daughters and also a respondent in this petition, opposed Ruby's petition. She alleged that Ruby understated the value of their late mother's estate and acted with "unconscionable bad faith" in the management thereof. Lilia prayed that her mother's holographic will be disallowed and that she be appointed as the Intestate Administratrix.

Lilia subsequently moved for the appointment of an Interim Special Administrator of the estate of her late mother, praying that the Prudential Bank & Trust Company-Ermita Branch be appointed as Interim Special Administrator. The trial court granted the motion but designated Jose V. Ferro (Senior Vice-President and Trust Officer, Trust Banking Group of the Philippine National Bank) as the Special Administrator. Ferro, however, declined the appointment.

The trial court then designated petitioner Atty. George S. Briones as Special Administrator of the estate. Atty. Briones accepted the appointment, took his oath of office, and started the administration of the estate. The significant highlights of his administration are listed below:

1. On November 22, 1999, the trial court directed the heirs of Luz J. Henson to turn over the possession of all the properties of the deceased to the Special Administrator.

2. On February 16, 2000, Atty. Briones moved that the trial court approve Special Administrator's fees of ₱75,000.00 per month. These fees were *in addition to* the commission referred to in Section 7, Rule 85 of the Revised Rules of Court. The trial court granted the motion but reduced the fees to ₱60,000.00 per month, retroactive to the date Atty. Briones assumed office.

3. Atty. Briones filed a Special Administrator's Report No. 1 dated September 8, 2000 which contained an inventory of the properties in his custody and a statement of the income received and the disbursements made for the estate. The trial court issued an Order dated March 5, 2001 approving the report.

4. On September 17, 2001, the heirs of Luz J. Henson submitted a project of partition of the estate for the trial court's approval.

5. On January 8, 2002, Atty. Briones submitted the Special Administrator's Final Report for the approval of the court. He prayed that he be paid a commission of ₱97,850,191.26 representing eight percent (8%) of the value of the estate under his administration.

6. The respondents opposed the approval of the final report and prayed that they be granted an opportunity to examine the documents, vouchers, and receipts mentioned in the statement of income and disbursements. They likewise asked the trial court to deny the Atty. Briones' claim for commission and that he be ordered to refund the sum of ₱134,126.33 to the estate.

7. On February 21, 2002, the respondents filed an audit request with the trial court. Atty. Briones filed his comment suggesting that the audit be done by an independent auditor at the expense of the estate.

8. In an Order dated March 12, 2002, the trial court granted the request for audit and appointed the accounting firm Alba, Romeo & Co. to conduct the audit.

9. The respondents moved for the reconsideration of Order dated March 12, 2002, alleging that in view of the partition of the estate there was no more need for a special administrator. They also clarified that they were not asking for an external audit; they merely wanted to be allowed to examine the receipts, vouchers, bank statements, and other documents in support of the Special Administrator's Final Report and to examine the Special Administrator under oath.

10. The trial court handed down an **Order dated April 13, 2002,** the dispositive portion of which reads:

IN VIEW OF THE FOREGOING, the court hereby:

1. Reiterates its designation of the accounting firm of Messrs. Alba, Romeo & Co. to immediately conduct an audit of the administration by Atty. George S. Briones of the estate of the late Luz J. Henson, the expenses of which shall be charged against the estate.

2. Suspends the approval of the report of the special administrator except the payment of his commission, which is hereby fixed at 1.8% of the value of the estate.

3. Directs the special administrator to deliver the residue to the heirs in proportion to their shares. From the shares of Lilia J. Henson-Cruz, there shall be deducted the advances made to her.

IT IS SO ORDERED.

On April 29, 2002, respondents filed with the Court of Appeals (*CA*) a **Petition for *Certiorari*, Prohibition, and *Mandamus*** which was raffled to the CA's Ninth Division and docketed as **CA-G.R. SP No. 70349**. The petition assailed the Order dated March 12, 2002 which appointed accounting firm Alba, Romeo & Co. as auditors and the Order dated April 3, 2002 which reiterated the appointment.

Prior the filing of the petition for *certiorari* in CA G.R. SP No. 70349, the heirs of Luz Henzon filed on April 9, 2002 a Notice of Appeal with the RTC assailing the Order dated April 3, 2003 insofar as it directed the payment of Atty. Briones' commission. They subsequently filed their record on appeal.

The trial court, however, denied the appeal and disapproved the record on appeal on May 23, 2002 on the ground of forum shopping. Respondents' motion for reconsideration was likewise denied.

On July 26, 2002, the respondents filed a **Petition for *Mandamus*** with the appellate court, docketed as **CA-G.R. SP No. 71844**. They claimed that the trial court unlawfully refused to comply with its ministerial duty to approve their seasonably-perfected appeal. They refuted the trial court's finding of forum shopping by declaring that the issues in their appeal and in their petition for *certiorari* (CA-G.R. SP No. 70349) are not identical,

although both stemmed from the same Order of April 3, 2002. The appeal involved the payment of the special administrator's commission, while the petition for *certiorari* assailed the appointment of an accounting firm to conduct an external audit.

On the other hand, the petitioner insisted that the respondents committed forum shopping when they assailed the Order of April 3, 2002 twice, *i.e.,* through a special civil action for *certiorari* and by ordinary appeal. Forum shopping took place because of the identity of the reliefs prayed for in the two cases. The petitioner likewise posited that the trial court's error, if any, in dismissing the appeal on the ground of forum shopping is an error of judgment, not of jurisdiction, and hence is not correctible by *certiorari*.

On February 11, 2003, the Court of Appeals decided the respondents' petition for *Mandamus* (CA-G.R. SP No. 71844) as follows:

> WHEREFORE, **the petition is GRANTED and respondent Judge is directed to give due course to the appeal of petitioners from the Order dated April 3, 2002 insofar as it directed the payment of commission to private respondent.** [Emphasis supplied.]
>
> SO ORDERED.

The Court of Appeals held that the trial court had neither the power nor the authority to deny the appeal on the ground of forum shopping. It pointed out that under Section 13, Rule 41 of the 1997 Rules of Civil Procedure, as amended, the authority of the trial court to dismiss an appeal, either *motu proprio* or on motion, may be exercised only if the appeal was taken out of time or if the appellate court docket and other fees were not paid within the reglementary period.

Atty. Briones moved for the reconsideration of this decision. The appellate court denied his motion in its Resolution dated July 17, 2003. Thereupon, he seasonably filed the present Petition for Review on *Certiorari* on September 4, 2003 on the ground that the CA refused to resolve the issue of forum shopping in its Decision of February 11, 2003 and its resolution of July 17,

2003 in CA-G.R. SP No. 71844 (Petition for *Mandamus* to give due course to the appeal).

In the interim, on August 5, 2003, the Court of Appeals (Ninth Division) handed down its Decision[3] in **CA-G.R. SP No. 70439** (Petition for *Certiorari*, Prohibition, and *Mandamus* on the appointment of the auditing firm), whose *fallo* reads:

> WHEREFORE, premises considered, the petition is GRANTED. The assailed Orders dated March 12, 2002 and April 3, 2002 are REVERSED and SET ASIDE. Public respondent Judge Artemio S. Tipon is hereby COMMANDED **to allow petitioner-heirs**: **1)** to examine all the receipts, bank statements, bank passbook, treasury bills, and other documents in support of the Special Administrator's Final Report, as well as the Statement of the Income and Disbusement (sic) Made from the Estate; and **2)** to cross-examine private respondent Briones, before finally approving the Special Administrator's Final Report. [Emphasis supplied.]
>
> SO ORDERED.

THE PARTIES' POSITIONS

The petitioner faults the appellate court for refusing to resolve the forum shopping issue in its Decision of February 11, 2003 and the Resolution of July 17, 2003, thereby deciding the case in a way not in accord with law or with applicable decisions of this Court. On the matter of forum shopping, the appellate court simply stated in its decision that "*In view of the fact that respondent Judge had no power to disallow the appeal on the ground of forum shopping, we deem it unnecessary to discuss whether or not petitioners committed forum shopping.*" Neither did the appellate court pass upon the issue of forum shopping in its ruling on the petitioner's motion for reconsideration, stating that forum shopping should be resolved either in the respondent's appeal or in their petition for *certiorari*, prohibition, and *mandamus* (CA-G.R. SP No. 70349).

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[3] *Rollo*, pp. 92-100; penned by Associate Justice B.A. Adefuin-De la Cruz, with Associate Justice Jose L. Sabio, Jr. and Associate Justice Hakim S. Abdulwahid concurring.

As basis, the petitioner cites Section 3 of this Court's Circular No. 28-91 which provides that "(a) Any violation of this Circular shall be a cause for the summary dismissal of the multiple petition or complaint; and (b) Any willful and deliberate forum shopping by any party and his lawyer with the filing of multiple petitions and complaints to ensure favorable action shall constitute direct contempt of court."

To prove that forum shopping transpired, the petitioner cites the respondents' petition for *certiorari*, prohibition, and *mandamus* (CA-G.R. SP No. 70349) that prayed for the annulment of the assailed Order of April 3, 2002 *in its entirety*. To the petitioner, the attack on the entire Order meant that even the payment of the special administrator's commission — which was the subject of a separate appeal — was covered by the petition. The petitioner further alleged that "to conceal the attempt at forum shopping, respondents deliberately failed to mention the existence of their ordinary appeal of the same Order of April 3, 2002 in the certification against forum shopping attached to their petition for *certiorari*, prohibition, and *mandamus* in CA-G.R. SP No. 70349."

The petitioner cites in support of his position the cases of *Silahis International, Inc. v. National Labor Relations Commission*,[4] *Tantoy Sr. v. Court of Appeals*,[5] and *First Philippine International Bank v. Court of Appeals*.[6] *Silahis* was cited for the proposition that only one recourse — the appeal — should have been filed because the issues were inter-related. *Tantoy, Sr.* spoke of related causes or the same or substantially the same reliefs in considering whether there is forum shopping. On the other hand, *First Philippine International Bank* was cited to emphasize that the key to a finding of forum shopping is the objective of the relief; though differently worded, there is violation of the rule against forum shopping if the objective in all the actions filed involves the same relief — in this case, the setting aside of the Order of April 3, 2002. The petitioner

[4] G.R. No. 104513, August 4, 1993, 225 SCRA 94.

[5] G.R. No. 141427, April 20, 2001, 357 SCRA 329.

[6] G.R. No. 115849, January 24, 1996, 252 SCRA 259.

noted that the respondents had succeeded in obtaining this relief in their petition for *certiorari*, prohibition, and *mandamus* (CA-G.R. SP No. 70349) and the ruling in this petition already constituted *res judicata* on the validity of the Order of April 3, 2002.

The respondents, for their part, claim that "the mere failure to specify in the decision the contentions of the appellant and the reason for refusing to believe them is not sufficient to hold the same contrary to the provisions of the law and the Constitution."[7] In support of the twin recourses they took, they cite *Argel v. Court of Appeals*[8] where this Court rejected the ground for objection similar to present petitioner's because "the special civil action for *certiorari* and the appeal did not involve the same issue." The respondents saw as ineffective the argument that the petition for *certiorari* prayed for the annulment of the entire Order of April 3, 2002 since the petition and the appeal were very specific on the portions of the Order that were being assailed. They pointed, too, to the decision in CA-G.R. SP No. 70349 which only passed upon the issues specified in the petition for *certiorari*, leaving untouched the issue that they chose to raise *via* an appeal. As their last point, the respondents claimed they saw no need to mention the pendency of the appeal in their non-forum shopping certification because the appeal dealt with an issue altogether different from the issues raised in the petition for *certiorari*, citing for this purpose the specific wordings of Section 5, Rule 7 of the Revised Rules of Court.

THE ISSUE

The sole issue presented to us for resolution is: **Did the Court of Appeals (Fifteenth Division) err in not dismissing the respondents' petition for *mandamus* (CA-G.R. SP No. 71844) on the ground of forum shopping?**

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[7] *Air France v. Carrascoso*, G.R, No. L-21438, September 28, 1966, 18 SCRA 155.

[8] G.R. No. 128805, October 12, 1999, 316 SCRA 511.

THE COURT'S RULING

We find the petition devoid of merit as the discussions below will show.

The Order of April 3, 2002

An examination of the RTC Order of April 3, 2002 shows that it resolved three matters, namely: **(1)** the designation of the accounting firm of Alba, Romeo & Co. to conduct an audit of the administration of Atty. George S. Briones of the estate of Luz J. Henson, at the expense of the estate; **(2)** the payment of the petitioner's commission as the estate's Special Administrator; and **(3)** the directive to the petitioner to deliver the residue of the estate to the heirs in their proportional shares. Of these, **only the first two** are relevant to the present petition as the third is the ultimate directive that will close the settlement of estate proceedings.

The first part of the Order (the auditor's appointment) was the subject of the petition for *certiorari*, prohibition, and *mandamus* that the respondents filed before the appellate court (CA-G.R. SP No. 70349). Whether this part is interlocutory or one that fully settles the case on the merits can be answered by the test that this Court laid down in *Mirada v. Court of Appeals*: "The test to ascertain whether or not an order is interlocutory or final is — ***Does it leave something to be done in the trial court with respect to the merits of the case? If it does, it is interlocutory; if it does not it is final."***[9]

The terms of the trial court's order with respect to the appointment or "designation" of the accounting firm is clear: "*to immediately conduct an audit of the administration by Atty. George S. Briones of the estate of the late Luz J. Henson, the expenses of which shall be charged against the estate.*"

To audit, is "to examine and verify (as the books of account of a company or a treasurer's accounts)." An audit is the "formal or official examination and verification of books of account (as

[9] G.R. No. L-33007, June 18, 1976, 71 SCRA 295.

for reporting on the financial condition of a business at a given date or on the results of its operations for a given period)."[10] Black's Law Dictionary defines it no differently: "a systematic inspection of accounting records involving analyses, tests and confirmations; a formal or official examination and authentication of accounts, with witnesses, vouchers, *etc*."[11]

Given that the subject matter of the audit is Atty. Briones' Final Report in the administration of the estate of the decedent, its *preparatory* character is obvious; it is a prelude to the court's final settlement and distribution of the properties of the decedent to the heirs. In the context of what the court's order accomplishes, the court's designation of an auditor does not have the effect of ruling on the pending estate proceeding on its merits (*i.e.*, in terms of finally determining the extent of the net estate of the deceased and distributing it to the heirs) or on the merits of any independently determinable aspect of the estate proceeding; it is only for purposes of confirming the accuracy of the Special Administrator's Final Report, particularly of the reported charges against the estate. In other words, the designation of the auditor did not resolve Special Proceedings No. 99-92870 or any independently determinable issue therein, and left much to be done on the merits of the case. **Thus, the April 3, 2002 Order of the RTC is interlocutory in so far as it designated an accounting firm to audit the petitioner's special administration of the estate.**

In contrast with the interlocutory character of the auditor's appointment, the second part is limited to the Special Administrator's commission which was fixed at 1.8% of the value of the estate. To quote from the Order: *the court hereby. . . 2. Suspends the approval of the report of the special administrator except the payment of his commission, which is hereby fixed at 1.8% of the value of the estate."* Under these terms, it is immediately apparent that this pronouncement on

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[10] Webster's Third International Dictionary (1993 ed.), p. 143.

[11] Fifth Ed. (1979), p. 120.

an *independently determinable issue* — the special administrator's commission — is the court's definite and final word on the matter, subject only to whatever a higher body may decide if an appeal is made from the court's ruling.

From an estate proceeding perspective, the Special Administrator's commission is no less a claim against the estate than a claim that third parties may make. Section 8, Rule 86 of the Rules recognizes this when it provides for "Claim of Executor or Administrator Against an Estate."[12] Under Section 13 of the same Rule, the action of the court on a claim against the estate "is appealable as in ordinary cases."[13] **Hence, by the express terms of the Rules, the ruling on the extent of the Special Administrator's commission — effectively, a claim by the special administrator against the estate — is the lower court's last word on the matter and one that is appealable.**

Available Recourses against the April 3, 2002 Order

We bring up the above distinctions between the first two parts of the Order of April 3, 2002 to highlight that the directives or determinations under the Order are not similarly final and appealable in character. In this regard, Section 1, Rule 41 of

[12] Section 8. *Claim of executor or administrator against an estate.* — If the executor or administrator has a claim against the estate he represents, he shall give notice thereof in writing, to the court, and the court shall appoint a special administrator, who shall, in the adjustment of such claim, have the same power and be subject to the same liability as the general administrator or executor in the settlement of other claims. The court may order the executor or administrator to pay the special administrator necessary funds to defend such action.

[13] Section 13. *Judgment appealable*. **The judgment of the court approving or disapproving a claim**, shall be filed with the record of the administration proceedings with notice to both parties, and **is appealable as in ordinary cases.** A judgment against the executor or administrator shall be that he pay, in due course of administration, the amount ascertained to be due, and it shall not create any lien upon the property of the estate, or give to the judgment creditor any priority of payment.

the 1997 Rules Court lays down the rules on what are or are not subject to appeal and it provides:

> Section 1. *Subject of appeal.* — An appeal may be taken from a judgment or final order that completely disposes of the case or of a particular matter therein when declared by these Rules to be appealable.
>
> No appeal shall be taken from:
>
> xxx xxx xxx
>
> (c) An interlocutory order.
>
> xxx xxx xxx
>
> In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

Under these terms and taking into account the previous discussion of the nature of the various parts of the Order of April 3, 2002, the lower court's determination of the special administrator's commission is clearly appealable while the auditor's appointment is not. The latter, under the express terms of the above provision, can be the subject of an "appropriate special civil action under Rule 65."

Rulings abound on when an appeal or a petition for *certiorari* is the appropriate recourse to take from a lower court ruling.[14] The *twist* in the present case is that the losing party took two available recourses from the same Order of the lower court: an appeal was made with respect to that portion of the Order that is final in character, and a petition for *certiorari* was taken against the portion that, again by its nature, is interlocutory. It was under these circumstances that the petitioner posited that forum shopping had been committed as the respondents should have simply appealed, citing the interlocutory aspect as an error in the appeal of the final aspect of the Order of April 3, 2002.

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[14] See *People v. Laguio, Jr.*, G.R. No. 128587, March 16, 2007, 518 SCRA 393.

While the petitioner's position may be legally correct as a general rule, it is not true in the present case considering the unique nature of the case that gave rise to the present petition. The petitioner is the special administrator in a settlement of estate, a special proceeding governed by Rule 72 to 109 of the Revised Rules of Court. Section 1, Rule 109 in part states:

> Section 1. *Orders or judgments from which appeals may be taken.* — An interested person may appeal in special proceedings from an order or judgment rendered by a Court of First Instance or a Juvenile Domestic Relations Court, where such order or judgment:
>
> xxx xxx xxx
>
> (c) allows or disallows, in whole or in part, any claim against the estate of a deceased person, or any claim presented on behalf of the estate in offset to a claim against it;
>
> (d) settles the account of an executor, administrator, trustee or guardian;
>
> (e) constitutes, in the proceedings relating to the settlement of the estate of a deceased person x x x a final determination in the lower court of the rights of the party appealing, except that no appeal shall be allowed from the appointment of a special administrator.

The rationale behind allowing more than one appeal in the same case is to enable the rest of the case to proceed in the event that a separate and distinct issue is resolved by the court and held to be final.[15] In this multi-appeal mode, the probate court loses jurisdiction only over the subject matter of the appeal but retains jurisdiction over the special proceeding from which the appeal was taken for purposes of further remedies the parties may avail of.[16]

Where multi-appeals are allowed, we see no reason why a separate petition for *certiorari* cannot be allowed *on an interlocutory aspect of the case that is separate and distinct*

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[15] *Roman Catholic Archbishop of Manila v. Court of Appeals*, G.R. No. 111324, July 5, 1996, 258 SCRA 186.

[16] *Valarao v. Pascual*, G.R. No. 150164, November 26, 2002, 392 SCRA 695.

as an issue from the aspect of the case that has been adjudged with finality by the lower court. To reiterate, the matter appealed was the special administrator's commission, a charge that is effectively a claim against the estate under administration, while the matter covered by the petition for *certiorari* was the appointment of an auditor who would pass upon the special administrator's final account. By their respective natures, these matters can exist independently of one another and can proceed separately as envisioned by the Rules under Rule 109.

The Forum Shopping Issue

Forum shopping is the act of a litigant who "repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising *substantially the same issues* either pending in or already resolved adversely by some other court to increase his chances of obtaining a favorable decision if not in one court, then in another."[17] It is directly addressed and prohibited under Section 5, Rule 7 of the 1997 Rules of Civil Procedure, and is signaled by the presence of the following requisites: **(1)** identity of parties, or at least such parties who represent the same interests in both actions, **(2)** identity of the rights asserted and the relief prayed for, the relief being founded on the same facts, and **(3)** identity of the two preceding particulars such that any judgment rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other.[18] In simpler terms, the test to determine whether a party has violated the rule against forum shopping is where the elements of *litis pendentia* are present

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[17] *Gatmaytan v. Court of Appeals,* G. R. No. 123332, February 3, 1997, 267 SCRA 487. See also: *Mondragon Leisure and Resorts Corp. v. United Coconut Planters Bank,* 427 SCRA 585 (2044), citing *T'Boli Agro-Industrial Development, Inc. (TADI) v. Solidapsi,* 394 SCRA 269 (2002).

[18] *Hongkong & Shanghai Banking Corp. Ltd. v. Catalan,* G.R. Nos. 159590-91, October 18, 2004, 440 SCRA 498, 513-514, citing *Phil. Commercial International Bank v. Court of Appeals,* 406 SCRA 575 (2003).

or where a final judgment in one case will amount to *res judicata* in the other.[19]

We see no forum shopping after considering these standards as neither *litis pendentia* nor *res judicata* would result in one case from a ruling in the other, notwithstanding that the appeal that subsequently became the subject of CA-G.R. SP No. 71844 and the petition for *certiorari* in CA-G.R. SP No. 70439 both stemmed from the trial court's Order dated April 3, 2002. The simple reason — as already discussed above — is that the petition and the appeal involve two different and distinct issues so that a ruling in either one will not affect the other.

Forum shopping is further negated when the nature of, and the developments in, the proceedings are taken into account — *i.e.*, an estate proceedings where the Rules expressly allow separate appeals and where the respondents have meticulously distinguished what aspect of the RTC's single Order could be appealed and what could not. Thus, the petitioner cannot take comfort in the cases it cited relating to forum shopping; these cases, correct and proper in their own factual settings, simply do not apply to the attendant circumstances and special nature of the present case where the issues, although pertaining to the same settlement of estate proceedings and although covered by the same court order, differ in substance and in stage of finality and can be treated independently of one another for the purposes of appellate review.

Did the Court of Appeals err in refusing to resolve the issue of forum shopping?

Given our above discussion and conclusions, we do not see forum shopping as an issue that would have made a difference in the appellate court's ruling. Nor is it an issue that the appellate court should, by law, have fully ruled upon on the merits. We

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[19] *Velasquez v. Hernandez,* G.R. Nos. 150732 & 151095, August 31, 2004, 437 SCRA 357, 367, citing *Bangko Silangan Development Bank v. Court of Appeals,* 360 SCRA 322 (2001), *Phil. Economic Zone Authority v. Vianzon,* 336 SCRA 309 (2000), *Progressive Development Corp. v. Court of Appeals,* 301 SCRA 637 (1999).

agree with the respondent that the appellate court is not required "to resolve every contention and issue raised by a party if it believes it is not necessary to do so to decide the case."[20]

The reality though is that the appellate court **did rule** on the issue when it stated that "*it becomes unnecessary to discuss whether the latter engaged in forum shopping. Apparently, the issue on forum shopping was also raised in CA-G.R. SP No. 70349 and private respondent can again raise the same in the appeal from the order dated April 3, 2002, where the issue should be properly resolved.*"[21] To the appellate court — faced with the task of ruling on a petition for *mandamus* to compel the trial court to allow the respondents' appeal — forum shopping was not an issue material to whether the trial court should or should not be compelled; what was material are the requisite filing of a notice of appeal and record on appeal, and the question of whether these have been satisfied. We cannot find fault with this reasoning as the forum shopping issue – *i.e.*, whether there was abuse of court processes in the respondents' use of two recourses to assail the same trial court order – has specific pertinence and relevance in the sufficiency and merits of the recourses the respondents took.

In sum, we hold that the Court of Appeals did not err in refusing to resolve forum shopping as an issue in its Decision in CA-G.R. SP No. 71844.

WHEREFORE, we hereby *DENY* the petition and, accordingly, *AFFIRM* the Decision of the Court of Appeals dated February 11, 2003 in CA-G.R. SP No. 71844. Costs against the petitioner.

SO ORDERED.

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

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[20] *Air France v. Carrascoso, supra* note 7.

[21] *Rollo,* pp. 54-55.

SECOND DIVISION

[G.R. No. 159302. August 22, 2008]

CITIBANK, N.A., *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION and ROSITA TAN PARAGAS,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; SECOND MOTION FOR RECONSIDERATION; LACK OF EXTRAORDINARY PERSUASIVE REASON TO DEPART FROM THE GENERAL RULE THAT A SECOND MOTION FOR RECONSIDERATION IS PROHIBITED; CASE AT BAR.— With regard to **respondent's** Motion for Leave and second MR, she has not shown any extraordinarily persuasive reasons, let alone merely persuasive reasons, for this Court to grant the same. Respondent's arguments in paragraphs 7.1 and 7.4 in her Motion for Leave both involve procedural issues which were already addressed by this Court in its Resolution of August 17, 2005 granting petitioner's second MR. xxx As for respondent's arguments under paragraphs 7.2 and 7.3, these were already extensively discussed in the Decision of February 6, 2008. Finally, the defect stated in above-quoted paragraph 7.5 of respondent's Motion for Leave, while true up until petitioner's filing of MANIFESTATION AND MOTION dated February 24, 2004, has since been remedied when petitioner filed its Reply dated January 10, 2006 wherein its counsels' Roll Numbers were indicated. As clarified in *D.O. Plaza Management Corp. v. Co-owners Heirs of Andres Atega*, the requirement to indicate counsel's Roll Number was intended to protect the public by making it easier to detect impostors who represent themselves as members of the Bar and to help lawyers keep track of their Roll of Attorneys Number. It was not meant to be a ground to dismiss an action or expunge from the records any pleading in which such Roll of Attorneys Number was not indicated. There being then no extraordinarily persuasive reason advanced by respondent for the Court to depart from the general rule that second MRs are prohibited, respondent's motions fail.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & De Los Angeles for petitioner.

M.M. Lazaro & Associates for private respondent.

R E S O L U T I O N

CARPIO MORALES, *J.*:

For consideration are respondent's MOTION FOR LEAVE TO ADMIT (Attached Second Motion for Reconsideration) and her SECOND MOTION FOR RECONSIDERATION (MR), both dated July 22, 2008.

At the outset, the Court notes respondent's claim that she learned of the Resolution dated April 23, 2008 denying her earlier motion for reconsideration only when she inquired about the status of her case with the Judicial Records Section of this Court last July 9, 2008. She admits, however, that copy of the Resolution may have been sent to the Law Firm of M.M. Lazaro & Associates, her counsel of record, with which she has had no communication ever since she filed her earlier motion. The reason proffered by respondent for such lack of communication was that her case was being handled by the said counsel on a *pro bono* basis and "she found it difficult to dismiss his services without creating any negative impression, or straining their relations," considering that she "still owes her lawyer for a debt of gratitude for handling this case."[1]

Records with this Court show that notice of the April 23, 2008 Resolution was received by the above-mentioned counsel for respondent last **June 5, 2008**. Notice to respondent's counsel is notice to her.

It is axiomatic that when a client is represented by counsel, notice to counsel is notice to client. In the absence of a notice of withdrawal or substitution of counsel, the Court will rightly assume that the

[1] *Rollo*, p. 491.

counsel of record continues to represent his client and receipt of notice by the former is the reckoning point of the reglementary period. As heretofore adverted, the original counsel did not file any notice of withdrawal. Neither was there any intimation by respondent at that time that it was terminating the services of its counsel.[2]

The Motion for Leave and the attached Second MR, which respondent filed on **July 24, 2008**, were thus filed way out of time.

At all events, the Court has delved into the substance of respondent's Motion for Leave and Second MR and found the same to be bereft of merit.

In her Motion for Leave, respondent admits having been once advised by counsel that second MRs are prohibited but that there have been instances where the rules were suspended by this Court to make them conformable to law and justice and to subserve the overriding public interest. She submits that this is a situation where a second MR should be allowed.

As for her second MR, respondent outlines her arguments in paragraphs 7.1 to 7.4 of her motion for leave, as follows:

> 7.1. Petitioner's second motion for extension of time and the petition for review on *certiorari* were already denied with finality in the Court's Resolution dated January 14, 2004;
>
> 7.2. Private respondent['s] claim for her retirement benefits was included in her position paper;
>
> 7.3. Both the Labor Arbiter's Decision dated June 29, 1998 and the NLRC Resolution dated October 24, 2004 did not make any findings of serious misconduct allegedly committed by the private respondent;
>
> 7.4. Petitioner failed to comply with Section 3, Rule 45 of the Revised Rules of Procedure, Revised Circular No. 1-88 and Supreme Court Circular No. 19-91;

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[2] *Manaya v. Alabang Country Club, Inc.*, G.R. No. 168988, June 19, 2007, 525 SCRA 140, 147.

> 7.5. Petitioner's counsel failed to indicate his attorney' roll number in all the documents he filed in Court in violation of Bar Matter No. 1132 of the Supreme Court.[3]

Respondent correctly argues that the prohibition against second MRs is not absolute, there being instances where the same are allowed in the interest of justice. Indeed, this was the reason the second MR of **petitioner** was granted by this Court, by Resolution of August 17, 2005, paving the way to the reinstatement of its petition which was eventually decided in its favor. In that Resolution, the Court found that extraordinarily persuasive reasons for granting petitioner's second MR were present; that the petition appeared meritorious on its face; and that the ends of substantial justice would be better served by allowing the motion.[4]

With regard to **respondent's** Motion for Leave and second MR, she has not shown any extraordinarily persuasive reasons, let alone merely persuasive reasons, for this Court to grant the same.

Respondent's above-quoted arguments in paragraphs 7.1 and 7.4 in her Motion for Leave both involve procedural issues which were already addressed by this Court in its Resolution of August 17, 2005 granting petitioner's second MR. *Novelty Philippines, Inc. v. CA*[5] further reinforces the Court's line of reasoning taken in the Resolution — where the merits of the case were given precedence over technicalities, *viz*:

> The policy of our judicial system is to encourage full adjudication of the merits of an appeal. In the exercise of its equity jurisdiction, this Court may reverse the dismissal of appeals that are grounded merely on technicalities. Moreover, procedural niceties should be avoided in labor cases in which the provisions of the Rules of Court are applied only in a suppletory manner. Indeed, rules of procedure

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[3] *Rollo*, pp. 490-491.

[4] Resolution dated August 17, 2005, p. 2, citing *Ortigas and Co. Limited Partnership v. Velasco* (254 SCRA 234, 240 [1996]) and *Somoso v. CA* (178 SCRA 654, 663 [1989]).

[5] 458 Phil. 36 (2003).

may be relaxed to relieve a part of an injustice not commensurate with the degree of noncompliance with the process required.

The foregoing judicial policy acquires greater significance where there has been subsequent compliance with the requirements of the rules, as in this case in which petitioner has submitted the Special Power of Attorney together with its Motion for Reconsideration. (Underscoring supplied)

As for respondent's above-quoted arguments under paragraphs 7.2 and 7.3, these were already extensively discussed in the Decision of February 6, 2008.

Finally, the defect stated in above-quoted paragraph 7.5 of respondent's Motion for Leave, while true up until petitioner's filing of MANIFESTATION AND MOTION dated February 24, 2004, has since been remedied when petitioner filed its Reply dated January 10, 2006 wherein its counsels' Roll Numbers were indicated. As clarified in *D.O. Plaza Management Corp. v. Co-owners Heirs of Andres Atega*,[6] the requirement to indicate counsel's Roll Number was intended to protect the public by making it easier to detect impostors who represent themselves as members of the Bar and to help lawyers keep track of their Roll of Attorneys Number. It was not meant to be a ground to dismiss an action or expunge from the records any pleading in which such Roll of Attorneys Number was not indicated.

There being then no extraordinarily persuasive reason advanced by respondent for the Court to depart from the general rule that second MRs are prohibited, respondent's motions fail.

WHEREFORE, respondent's MOTION FOR LEAVE TO ADMIT (Attached Second Motion for Reconsideration) and SECOND MOTION FOR RECONSIDERATION, both dated July 22, 2008, are *DENIED*.

SO ORDERED.

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

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[6] G.R. No. 158526, December 16, 2004, 447 SCRA 171, 182 (2004).

THIRD DIVISION

[G.R. No. 166760. August 22, 2008]

EASTRIDGE GOLF CLUB, INC., *petitioner, vs.* **EASTRIDGE GOLF CLUB, INC., LABOR UNION-SUPER, represented by LORENZO M. ESTEBAN, Union President and 13 others similarly situated, namely: REMEGIO PERU, ALEJANDRO RIVERA, ANTONIO ALVIZA, ELMER ANONICAL, GILBERT DARILAY, APOLINAR CAISIP, GERALDINE ARAGON, ANTONIO LLANTINO, ABSALON BARBON, ALVIN ZELLER, LUISITO TEVES, REYNALDO VICTORIOSO and LORENZO M. ESTEBAN,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; RETRENCHMENT AS A GROUND THEREFOR, EXPLAINED.— Retrenchment or lay-off is the termination of employment initiated by the employer, through no fault of the employees and without prejudice to the latter, during periods of business recession, industrial depression, or seasonal fluctuations, or during lulls occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program or the introduction of new methods or more efficient machinery, or of automation. It is an exercise of management prerogative which the Court upholds if compliant with certain substantive and procedural requirements, namely: 1. That retrenchment is necessary to prevent losses and it is proven, by sufficient and convincing evidence such as the employer's financial statements audited by an independent and credible external auditor, that such losses are substantial and not merely flimsy and actual or reasonably imminent; and that retrenchment is the only effective measure to prevent such imminent losses; 2. That written notice is served on to the employees and the DOLE at least one (1) month prior to the intended date of retrenchment; and 3. That the retrenched employees receive separation pay equivalent to one (1) month

pay or at least one-half (½) month pay for every year of service, whichever is higher. The employer must prove compliance with all the foregoing requirements. Failure to prove the first requirement will render the retrenchment illegal and make the employer liable for the reinstatement of its employees and payment of full backwages. However, were the retrenchment undertaken by the employer is *bona fide*, the same will not be invalidated by the latter's failure to serve prior notice on the employees and the DOLE; the employer will only be liable in nominal damages, the reasonable rate of which the Court *En Banc* has set at ₱50,000.00 for each employee.

2. ID.; ID.; ID.; CLOSURE OR CESSATION OF BUSINESS AS A GROUND FOR TERMINATION OF EMPLOYMENT, DISCUSSED.— Closure or cessation of business is the complete or partial cessation of the operations and/or shut-down of the establishment of the employer. It is carried out to either stave off the financial ruin or promote the business interest of the employer. ***Unlike retrenchment, closure or cessation of business, as an authorized cause of termination of employment, need not depend for validity on evidence of actual or imminent reversal of the employer's fortune.*** Article 283 authorizes termination of employment due to business closure, regardless of the underlying reasons and motivations therefor, be it financial losses or not. The decision to close business is a management prerogative exclusive to the employer, the exercise of which no court or tribunal can meddle with, except only when the employer fails to prove compliance with the requirements of Art. 283, to wit: a) that the closure/cessation of business is *bona fide*, *i.e.*, its purpose is to advance the interest of the employer and not to defeat or circumvent the rights of employees under the law or a valid agreement; b) that written notice was served on the employees and the DOLE at least one month before the intended date of closure or cessation of business; and c) in case of closure/cessation of business ***not*** due to financial losses, that the employees affected have been given separation pay equivalent to ½ month pay for every year of service or one month pay, whichever is higher. It should be borne in mind that where the closure of business is found to be in bad faith, the dismissal of the employees shall be declared illegal and the employer held liable for their reinstatement and payment of full backwages, unless reinstatement is no longer feasible in which case the employer

shall be liable for full backwages as well as separation pay at the rate of one month salary for every year of service, with a fraction of at least six months being considered as one year. If the closure of business due to serious business losses or financial reverses is shown to be in good faith, the resultant dismissal of the employees shall be upheld, with no separation benefits due them. If the closure of business is ***not*** due to serious business losses or financial reverses but it is shown to be in good faith, the resultant dismissal of the employees will still be upheld but the latter shall be entitled to separation pay at the rate of ½ month pay for every year of service or one month pay, whichever is higher.

3. ID.; ID.; ID.; WHERE CLOSURE OF THE BUSINESS WAS FOUND TO BE A MERE SUBTERFUGE, THE DISMISSAL OF EMPLOYEES BY REASON THEREOF WAS ILLEGAL; CASE AT BAR.— The evidence presented by respondents overwhelmingly shows that petitioner did not cease its F&B operations but merely simulated its transfer to the concessionaire. The payslips alone, the authenticity of which petitioner did not dispute, bear the name of petitioner's Eastridge Golf Club, Food and Beverage Department. The payroll register for the Food and Beverage Department is verified correct by petitioner's Chief Accountant, Nestor Rubis. The Philhealth and Social Security System (SSS) remittance documents are likewise certified correct by the same Chief Accountant. These pieces of documentary evidence convincingly, even conclusively, establish that petitioner remained the employer of the F&B staff even after the October 1, 1999 alleged take-over by the concessionaire. Even petitioner's own evidence adds weight to respondents' evidence. The quitclaims and release forms which petitioner required respondents to sign at the time of the alleged cessation of petitioner's F&B operations all bear the signature of its Chief Accountant. It was that same Chief Accountant who certified and verified as correct the payroll register and Philhealth/SSS remittance documents issued many months after the alleged cessation of the F&B operations. Moreover, the documents which petitioner attached to prove that the concessionaire took over the F&B operations are of doubtful veracity. For one, the October 1, 1999 Agreement (Food & Beverages Concessionaire) with Mother's Choice Meat Shop & Food Services is not notarized, which is an unusual omission by a business entity such as petitioner. It is also curious

that the Certificate of Registration of Business Name as well as the Mayor's Permit are all in the name of Bilibiran Food Services, not Mother's Choice Meat Shop & Food Services. There is no doubt, therefore, that the CA was correct in ruling that the cessation of petitioner's F&B operations and transfer to the concessionaire were a mere subterfuge, and that the dismissal of respondents by reason thereof was illegal.

APPEARANCES OF COUNSEL

Francisco L. Daria for petitioner.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court of petitioner Eastridge Golf Club, Inc. from the October 13, 2004 Decision[1] of the Court of Appeals (CA) which ordered the reinstatement of the individual respondents; and the January 19, 2005 Resolution[2] of the CA which denied petitioner's motion for reconsideration.

The relevant facts are of record.

Petitioner employed respondents as kitchen staff in its Food and Beverage (F&B) Department. Effective October 1, 1999, petitioner terminated the employment of respondents on the ground that the operations of the F&B Department had been turned over to concessionaire Mother's Choice Meat Shop & Food Services.[3] Petitioner filed with the Department of Labor and Employment (DOLE) an Establishment Termination Report,[4] stating that it laid off the respondents due to company

[1] Penned by Associate Justice Eliezer R. delos Santos and concurred in by Associate Justices Delilah Vidallon-Magtolis and Arturo Brion (now a member of the Supreme Court), *rollo*, p. 9.

[2] *Id.* at 36.

[3] CA *rollo*, pp. 66-77.

[4] *Id.* at 78.

reorganization/downsizing and transfer of operations to a concessionaire.

Respondents filed with the National Labor Relations Commission (NLRC), Regional Arbitration Branch, a complaint for illegal dismissal, unfair labor practice and payment of 13th month pay. They claimed that their dismissal was not based on any of the causes allowed by law, and that it was effected without due process.[5]

Petitioner denied respondents' claims, pointing out that several months before their dismissal, it issued various office memoranda[6] informing respondents that, to minimize company losses, the management decided to bid out a part of its operations, specifically the F&B Department, to a concessionaire.[7] The partial cessation of operations was *bonafide*, as shown by such evidence as:

1. Agreement (Food & Beverages Concessionaire), dated October 1, 1999, between Eastridge Golf Club, Inc. and Mother's Choice Meat Shop & Food Services (Annex "10");[8]
2. Certificate of Registration of Business Name, dated January 26, 2000, issued by the Department of Trade and Industry to Bilibiran Food Services (Annex "11");[9] and
3. Mayor's Permit dated February 8, 2000 issued to Food Services/Bilibiran (Annex "11-A").[10]

Petitioner further explained that the transfer of operations was not intended to displace its workers. In fact, a procedure was adopted by which the old F&B staff, such as respondents, could be rehired by the concessionaire. Several F&B staff were in fact rehired, as shown in Annexes "6"[11]

[5] *Id.* at 44.

[6] *Id.* at 60-65.

[7] Position Paper, *id.* at 55-58.

[8] *Id.* at 79.

[9] *Id.* at 83.

[10] CA *rollo*, p. 84.

[11] *Id.* at 64

and "7"[12] of its Position Paper. However, respondents failed to comply with the rehiring procedure; hence, they were considered resigned when the concessionaire took over operations on October 1, 1999.[13]

To controvert petitioner's claim that the partial cessation of operations was *bona fide*, respondents filed a Motion to Re-open Case[14] in which they presented documentary evidence that there was no real transfer of operations, for even after October 1, 1999, petitioner remained the real employer of all the F&B staff. Their documentary evidence consists of the following:[15]

1. Payslips for the periods October 1-15, 1999 (Annex "A");[16] January 16-31, 2000 (Annex "A-1");[17] and May 1-15, 2000 (Annex "A-2")[18] issued by petitioner to various employees, including those listed in Annex "6" and Annex "7";

2. Monthly Payroll Register (Annexes "C" to "C-1")[19] issued by petitioner for the entire F&B Department for the period April 16-30, 2000;

3. ME-5 Philippine Health Insurance Corporation Contribution Payment Return (Annex "D")[20] issued by petitioner, through its Chief Accountant Nestor Rubis, showing payment of contributions for the period February 2000, in the total amount of ₱16,375.00, for all its employees, including those listed in Annex "6" and Annex "7";

4. RF-1 Employer Quarterly Remittance Report (Annexes "K" to "K-8")[21] submitted by petitioner through its Chief

[12] *Id.* at 67.

[13] *Id.*

[14] *Id.* at 684.

[15] *Id.* at 109.

[16] *Id.* at 687.

[17] *Id.* at 688.

[18] *Id.* at 689.

[19] *Id.* at 694-695.

[20] *Id.* at 175.

[21] CA *rollo*, pp. 117-124.

Accountant Nestor Rubis, indicating remittance of premium contributions, in the total amount of ₱16,375.00, of the individual employees listed therein, including employees listed in Annex "6" and Annex "7"; and

5. R-5 Social Security System Contribution Payment Return (Annex "E"),[22] showing payment by petitioner for March 2000.

In a Decision dated March 22, 2002, the Labor Arbiter (LA) held:

WHEREFORE, judgment is hereby rendered in favor of the complainants, holding that no sufficient ground to validly considered [sic] them resigned from their job and holding illegal their dismissal from the service by reason therefor. Accordingly, respondent company is ordered to reinstate them to their former position without loss of seniority rights and with full backwages, as shown in the attached computation hereof which is adopted as our own and forming part of the decision as Annex "A". Further, holding respondent company guilty of unfair labor practice act under par. c, Article 248 of the Labor Code, as amended and thereby ordered to pay each of the complianant (sic) and the union the amount of ₱5,000.00 as and for damages.

The other claims are dismissed for lack of merit.

SO ORDERED.[23]

On appeal, the NLRC, in a Decision dated May 21, 2003, reversed the LA, thus:

WHEREFORE, the appeal is hereby GRANTED and the decision appealed from is SET ASIDE and this complaint DISMISSED for lack of merit. Respondents, however, are ordered jointly and severally, to pay each complainant of one (1) month salary for every year of service.

SO ORDERED.[24]

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[22] *Id.* at 127.

[23] *Id.* at 25.

[24] *Id.* at 39.

After their motion for reconsideration was denied by the NLRC,[25] respondents filed with the CA a Petition for *Certiorari*,[26] which the appellate court granted in the October 13, 2004 Decision assailed herein, the dispositive portion of which reads:

> WHEREFORE, premises considered, the petition is GRANTED. The assailed NLRC decision and resolution dated May 21, 2003 and July 21, 2003, respectively, are hereby REVERSED and SET ASIDE. The decision of the Labor Arbiter dated March 22, 2002 is hereby REINSTATED.
>
> SO ORDERED.[27]

Petitioner's motion for reconsideration was denied by the CA in its January 19, 2005 Resolution.[28]

Hence, petitioner's recourse to this Court, assailing the CA Decision and Resolution on the sole ground that these were rendered contrary to existing law and jurisprudence.[29]

Petitioner's recourse must fail.

The LA held the dismissal of respondents illegal in the light of evidence that petitioner did not actually cease the operation of its F&B Department:

> By their own declaration/admission, respondent [petitioner] company had not closed operation but merely transferred management of its Food and Beverages Operations temporarilly thru a concessionaire for alleged low income generation and increasing operation expenses x x x.
>
> xxx xxx xxx
>
> It is well to note that respondents Food and Beverages Department continues to exist after complainants [respondents] were dismissed as evidenced by the pay slip of complainants' [respondents'] co-

[25] *Id.* at 42.

[26] *Id.* at 2.

[27] *Rollo*, p. 15.

[28] *Id.* at p. 36.

[29] Petition for Review, *id.* at 46.

employees x x x and SSS premium payments by respondent [petitioner] company to complainants' co-employees at the Food & Beverages Department x x x as well as the respondent [petitioner] company payroll xxx where complainants' [respondents'] co-employees are included x x x.[30]

The LA further held that even if it were true that petitioner ceased operation of its F&B Department, the same would not have warranted the dismissal of respondents because petitioner had not shown evidence that it was incurring financial losses. To quote the LA:

> Respondent alleged that the reason for the implementation of the above-scheme was brought about by financial constraint — "low income generation and increasing operational expenses" x x x.
>
> As correctly put forth by the complainants, allegation of losses, must be established beyond cavil xxx. In our case, respondent had not at all presented documentary evidence in support of their losses.[31]

Contradicting the LA, the NLRC held that the evidence of respondents do not prove that petitioner acted in a malicious or arbitrary manner when it relinquished its F&B operations.[32] The NLRC further held that the LA erred in requiring petitioner to prove that it ceased its F&B operations because of financial losses. No such requirement is imposed by Article 283 because petitioner's "decision, as authorized by the Board of Directors, to transfer the operation and Management of the F&B business to a concessionaire was a valid exercise of management prerogative 'to prevent losses' x x x. The employer's act of terminating the services of the affected employee is authorized before the anticipated losses are actually sustained or realized, for it is not the intention of the lawmakers to compel the employer to stay his hand and keep all his employees until after losses shall have in fact materialized."[33]

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[30] LA Decision, CA *rollo*, pp. 22 and 24.

[31] CA, *rollo*, p. 23.

[32] NLRC Decision, *rollo*, pp. 35-36.

[33] *Id.* at 35.

The CA discarded the view of the NLRC and reverted to the position of the LA, thus:

> Retrenchment is one of the ways of terminating the employment to preserve the viability of the business. However, the employer bears the burden of proving his allegation of economic and business reverses with clear and satisfactory evidence. Requirements for valid retrenchment must be proved by clear and convincing evidence. In this case, the Club [petitioner] allegedly decided to get a concessionaire to avoid losses and further increase in its overhead expenses. However, it had not presented documentary evidence in support of its alleged losses.
>
> On the other hand, the Union [respondents] presented evidence sufficient to prove that the Club's [petitioner's] Food and Beverage Department continues to exist even after their dismissal like the Club's Philippine Health Insurance Corporation Employees Quarterly Remittance Report dated April 2, 2000 showing the names of the employees allegedly absorbed by the concessionaire x x x.[34]

It is evident that the CA and LA differ in their factual assessment and legal conclusion from those of the NLRC on three planes: first, on the cause of the termination of the employment of respondents; second, on the legal requirements for the validity of the termination of respondents; and third, on petitioner's compliance with these requirements. Their differing views compelled the Court to scrutinize the records to satisfy itself on which view was more in accord with the facts and the law of the case.[35]

Petitioner argues that it has sufficient business autonomy to close its F&B operations, and that it need not justify its decision by presenting evidence that it has been incurring financial losses.[36]

Article 283 of the Labor Code allows various modes of termination of employment, to wit:

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[34] CA Decision, *rollo*, p. 14.

[35] *Cajucom VII v. TPI Philippines Cement Corporation*, G.R. No. 149090, February 11, 2005, 451 SCRA 70, 78; *Asufrin, Jr. v. San Miguel Corporation*, G.R. No. 156658, March 10, 2004, 425 SCRA 270.

[36] Petition, *rollo*, pp. 48-50.

Art. 283. ***Closure of establishment and reduction of personnel.***— The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, ***retrenchment to prevent losses*** or ***the closing or cessation of operation of the establishment or undertaking*** unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. ***In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.***

Only the last two modes are relevant here, *i.e.*: retrenchment to prevent losses and closure or cessation of operation of the establishment or undertaking.

Retrenchment or lay-off is the termination of employment initiated by the employer, through no fault of the employees and without prejudice to the latter, during periods of business recession, industrial depression, or seasonal fluctuations, or during lulls occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program or the introduction of new methods or more efficient machinery, or of automation.[37]

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[37] *Tanjuan v. Philippine Postal Savings Bank, Inc.*, G.R. No. 155278, September 16, 2003, 411 SCRA 168, citing *Sebuguero v. National Labor Relations Commission*, G.R. No. 115394, September 27, 1995, 248 SCRA 532, 542 , which in turn cites *LVN Pictures Employees and Workers Assocaition v. LVN Pictures*, 146 Phil. 153 (1970), LVN Pictures Employees and Worker Association derived the definition of the term from the rulings of the Court in *Phil. American Embroideries, Inc. v. Embroidery & Garment Workers Union*, No. L-20143, January 27, 1969, 26 SCRA 634, 643; *Northern Luzon Transportation Co. v. Commissioner on Internal Revenue*, 73 Phil. 41 (1941); *Union of Philippine Education Employees v. Philippine Education Co.*, L-7161, 97 Phil. 954 (1955); and *Gregorio Araneta Employees Union v. Roldan*, 97 Phil. 304 (1955).

It is an exercise of management prerogative which the Court upholds if compliant with certain substantive and procedural requirements,[38] namely:

1.That retrenchment is necessary to prevent losses and it is proven, by sufficient and convincing evidence such as the employer's financial statements audited by an independent and credible external auditor,[39] that such losses are substantial and not merely flimsy [40] and actual or reasonably imminent;[41] and that retrenchment is the only effective measure to prevent such imminent losses;[42]

2.That written notice is served on to the employees and the DOLE at least one (1) month prior to the intended date of retrenchment;[43] and

3. That the retrenched employees receive separation pay equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher.[44]

The employer must prove compliance with all the foregoing requirements.[45]

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[38] *AMA Computer College, Inc. v. Garcia*, G.R. No. 166703, April 14, 2008*; EMCO Plywood Corporation v. Abelgas*, G.R. No. 148532, April 14, 2004, 427 SCRA 496.

[39] *TPI Philippines Cement Corporation v. Cajucom VII*, G.R. No. 149138, February 28, 2006, 483 SCRA 494; *De la Salle University v. De la Salle University Employees Association*, G.R. No. 110072, April 12, 2000, 330 SCRA 368.

[40] *PT&T v. National Labor Relations Commission*, G.R. No. 147002, April 15, 2005, 456 SCRA 264.

[41] *Blucor Minerals Corporation v. Amarilla*, G.R. No. 161217, May 4, 2005, 458 SCRA 37, 45.

[42] *EMCO Plywood Corporation*, *supra*, note 38, citing *Saballa v. National Labor Relations Commission*, 329 Phil. 511, 526-527 (1996); and *Lopez Sugar Corporation v. Federation of Free Workers*, G.R. Nos. 75700-01, August 30, 1990, 189 SCRA 179, 186-187.

[43] *TPI Philippine Cement Corporation*, *supra* note 39.

[44] *EMCO Plywood Corporation v. Abelgas*, *supra* note 38.

[45] *Composite Enterprises, Inc. v. Caparoso*, G.R. No. 159919, August 8, 2007, 529 SCRA 470.

Failure to prove the first requirement will render the retrenchment illegal and make the employer liable for the reinstatement of its employees and payment of full backwages.[46] However, were the retrenchment undertaken by the employer is *bona fide*, the same will not be invalidated by the latter's failure to serve prior notice on the employees and the DOLE; the employer will only be liable in nominal damages,[47] the reasonable rate of which the Court *En Banc* has set at ₱50,000.00[48] for each employee.

Closure or cessation of business is the complete or partial[49] cessation of the operations and/or shut-down of the establishment of the employer. It is carried out to either stave off the financial ruin[50] or promote the business interest of the employer.[51]

Unlike retrenchment, closure or cessation of business, as an authorized cause of termination of employment, need not depend for validity on evidence of actual or imminent reversal of the employer's fortune. Article 283 authorizes termination of employment due to business closure, regardless of the underlying reasons and motivations therefor, be it financial losses or not.[52]

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[46] *F.F. Marine Corporation v. National Labor Relations Commission*, G.R. No. 152039, April 8, 2005, 455 SCRA 154, 173; *Philippine Carpet Employees Association v. Sto. Tomas*, G.R. No. 168719, February 22, 2006, 483 SCRA 128; *Cabalen Management Co., Inc. v. Quiambao*, G.R. No. 169494, March 14, 2007, 518 SCRA 342.

[47] *PT&T v. Court of Appeals*, *supra* note 40.

[48] *Jaka Food Processing Corporation v. Pacot*, G.R. No. 151378, March 28, 2005, 454 SCRA 119. See also *DAP Corporation v. Court of Appeals*, G.R. No. 165811, December 14, 2005, 477 SCRA 792.

[49] *Espina v. Court of Appeals*, G.R. No. 164582, March 28, 2007.

[50] *Cama v. Joni's Food Services, Inc.*, G.R. No. 153021, March 10, 2004, 425 SCRA 259.

[51] *Angeles v. Polytex Design, Inc.*, G.R. No. 157673, October 15, 2007, 536 SCRA 159.

[52] *Alabang Country Club, Inc. v. National Labor Relations Commission*, G.R. No. 157611, August 9, 2005, 466 SCRA 329; *J.A.T. General Services v. National Labor Relations Commission*, G.R. No. 148430, January 26, 2004, 421 SCRA 78.

In the case under review, the cause invoked by petitioner in terminating the employment of respondents is not retrenchment but cessation of a single aspect of its business undertaking, *i.e.*, the F&B Department. This is evident in the notices of termination it sent to respondents where petitioner indicated that it had withdrawn from the direct operation of the F&B Department and had transferred the management thereof to the concessionaire.[53] Also, in the various office memoranda it posted, petitioner explained that the underlying reason for the cessation of its F&B undertaking was that the economic depression had affected its sales and operations and resulted in increased overhead expenses and decreased incomes.[54]

Cessation of its F&B operations being the cause invoked by petitioner to terminate the employment of respondents, it need not present evidence of financial losses to justify such business decision. Thus, the Court agrees with petitioner that the CA erred when it declared that, for lack of evidence of financial losses, petitioner's cessation of its F&B operations was not a valid cause to terminate the employment of respondents.

But petitioner is not out of the woods yet.

The decision to close business is a management prerogative exclusive to the employer, the exercise of which no court or tribunal can meddle with, except only when the employer fails to prove compliance with the requirements of Art. 283, to wit: a) that the closure/cessation of business is *bona fide, i.e.*, its purpose is to advance the interest of the employer and not to defeat or circumvent the rights of employees under the law or a valid agreement*;* b) that written notice was served on the employees and the DOLE at least one month before the intended date of closure or cessation of business; and c) in case of closure/ cessation of business ***not*** due to financial losses, that the employees affected have been given separation pay equivalent to ½ month

[53] CA *rollo,* pp. 66-77.

[54] *Id.* at 60-64.

pay for every year of service or one month pay, whichever is higher.[55]

It should be borne in mind that where the closure of business is found to be in bad faith, the dismissal of the employees shall be declared illegal and the employer held liable for their reinstatement and payment of full backwages,[56] unless reinstatement is no longer feasible in which case the employer shall be liable for full backwages as well as separation pay at the rate of one month salary for every year of service, with a fraction of at least six months being considered as one year.[57]

If the closure of business due to serious business losses or financial reverses is shown to be in good faith, the resultant dismissal of the employees shall be upheld, with no separation benefits due them.[58] If the closure of business is ***not*** due to serious business losses or financial reverses but it is shown to be in good faith, the resultant dismissal of the employees will still be upheld but the latter shall be entitled to separation pay at the rate of ½ month pay for every year of service or one month pay, whichever is higher.[59]

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[55] *Mac Adams Metal Engineering Workers Union-Independent v. Mac Adams Metal Engineering*, 460 Phil. 583 (2003).

[56] *Stanley Garments Specialists v. Gomez,* G.R. No. 154818, August 11, 2005, 466 SCRA 535; *Danzas Intercontinental, Inc. v. Daguman,* G.R. No. 154368, April 15, 2005*; Raycor Air Control Systems, Inc. v. San Pedro*, G.R. No. 158132, July 4, 2007, 526 SCRA 429.

[57] *Capitol Medical Center, Inc. v. Meris*, G.R. No. 155098, September 16, 2005, 470 SCRA 125.

[58] *Galaxie Steel Workers Union v. National Labor Relations Commission*, G.R. No. 165757, October 17, 2006; *Cama v. Joni's Food Services, Inc., supra* at 49; *Business Services of the Future Today, Inc. v. Court of Appeals*, G.R. No. 157133, January 30, 2006.

[59] *Angeles v. Polytex Design, Inc., supra* at 50; *Pilar Espina v. Court of Appeals*, G.R. No. 164582, March 28, 2007; *J.A.T. General Services v. National Labor Relations Commission*, G.R. No. 148340, January 26, 2004. See also *Kasapian ng Malayang Manggagawa sa Coca-Cola (Kasama-CCO)-CFW Local 245 v. Court of Appeals*, G.R. No. 159828, April 19, 2006 and *TPI Philippines Cement Corporation v. Cajucom*, G.R. No. 149138, February 28, 2006.

Both the CA and the LA found that the cessation of petitioner's F&B operations was a mere subterfuge in view of evidence that the latter continued to act as the real employer by paying for the salaries and insurance contributions of the employees of the F&B Department even after the concessionaire allegedly took over its operations. The NLRC saw otherwise, holding that the said evidence did not establish that the cessation of petitioner's F&B operations was in bad faith.

Petitioner insists that the documentary evidence presented by respondents hardly establish that it remained the employer of the F&B staff even after the turn over of its operations to the concessionaire. Said evidence was even controverted by the quitclaims and release forms executed by the individual respondents which show that petitioner had paid separation benefits to those employees absorbed by the concessionaire,[60] Petitioner reasons out that if it had not given up its F&B operations, it would not have paid those employees separation benefits.[61]

Petitioner fails to persuade the Court.

In *Me-Shurn Corporation v. Me-Shurn Workers Union-FSM,*[62] the corporation shut down its operations allegedly due to financial losses and paid its workers separation benefits. Yet, barely one month after the shutdown, the corporation resumed operations. In light of such evidence of resumption of operations, the Court held that the earlier shutdown of the corporation was in bad faith.

With a similar outcome was the closure of the brokerage department of the corporation in *Danzas Intercontinental, Inc. v. Daguman.*[63] In view of evidence consisting of a mere letter written by the corporation to its clientele that its brokerage department was still operating but with a new staff, the Court

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[60] Petition, *rollo*, p. 48.

[61] Memorandum for Petitioner, *rollo*, pp. 394-396.

[62] G.R. No. 156292, January 11, 2005.

[63] G.R. No. 154368, April 15, 2005.

declared the earlier closure of the corporation's brokerage department not *bona fide* and ordered the reinstatement of its former staff, despite the latter having signed quitclaims and release forms acknowledging payment of separation benefits.

The closure of a high school department in *St. John Colleges, Inc. v. St. John Academy Faculty and Employees Union* [64] was likewise annulled upon evidence that barely one year after the announced closure, the school reopened its high school department. The Court found the closure of the high school in bad faith notwithstanding payment to the affected teachers of separation benefits.

In *Capitol Medical Center, Inc. v. Meris*[65] the hospital justified the closure of a unit and the dismissal of its head doctor by claiming that there was a dwindling demand for the unit's services. However, upon examination of the records, the Court found that service demand had in fact been rising, thus negating the very reason proffered by the hospital in closing down the unit. On that score, the Court declared the action of the hospital in bad faith.

The evidence presented by respondents overwhelmingly shows that petitioner did not cease its F&B operations but merely simulated its transfer to the concessionaire. The payslips alone, the authenticity of which petitioner did not dispute,[66] bear the name of petitioner's Eastridge Golf Club, Food and Beverage Department.[67] The payroll register for the Food and Beverage Department is verified correct by petitioner's Chief Accountant, Nestor Rubis.[68] The Philhealth and Social Security System (SSS) remittance documents are likewise certified correct by the same Chief Accountant.[69] These pieces of documentary evidence

[64] G.R. No. 167892, October 27, 2006.

[65] *Supra* at 47.

[66] Memorandum for Petitioner, *rollo*, p. 394.

[67] Annexes "A" and "A-3", CA *rollo*, pp. 687, 690.

[68] Annex "C", *id.* at 693.

[69] Annex "D", *id.* at 175.

convincingly, even conclusively, establish that petitioner remained the employer of the F&B staff even after the October 1, 1999 alleged take-over by the concessionaire.

Even petitioner's own evidence adds weight to respondents' evidence. The quitclaims and release forms which petitioner required respondents to sign at the time of the alleged cessation of petitioner's F&B operations all bear the signature of its Chief Accountant. It was that same Chief Accountant who certified and verified as correct the payroll register and Philhealth/SSS remittance documents issued many months after the alleged cessation of the F&B operations.

Moreover, the documents which petitioner attached to prove that the concessionaire took over the F&B operations are of doubtful veracity. For one, the October 1, 1999 Agreement (Food & Beverages Concessionaire) with Mother's Choice Meat Shop & Food Services is not notarized,[70] which is an unusual omission by a business entity such as petitioner. It is also curious that the Certificate of Registration of Business Name as well as the Mayor's Permit are all in the name of Bilibiran Food Services, not Mother's Choice Meat Shop & Food Services.[71]

There is no doubt, therefore, that the CA was correct in ruling that the cessation of petitioner's F&B operations and transfer to the concessionaire were a mere subterfuge, and that the dismissal of respondents by reason thereof was illegal.

Finally, it is noted that in reinstating the decision of the LA, the CA in effect affirmed the finding of unfair labor practice. In its petition and memorandum, petitioner offered no argument in refutation of the said finding, except for its claim that the cessation of its F&B operation was justified, which claim has been revealed to be spurious. The Court must therefore also sustain the judgment of the CA on the existence of unfair labor practice.

WHEREFORE, the petition is *DENIED*.

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[70] CA *rollo*, p. 79.

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

Costs against petitioner.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 167708. August 22, 2008]

THE HON. SECRETARY OF LABOR AND EMPLOYMENT, EDGARDO M. AGAPAY and SAMILLANO A. ALONSO, JR., *petitioners, vs.* **PANAY VETERAN'S SECURITY AND INVESTIGATION AGENCY, INC. and JULITO JALECO,**[1] *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; REQUIREMENTS TO PERFECT AN APPEAL FROM REGIONAL DIRECTOR'S ORDER TO THE SECRETARY OF LABOR.— The rule is that, to perfect an appeal of the Regional Director's order involving a monetary award in cases which concern the visitorial and enforcement powers of the Secretary of Labor and Employment, the appeal must be filed and the cash or surety bond equivalent to the monetary award must be posted within ten calendar days from receipt of the order. Failure either to file the appeal or post the bond within the prescribed period renders the order final and executory. The legislative intent to make the bond an indispensable requisite for the perfection of an appeal by the employer is underscored

[1] The Court of Appeals was impleaded as respondent but the Court excluded it pursuant to Section 4, Rule 45 of the Rules of Court.

by the provision that "an appeal by the employer may be perfected only upon the posting of a cash or surety bond." The word "only" makes it clear that the lawmakers intended the posting of a cash or surety bond by the employer to be the exclusive means by which an employer's appeal may be perfected.

2. ID.; ID.; ID.; EFFECT OF FAILURE TO POST THE REQUIRED BOND.— In this case, respondents admit that they failed to post the required bond when they filed their appeal to the Secretary of Labor and Employment. Because of such failure, the appeal was never perfected and the May 10, 2001 order of the DOLE-NCR Regional Director attained finality.

3. ID.; ID.; ID.; TWO-FOLD PURPOSE OF THE REQUIREMENT TO POST BOND.— The CA's amended decision also contradicted the spirit that animates all labor laws, the promotion of social justice and the protection of workers. The posting of a cash or surety bond to perfect an appeal of an order involving a monetary award has a two-fold purpose: (1) to assure the employee that, if he finally prevails in the case, the monetary award will be given to him upon dismissal of the employer's appeal and (2) to discourage the employer from using the appeal to delay or evade payment of his obligations to the employee. The CA disregarded these pro-labor objectives when it treated respondents' failure to post the required bond with undue leniency. The CA should have resolved any doubt in the implementation and interpretation of the Labor Code and its implementing rules in favor of labor. For like all laws which govern industrial relations (assuming all things are equal), the rules governing the proceedings in labor disputes should be interpreted in favor of the worker.

4. ID.; ID.; ID.; NLRC'S PRACTICE OF ALLOWING REDUCTION OF APPEAL BOND DOES NOT APPLY IN CASES COGNIZABLE BY THE SECRETARY OF LABOR.— Moreover, *Star Angel Handicraft* permitted the filing of a motion for reduction of the appeal bond because the Court recognized the NLRC's existing practice at that time to allow the reduction of the appeal bond "upon motion of appellant and on meritorious grounds." In fact, the practice was subsequently institutionalized in the rules of procedure of the NLRC which now allow the reduction of the amount of the bond "in justifiable cases and upon motion of the appellant."

On the contrary, no such practice ever existed in cases taken cognizance of by the Secretary of Labor and Employment in the exercise of his visitorial and enforcement powers. Hence, *Star Angel Handicraft* cannot be applied in labor standards cases appealed to the Secretary of Labor and Employment.

5. ID.; NLRC'S JURISDICTION IS SEPARATE AND DISTINCT FROM THAT OF THE SECRETARY OF LABOR AND EMPLOYMENT; RULES OF PROCEDURE OF THE NLRC DOES NOT APPLY TO CASES COGNIZABLE BY THE LABOR SECRETARY.— The jurisdiction of the NLRC is separate and distinct from that of the Secretary of Labor and Employment. In the exercise of their respective jurisdictions, each agency is governed by its own rules of procedure. In other words, the rules of procedure of the NLRC are different from (and do not apply in) cases cognizable by the Secretary of Labor and Employment. Unlike the New Rules of Procedure of the NLRC, no provision in the Rules on the Disposition of Labor Standards Cases governs the filing of a motion for the reduction of the amount of the bond. However, on matters that are not covered by the Rules on the Disposition of Labor Standards Cases, the suppletory application of the Rules of Court is authorized. *In other words, the Rules on the Disposition of Labor Standards Cases does not sanction the suppletory resort to the rules of procedure of the NLRC.* By ruling that the rules of procedure of the NLRC should be applied suppletorily to respondents' appeal to the Secretary of Labor and Employment, the CA effectively amended the Rules on the Disposition of Labor Standards Cases. In the process, it encroached on the rule-making power of the Secretary of Labor and Employment.

6. ID.; REGIONAL DIRECTOR'S MONETARY AWARD IS SUBJECT TO LEGAL INTEREST.— The obligation of respondents to pay the lawful claims of petitioners Agapay and Alonso, Jr. was established with reasonable certainty on October 30, 2000 when respondents received the notice of inspection from the labor employment officer. Since such obligation did not constitute a loan or forbearance of money, it was subject to legal interest at the rate of 6% per annum from that date until the May 10, 2001 order of the DOLE-NCR Regional Director attained finality. From the time the May 10, 2001 order of the DOLE-NCR Regional Director

became final and executory, petitioners Agapay and Alonso, Jr. were entitled to 12% legal interest per annum until the full satisfaction of their respective claims.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Julio O. Lopez for respondents.

D E C I S I O N

CORONA, *J.*:

This is a petition for review[2] of the November 25, 2004 amended decision[3] of the Court of Appeals (CA) in CA-G.R. SP No. 72713.

Petitioners Edgardo M. Agapay and Samillano A. Alonso, Jr.[4] were hired by respondent Panay Veteran's Security and Investigation Agency, Inc. as security guards sometime in 1988. They were stationed at the plant site of Food Industries, Inc. (FII) in Sta. Rosa, Laguna until FII terminated its contract with respondent security agency on July 6, 2000. They were not given new assignments and their benefits (including 13th month pay, overtime pay and holiday pay as well as wage differentials due to underpayment of wages) were withheld by respondent security agency. This prompted them to file a complaint for violation of labor standards in the regional office of the Department of Labor and Employment in the National Capital Region (DOLE-NCR).

Acting on the complaint, Manuel M. Cayabyab, a labor

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[2] Under Rule 45 of the Rules of Court.

[3] Penned by Associate Justice Jose Catral Mendoza and concurred in by Associate Justices Remedios Salazar-Fernando and Perlita J. Tria-Tirona (retired) of the Special former Ninth Division of the Court of Appeals. *Rollo*, pp. 22-24.

[4] Also referred to as "Samillano A. Alonzo, Jr." in some parts of the records.

employment officer of the DOLE-NCR, conducted an inspection of respondent security agency on October 30, 2000. During the inspection, respondent security agency failed to present its payroll as well as the daily time records submitted by petitioners Agapay and Alonso, Jr. Such failure was noted as a violation.

After conducting his inspection, Cayabyab issued a notice of inspection to respondent security agency through its authorized representative, respondent Julito Jaleco.[5] Cayabyab explained the contents and significance of the notice to respondent Jaleco. He emphasized the need for respondents either to comply with labor standards by paying the claims of petitioners Agapay and Alonso, Jr. (as computed by Cayabyab) or to raise any question regarding the notice to the DOLE-NCR within five days.

Respondents neither paid the claims of petitioners Agapay and Alonso, Jr. nor questioned the labor employment officer's findings. Thus, in his May 10, 2001 order, the Regional Director of the DOLE-NCR adopted the findings and computation of Cayabyab as to the unpaid benefits due to petitioners Agapay and Alonso, Jr. The dispositive portion of the order read:

> WHEREFORE, premises considered, Panay Veterans Security and Investigation Agency, Inc. and/or Julius Jaleco [are/]is hereby ordered to pay Edgardo Agapay, [*et al.*] the aggregate amount of ₱206,569.20 representing 13th month, overtime and legal holiday [pay] & [underpaid] wages within ten (10) days from receipt hereof.
>
> Otherwise, a [w]rit of [e]xecution shall be issued for the enforcement of [this] order.
>
> SO ORDERED.[6]

Respondents moved for reconsideration but the DOLE-NCR Regional Director denied it.

Undeterred, respondents filed an appeal (with motion to reduce cash or surety bond) to the Secretary of Labor and Employment. In his July 9, 2002 order, the Secretary of Labor and Employment

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[5] Also referred to as "Julius Jaleco" in some parts of the records.

[6] See memorandum for respondents, p. 4. *Rollo*, p. 65.

found that respondents failed to perfect their appeal since they did not post a cash or surety bond equivalent to the monetary award. Thus, the appeal was dismissed and the DOLE-NCR Regional Director's May 10, 2001 order was declared final and executory. The Secretary of Labor and Employment denied reconsideration.

Respondents assailed the Secretary of Labor and Employment's July 9, 2002 order via a petition for *certiorari* in the CA. The CA initially dismissed the petition for lack of merit and ordered respondents to pay a total recomputed amount of ₱224,603.26.[7] However, the CA granted reconsideration by applying the following ruling in *Star Angel Handicraft v. National Labor Relations Commission*[8] (NLRC) by analogy:

> Inasmuch as in practice, the NLRC allows the reduction of the appeal bond upon motion of appellant and on meritorious grounds, it follows that a motion to that effect may be filed within the reglementary period for appealing. Such motion may be filed in lieu of a bond which amount is being contested. In the meantime, the appeal is not deemed perfected and the Labor Arbiter retains jurisdiction over the case until the NLRC has acted on the motion and appellant has filed the bond as fixed by the NLRC.

Thus, the CA amended its decision and allowed respondents to pursue their appeal.[9] The Secretary of Labor and Employment moved for reconsideration but it was denied. Thus, this petition.

The Secretary of Labor and Employment contends that respondents failed to perfect their appeal in the manner prescribed by the Labor Code. He further asserts that a motion to reduce the appeal bond is not allowed by the Labor Code and the Rules of Disposition of Labor Standards Cases in the Regional Offices (Rules on the Disposition of Labor Standards Cases)

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[7] It found that the underpayment of wages and nonpayment of 13th month pay and overtime pay were in the amounts of ₱109,727.63 and ₱114,875.63 in favor of petitioners Alonso, Jr. and Agapay, respectively. Court of Appeals' November 11, 2003 decision, p. 7.

[8] G.R. No. 108914, 20 September 1994, 236 SCRA 580.

[9] *Supra* note 2.

and does not suspend the period of appeal. Moreover, the rules of procedure of the NLRC do not apply in this case.

We uphold the Secretary of Labor and Employment.

RESPONDENTS FAILED TO PERFECT THEIR APPEAL

Article 128 of the Labor Code provides:

ART. 128. *Visitorial and enforcement power.—*

(a) The Secretary of Labor or his duly authorized representatives, including labor regulation officers, shall have access to employer's records and premises at any time of the day or night whenever work is being undertaken therein, and the right to copy therefrom, to question any employee and investigate any fact, condition or matter which may be necessary to determine violations or which may aid in the enforcement of this Code and of any labor law, wage order or rules and regulations issued pursuant thereto.

(b) Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders to give effect to the labor standards provisions of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection. The Secretary or his duly authorized representatives shall issue writs of execution to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the finding of the labor employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of inspection.

An order issued by the duly authorized representative of the Secretary of Labor and Employment under this Article may be appealed to the latter. **In case said order involves a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Secretary of Labor and Employment in the amount equivalent to the monetary award in the order appealed from**. (emphasis supplied)

In this connection, this Court ruled in *Guico, Jr. v. Hon. Quisumbing*:[10]

Article 128(b) of the Labor Code clearly provides that the appeal bond must be "in the amount equivalent to the monetary award in the order appealed from." The records show that petitioner failed to post the required amount of the appeal bond. His appeal was therefore not perfected.

The rule is that, to perfect an appeal of the Regional Director's order involving a monetary award in cases which concern the visitorial and enforcement powers of the Secretary of Labor and Employment, the appeal must be filed and the cash or surety bond equivalent to the monetary award must be posted within ten calendar days from receipt of the order.[11] Failure either to file the appeal or post the bond within the prescribed period renders the order final and executory.

The legislative intent to make the bond an indispensable requisite for the perfection of an appeal by the employer is underscored by the provision that "an appeal by the employer may be perfected only upon the posting of a cash or surety bond."[12] The word "only" makes it clear that the lawmakers intended the posting of a cash or surety bond by the employer to be the exclusive means by which an employer's appeal may be perfected.[13] In one case, we held that:

Anent the issue of whether or not the respondent Secretary of Labor acted with grave abuse of discretion in dismissing petitioner's appeal on the ground that petitioner failed to post the required cash or surety bond, we rule in the negative.

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[10] 359 Phil. 197 (1998).

[11] Section 1, Rule IV (Appeals) of the Rules on the Disposition of Labor Standards Cases provides:

Section 1. *Appeal*.— The Order of the Regional Director shall be final and executory unless appealed to the Secretary of Labor and Employment within ten (10) calendar days from receipt thereof.

[12] *Ong v. CA*, G.R. No. 152494, 22 September 2004, 438 SCRA 668.

[13] *Id*.

Article 128 of the Labor Code likewise explicitly provides that **in case an order issued by the duly authorized representative of the Secretary of Labor and Employment involves a monetary award, an appeal by the employer may be perfected only upon posting of a cash or surety bond in an amount equivalent to the monetary award in the order appealed from**.

As correctly noted by the Office of the Solicitor General, **since the Order appealed from involves a monetary award, an appeal by petitioner may be perfected only upon posting of a cash or surety bond issued by a reputable bonding company duly accredited by respondent Secretary of Labor in the amount equivalent to the monetary award in the Order appealed from**.

It is undisputed that petitioner herein did not post a cash or surety bond when it filed its appeal with the Office of respondent Secretary of Labor. Consequently, petitioner failed to perfect its appeal on time and the Order of respondent Regional Director became final and executory.

Thus, the Secretary of Labor and Employment thru Undersecretary Cresenciano B. Trajano correctly dismissed petitioner's appeal.[14] (emphasis supplied)

In this case, respondents admit that they failed to post the required bond when they filed their appeal to the Secretary of Labor and Employment. Because of such failure, the appeal was never perfected and the May 10, 2001 order of the DOLE-NCR Regional Director attained finality.

MOTION TO REDUCE APPEAL BOND IS NOT ALLOWED IN APPEALS TO THE SECRETARY OF LABOR

The jurisdiction of the NLRC is separate and distinct from that of the Secretary of Labor and Employment. In the exercise of their respective jurisdictions, each agency is governed by its own rules of procedure. In other words, the rules of procedure of the NLRC are different from (and do not apply in) cases cognizable by the Secretary of Labor and Employment.

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[14] *Allied Investigation Bureau, Inc. v. Secretary of Labor*, 377 Phil. 80 (1999).

Unlike the New Rules of Procedure of the NLRC,[15] no provision in the Rules on the Disposition of Labor Standards Cases governs the filing of a motion for the reduction of the amount of the bond. However, on matters that are not covered by the Rules on the Disposition of Labor Standards Cases, the suppletory application of the Rules of Court is authorized.[16] *In other words, the Rules on the Disposition of Labor Standards Cases does not sanction the suppletory resort to the rules of procedure of the NLRC.*

By ruling that the rules of procedure of the NLRC should be applied suppletorily to respondents' appeal to the Secretary of Labor of Employment, the CA effectively amended the Rules on the Disposition of Labor Standards Cases. In the process, it encroached on the rule-making power of the Secretary of Labor and Employment.

The CA's amended decision also contradicted the spirit that animates all labor laws, the promotion of social justice and the protection of workers. The posting of a cash or surety bond to perfect an appeal of an order involving a monetary award has a two-fold purpose: (1) to assure the employee that, if he finally prevails in the case, the monetary award will be given to him upon dismissal of the employer's appeal and (2) to discourage the employer from using the appeal to delay or evade payment of his obligations to the employee.[17] The CA disregarded these pro-labor objectives when it treated respondents' failure to post the required bond with undue leniency. The CA should have resolved any doubt in the implementation and interpretation of the Labor Code and its implementing rules in favor of labor.[18]

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[15] The NLRC rules of procedure in effect at the time material to this case.

[16] Section 6, Rule I (Title, Construction and Definition), Rules on the Disposition of Labor Standards Cases provides:

Section 6. *Suppletory application of Rules of Court*.— In the absence of any applicable provision in these Rules, the pertinent provisions of the Rules of Court may be applied in a suppletory character.

[17] *Casimiro v. Stern Real Estate, Inc.*, G.R. No. 162233, 10 March 2006, 484 SCRA 463.

[18] See Section 4, Labor Code.

For like all laws which govern industrial relations (assuming all things are equal), the rules governing the proceedings in labor disputes should be interpreted in favor of the worker.

Moreover, *Star Angel Handicraft* permitted the filing of a motion for reduction of the appeal bond because the Court recognized the NLRC's existing practice at that time to allow the reduction of the appeal bond "upon motion of appellant and on meritorious grounds." In fact, the practice was subsequently institutionalized in the rules of procedure of the NLRC which now allow the reduction of the amount of the bond "in justifiable cases and upon motion of the appellant."[19] On the contrary, no such practice ever existed in cases taken cognizance of by the Secretary of Labor and Employment in the exercise of his visitorial and enforcement powers. Hence, *Star Angel Handicraft* cannot be applied in labor standards cases appealed to the Secretary of Labor and Employment.

In ruling that *Star Angel Handicraft* was applicable by analogy to appeals to the Secretary of Labor and Employment in cases involving his visitorial and enforcement powers, the CA effectively reversed *Guico, Jr.* and *Allied Investigation Bureau, Inc. v. Secretary of Labor*,[20] thus arrogating to itself a power that it did not possess, a power only this Court sitting *en banc* may exercise.[21] For this reason, the amended decision was invalid as it was rendered by the CA in excess of its jurisdiction.

MONETARY AWARD IS SUBJECT TO LEGAL INTEREST

In *Eastern Shipping Lines, Inc. v. Court of Appeals*,[22] the Court laid down the following guidelines:

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[19] See Section 6, Rule VI (Appeals), New Rules of Procedure of the NLRC, as amended by Resolution 3-99, s. 99. The 2005 Revised Rules of the NLRC still allows a motion to reduce bond on "meritorious grounds" and "only upon the posting of a bond in a reasonable amount in relation to the monetary award" (Section 6, Rule VI [Appeals]).

[20] *Supra* note 14.

[21] See proviso of Section 4(3), Article VIII, Constitution.

[22] G.R. No. 97412, 12 July 1994, 234 SCRA 78.

I. When an obligation, regardless of its source, *i.e.*, law, contracts, quasi-contracts, delicts or quasi-delicts, is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

The obligation of respondents to pay the lawful claims of petitioners Agapay and Alonso, Jr. was established with reasonable certainty on October 30, 2000 when respondents received the notice of inspection from the labor employment officer. Since such obligation did not constitute a loan or forbearance of money, it was subject to legal interest at the rate of 6% per annum from that date until the May 10, 2001 order of the DOLE-NCR Regional Director attained finality. From the time the May 10, 2001 order of the DOLE-NCR Regional Director became final and executory, petitioners Agapay and Alonso, Jr. were entitled to 12% legal interest per annum until the full satisfaction of their respective claims.

WHEREFORE, the petition is hereby *GRANTED*. The November 25, 2004 amended decision of the Court of Appeals in CA-G.R. SP No. 72713 is *REVERSED* and *SET ASIDE*. The July 9, 2002 order of the Secretary of Labor and Employment affirming the May 10, 2001 order of the DOLE-NCR Regional Director is hereby *REINSTATED* with the modification that the monetary award shall earn 6% legal interest per annum from October 30, 2000 until the finality of the May 10, 2001 order of the DOLE-NCR Regional Director and, thereafter, 12% legal interest per annum until the full satisfaction thereof.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 168102. August 22, 2008]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JAYSON TUAZON *Y* OLIA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT THEREON.— Accordingly, in resolving rape cases, primordial consideration is given to the credibility of the victim's testimony. The settled rule is that the trial court's conclusions on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, unless there appear in the record certain facts or circumstances of weight and value which the lower court overlooked or misappreciated and which, if properly considered, would alter the result of the case. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial court stood in a much better position to decide the question of credibility. Findings of the trial court on such matters are binding and conclusive on the appellate court, unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted. No such facts or circumstances exist in the present case. In this case, both the RTC and the CA are in agreement that AAA was candid, natural, forthright and unwavering in her testimony that appellant raped her. During trial, the RTC observed that AAA wept while recounting her heart-rending experience. The trial court held thus: AAA's testimony was straight-forward, logical, probable and credible. She was occasionally in tears when she narrated in court the sexual ordeal she had gone through. Her embarrassment, emotional pain and indignation, as well as her intense desire for justice and the punishment of her defiler, were clearly discernible from the expression of her face and demeanor. The Court has consistently held that the crying of the victim during her testimony was evidence of the credibility of the rape charge with the verity borne out of human nature and experience.

2. ID.; ID.; ID.; MOTIVE; TESTIMONY OF THE RAPE VICTIM PREVAILS IN THE ABSENCE OF ILL MOTIVE TO INCRIMINATE THE ACCUSED.— AAA's credibility is strengthened by the absence of convincing evidence showing that she had any ill motive in testifying against appellant. Appellant contends that private complainant's reason in charging him with the crime of rape is that she got angry with him because appellant allegedly embarrassed her in front of her visitors. Appellant's claim deserves scant consideration. The Court finds it incredible for private complainant to trump up a charge of rape against appellant because she wanted to exact revenge on the latter for the simple reason that he caused her embarrassment. No woman would cry rape, allow an examination of her private parts, subject herself to humiliation, go through the rigors of public trial and taint her good name if her claim were not true. Against the overwhelming evidence of the prosecution, appellant merely interposed the defense of denial. Categorical and consistent positive identification, absent any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over the defense of denial. In the present case, there is no showing of any improper motive on the part of the victim to testify falsely against the accused or to implicate him falsely in the commission of the crime; hence, the logical conclusion is that no such improper motive exists and that the testimony is worthy of full faith and credence. Accordingly, appellant's weak defense of denial cannot prosper.

3. ID.; ID.; ID.; WHERE CREDIBILITY OF THE RAPE VICTIM IS BOLSTERED BY MEDICAL FINDINGS.— AAA's credibility is further bolstered by the fact that her testimony is consistent with the findings of the physician who examined her. When the consistent and forthright testimony of a rape victim corresponds with medical findings, there is sufficient basis to warrant a conclusion that the essential requisites of carnal knowledge have been established. AAA testified that appellant repeatedly rubbed his private organ on her private part and that she felt his organ come in and out of hers. On the other hand, it is clear from the Medico-Legal Report of the physician who examined AAA that at the time of private complainant's examination, which was conducted on the same day that she informed police authorities that she was raped, her genitalia exhibited signs of "some form of physical trauma." The physician confirmed her findings when she testified in

open court that she found redness and inflammation on AAA's *labia minora* and hymen which are indications that the said parts of her organ were subjected to some kind of friction with a foreign object. In addition, the medico-legal officer found that AAA's posterior fourchette, found at the end of her *labia minora* and at the outer portion of her vagina, had an abrasion which indicated that it repeatedly came in contact with a blunt object.

4. CRIMINAL LAW; RAPE; "SWEETHEART DEFENSE" BY THE ACCUSED NOT GIVEN WEIGHT AND CREDENCE; REASONS.— The Court is not persuaded and agrees with the CA that the "sweetheart defense" is a much-abused defense that rashly derides the intelligence of the Court and sorely tests its patience. To be worthy of judicial acceptance, such a defense should be supported by documentary, testimonial or other evidence. Being an affirmative defense, it must be established with convincing evidence — by some documentary and/or other evidence like mementos, love letters, notes, pictures and the like. The "sweetheart theory" which appellant proffers is effectively an admission of carnal knowledge of the victim and consequently places on him the burden of proving the supposed relationship by substantial evidence. In the present case, the appellant failed to discharge this burden. There was no substantial support to his claim that he and AAA were having an affair. The document denominated as *Kasunduan Naming Dalawa* which was signed by the private complainant hardly constitutes proof that appellant and private complainant were lovers. If any, it merely shows that on December 10, 1999, AAA received from appellant the sum of ₱1,500.00 and expects to receive the same amount from appellant on a monthly basis thereafter. No reason was specified why appellant agreed to give her such amounts of money. Besides, the private complainant had explained that she was deceived into signing the said document the day before she was raped and that when she asked appellant why it was dated December 10, 1999, appellant told her that it was simply a sample form of a loan document. Moreover, appellant's claim that he treated private complainant as his own daughter is inconsistent with his allegation that they were lovers. Granting that appellant's claim is true that he and the private complainant were indeed lovers and that they agreed to keep their affair a secret, the latter

would not have fabricated a charge of rape against the former at the risk of exposing their illicit relationship and, thereby, subjecting themselves to public shame and ridicule, not to mention the ire of private complainant's mother who is appellant's common-law wife.

5. ID.; ID.; POKING A KNIFE AT THE VICTIM CONSTITUTES FORCE AND INTIMIDATION; RELEVANT RULINGS, CITED.— There is likewise no merit in appellant's submission that the prosecution was not able to sufficiently prove the element of force and intimidation; that the application of force and intimidation was solely based on the mere allegation of the private complainant; that there was no physical manifestation of the force allegedly employed upon her. AAA testified that before she was sexually abused, appellant poked a knife at her. The act of holding a knife is by itself strongly suggestive of force or at least intimidation, and threatening the victim with a knife is sufficient to bring her into submission. In any case, it is settled that force or intimidation is not limited to physical force. As long as it is present and brings the desired result, all consideration of whether it was more or less irresistible is beside the point. The force or violence that is required in rape cases is relative; when applied, it need not be overpowering or irresistible. That it enables the offender to consummate his purpose is enough. The force, violence, or intimidation in rape is a relative term, depending not only on the age, size, and strength of the parties but also on their relationship with each other. Appellant is the common-law husband of private complainant's mother. Private complainant testified that she treated appellant with respect, being the second husband of her mother. Appellant himself admitted that he acted like a father to AAA and her sister by showing them love and concern and by disciplining them. As such, appellant is deemed in legal contemplation to have moral ascendancy over — the victim. It is a settled rule that in rape committed by a close kin, moral ascendancy takes the place of violence and intimidation.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.

Public Attorney's Office for accused-appellant

D E C I S I O N

AUSTRIA-MARTINEZ, *J.:*

Before the Court on automatic review is the Decision[1] of the Court of Appeals (CA) dated April 14, 2005 in *CA-G.R. CR-H.C. No. 00047* which affirmed, with modification, an earlier decision of the Regional Trial Court (RTC) of Pasig City, Branch 163, in Criminal Case No. 120458-H, finding appellant Jayson Tuazon *y* Olia guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of *Reclusion Perpetua*.

Consistent with the Court's decision in *People v. Cabalquinto*,[2] the real name of the rape victim in this case is withheld and, instead, fictitious initials are used to represent her. Also, the personal circumstances of the victim or any other information tending to establish or compromise her identity, as well as those of her immediate family or household members, are not disclosed in this decision.

The facts of the case, as found by the trial court, are as follows:

> Evidence on record show that on March 3, 2001 around 3:30 in the morning, AAA was sleeping in her room on the second floor of their house when she was awakened by [appellant] Jayson's kissing her on her cheeks and lips. As he mounted her, appellant, who was her mother's common-law-husband, started to touch her breast and bite her nipples and breasts. Thereafter, appellant poked a fan-knife at her and told her not to tell anybody what he had done to her. Shocked, AAA cried and tried to shout but appellant covered her mouth.
>
> Around four o'clock in the morning, appellant instructed her to go downstairs in order to cook porridge which she was supposed to sell later. While she was cooking, he guarded her and talked to her. He offered to give her money to buy a cell phone but she did not accept it. Around 4:45 a.m. and after she had finished cooking,

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[1] Penned by Justice Japar B. Dimaampao with the concurrence of Justices Renato C. Dacudao and Edgardo F. Sundiam, *rollo*, p. 3.

[2] G.R. No. 167693, September 19, 2006, 502 SCRA 419.

appellant told her to sit on her bed. Appellant then started to touch her breasts and private part while he poked a fan-knife at the right portion of her neck. He told her to lie down and as she did, he rolled up her shirt, took off her bra and touched her breasts. After appellant had removed her shorts and panty, he licked her body up to her private part. Appellant then removed his pants and brief, placed himself on top of AAA and rubbed his penis on her private part. AAA felt his penis coming in and out of her vagina and then something dripping. Then, appellant wiped her private part with his handkerchief. He then ordered her to dress up and to take a bath but she did not obey him. Instead, she started to bring out her merchandise while she kept on crying. During the time [that] she was being molested, AAA wanted to run but their gate was locked and appellant had the key.

AAA's mother and her sister, BBB, who left the house at 3 o'clock in the morning, arrived back from the Pasig market around 7 o'clock in [the] morning. BBB noticed that AAA's eyes were swollen and that she was crying. AAA told them what Jason did to her. Immediately, they went to the Taguig Police Station and had the incident recorded on the police blotter (Exh. D). AAA was also medically examined by Dr. Lilli Melrose Camara of the Southern Police District Crime Laboratory. The next day AAA executed her sworn statement (Exh. A).[3]

In an Information[4] dated March 4, 2001, appellant was charged before the RTC of Pasig City with the crime of rape, the accusatory portion of which reads:

> On or about March 3, 2001 in Taguig, Metro Manila, and within the jurisdiction of this Honorable Court, the accused, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with AAA, [over] whom accused has moral ascendancy being the daughter of his common-law-wife with whom he is living with, which sexual act done against the will and consent of said AAA as she was then threatened with a knife.[5]

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[3] Original Records, pp. 137-138.

[4] OR, p. 1.

[5] *Id.*

On arraignment, appellant pleaded not guilty.[6] Pre-trial conference followed. Thereafter, trial ensued.

On June 11, 2002, the RTC rendered its Decision,[7] the dispositive portion of which reads as follows:

> WHEREFORE, accused, JAYSON TUAZON *y* OLIA is hereby found GUILTY beyond reasonable doubt of the crime of rape and sentenced to suffer the penalty of *reclusion perpetua* and the accessory penalties provided by law and to pay the cost.
>
> On the civil aspect of this case, accused is ordered to pay the victim, AAA, ₱50,000.00 as civil indemnity plus moral, exemplary and nominal damages in the respective sums of ₱50,000.00, ₱50,000.00 and ₱25,000.00.
>
> SO ORDERED.[8]

Appellant filed a Notice of Appeal.[9] Thereafter, the trial court ordered the transmittal of the entire records of the case to this Court.[10]

Pursuant to the Court's pronouncement in *People v. Mateo*,[11] which modified the provisions of the Rules of Court insofar as they provide for direct appeals from the RTC to this Court in cases in which the penalty imposed by the trial court is death, *reclusion perpetua* or life imprisonment, the case was referred to the CA for appropriate action and disposition.[12]

After a review of the case, the CA affirmed the RTC's decision convicting the appellant. However, the appellate court modified the trial court's award of damages by reducing the grant of exemplary damages and deleting the award of nominal damages.

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[6] *Id.* at 37.

[7] *Id.* at 137-141.

[8] *Id.* at 141.

[9] *Id.* at 143.

[10] *Id.* at 144.

[11] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[12] CA *rollo*, p. 96.

Appellant filed a Notice of Appeal pursuant to Section 13(c), Rule 124 of the Rules of Court, as amended by A.M. No. 00-5-03-SC.

The case was then elevated to this Court for review.

In a Resolution[13] dated August 22, 2005, the parties were required to simultaneously submit their respective supplemental briefs if they so desired. However, both parties manifested that they were adopting the arguments they raised in their respective appeal briefs which were forwarded to the CA. Thereafter, the case was deemed submitted for decision.

Appellant assigned a lone error in his Brief, to wit:

> THE COURT *A QUO* ERRED IN FINDING THE ACCUSED APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE.[14]

The Court finds appellant's contentions untenable.

To determine the innocence or guilt of the accused in rape cases, the courts are guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[15]

Accordingly, in resolving rape cases, primordial consideration is given to the credibility of the victim's testimony.[16] The settled

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[13] *Rollo*, p. 28.

[14] CA *rollo*, p. 36.

[15] *People v. Pangilinan*, G.R. No. 171020, March 14, 2007, 518 SCRA 358, 373.

[16] *People v. Noveras*, G.R. No. 171349, April 27, 2007, 522 SCRA 777, 787.

rule is that the trial court's conclusions on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, unless there appear in the record certain facts or circumstances of weight and value which the lower court overlooked or misappreciated and which, if properly considered, would alter the result of the case.[17]

Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial court stood in a much better position to decide the question of credibility.[18] Findings of the trial court on such matters are binding and conclusive on the appellate court, unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted.[19] No such facts or circumstances exist in the present case.

In this case, both the RTC and the CA are in agreement that AAA was candid, natural, forthright and unwavering in her testimony that appellant raped her.

During trial, the RTC observed that AAA wept while recounting her heart-rending experience. The trial court held thus:

> AAA's testimony was straight-forward, logical, probable and credible. She was occasionally in tears when she narrated in court the sexual ordeal she had gone through. Her embarrassment, emotional pain and indignation, as well as her intense desire for justice and the punishment of her defiler, were clearly discernible from the expression of her face and demeanor.[20]

The Court has consistently held that the crying of the victim during her testimony was evidence of the credibility of the rape charge with the verity borne out of human nature and experience.[21]

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[17] *Id*.

[18] *People v. Balonzo*, G.R. No. 176153, September 21, 2007, 533 SCRA 760, 768.

[19] *People v. Hermocilla*, G.R. No. 175830, July 10, 2007, 527 SCRA 296, 303.

[20] RTC Decision, OR, p. 139.

[21] *People v. Aguilar*, G.R. No. 177749, December 17, 2007, 540 SCRA 509, 523; *People v. Canare*, G.R. No. 168444, December 13, 2006, 511 SCRA

AAA's credibility is strengthened by the absence of convincing evidence showing that she had any ill motive in testifying against appellant.

Appellant contends that private complainant's reason in charging him with the crime of rape is that she got angry with him because appellant allegedly embarrassed her in front of her visitors.[22] Appellant's claim deserves scant consideration. The Court finds it incredible for private complainant to trump up a charge of rape against appellant because she wanted to exact revenge on the latter for the simple reason that he caused her embarrassment. No woman would cry rape, allow an examination of her private parts, subject herself to humiliation, go through the rigors of public trial and taint her good name if her claim were not true.[23]

Appellant does not deny the sexual intercourse between him and AAA but claims that it was a consensual sex because he and the private complainant were sweethearts.

The Court is not persuaded and agrees with the CA that the "sweetheart defense" is a much-abused defense that rashly derides the intelligence of the Court and sorely tests its patience.[24] To be worthy of judicial acceptance, such a defense should be supported by documentary, testimonial or other evidence.[25] Being an affirmative defense, it must be established with convincing evidence — by some documentary and/or other evidence like mementos, love letters, notes, pictures and the like.[26] The "sweetheart theory" which appellant proffers is effectively an admission of carnal knowledge of the victim and consequently

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31, 39; *People v. Galang*, G.R. Nos. 150523-25, July 2, 2003, 405 SCRA 301, 308; *People v. Supnad*, G.R. Nos. 133791-94, August 8, 2001, 362 SCRA 346, 355-356.

[22] TSN, February 26, 2002, p. 33.

[23] *People v. Marcelo*, G.R. Nos. 126538-39, November 20, 2001, SCRA

[24] *People v. Rapisora*, G.R. No. 147855, May 28, 2004, 430 SCRA 237, 259.

[25] *Id*.

[26] *People v. San Antonio, Jr.*, G.R. No. 176633, September 5, 2007, 532 SCRA 411, 425.

places on him the burden of proving the supposed relationship by substantial evidence.[27] In the present case, the appellant failed to discharge this burden. There was no substantial support to his claim that he and AAA were having an affair. The document denominated as *Kasunduan Naming Dalawa*[28] which was signed by the private complainant hardly constitutes proof that appellant and private complainant were lovers. If any, it merely shows that on December 10, 1999, AAA received from appellant the sum of ₱1,500.00 and expects to receive the same amount from appellant on a monthly basis thereafter. No reason was specified why appellant agreed to give her such amounts of money. Besides, the private complainant had explained that she was deceived into signing the said document the day before she was raped and that when she asked appellant why it was dated December 10, 1999, appellant told her that it was simply a sample form of a loan document.[29]

Moreover, appellant's claim that he treated private complainant as his own daughter is inconsistent with his allegation that they were lovers.[30]

Granting that appellant's claim is true that he and the private complainant were indeed lovers and that they agreed to keep their affair a secret, the latter would not have fabricated a charge of rape against the former at the risk of exposing their illicit relationship and, thereby, subjecting themselves to public shame and ridicule, not to mention the ire of private complainant's mother who is appellant's common-law wife.[31]

More importantly, the victim's subsequent acts of promptly disclosing and complaining about her molestation to her relatives and the authorities and taking immediate steps to subject herself to medical examination represent conduct consistent with her

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[27] *Id*.

[28] OR, p. 115.

[29] See TSN, October 23, 2001, pp. 13-16.

[30] See TSN, February 26, 2002, pp. 20-22 and p. 38.

[31] *People v. Rapisora*, *supra* note 24.

straightforward, logical and probable testimony that she was in fact raped by appellant. They represent strong and compelling factors that enhance complainant's credibility as a witness.

AAA's credibility is further bolstered by the fact that her testimony is consistent with the findings of the physician who examined her. When the consistent and forthright testimony of a rape victim corresponds with medical findings, there is sufficient basis to warrant a conclusion that the essential requisites of carnal knowledge have been established.[32]

AAA testified that appellant repeatedly rubbed his private organ on her private part and that she felt his organ come in and out of hers.[33] On the other hand, it is clear from the Medico-Legal Report of the physician who examined AAA that at the time of private complainant's examination, which was conducted on the same day that she informed police authorities that she was raped, her genitalia exhibited signs of "some form of physical trauma."[34] The physician confirmed her findings when she testified in open court that she found redness and inflammation on AAA's *labia minora* and hymen which are indications that the said parts of her organ were subjected to some kind of friction with a foreign object.[35] In addition, the medico-legal officer found that AAA's posterior fourchette, found at the end of her *labia minora* and at the outer portion of her vagina, had an abrasion which indicated that it repeatedly came in contact with a blunt object.[36]

As to appellant's argument that it was uncharacteristic for the private complainant to be able to go about her daily chores after she was allegedly raped, the settled rule is that not all rape victims can be expected to act conformably to the usual

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[32] *People v. Senieres*, G.R. No. 172226, March 23, 2007, 519 SCRA 13, 25.

[33] TSN, October 16, 2001, pp. 10-11.

[34] Exhibit "C-2", OR, p. 84.

[35] TSN, August 21, 2001, pp. 14-15.

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

expectations of everyone and that different and varying degrees of behavioral responses are expected in the proximity of, or in confronting, an aberrant episode.[37] It is well-settled that different people react differently to a given situation or type of situation.[38] There is no standard form of reaction for a woman when facing a shocking and horrifying experience such as a sexual assault.[39] The workings of the human mind placed under emotional stress are unpredictable, and people react differently — some may shout, some may faint, and some may be shocked into insensibility while others may openly welcome the intrusion.[40] However, any of these reactions does not impair the credibility of a rape victim.

There is likewise no merit in appellant's submission that the prosecution was not able to sufficiently prove the element of force and intimidation; that the application of force and intimidation was solely based on the mere allegation of the private complainant; that there was no physical manifestation of the force allegedly employed upon her.

AAA testified that before she was sexually abused, appellant poked a knife at her.[41] The act of holding a knife is by itself strongly suggestive of force or at least intimidation, and threatening the victim with a knife is sufficient to bring her into submission.[42]

In any case, it is settled that force or intimidation is not limited to physical force.[43] As long as it is present and brings the desired result, all consideration of whether it was more or less irresistible is beside the point.[44] The force or violence that

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[37] *People v. San Antonio, Jr.*, G.R. No. 176633, September 5, 2007, 532 SCRA 411, 428.

[38] *Id*.

[39] *Id*.

[40] *People v. San Antonio, Jr.*, *supra* note 37.

[41] TSN, October 16, 2001, pp. 7-9.

[42] *People v. Noveras*, G.R. No. 171349, April 27, 2007, 522 SCRA 777, 793.

[43] *People v. San Antonio, Jr.*, *supra* note 37, at 428.

[44] *Id*.

is required in rape cases is relative; when applied, it need not be overpowering or irresistible.[45] That it enables the offender to consummate his purpose is enough.[46] The force, violence, or intimidation in rape is a relative term, depending not only on the age, size, and strength of the parties but also on their relationship with each other.[47] Appellant is the common-law husband of private complainant's mother. Private complainant testified that she treated appellant with respect, being the second husband of her mother.[48] Appellant himself admitted that he acted like a father to AAA and her sister by showing them love and concern and by disciplining them.[49] As such, appellant is deemed in legal contemplation to have moral ascendancy over the victim.[50] It is a settled rule that in rape committed by a close kin, moral ascendancy takes the place of violence and intimidation.[51]

Against the overwhelming evidence of the prosecution, appellant merely interposed the defense of denial. Categorical and consistent positive identification, absent any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over the defense of denial.[52] In the present case, there is no showing of any improper motive on the part of the victim to testify falsely against the accused or to implicate him falsely in the commission of the crime; hence, the logical conclusion is that

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[45] *Id*.

[46] *Id*.

[47] *People v. Ubiña*, G.R. No. 176349, July 10, 2007, 527 SCRA 307, 318.

[48] TSN, October 16, 2001, p. 6.

[49] TSN, February 26, 2002, pp. 38-40.

[50] *People v. Blancaflor*, G.R. No. 130586, January 29, 2004, 421 SCRA 354, 361; *People v. Galang*, G.R. Nos. 150523-25, July 2, 2003, 405 SCRA 301, 308.

[51] *People v. Noveras*, G.R. No. 171349, April 27, 2007, 522 SCRA 777, 793.

[52] *People v. Quezada*, G.R. Nos. 135557-58, January 30, 2002, 375 SCRA 248, 259.

no such improper motive exists and that the testimony is worthy of full faith and credence. Accordingly, appellant's weak defense of denial cannot prosper.

WHEREFORE, the Decision of the Court of Appeals in *C.A. G.R. CR-H.C. No. 00047*, finding herein appellant Jayson Tuazon *y* Olia guilty beyond reasonable doubt of the crime of Rape committed against AAA and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the victim the sum of Fifty Thousand Pesos (₱50,000.00) as civil indemnity *ex delicto*, Fifty Thousand Pesos (₱50,000.00) as moral damages and Twenty-Five Thousand Pesos (₱25,000.00) as exemplary damages, is *AFFIRMED*.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Velasco, Jr.,[*] and *Reyes, JJ.,* concur.

[*] In Lieu of Justice Antonio Eduardo B. Nachura, per raffle dated August 11, 2008.

FIRST DIVISION

[G.R. No. 168198. August 22, 2008]

DIANA T. LAO, ROWENA O. TAN and WILSON O. TAN, *petitioners, vs.* **RAMON G. CO, JIUNN SAN LAY, LI MING-CHIU, MERIAM S. REPORSADO, MA. THERESA D. BATA, MELVIN P. GUEVARRA, ELENA MELITA L. CHICA and JOHN D. CALUSO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; DISMISSAL; FAILURE TO ATTACH DUPLICATE ORIGINAL COPIES OF THE ASSAILED RESOLUTION.—** Be that as it may, we sustain the CA's dismissal of the petition for *certiorari* because, contrary to petitioners' assertions that they submitted duplicate original copies of the assailed first and third DOJ resolutions, only machine copies thereof were attached to the petition. This is in violation of Section 3, Rule 46 of the Rules of Court. Thus, the CA was correct in dismissing their petition for *certiorari* on this ground.

2. **ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; FINDING AS TO THE ABSENCE OR EXISTENCE THEREOF RESTS ON THE PROSECUTOR AND ULTIMATELY ON THE SECRETARY OF JUSTICE, AND IT IS NOT SUBJECT TO COURT'S REVIEW UNLESS MADE WITH GRAVE ABUSE OF DISCRETION.—** As to petitioners' contention that the DOJ erred in holding that an expert's view of the genuineness of the subject deeds of assignment and their signatures was a condition *sine qua non* in establishing probable cause for falsification against respondents, suffice it to say that the prosecutor and the DOJ did not categorically state that they dismissed the complaint solely on the ground that an expert's view was necessary to establish probable cause for forgery. Rather, they dismissed the complaint because they observed that petitioners' evidence did not engender a well-founded belief that respondents were guilty of falsifying said deeds. As correctly argued by respondents, petitioners' complaint-affidavit

contained only bare allegations of forgery pointing to respondents as the authors thereof. No corroborating evidence was presented by petitioners to bolster their position. Thus, the investigating prosecutor and the Secretary of Justice had no other recourse but to dismiss the complaint. The decision whether to dismiss a complaint or not depends upon the sound discretion of the prosecutor and, ultimately, that of the Secretary of Justice. Findings of the Secretary of Justice are not subject to review unless made with grave abuse of discretion. Thus, courts will not normally interfere with the prosecutor's discretion to file or not to file a criminal case.

APPEARANCES OF COUNSEL

Rigoroso & Galindez Law Offices for petitioners.
Maria Luisa R. Valenzuela for respondents.

D E C I S I O N

CORONA, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court seeks to set aside the August 31, 2004[1] and May 9, 2005[2] resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 85514.

On October 22, 1999, petitioners' sister, Susana Tan Villaviray (Villaviray),[3] filed a criminal complaint against respondents for falsification of public documents in the City Prosecutor's Office of Mandaluyong City. On June 27, 2000, petitioners followed suit. In both complaints, petitioners and Villaviray accused respondents of making it appear that they (Villaviray and petitioners) caused the transfer of their shares (Villaviray's and

[1] Penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Josefina Guevara-Salonga of the Former Seventh Division of the Court of Appeals. *Rollo*, pp. 24-25.

[2] *Id.*, pp. 27-31.

[3] She did not join petitioners in filing a petition for *certiorari* in the CA and a petition for review on *certiorari* in this Court.

petitioners' shares) of stock in Leecauco International Group (Leecauco) to respondents' corporation, Moly Chiu, Inc., when they, in fact, did not. They denied having executed any deed of assignment of their shares of stock in Leecauco in respondents' favor. They likewise denied having appeared before notaries public of Manila, Melvin P. Guevara and Elena Melita L. Chica, before whom the assailed deeds were subscribed.

A joint resolution[4] was issued by the City Prosecutor[5] dismissing the complaints for insufficiency of evidence. The resolution declared that:

> We agree with respondents that **reliance *alone* on complainants['] claim that the signatures appearing on the subject Deed of Assignment are forgeries[,]** should not be given due consideration. The deed is a public document. Without any expert view that indeed the signatures appearing thereon appear to be forgeries, no *prima facie* case for falsification exists against respondents. The need is absolutely necessary particularly considering the similarity of the signatures appearing on the Deed of Assignment and the Articles of Incorporation.
>
> WHEREFORE, it is respectfully recommended that these cases be DISMISSED for insufficiency of evidence. (Emphasis supplied)

Petitioners appealed to the Department of Justice (DOJ), contending that the City Prosecutor erred in dismissing the case and in ruling that no *prima facie* case existed. They emphasized that they neither executed the questioned deeds of assignment nor appeared before the notaries public named therein. However, the appeal was denied for lack of merit in a resolution dated November 14, 2002 (first DOJ resolution).[6]

Petitioners then filed a motion for reconsideration with a motion for production and inspection of documents, praying for the referral of the original of the deeds of assignment to the

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[4] *Rollo,* pp. 43-44.

[5] City Prosecutor Pablito A. Gahol approved the resolution prepared by Prosecutor Rodil Zalameda.

[6] *Rollo,* pp. 45-48.

proper agency for expert analysis. In its August 25, 2003 resolution (second DOJ resolution),[7] the DOJ granted the motion for reconsideration:

> WHEREFORE, the motion for reconsideration is hereby **GRANTED.** The City Prosecutor of Mandaluyong City is directed to refer the questioned deeds of assignment to the National Bureau of Investigation (NBI) and thereafter to conduct a reinvestigation, furnishing this Office a copy of his resolution within ten (10) days from the release of the same.
>
> SO ORDERED.

This time, it was respondents who filed a motion for reconsideration averring that unsubstantiated allegations of forgery were not proof and that such allegations could not rebut the presumption of regularity in the execution of the subject deeds. The same was granted by the DOJ in a resolution dated June 2, 2004 (third DOJ resolution):[8]

> WHEREFORE, respondents' motion for reconsideration is **GRANTED.** The resolution dated August 25, 2003 is set aside and the resolution dated November 14, 2002 dismissing the complaints and the appeal is reinstated.

Aggrieved, petitioners filed a petition for *certiorari* in the CA. The appellate court dismissed the petition outright for being precipitatedly filed as there was no showing that petitioners ever filed a motion for reconsideration of the third DOJ resolution. According to the CA, there was no justification to dispense with the filing of said motion. Moreover, only machine copies of the assailed first and third DOJ resolutions were attached to the petition, in violation of Section 3, Rule 46 of the Rules of Court. The CA likewise denied petitioners' motion for reconsideration. Thus, this petition.

The primary issue before us is whether the CA erred in dismissing the petition for *certiorari* on the ground of petitioners' failure to file a motion for reconsideration of the third DOJ

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[7] *Id.*, pp. 49-51.

[8] *Id.*, pp. 52-54.

resolution.

Section 13 of DOJ Circular No. 70 dated July 3, 2000 (2000 National Prosecution Service Rule on Appeal) provides:

> Sec. 13. *Motion for reconsideration.* — The aggrieved party may file a motion for reconsideration within a non-extendible period of ten (10) days from receipt of the resolution on appeal, furnishing the adverse party and the Prosecution Office concerned with copies thereof and submitting proof of such service. **No second or further motion for reconsideration shall be entertained.** (Emphasis supplied.)

In *Balindong v. CA*, we held that the above provision is a mandatory provision.[9] A second motion for reconsideration is prohibited for being a mere reiteration of the issues assigned and the arguments raised by the parties.[10]

In this case, the issues presented and the grounds relied upon by petitioners (on the sufficiency of their evidence to establish probable cause for falsification) had been previously raised by them in their first motion for reconsideration and fully passed upon in all three DOJ resolutions. Thus, had they filed a subsequent motion for reconsideration of the third DOJ resolution, it would have been properly classified as a second motion for reconsideration.

We note that the third DOJ resolution explicitly stated that: "*The resolution dated August 25, 2003 is set aside and the resolution dated November 14, 2002 dismissing the complaints and the appeal is reinstated.*" Following the CA's ruling, petitioners should have questioned the same. However, in such a case, the subsequent motion for reconsideration would have essentially been a mere reiteration of the same issues and contentions earlier proferred by petitioners for it would have questioned the reinstatement of the first resolution and they would have again insisted on the sufficiency of their evidence to establish probable cause. In fact, petitioners asked the CA to rule on said issue in their petition for *certiorari* filed therein.

[9] G.R. No. 159962, 16 December 2004, 447 SCRA 200, 210.

[10] *Id.*

Consequently, the CA erred in dismissing the petition for *certiorari* on the ground that the same was precipitatedly filed because clearly, there was no other plain, speedy and adequate remedy available in the course of law.

Be that as it may, we sustain the CA's dismissal of the petition for *certiorari* because, contrary to petitioners' assertions that they submitted duplicate original copies of the assailed first and third DOJ resolutions, only machine copies thereof were attached to the petition. This is in violation of Section 3, Rule 46 of the Rules of Court, which explicitly states that:

> Sec. 3. *Contents and filing of petition; effect of non-compliance with requirements.* — **The petition shall**
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> xxx xxx xxx
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> xxx xxx xxx
>
> x x x 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,** x x x
>
> xxx xxx xxx
>
> xxx xxx xxx
>
> **The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.** (Emphasis supplied)

Thus, the CA was correct in dismissing their petition for *certiorari* on this ground.

Moreover, as to petitioners' contention that the DOJ erred in holding that an expert's view of the genuineness of the subject deeds of assignment and their signatures was a condition *sine qua non* in establishing probable cause[11] for falsification against respondents, suffice it to say that the prosecutor and the DOJ

[11] In *Bautista v. CA*, 413 Phil. 159, 175 (2001), citing *Yap v. IAC*, G.R. No. 68464, 22 March 1993, 220 SCRA 245 and *Qui v. IAC*, G.R. No. 66865,

did not categorically state that they dismissed the complaint solely on the ground that an expert's view was necessary to establish probable cause for forgery. Rather, they dismissed the complaint because they observed that petitioners' evidence did not engender a well-founded belief that respondents were guilty of falsifying said deeds. As correctly argued by respondents, petitioners' complaint-affidavit contained only bare allegations of forgery pointing to respondents as the authors thereof. No corroborating evidence was presented by petitioners to bolster their position. Thus, the investigating prosecutor and the Secretary of Justice had no other recourse but to dismiss the complaint.

The decision whether to dismiss a complaint or not depends upon the sound discretion of the prosecutor and, ultimately, that of the Secretary of Justice. Findings of the Secretary of Justice are not subject to review unless made with grave abuse of discretion.[12] Thus, courts will not normally interfere with the prosecutor's discretion to file or not to file a criminal case.

WHEREFORE, the petition is hereby *DENIED*. The August 31, 2004 and May 9, 2005 resolutions of the Court of Appeals in CA-G.R. SP No. 85514 are *AFFIRMED.*

Costs against petitioners.

SO ORDERED.

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

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13 January 1989, 169 SCRA 137, we held that "probable cause has been defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted." In *Webb v. De Leon,* 317 Phil. 758, 780 (1995), we emphasized that "in determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of our technical rules of evidence of which his knowledge is nil. Rather, he relies on the calculus of common sense of which all reasonable men have an abundance."

[12] *Santos v. Go,* G.R. No. 156081, 19 October 2005, 473 SCRA 350, 362, citing *Public Utilities Department v. Hon. Guingona, Jr.*, 417 Phil. 798, 804 and 805 (2001).

THIRD DIVISION

[G.R. No. 176282. August 22, 2008]

VICTORIA FERNANDO, *petitioner, vs.* **SPS. REGINALDO LIM and ASUNCION LIM,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; ALLEGATIONS THAT MUST BE STATED IN A COMPLAINT FOR UNLAWFUL DETAINER; APPLICATION.— A complaint sufficiently alleges a cause of action for unlawful detainer if it recites that: a) initially, possession of the property by the defendant was by contract with or by tolerance of the plaintiff; b) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession; c) thereafter, defendant remained in possession of the property and deprived plaintiff of the enjoyment thereof; and d) within one year from the last demand on defendant to vacate the property, plaintiff instituted the complaint for ejectment. In essence, the complaint recites that when respondents acquired Unit 1682 from LKTSI, petitioner was still in possession of the property by virtue of a month-to-month lease contract with LKTSI; that said lease contract was set to expire on April 30, 2005; that respondents verbally informed petitioner that her lease contract would not be renewed when it expired; and that respondents also served a written demand dated April 29, 2004 on petitioner to vacate Unit 1682, but the latter refused to do so. By these allegations, the complaint clearly drew up a case for unlawful detainer. It was therefore correctly filed with the MeTC which has jurisdiction over ejectment cases.

2. ID.; ID.; ID.; MERE CLAIM OF TITLE TO THE SUBJECT PROPERTY DOES NOT ALTER THE NATURE OF A COMPLAINT FOR UNLAWFUL DETAINER AND THE JURISDICTION OF THE COURT OVER IT; REASON.— Petitioner, however, has raised an issue of title, to question the jurisdiction of the MeTC. She claims that respondents have no right to institute the action for unlawful detainer because they did not validly acquire the property in view of the prohibition

under P.D. No. 1517 against her dispossession or the transfer of the property without first offering it for sale to her. She insists that such issue of title prevents the MeTC from acquiring jurisdiction over the case; it should have deferred to the jurisdiction of the RTC where there is a pending case for annulment of the title of respondents. As a rule, the nature of a complaint for unlawful detainer and the jurisdiction of a court over it are not altered by the mere claim of the defendant of title to the property subject matter of the ejectment case. Even a pending action involving title to the property which the defendant may have instituted in another court will not abate or suspend the summary proceedings for unlawful detainer. The underlying reason for this rule is to prevent the defendant from trifling with the summary nature of the case by the simple expedient of asserting ownership over the disputed property.

3. ID.; ID.; ID.; REQUISITES THAT MUST BE ESTABLISHED BEFORE A PARTY MAY AVAIL OF THE BENEFIT OF P.D. 1517; REQUISITES NOT PRESENT IN CASE AT BAR.— To be entitled to the beneficence of P.D. No. 1517, a party must provide *prima facie* evidence of the following facts: a) that the property being leased falls within an Area for Priority Development and Urban Land Reform Zone; b) that the party is a tenant on said property as defined under Section 3 (f) of P.D. No. 1517; c) that the party built a house on said property; and d) that the party has been residing on the property continuously for the last ten (10) years or more, reckoned from 1968. The question is, did petitioner establish the foregoing requisites as to avail herself of the "suspensive" effect of P.D. No. 1517 as in *Sps. Dulay* and *Vda. de Legaspi*? It is noted that the MeTC rejected the claim of petitioner to preferential rights over the property, but petitioner objected on the ground that the MeTC had no jurisdiction to resolve such subject matter. Petitioner's objection was frivolous. Under Section 33 of *Batas Pambansa Blg*. 129, the MeTC is conditionally vested with authority to resolve the question of ownership raised as an incident in the case, the determination of which is necessary for a complete adjudication of the issue of possession. In the present case, the MeTC's foray into the issue of whether under P.D. No. 1517, petitioner has preferential rights to the purchase and occupation of Unit 1682 as against respondents' rights was necessary to resolve the issue of

material possession. The ***provisional*** ruling of the MeTC on said issue is that P.D. No. 1517 does not apply to the case because there was no sale between LKTSI and respondents but a mere distribution of liquidating dividends on account of the dissolution of LKTSI. The share of each stockholder in the remaining assets of the corporation upon liquidation, after the payment of all corporate debts and liabilities, is what is known as liquidating dividend. In its interpretation of recent tax laws, the Bureau of Internal Revenue viewed the distribution of liquidating dividends not as a sale of asset by the liquidating corporation to its stockholder but as ***a sale of shares by the stockholder to the corporation or the surrender of the stockholder's interest in the corporation, in place of which said stockholder receives property or money from the corporation about to be dissolved***. Thus, on the part of the stockholder, any gain or loss is subject to tax, while on the part of the liquidating corporation, no tax is imposed on its receipt of the shares surrendered by the stockholder or transfer of assets to said stockholder because said transaction is not treated as a sale. Preliminarily, therefore, the Court agrees with the view of the MeTC that the April 1, 2004 assignment of Unit 1682 is not covered by the prohibition under P.D. No. 1517. It should be emphasized that such interim ruling is without prejudice to how the complaint for annulment of the April 1, 2004 deed of assignment is resolved by the RTC. In addition to the foregoing reason, the Court also finds no ***prima facie*** evidence that petitioner qualifies as a tenant under P.D. No. 1517. Respondents presented a Land Transaction Certificate issued by the HLURB, stating that Unit 1682 is outside any Area for Priority Development. However, Proclamation No. 1967 identifies in Appendix "J" thereof 244 sites in Metropolitan Manila that fall within the coverage of P.D. No. 1517. In the West Sector (Manila), one identified site is "Sta. Clara to Blumentritt." Thus, it would appear that Unit 1682, which is located in Blumentritt Street, Sta. Cruz, Manila, is within the scope of P.D. No. 1517, the HLURB Certification to the contrary notwithstanding. Moreover, petitioner had a month-to-month lease contract with LKTSI on Unit 1682, which expired on April 30, 2004. Thus, up to that time, petitioner was a rightful occupant of the property as defined under Sec. 3 of P.D. No. 1517. However, other than her bare claim that she owns the structure on Unit 1682 because she allegedly

rebuilt it after it was burned down, petitioner offered no concrete evidence of when the original structure was burned down and when she rebuilt it. She presented no detail on how she spent for the construction of the structure, or proof that LKTSI allowed her to claim ownership thereof. On the other hand, it was respondents who presented Tax Declaration No. 00182 which indicates that they are the registered owners of the improvements, including Unit 1682, on the land covered by TCT No. 264835. Furthermore, except for her empty allegation — which respondents dispute — that she has been occupying Unit 1682 for more than thirty (30) years, petitioner presented no concrete evidence of the exact period of her occupation, even when she could have easily produced receipts of past rental payments similar to the receipt she easily presented for her March 2004 rental payment. Such unexplained omission prevents an adjudication on whether petitioner's period of occupation qualifies her to exercise the right of first refusal under P.D. No. 1517. Therefore, unlike in *Sps. Dulay* or *Guardacasa de Legaspi*, there is no *prima facie* showing in this case that petitioner is protected under P.D. No. 1517 from dispossession of Unit 1682, or that she has the right of first refusal in the sale of said property. Petitioner, therefore, cannot invoke P.D. No. 1517 in abatement of the complaint for unlawful detainer.

4. ID.; ID.; ID.; TRIAL COURTS ARE AUTHORIZED TO FIX REASONABLE RENT AFTER TERMINATION OF THE LEASE CONTRACT.— Petitioner has also questioned the award of reasonable rent of ₱15,000.00. Trial courts are authorized to fix the reasonable value for the continued use and occupancy of the leased premises after the termination of the lease contract; and they are not bound by the stipulated rental in the contract of lease, since it is equally settled that upon termination or expiration of said contract, the rental stipulated therein may no longer be the reasonable value for the use and occupation of the premises as a result or by reason of the change or rise in values. As to what amount would constitute a reasonable rent of Unit 1682, the same is a question of fact on which the determination of the CA binds the Court, unless the latter finds reason to reverse it. In the present case, the CA reduced the award of reasonable rent from ₱25,000.00 to ₱15,000.00 based on the finding that such amount represents

the reasonable amount of lost opportunity income respondents would have derived from the conversion of Unit 1682 into a San Miguel Food shop. Petitioner has not adduced evidence in refutation of the factual findings of the CA.

APPEARANCES OF COUNSEL

RRV Legal Consultancy Firm for petitioner.
Guzman Tañedo & Acain 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 August 31, 2006 Decision[1] of the Court of Appeals (CA) which affirmed the ejectment of Victoria Fernando (petitioner) from the property of Spouses Reginaldo and Asuncion Lim; and the January 15, 2007 CA Resolution[2] which denied the motion for reconsideration.

The relevant facts are of record.

Lim Kieh Tong and Sons, Inc. (LKTSI) was the owner of a parcel of land with an area of 400 sq. meters, known as Lot 1 of the consolidation-subdivision plan (LRC) Pcs-320, located at Blumentritt Street, Sta. Cruz, Manila and registered in its name under Transfer Certificate of Title (TCT) No. 125241.[3]

On the property are improvements registered in the name of LKTSI under Tax Declaration No. 00198.[4] Among these improvements is Unit 1682 which, as of March 5, 2004, was being occupied by petitioner for a gross monthly rental of

[1] Penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justices Fernanda Lampas-Peralta and Myrna Dimaranan Vidal; *rollo*, p. 59.

[2] *Id.* at 57.

[3] CA *rollo*, p. 56.

[4] *Id.* at 217.

₱10,412.00 plus withholding tax of ₱520.60 or a total of ₱10,932.60.[5]

When it was about to be dissolved, LKTSI executed on April 1, 2004 a Deed of Assignment of Real Property,[6] transferring by way of liquidating dividends all its rights and interests in the property covered by TCT No. 125241 to its stockholder, respondent Reginaldo Lim.

Spouses Reginaldo and Asuncion Lim (respondents) subdivided the assigned property and registered their title to the larger portion under TCT No. 263331, and to the smaller portion — which covers Unit 1682 — under TCT No. 264835.[7] They also registered in their names the improvements on the assigned property under Tax Declaration No. 00182.[8]

In a letter dated April 29, 2004, respondents, through counsel, informed petitioner that they were the new owners of Unit 1682 and that they were not renewing her lease, thus:

> We are writing you in behalf of our client, Mr. Reginaldo Lim, to formally inform you that he is now the new owner of the property you are presently leasing. Please find attached a copy of his title to the said property.
>
> Our client decided not to renew or extend any lease agreement you may have entered with the previous owner. We understand that your lease of the property is on a month-to-month basis. Hence, your lease contract ends on April 30, 2004 and will no longer be renewed. Any stay in the premises beyond the said date should not be construed as a renewal of your monthly lease, but merely by tolerance of our client. At any rate, you are hereby given notice to vacate the premises of 1682 Blumentritt St., Sta. Cruz, Manila within fifteen (15) days from receipt of this letter. Your failure to do so will compel us to institute an ejectment suit against you to enforce

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[5] Position Paper of respondents in Civil Case No. 000000002-CV, CA *rollo*, p. 92; Position Paper of petitioner in Civil Case No. 00000002-CV, CA *rollo*, p. 107.

[6] CA *rollo*, p. 59.

[7] *Id.* at 62.

[8] *Id.* at 218.

our clients' rights, and charge you with attorney's fees and all attendant damages that will be incurred by our client, including lost business opportunities and income.

We trust that you will see yourself clear on this matter and surrender peacefully the possession of the leased premises to our client.[9]

As their demand went unheeded, respondents filed with the Metropolitan Trial Court, Branch 16, Manila (MeTC) a Complaint[10] for Ejectment with Prayer for Issuance of Injunction against petitioner, praying that the latter be ordered to vacate Unit 1682 and to pay reasonable monthly rent of ₱25,000.00 and attorney's fees.

In her Answer,[11] petitioner questioned the jurisdiction of the MeTC in view of an issue of title over Unit 1682 that she raised in a complaint[12] she filed with the Regional Trial Court (RTC) to annul the April 1, 2004 deed of assignment for violation of Sec. 6 of Presidential Decree No. 1517 (P.D. No. 1517), which states:

Sec. 6. *Land Tenancy in Urban Land Reform Areas*. Within the Urban Zones legitimate tenants who have resided on the land for ten years or more who have built their homes on the land and residents who have legally occupied the lands by contract, continuously for the last ten years shall not be dispossessed of the land and shall be allowed the right of first refusal to purchase the same within a reasonable time and at reasonable prices, under terms and conditions to be determined by the Urban Zone Expropriation and Land Management Committee created by Section 8 of this Decree.

She pointed out that the MeTC could not decide the complaint for ejectment without determining whether the assignment of Unit 1682 to respondents impinged on her preemptive rights under P.D. No. 1517; that the MeTC would also have to determine

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[9] CA *rollo*, p. 61.

[10] *Id.* at 64.

[11] *Id.* at 72.

[12] *Id.* at 182. The complaint was filed with the RTC, Branch 49, Manila on March 22, 2005 and docketed as Civil Case No. 05112209.

whether respondents could legally eject her despite the express prohibition against her dispossession under said law; and that, therefore, as the issues of possession and title could not be adjudicated separately, the case should have been brought before the RTC, not the MeTC.[13]

Petitioner further argued that respondents had no cause of action for ejectment because they did not serve on her a valid demand to pay rent and vacate, or resort to *barangay* conciliation.[14] Petitioner was never remiss in her obligations under the monthly lease contract; and under the Rent Control Law, expiration of contract is not a valid ground for ejectment.[15]

After the parties submitted their position papers, the MeTC rendered a Decision[16] dated June 7, 2005, in favor of respondents, thus:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff [respondents] and against the defendant [petitioners]:
>
> 1. Ordering the defendant [petitioner] and all persons claiming right under her to vacate the subject premises and peacefully surrender possession of the property located at 1682 Blumentritt, Sta. Cruz, Manila;
>
> 2. Ordering the defendant [petitioner] to pay a reasonable monthly rental of ₱25,000.00 to plaintiffs [respondents] computed from the time the instant action was filed up to the time the subject premises is completely vacated and surrendered to plaintiffs [respondents];
>
> 3. Ordering the defendant [petitioner] to pay plaintiff the sum of ₱20,000.00 as attorney's fees.
>
> 4. Without Costs.

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[13] Answer, CA *rollo*, pp. 75-78.

[14] *Id.* at 73-75.

[15] *Id.* at 77-78.

[16] *Id.* at 123.

SO ORDERED.[17]

Petitioner appealed to the RTC, Branch 20, Manila emphasizing that she actually owns Unit 1682 because it was she who rebuilt it after it was destroyed by fire,[18] petitioner argued that respondents had no interest in or title to Unit 1682; hence, they could not validly compel her to vacate the property. Neither could they claim title to the land on which Unit 1682 stands because the April 1, 2004 deed of assignment was of no effect, for it was in violation of Sec. 6, P.D. No. 1517.[19] She reiterated that such issue of title affecting Unit 1682 could only be resolved in an *accion reivindicatoria* cognizable by the RTC.[20]

Moreover, in the event that the complaint for ejectment be found proper, petitioner invoked the protection against ejectment provided under existing rent control laws. She argued that, contrary to the ruling of the MeTC, said laws were applicable to her because she had been using Unit 1682 not just as her business office but also as a dwelling place.[21] Moreover, her lease on the property started more than thirty (30) years ago; hence, the ₱7,500.00 threshold rent set by the Rent Control Law could not prejudice her.[22]

Finally, petitioner questioned the MeTC's imposition of a ₱25,000.00 monthly rent for lack of factual and legal basis.[23]

In a Decision dated December 16, 2005, the RTC affirmed the MeTC Decision with modification, thus:

WHEREFORE, the assailed Decision dated June 7, 2005 of the Metropolitan Trial Court Branch 20 is hereby MODIFIED as follows:

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[17] CA *rollo*, p. 126.

[18] *Id.* at 142-144.

[19] *Id.* at 137-141

[20] *Id.* at 145-146.

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

[22] *Id.* at 147-148.

[23] *Id.* at 150-151.

> 1. Ordering the defendant [petitioner] and all persons claiming right under her to vacate the subject premises and peacefully surrender possession of the property located at 1682 Blumentritt, Sta. Cruz, Manila to herein plaintiffs [respondents];
>
> 2. Ordering the defendant [petitioner] to pay a reasonable monthly rental of ₱15,000.00 to plaintiffs [respondents] computed from the time the instant action was filed up to the time the subject premises is completely vacated and surrendered to plaintiffs;
>
> 3. Ordering the defendant [petitioner] to pay plaintiffs [respondents the sum of ₱20,000.00 as attorney's fees.
>
> 4. Without cost.
>
> SO ORDERED.[24]

Petitioner filed a motion for reconsideration but the RTC denied it in its Order[25] dated January 20, 2006.

She then filed with the CA a Petition for Review under Rule 42 of the Rules of Court in the August 31, 2006 Decision assailed herein. The CA affirmed the RTC decision with modification:

> WHEREFORE, in consideration of the foregoing, the instant petition is perforce ***denied***. Accordingly, we ***affirm with modification*** the assailed decision dated 16 December 2005 of the respondent court, in that the award of attorney's fees in the amount of ₱20,000.00 is hereby ***deleted***.
>
> SO ORDERED.[26]

Her motion for reconsideration[27] having been denied by the CA in its Resolution[28] dated January 15, 2007, petitioner filed the present Petition, with application for temporary restraining order and writ of preliminary injunction to enjoin enforcement of the assailed CA decision and resolution.

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[24] CA *rollo*, pp. 36-37.

[25] *Id.* at 37.

[26] *Rollo*, p. 67.

[27] *Id.* at 69.

[28] *Id.* at 57.

In a Resolution[29] dated February 28, 2007, the Court issued a Temporary Restraining Order (TRO) enjoining the CA, RTC, MeTC and respondents or their agents and assigns from implementing or enforcing the August 31, 2006 Decision and January 15, 2007 Resolution of the CA. Petitioner posted a cash bond in the amount of ₱100,000.00.[30]

Respondents filed a Motion to Lift the TRO or to Require Petitioners to Make the Required Monthly Deposit,[31] to which petitioner filed a Consolidated Comment.[32] In its Resolution[33] of July 9, 2007, the Court denied respondents' motion to lift the TRO, but granted their prayer that petitioner be required to pay ₱10,932.60 monthly rental from the date of receipt by petitioner of the MeTC decision, in accordance with Section 19,[34] Rule 70 of the Revised Rules of Court.

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[29] CA *rollo*, pp. 110-114.

[30] *Id.* at 107.

[31] *Id.* at 120

[32] *Id.* at 152.

[33] *Id.* at 181-182.

[34] Sec. 19. *Immediate execution of judgment; how to stay same*.—If judgment is rendered against the defendant, execution shall issue immediately upon motion, unless an appeal has been perfected and the defendant to stay execution files a sufficient supersedeas bond, approved by the Municipal Trial Court and executed in favor of the plaintiff to pay the rents, damages, and costs accruing down to the time of the judgment appealed from, and unless, during the pendency of the appeal, he deposits with the appellate court the amount of rent due from time to time under the contract, if any, as determined by the judgment of the Municipal Trial Court. In the absence of a contract, he shall deposit with the Regional Trial Court the reasonable value of the use and occupation of the premises for the preceding month or period at the rate determined by the judgment of the lower court on or before the tenth day of each succeeding month or period. The supersedeas bond shall be transmitted by the Municipal Trial Court, with the other papers, to the clerk of the Regional Trial Court to which the action is appealed. All amounts so paid to the appellate court shall be deposited with said court or authorized government depositary bank, and shall be held there until the final disposition of the appeal, unless the court, by agreement of the interested parties, or in the absence of reasonable grounds of opposition to a motion to withdraw, or for justifiable reasons, shall decree otherwise Should the defendant fail to make the payments above

In separate Certifications[35] dated August 22, 2007, the MeTC and RTC reported that petitioner did not make any rental deposit, although she posted a supersedeas bond in the amount of ₱100,000.00. Hence, respondents filed a Manifestation and Motion[36] dated September 12, 2007 to lift the TRO for failure of petitioner to comply with the Court's Resolution of July 9, 2007. The Court, in a Resolution[37] dated October 15, 2007, required petitioner to comment.

In her January 28, 2008 Comment[38] to the September 12, 2007 Manifestation and Motion, petitioner explained that she already complied with the July 9, 2007 Resolution of the Court by filing a supersedeas bond for ₱100,000.00, and that she had filed with the RTC an urgent motion for computation of back rentals but the same had remained unresolved, thus preventing her from making the required monthly deposit.

Earlier, on January 23, 2008, respondents filed a Reiterative Motion to Lift the Temporary Restraining Order[39] for failure of petitioner to comply with the July 9, 2007 and October 15, 2007 Resolutions of the Court. On March 12, 2008, the Court

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prescribed from time to time during the pendency of the appeal, the appellate court, upon motion of the plaintiff, and upon proof of such failure, shall order the execution of the judgment appealed from with respect to the restoration of possession, but such execution shall not be a bar to the appeal taking its course until the final disposition thereof on the merits.

After the case is decided by the Regional Trial Court, any money paid to the court by the defendant for purposes of the stay of execution shall be disposed of in accordance with the provisions of the judgment of the Regional Trial Court. In any case wherein it appears that the defendant has been deprived of the lawful possession of land or building pending the appeal by virtue of the execution of the judgment of the Municipal Trial Court, damages for such deprivation of possession and restoration of possession may be allowed the defendant in the judgment of the Regional Trial Court disposing of the appeal.

[35] *Rollo*, pp. 187 and 188.

[36] *Id.* at 184.

[37] *Id.* at 259.

[38] *Id.* at 271-272.

[39] *Id.* at 261.

issued a Resolution[40] noting both the respondents' Reiterative Motion and petitioner's Comment, and requiring petitioner to deposit to the RTC the unpaid monthly rentals in the amount of ₱10,932.60 as directed in the Court's July 9, 2007 Resolution and to submit proof of compliance within ten (10) days from notice; otherwise, the temporary restraining order would be lifted.

In a Manifestation and Compliance[41] dated March 9, 2008, petitioner explained that her January 28, 2008 Comment was in compliance with both the July 9, 2007 and October 15, 2007 Resolutions of the Court.

Based on court records, copy of the Resolution was mailed to petitioner on March 18, 2008,[42] and she received the same on April 28. 2008.[43] Yet, as per Certification issued on May 12, 2008 by the RTC, petitioner had not made any rental deposit.[44] Hence, respondents filed another Manifestation[45] for the lifting of the TRO.

The Court now resolves the main issues in the Petition, *viz.*:

1. Whether the pending action for annulment of transfer of title on ground of violation of P.D. 1517 (granting right of first refusal to the lessee and prohibiting dispossession of the property) filed by the petitioner against private respondents and previous lessor LKTSI constitutes *litis pendentia* or at the very least poses legal questions warranting the suspension of the proceedings of this ejectment suit.

2. Whether the court where the prior pending action involving the issue of whether the lessee can be dispossessed has exclusive and original jurisdiction to the exclusion of other courts where the action for dispossession via ejectment suit is filed after.

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[40] *Id.* at 284.

[41] *Rollo*, p. 288.

[42] As Registered Letter No. 40591.

[43] *Rollo*, p. 311.

[44] *Id.* at 312.

[45] *Id.* at 309.

3. Whether the trial court *a quo* has jurisdiction over the complaint.

4. Whether there is a lease relationship between the parties that can entitle the lessor to file an ejectment case.

5. Whether there is a proper demand for purposes of ejectment suit.

6. Whether the appellate court and the trial court *a quo* could make an award for payment of monthly rental in such amount more than if not other than the last agreed monthly rentals between petitioner and LKTSI.[46]

To the foregoing set of issues, however, petitioner, in her Memorandum, added several more, to wit:

1. Whether private respondents committed forum-shopping;

xxx xxx xxx

7. Whether on account of the foregoing issues, the application for issuance of writ of preliminary injunction may be granted as prayed for in the petition.

8. Whether ejectment proceedings which are summary in nature can take precedence over an annulment action based upon a violation of specific and express provision of law (PD 1517).

9. Whether the ejectment proceeding can be suspended when it comes to direct conflict with an existing and applicable law; and

10. Whether which rights in the instant case must be a *priori* protected – physical or material right of possession or substantial issue of ownership which subsumes the issue of possession pursuant to the existing and applicable provision of law,[47]

in arrant disregard of the July 9, 2007 Resolution of the Court, forbidding new issues from being raised by the parties in their respective memoranda.[48] This is a standard prohibition inserted into every Court order for submission of memoranda, the purpose

[46] *Id.* at 24.

[47] *Rollo*, pp. 222-223.

[48] *Id.* at 178.

of which is to forestall surprise by one party upon the other, who would have no opportunity to counter whatever new point of law, theory, issue or argument may be belatedly raised.[49]

Consequently, the Court will not resolve such new issues, except when they are related to the issues raised in the Petition, which may actually be condensed, thus:

First, whether the CA erred in affirming the RTC for sustaining the jurisdiction of the MeTC over the ejectment complaint; and

Second, whether the CA erred in affirming with modification the judgments of the RTC and MeTC ordering the ejectment of petitioner.

Third, whether the temporary restraining order issued by the Court should be lifted as prayed for by respondents.

On the issue of jurisdiction

The allegations in a complaint[50] and the character of the relief sought[51] determine the nature of the action and the court with jurisdiction over it. The defenses set up in an answer are not determinative.[52]

A complaint sufficiently alleges a cause of action for unlawful detainer if it recites that: a) initially, possession of the property by the defendant was by contract with or by tolerance of the plaintiff; b) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession; c) thereafter, defendant remained in possession of the property and deprived plaintiff of the enjoyment

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[49] *Valdes v. China Banking Corporation*, G.R. No. 155009, April 12, 2005, 455 SCRA 687, 696.

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

[51] *Barrazona v. Regional Trial Court, Br. 61, Baguio City*, G.R. No. 154282, April 7, 2006, 486 SCRA 555, 560.

[52] *Dela Cruz v. Court of Appeals*, G.R. No. 139442, December 6, 2006, 510 SCRA 103, 117.

thereof; and d) within one year from the last demand on defendant to vacate the property, plaintiff instituted the complaint for ejectment.[53]

The complaint for ejectment which respondents filed against petitioner alleges:

> 3. Plaintiffs [respondents] are the absolute and registered owners of the land located at No. 1682 Blumentritt St., Sta. Cruz, Manila, including improvements therein xxx.
>
> xxx xxx xxx
>
> 5. xxx The first unit, designated as 1682 Blumentritt St., Sta. Cruz, Manila xxx is presently being occupied by herein defendant [petitioner].
>
> 6. Defendant's [petitioner's] lease of Unit 1682 xxx with LKT, [sic] as with the others, was on a month-to-month basis. The property was transferred to plaintiffs [respondents] on April 2, 2004. Plaintiffs [respondents] have no plans to have the premises leased as they acquired the property for some other urgent business purpose in mind. Thus, plaintiffs [respondents] talked to and appealed to the occupants of the building to voluntarily vacate the premises and peacefully surrender possession thereof to plaintiffs [respondents].
>
> 7. However, defendant [petitioner] did not cooperate and instead stubbornly remained on the subject premises.
>
> xxx xxx xxx
>
> 9. Thus, plaintiffs [respondents], through their counsel, formally wrote to defendant Victoria Fernando [petitioner], informing the latter that her lease of the aforegmentioned (sic) premises, which is on a month-to-month basis, ended on April 30, 2004 and will no longer be renewed. Defendant [petitioner] was also informed that if she ever continued to stay in the premises beyond April 30, 2004, it should not be construed as a renewal of whatever lease agreement defendant [petitioner] previously had with LKT.
>
> 10. Defendant, who duly received the letter, was given fifteen (15) days to peacefully surrender possession of the subject

[53] *Dela Cruz v. Court of Appeals, id.*; *Heirs of Demetrio Melchor v. Melchor*, G.R. No. 150633, November 12, 2003, 415 SCRA 727.

premises, particularly 1682 Blumentritt, St., Sta. Cruz, Manila, to herein plaintiffs. A copy of said letter dated April 29, 2004 is hereto attached and made an integral part hereof as "Annex C".

11. However, despite oral and written demands to vacate subject premises, defendant failed and refused, and still fails and refuses, without justifiable reason, to vacate the said subject premises and to peacefully surrender possession thereof to plaintiffs, to the damage and prejudice of the latter.[54]

In essence, the complaint recites that when respondents acquired Unit 1682 from LKTSI, petitioner was still in possession of the property by virtue of a month-to-month lease contract with LKTSI; that said lease contract was set to expire on April 30, 2005; that respondents verbally informed petitioner that her lease contract would not be renewed when it expired; and that respondents also served a written demand dated April 29, 2004 on petitioner to vacate Unit 1682, but the latter refused to do so. By these allegations, the complaint clearly drew up a case for unlawful detainer. It was therefore correctly filed with the MeTC which has jurisdiction over ejectment cases.[55]

Petitioner, however, has raised an issue of title, to question the jurisdiction of the MeTC. She claims that respondents have no right to institute the action for unlawful detainer because they did not validly acquire the property in view of the prohibition under P.D. No. 1517 against her dispossession or the transfer of the property without first offering it for sale to her. She insists that such issue of title prevents the MeTC from acquiring jurisdiction over the case; it should have deferred to the jurisdiction of the RTC where there is a pending case for annulment of the title of respondents.

As a rule, the nature of a complaint for unlawful detainer and the jurisdiction of a court over it are not altered by the mere claim of the defendant of title to the property subject

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[54] Complaint, CA *rollo*, pp. 65-67.

[55] Section 33, Chapter III of Batas Pambansa Blg. 129. See also Section 1, Rule 70 of the Rules of Court.

matter of the ejectment case.[56] Even a pending action involving title to the property which the defendant may have instituted in another court will not abate or suspend the summary proceedings for unlawful detainer.[57] The underlying reason for this rule is to prevent the defendant from trifling with the summary nature of the case by the simple expedient of asserting ownership over the disputed property.[58]

Respondents cite *Solanda Enterprises, Inc. v. Court of Appeals*.[59] It involves an action for ejectment filed by the vendee of a parcel of land against the vendor's lessees on the property. In turn, the lessees filed an action for annulment of the sale of the property between the vendor and vendee on the ground that the sale violated their [lessees'] preemptive rights over the property as guaranteed under P.D. No. 1517. The Court held that the action for ejectment may proceed independently of the action for annulment, citing the following reason:

> xxx the consistent case law is that ejectment suits deal only with the issue of physical possession. The pendency of an action for the annulment of the sale and the reconveyance of the disputed property may not be successfully pleaded in abatement of an action for ejectment. Private respondent's alleged right of possession is conditioned on his right to acquire ownership over the land. His right of the possession is, at best, only inchoate. ***In any event, the private respondent's expectation of being granted the preemptive right to purchase the property neither establishes his right to possess nor justifies the dismissal of the ejectment case against him.*** [Emphasis added.]

It is important to bear in mind that in *Solanda*, it was conclusively found that the property in dispute was not within

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[56] *Palattao v. Court of Appeals*, G.R. No. 131762, May 7, 2002, 381 SCRA 681, 691.

[57] *Arambulo v. Gungab*, G.R. No. 156581, September 30, 2005, 471 SCRA 640.

[58] *Tecson v. Guitierrez*, G.R. No. 152978, March 4, 2005, 452 SCRA 781.

[59] G.R. No. 123479, April 14, 1999, 305 SCRA 645.

the coverage of P.D. No. 1517 as defined under Proclamation No. 1967[60] and certified to by the Housing and Land Use Regulatory Board (HLURB).

But then, there have been two rare cases in which the Court allowed the suspension of an action for unlawful detainer to make way for an action for annulment of title.

In *Vda. de Legaspi v. Avendaño*,[61] the Court suspended the enforcement of a writ of demolition rendered in an ejectment case until after a case for annulment of title involving the property to be demolished was decided. The Court ratiocinated:

> x x x. ***Where the action, therefore, is one of illegal detainer, as distinguished from one of forcible entry, and the right of the plaintiff to recover the premises is seriously placed in issue in a proper judicial proceeding***, it is more equitable and just and less productive of confusion and disturbance of physical possession, with all its concomitant inconvenience and expenses. For the Court in which the issue of legal possession, whether involving ownership or not, is brought to restrain, should a petition for preliminary injunction be filed with it, the effects of any order or decision in the unlawful detainer case in order to await the final judgment in the more substantive case involving legal possession or ownership. It is only where there has been forcible entry that as a matter of public policy the right to physical possession should be immediately set at rest in favor of the prior possession regardless of the fact that the other party might ultimately be found to have superior claim to the premises involved, thereby to discourage any attempt to recover possession thru force, strategy or stealth and without resorting to the courts. (Emphasis supplied)

More in point is *Dulay v. Tabago*,[62] in which the Court sustained the RTC in suspending the eviction of Spouses Tabago from the property of Spouses Dulay in view of the issuance of Presidential Decree No. 2016, which placed the disputed property

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[60] Amending Proclamation No. 1893 by Specifying 244 Sites in Metropolitan Manila as Areas for Priority and Urban Reform Zones.

[61] No. L-40437, September 7, 1977, 79 SCRA 135.

[62] Resolution dated February 4, 2002 in G.R. No. 150645.

under the coverage of P.D. No. 1517 and prohibited the eviction of the tenants therein. As there was no dispute over the status of Spouses Tabago as tenants on the property since 1959, or over the status of the property as an urban land reform area, the Court therein held:

> Sec. 2 of P.D. No. 2016, which was promulgated to forestall violations of P.D. No. 1517, provides that "No tenant or occupant family, residing for ten years or more, reckoned from the date of issuance of Presidential Decree No. 1517 [June 11, 1978] otherwise known as the Urban Land Reform Law, in land proclaimed as Areas of Priority Development . . . shall be evicted from the land or otherwise dispossessed" (emphasis added). ***Considering that respondents have been occupants of the lot in question since 1959 and in view of the subsequent classification of the said land as an APD, petitioners' action for ejectment cannot prosper.***

To be entitled to the beneficence of P.D. No. 1517, a party must provide *prima facie* evidence of the following facts: a) that the property being leased falls within an Area for Priority Development and Urban Land Reform Zone;[63] b) that the party is a tenant on said property as defined under Section 3 (f)[64] of P.D. No. 1517;[65] c) that the party built a house on said property;[66] and d) that the party has been residing on the property continuously for the last ten (10) years or more, reckoned from 1968.[67]

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[63] *Arlegui v. Court of Appeals*, G.R. 126437 Phil. 381, 391 (2002); *Vidal v. Escueta,* G.R. No. 156228, December 10, 2003, 417 SCRA 617.

[64] Sec. 3. Definitions. As used in this Decree, the following words and phrases shall have the following meanings and definitions: x x x (f) Tenant refers to the rightful occupant of land and its structure, but ***does not include those whose presence on the land is merely tolerated and without the benefit of contract***, those who enter the land by force or deceit, or those whose possession is under litigation. (Emphasis added)

[65] *Dee v. Court of Appeals*, G.R. No. 108205, February 15, 2000, 325 SCRA 466.

[66] *Vidal v. Escueta, supra* note 63.

[67] *Dimaculangan v. Casalla*, G.R. No. 156689, June 8, 2007, 524 SCRA 181.

The question is, did petitioner establish the foregoing requisites as to avail herself of the "suspensive" effect of P.D. No. 1517 as in *Sps. Dulay* and *Vda. de Legaspi*?

It is noted that the MeTC rejected the claim of petitioner to preferential rights over the property, but petitioner objected on the ground that the MeTC had no jurisdiction to resolve such subject matter.

Petitioner's objection was frivolous. Under Section 33[68] of *Batas Pambansa Blg*. 129, the MeTC is conditionally vested with authority to resolve the question of ownership raised as an incident in the case, the determination of which is necessary for a complete adjudication of the issue of possession.[69] In the present case, the MeTC's foray into the issue of whether under P.D. No. 1517, petitioner has preferential rights to the purchase and occupation of Unit 1682 as against respondents' rights was necessary to resolve the issue of material possession.

The ***provisional*** ruling of the MeTC on said issue is that P.D. No. 1517 does not apply to the case because there was no sale between LKTSI and respondents but a mere distribution of liquidating dividends on account of the dissolution of LKTSI.[70]

The share of each stockholder in the remaining assets of the corporation upon liquidation, after the payment of all corporate debts and liabilities, is what is known as liquidating dividend.[71] In its interpretation of recent tax laws, the Bureau of Internal

[68] Section 33. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Civil Cases*.— Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise: x x x (2) Exclusive original jurisdiction over cases of forcible entry and unlawful detainer: Provided, That when, in such cases, the defendant raises the question of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession.

[69] *Aquino v. Aure*, G.R. No. 153567, February 18, 2008; *Dela Cruz v. Court of Appeals, supra* note 52.

[70] MeTC Decision, CA *rollo*, pp. 123-126.

[71] *PDIC v. Reyes*, G.R. No. 154973, June 21, 2005, 460 SCRA 473.

Revenue viewed the distribution of liquidating dividends not as a sale of asset by the liquidating corporation to its stockholder but as ***a sale of shares by the stockholder to the corporation or the surrender of the stockholder's interest in the corporation, in place of which said stockholder receives property or money from the corporation about to be dissolved***.[72] Thus, on the part of the stockholder, any gain or loss is subject to tax, while on the part of the liquidating corporation, no tax is imposed on its receipt of the shares surrendered by the stockholder or transfer of assets to said stockholder because said transaction is not treated as a sale.[73]

Preliminarily, therefore, the Court agrees with the view of the MeTC that the April 1, 2004 assignment of Unit 1682 is not covered by the prohibition under P.D. No. 1517. It should be emphasized that such interim ruling is without prejudice to how the complaint for annulment of the April 1, 2004 deed of assignment is resolved by the RTC.

In addition to the foregoing reason, the Court also finds no ***prima facie*** evidence that petitioner qualifies as a tenant under P.D. No. 1517.

Respondents presented a Land Transaction Certificate issued by the HLURB, stating that Unit 1682 is outside any Area for Priority Development.[74] However, Proclamation No. 1967 identifies in Appendix "J"[75] thereof 244 sites in Metropolitan Manila that fall within the coverage of P.D. No. 1517. In the West Sector (Manila), one identified site is "8. Sta. Clara to

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[72] See, however, Jose Campos, *The Corporation Code* Volume II, p. 417, citing *Stockholders of Guanzon v. Register of Deeds*, No. L-18216, October 30, 1962, 6 SCRA 373.

[73] BIR Ruling No. DA-111-2005, April 5, 2005. See also *Commissioner v. Court Holding Co*. (324 U.S. 331 [1945]), in which the US Supreme Court held that that a corporation realizes no taxable gain by a mere distribution of its assets in kind, or in partial or complete liquidation, however much they may have appreciated in value since acquisition.

[74] CA *rollo*, p. 272.

[75] The Annex Attached to Proclamation 1967 Enumerates the Following Areas of Priority Development and Urban Land Reform Zones.

Blumentritt." Thus, it would appear that Unit 1682, which is located in Blumentritt Street, Sta. Cruz, Manila, is within the scope of P.D. No. 1517,[76] the HLURB Certification to the contrary notwithstanding.

Moreover, petitioner had a month-to-month lease contract with LKTSI on Unit 1682, which expired on April 30, 2004. Thus, up to that time, petitioner was a rightful occupant of the property as defined under Sec. 3 of P.D. No. 1517.

However, other than her bare claim that she owns the structure on Unit 1682 because she allegedly rebuilt it after it was burned down, petitioner offered no concrete evidence of when the original structure was burned down and when she rebuilt it. She presented no detail on how she spent for the construction of the structure, or proof that LKTSI allowed her to claim ownership thereof. On the other hand, it was respondents who presented Tax Declaration No. 00182 which indicates that they are the registered owners of the improvements, including Unit 1682, on the land covered by TCT No. 264835.

Furthermore, except for her empty allegation — which respondents dispute —[77] that she has been occupying Unit 1682 for more than thirty (30) years, petitioner presented no concrete evidence of the exact period of her occupation, even when she could have easily produced receipts of past rental payments similar to the receipt[78] she easily presented for her March 2004 rental payment. Such unexplained omission prevents an adjudication on whether petitioner's period of occupation qualifies her to exercise the right of first refusal under P.D. No. 1517.[79]

Therefore, unlike in *Sps. Dulay* or *Guardacasa de Legaspi*, there is no *prima facie* showing in this case that petitioner is protected under P.D. No. 1517 from dispossession of Unit 1682, or that she has the right of first refusal in the sale of said property.

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[76] *Garrido v. Court of Appeals*, G.R. No. 118462, November 22, 2001, 370 SCRA 199.

[77] Memorandum for Respondents, *rollo*, p. 210

[78] *Supra* note 5.

[79] *Dimaculangan v. Casalla, supra* note 67.

Petitioner, therefore, cannot invoke P.D. No. 1517 in abatement of the complaint for unlawful detainer.

Another matter raised by petitioner relating to the jurisdiction of the MeTC is the personality of respondents to give notice to vacate and to file an ejectment case. The Court need not belabor the point for it is well-settled that, as vendees of the property, respondents were placed in the shoes of the original lessor LKTSI and vested with the right to evict petitioner as the lessee from the premises.[80] Whether the transfer of the property to respondents was valid is of no moment, for all that is to be resolved in the ejectment case is whether the latter are entitled to the material possession of the property.[81]

All told, the Court sustains the CA in affirming the ruling of the RTC that the MeTC correctly exercised jurisdiction over the complaint for unlawful detainer.

On the issue of the correctness of the judgment of eviction

Petitioner poses no serious challenge to the concurrent findings of the MeTC, RTC and CA that her right to possession of Unit 1682 has expired; that her continued possession thereof unlawfully deprives respondents of the enjoyment of the property; and that, therefore, she must now peacefully surrender possession thereof to respondents. Her remaining defense is that, under the rent control laws, respondents cannot eject her because she has been religiously paying her rent.

Republic Act No. 9161,[82] otherwise known as the "Rental Reform Act of 2002," was the rent control law in force at the time the complaint for unlawful detainer was filed. Sec. 7(e)

[80] Rule 70 of the Rules of Court, which provides:

Section 1. *Who may institute proceedings, and when.* – Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, **vendee**, or other person against whom the possession of any land or building is unlawfully withheld xxx. See also *Ocampo v. Tirona*, G.R. No. 147812, April 6, 2005, 455 SCRA 62.

[81] *Barnes v. Quijano,* G.R. No. 160753, June 28, 2005, 461 SCRA 533.

[82] Effective January 1, 2002.

thereof allows for judicial ejectment of a lessee on the ground of expiration of the period of the lease contract. As already discussed, the month-to-month lease contract of petitioner expired on April 30, 2004 and was not renewed by respondents; hence, the latter acted well within their rights to file a complaint for unlawful detainer.[83]

Petitioner has also questioned the award of reasonable rent of ₱15,000.00. Trial courts are authorized to fix the reasonable value for the continued use and occupancy of the leased premises after the termination of the lease contract; and they are not bound by the stipulated rental in the contract of lease, since it is equally settled that upon termination or expiration of said contract, the rental stipulated therein may no longer be the reasonable value for the use and occupation of the premises as a result or by reason of the change or rise in values.[84] As to what amount would constitute a reasonable rent of Unit 1682, the same is a question of fact on which the determination of the CA binds the Court, unless the latter finds reason to reverse it.[85] In the present case, the CA reduced the award of reasonable rent from ₱25,000.00 to ₱15,000.00 based on the finding that such amount represents the reasonable amount of lost opportunity income respondents would have derived from the conversion of Unit 1682 into a San Miguel Food shop.[86] Petitioner has not adduced evidence in refutation of the factual findings of the CA.

Considering that no error has been committed by the CA in its August 31, 2006 Decision and January 15, 2007 Resolution, the Court affirms the same.

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[83] *Lopez v. Fajardo*, G.R. No. 157971, August 31, 2005, 468 SCRA 664.

[84] *Sps. Catungal v. Hao*, G.R. No. 134972, March 22, 2001, 355 SCRA 29 citing *Sia v. Court of Appeals*, G.R. No. 108222, May 5, 1997, 272 SCRA 141.

[85] *Bacolod Delars Realty Dev't. Corp. v. Negros Grace Pharmacy*, G.R. No. 140855, August 9, 2000, Resolution, First Division.

[86] CA Decision, *rollo*, p. 67.

On the issue of whether the temporary restraining order should be lifted

The Court finds respondents' September 12, 2007 Manifestation and Motion, January 23, 2008 Reiterative Motion to Lift the Temporary Restraining Order and May 13, 2008 Manifestation to be well-taken. It notes petitioner's January 28, 2008 Comment and March 9, 2008 Manifestation and Compliance, and finds unsatisfactory the explanation put forth therein why she failed to deposit to the RTC unpaid monthly rentals in the amount of ₱10,932.60 from date of receipt of the MeTC Decision. It should be emphasized that while petitioner may have questioned before the RTC the computation of back rentals, the same cannot muddle the July 9, 2007 and March 12, 2008 Resolution of the Court which are rather explicit in the amount of unpaid monthly rentals she is required to pay. The Court further notes that petitioner utterly failed to show proof of compliance with the foregoing resolutions.

WHEREFORE, the petition is *DENIED*. The temporary restraining order issued by the court is *LIFTED* and *SET ASIDE*.

Costs against petitioner.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 176344. August 22, 2008]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **YOLANDA G. DAVID,** *respondent.*

SYLLABUS

1. CIVIL LAW; LOANS; INTEREST; COURTS ARE EMPOWERED TO EQUITABLY REDUCE INTEREST RATES AND PENALTY CHARGES.— Jurisprudence empowers courts to equitably reduce interest rates. And the law empowers them to reduce penalty charges. Thus, Article 1229 of the Civil Code provides: The judge shall **equitably reduce the penalty** when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no partial performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable. Whether an interest rate or penalty charge is reasonable or iniquitous is addressed to the sound discretion of the courts. In determining what is iniquitous and unconscionable, courts must consider the circumstances of each case, for what may be just in one case may be iniquitous and unconscionable in another. Thus, while this Court sustained the validity of a 21% *per annum* interest in *Spouses Bautista v. Pilar Development Corporation*, it reduced an 18% *per annum* interest rate to 12% *per annum* in *Trade & Investment Development Corporation of the Phils. v. Roblett.*

2. ID.; ID.; ID.; WHERE THE LOAN WAS GRANTED PURSUANT TO R.A. 8435 AND WAS A PART OF SOCIAL ASSISTANCE PROGRAM, REDUCTION OF INTEREST RATE AND PENALTY CHARGE IS JUSTIFIED.— Section 24 of R.A. No. 8435 (The Agriculture and Fisheries Modernization Act of 1997) provides that "[t]he Land Bank of the Philippines shall, in accordance with its original mandate, focus primarily on plans and programs in relation to the financing of agrarian reform and the delivery of credit services to the agriculture and fisheries sectors, especially to small farmers and fisherfolk." In the case at bar, the purpose of the loan was to finance the construction of two broiler houses and a feeds warehouse. The

observation by the Court of Appeals that the loan extended to respondent was part of the social assistance program to improve the plight of farmers is thus well-taken. The Court notes respondent's claim, that even after the restructuring on April 18, 1996 of the original loan, which was not refuted by petitioner, her profits greatly diminished due to the poor quality of feeds provided by *Vitarich* such that in April 1997, she earned a profit of only ₱8,236.43. Given the business losses that respondent suffered, coupled with the fact that she had made partial payments on both the original loan and the restructured loan, the reduction by the appellate court of the interest rate and penalty charge is justified.

3. ID.; ID.; ID.; EFFECT OF THE NULLIFICATION OF THE INTEREST RATE AND PENALTY CHARGE; CASE AT BAR.— While, as petitioner argues, the nullity of the interest rate and penalty charge does not affect its right to recover the principal amount of the loan, the public auction of the mortgaged property is nevertheless void, the amount indicated as mortgage indebtedness having included excessive, iniquitous, and exorbitant interest rate and penalty charge. x x x The nullity of the stipulation on the usurious interest does not x x x affect the lender's right to recover the principal of the loan. Nor would it affect the terms of the real estate mortgage. The right to foreclose the mortgage remains with the creditors, and said right can be exercised upon the failure of the debtors to pay the debt due. The debt due is to be considered without the stipulation of the excessive interest. While the terms of the Real Estate Mortgage remain effective, the foreclosure proceedings held on 31 October 1990 cannot be given effect. In the Notice of Sheriff's Sale dated 5 October 1990, and in the Certificate of Sale dated 31 October 1990, the amount designated as mortgage indebtedness amounted to ₱874,125.00. Likewise, in the demand letter dated 12 December 1989, Zoilo Espiritu demanded from the Spouses Landrito the amount of ₱874,125.00 for the unpaid loan. Since the debt due is limited to the principal of ₱350,000.00 with 12% *per annum* as legal interest, the previous demand for payment of the amount of ₱874,125.00 cannot be considered as a valid demand for payment. For an obligation to become due, there must be a valid demand. Nor can the foreclosure proceedings be considered valid since the total amount of the indebtedness during the foreclosure proceedings was pegged at P874,125.00

which included interest and which this Court now nullifies for being excessive, iniquitous, and exorbitant. x x x

APPEARANCES OF COUNSEL

Litigation Department (LBP) for petitioner.
Benjamin C. Reyes for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Respondent, Yolanda G. David, doing business under the trade name David Poultry Farm with address at Arayat, Pampanga, obtained on April 21, 1993 a ₱1,100,000 loan from petitioner, Land Bank of the Philippines (Land Bank), to bear interest "based on the prevailing lender's rates/special financing rate"[1] and penalty charge of 12% *per annum* in case of default in the settlement thereof. To secure the payment of the loan, respondent mortgaged[2] a parcel of land covered by Transfer Certificate of Title No. 334702-R.[3]

Due to serious business reverses suffered by respondent, she and petitioner executed on April 18, 1996 a Restructuring Agreement[4] with the following terms:

As conditions for restructuring, the BORROWER hereby undertakes and promises, without need for any notice or demand or any act or deed to perform the following:

1. Restructuring of BORROWER's subject's [*sic*] outstanding obligation of PESOS: ONE MILLION ONE HUNDRED SEVENTY ONE THOUSAND FOUR HUNDRED SIXTY SEVEN & 18/100 CTS. (₱1,171, 467.18) as of February 29, 1996 as follows:

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[1] Loan Agreement, Exhibit "1", Exhibits (Defendant).

[2] Real Estate Mortgage, Exhibit "2", Exhibits (Defendant).

[3] Transfer Certificate of Title, Exhibit "3", Exhibits (Defendant).

[4] Restructuring Agreement, Exhibit "4", Exhibits (Defendant).

a) Upfront payment of PESOS: THREE HUNDRED THOUSAND SIX HUNDRED TWENTY THREE & 55/100 CTS. (₱300,623.55) presently lodged to Accounts Payable (A/P) shall be applied as follows:

₱165,146.85	**–**	**to settle the penalty & interest**
135, 476.70	–	to partially pay the principal
₱300,625.55		

b) The remaining principal balance of PESOS: EIGHT HUNDRED SEVENTY THOUSAND EIGHT HUNDRED FORTY THREE & 63/100 (₱870,843.63) after above application shall be charged **interest at 17% per annum** (p.a.) effective March 1, 1996. The restructured loan shall be paid in fifteen quarterly amortizations of PESOS: SEVENTY NINE THOUSAND (₱79,000.00) starting April 30, 1996, and every quarter thereafter after fully paid.

2. Failure of the BORROWER to remit two consecutive quarterly amortizations shall be sufficient ground to initiate foreclosure proceedings;

xxx xxx xxx

5. All other terms and conditions of the original Loan Agreement as well as existing collateral documents not inconsistent herewith shall remain in force and effect.[5] (Emphasis supplied)

Respondent defaulted in the payment of monthly amortizations of the loan; hence, the entire balance of the loan became due and demandable[6] which, as of March 31, 1997, stood at ₱971,324.89.[7] Despite demand,[8] respondent failed to settle her obligation, prompting petitioner to initiate foreclosure proceedings.[9]

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[5] *Ibid.*

[6] TSN, May 6, 1999, pp. 33-34.

[7] Statement of Account as of March 31, 1997, Exhibit "6", Exhibits (Defendants).

[8] *Vide* Exhibit "7", Exhibits (Defendants); TSN, May 6, 1999, pp. 35-38.

[9] TSN, May 6, 1999, p. 38; Exhibit "8", Exhibits (Defendant).

Respondent thereupon filed on July 28, 1997 before the Regional Trial Court (RTC) of San Fernando, Pampanga a Complaint with prayer for Preliminary Injunction[10] against petitioner, the Clerk of Court and *Ex-Officio* Sheriff of the RTC of Pampanga, and Sheriff Efren Cannivel. Arguing that the interest on the loan is usurious, respondent prayed:

> 1. That immediately upon the filing of th[e] action, a Restraining Order issue, prohibiting and stopping the defendant from proceeding with the Sale of the aforesaid property on July 28 and until the final resolution of th[e] case;
>
> 2. After hearing converting said Restraining Order into a Writ of Preliminary Injunction;
>
> 3. After trial: —
>
> a. Declaring CB Circular No. 905 basis of high interest rate and any other circular floating the interest rate as without legal basis whatsoever and therefore null and void;
>
> b. Declaring PD No. 116 which authorizes the CB now BSP to fix interest rates or ceiling as unconstitutional for being among others an undue delegation of legislative power.
>
> c. Declaring that all payments made by the plaintiff to defendant be considered as payment of the principal without interest whatsoever;
>
> d. Ordering defendant Bank to pay attorney's fee of ₱50,000.00.[11] (Underscoring supplied)

As prayed for by respondent, the Executive Judge–Presiding Judge of Branch 42 of the San Fernando, Pampanga RTC immediately issued a Temporary Restraining Order.[12]

Petitioner filed its Answer (With Compulsory Counterclaim [for damages and attorney's fees]).

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[10] Records, pp. 1-6.

[11] *Id.* at 5.

[12] *Id.* at 29.

After conducting a hearing on respondent's application for the issuance of writ of preliminary injunction, Branch 43 of the San Fernando RTC to which the case was raffled denied the application by Order[13] of January 28, 1998.

Respondent subsequently filed on June 8, 1998 a Supplemental Complaint[14] alleging that even before the denial of her application for writ of preliminary injunction, the mortgaged property was sold at public auction for ₱1,298,460.88, pursuant to which a Certificate of Sale[15] was issued. She thus prayed for the annulment of the Certificate of Sale on the ground that "the amount for which [petitioner sought] to have the property sold at public auction is mostly an accumulation of usurious interest x x x."[16] The Supplemental Complaint was admitted[17] by the trial court as was a subsequently filed Amended Supplemental Complaint.[18]

After trial, the trial court, by Decision[19] of April 18, 2000, dismissed respondent's complaint and, acting on petitioner's Counterclaim, ordered respondent to pay moral damages, exemplary damages, attorney's fees, expenses of litigation, and costs of suit.

On appeal,[20] the Court of Appeals, noting that the loan extended to respondent was part of the social assistance program to improve the plight of farmers, found the interest rate of 17% *per annum* and the penalty charge of 12% *per annum* exorbitant and thus reduced them to 12% *per annum* and 5% *per annum*, respectively. And it nullified the sale at public auction of the mortgaged

[13] *Id.* at 113-114.

[14] *Id.* at 138.

[15] *Id.* at 138-A.

[16] *Id.* at 138.

[17] *Id.* at 141.

[18] *Id.* at 169-169-A.

[19] *Id.* at 368-375.

[20] *Id.* at 381.

property. Thus the appellate court disposed in its challenged Decision of July 22, 2005:[21]

> WHEREFORE, in view of the foregoing, the Decision dated April 18, 2000 is hereby **MODIFIED.** Accordingly, the Extrajudicial Foreclosure Sale of the property covered by TCT No. 334702-R of the Registry of Deeds of Pampanga is hereby declared **NULL** and **VOID**.
>
> Appellant is, however, directed to **PAY** appellee LBP the amount of Five Hundred Ninety Two Thousand and Seven Hundred Ninety Two Pesos and 42/100 (₱592,792.42) with interest at the legal rate from March 29, 1999, upon payment of which appellee LBP shall **RETURN** title of the mortgaged property to plaintiff-appellant and **RESTORE** her in possession thereof.
>
> The award of moral and exemplary damages, attorney's fees and expenses of litigation to defendant LBP is **SET ASIDE**.
>
> SO ORDERED.[22] (Emphasis in the original)

Its Motion for Reconsideration[23] having been denied,[24] petitioner filed the present Petition for Review on *Certiorari*,[25] raising the following issues:

> (A)
>
> WHETHER OR NOT THE INTEREST RATE OF 17% PER ANNUM, AS PROVIDED IN THE RESTRUCTURING AGREEMENT, AS WELL AS THE PENALTY CHARGES OF 12% PER ANNUM CAN BE CONSIDERED AS EXORBITANT AND UNCONSCIONABLE.

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[21] Penned by Court of Appeals Associate Justice Arcangelita M. Romilla-Lontok with the concurrence of Associate Justices Rodrigo V. Cosico and Danilo B. Pine. CA *rollo*, pp. 86-101. *Vide* pp. 97-98.

[22] CA *rollo*, p. 101.

[23] *Id.* at 104-107.

[24] *Id.* at 117.

[25] *Rollo*, pp. 29-41.

(B)

WHETHER OR NOT THE FORECLOSURE PROCEEDINGS CAN BE NULLIFIED ON THE GROUND THAT THE INTEREST RATES IMPOSED BY LAND BANK WAS UNCONSCIONABLE.[26]

The petition fails.

Jurisprudence empowers courts to equitably reduce interest rates.[27] And the law empowers them to reduce penalty charges. Thus, Article 1229 of the Civil Code provides:

> The judge shall **equitably reduce the penalty** when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no partial performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable. (Emphasis and underscoring supplied)

Whether an interest rate or penalty charge is reasonable or iniquitous is addressed to the sound discretion of the courts.[28] In determining what is iniquitous and unconscionable, courts must consider the circumstances of each case,[29] for what may be just in one case may be iniquitous and unconscionable in another.[30] Thus, while this Court sustained the validity of a 21% *per annum* interest in *Spouses Bautista v. Pilar Development Corporation*,[31] it reduced an 18% *per annum* interest rate to 12% *per annum* in *Trade & Investment Development Corporation of the Phils. v. Roblett:*[32]

Section 24 of R.A. No. 8435 (The Agriculture and Fisheries Modernization Act of 1997) provides that "[t]he Land Bank of

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[26] *Id.* at 36.

[27] *Vide Ruiz v. Court of Appeals*, 449 Phil. 419, 433-435 (2003).

[28] *Poltan v. BPI Family Savings Bank*, G.R. No. 164307, March 5, 2007, 517 SCRA 430, 446.

[29] *Vide Trade & Investment Development Corporation of the Philippines v. Roblett Industrial Construction Corporation*, G.R. No. 139290, May 19, 2006, 490 SCRA 1, 6.

[30] *Vide ibid.*

[31] 371 Phil. 533, 543-544 (1999).

[32] *Supra* note 29 at 7-8.

the Philippines shall, in accordance with its original mandate, focus primarily on plans and programs in relation to the financing of agrarian reform and the delivery of credit services to the agriculture and fisheries sectors, especially to small farmers and fisherfolk." In the case at bar, the purpose of the loan was to finance the construction of two broiler houses and a feeds warehouse.[33] The observation by the Court of Appeals that the loan extended to respondent was part of the social assistance program to improve the plight of farmers is thus well-taken.

The Court notes respondent's claim, that even after the restructuring on April 18, 1996 of the original loan, which was not refuted by petitioner, her profits greatly diminished due to the poor quality of feeds provided by *Vitarich* such that in April 1997, she earned a profit of only ₱8,236.43.[34]

Given the business losses that respondent suffered, coupled with the fact that she had made partial payments on both the original loan and the restructured loan, [35] the reduction by the appellate court of the interest rate and penalty charge is justified.[36]

While, as petitioner argues, the nullity of the interest rate and penalty charge does not affect its right to recover the principal amount of the loan, the public auction of the mortgaged property is nevertheless void,[37] the amount indicated as mortgage indebtedness having included excessive, iniquitous, and exorbitant interest rate and penalty charge.

> x x x The nullity of the stipulation on the usurious interest does not x x x affect the lender's right to recover the principal of the loan. Nor would it affect the terms of the real estate mortgage. The right to foreclose the mortgage remains with the creditors, and said

[33] Loan Agreement, Exhibit "1", Exhibits (Defendant).

[34] TSN, November 12, 1998, pp. 23-39; Growership Agreement Settlement Sheet, Exhibit "Q", Exhibits (Plaintiff).

[35] TSN, May 6, 1999, p. 43; Exhibits "F" – "N", Exhibits (Plaintiff).

[36] *Lo v. Court of Appeals*, 458 Phil. 414, 419 (2003).

[37] *Heirs of Zoilo Espiritu v. Landrito*, G.R. No. 169617, April 3, 2007, 520 SCRA 383.

right can be exercised upon the failure of the debtors to pay the debt due. The debt due is to be considered without the stipulation of the excessive interest.

While the terms of the Real Estate Mortgage remain effective, the foreclosure proceedings held on 31 October 1990 cannot be given effect. In the Notice of Sheriff's Sale dated 5 October 1990, and in the Certificate of Sale dated 31 October 1990, the amount designated as mortgage indebtedness amounted to ₱874,125.00. Likewise, in the demand letter dated 12 December 1989, Zoilo Espiritu demanded from the Spouses Landrito the amount of ₱874,125.00 for the unpaid loan. Since the debt due is limited to the principal of ₱350,000.00 with 12% *per annum* as legal interest, the previous demand for payment of the amount of ₱874,125.00 cannot be considered as a valid demand for payment. For an obligation to become due, there must be a valid demand. Nor can the foreclosure proceedings be considered valid since the total amount of the indebtedness during the foreclosure proceedings was pegged at ₱874,125.00 which included interest and which this Court now nullifies for being excessive, iniquitous, and exorbitant. x x x (Emphasis and underscoring supplied)[38]

WHEREFORE, the petition is, in light of the foregoing disquisition, *DENIED.*

SO ORDERED.

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

[38] *Id.* at 394-395.

SECOND DIVISION

[G.R. No. 176640. August 22, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LUSTRISIMO ARELLANO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DELAY IN FILING THE CASE DOES NOT DETRACT FROM THE CREDIBILITY OF THE WITNESS.— Indeed, AAA's delay in filing the cases against appellant does not, in light of the attendant facts and circumstances, detract from her credibility. Delay in reporting a rape incident renders the charge doubtful only if the delay is unreasonable and unexplained. In the case of AAA who was only seven years old when the first rape took place and still a minor at the time the fourth rape occurred, her explanation that appellant threatened to kill her mother if she disclosed what he did to her, coupled with the fact that appellant is her own father who exercises moral ascendancy over her, reasonably justifies the delay. As in most criminal cases, decision thereof hinges on credibility—of witness and of testimony. This Court appreciates no reason to doubt AAA's credibility and that of her testimony *vis-à-vis* the findings of Dr. Mercado. Appellant's bare denial of the charges fails to overcome the evidence against him.

2. CRIMINAL LAW; RAPE; ELEMENTS OF STATUTORY RAPE AND SIMPLE RAPE, ESTABLISHED.— In Criminal Case Nos. 11724, 11725, 11726, the elements of statutory rape as defined by Article 266-A (1) (d) of the Revised Penal Code, x x x have been established by the prosecution. And so have the elements of simple rape in Criminal Case No. 11727. For in a rape committed by a father against his daughter, his moral ascendancy and influence over his daughter substitutes for violence or intimidation, hence, evidence thereof is unnecessary to secure his conviction.

3. ID.; ID.; CIVIL LIABILITY; AWARD OF ₱75,000 MORAL DAMAGES AND ₱75,000 CIVIL INDEMNITY IN QUALIFIED RAPE, HAVING BEEN CLASSIFIED AS

HEINOUS, IS IN ORDER.— Following *People v. dela Cruz*, ₱75,000 civil indemnity and ₱75,000 moral damages in rape cases are awarded only if they are classified as heinous. At the time the rape in Criminal Case No. 11724 took place in 1993, R.A. No. 7659, "AN ACT TO IMPOSE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL LAWS, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES," which was approved on December 13, 1993 and was to become effective fifteen days after its publication in two national newspapers of general circulations, was not yet effective. With regard to Criminal Case Nos. 11725, 11726, and 11727, the award of ₱75,000 civil indemnity and moral damages of ₱75,000 is in order even if the penalty in each case has been modified to *reclusion perpetua*, qualified rape having remained classified as heinous.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

CARPIO MORALES, *J.*:

On June 25, 2001, four criminal cases, docketed as Criminal Case Nos. 11724, 11725, 11726, and 11727, the first three for statutory rape, and the last for simple rape, were filed against accused-appellant Lustrisimo Arellano before the Regional Trial Court (RTC) of Batangas City. The accusatory portions of the Informations respectively read:

Criminal Case No. 11724:

That in the year 1993 at Brgy. x x x, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd designs, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one [AAA], then a 7-year old minor, against her will.

That the aggravating circumstance of relationship is attendant in the commission of the offense, the accused being the father of the offended party.[1] (Underscoring supplied)

Criminal Case No. 11725:

That in or about August, 1994, at Brgy. xxx, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd designs, by means of force, threat and intimidation, did then and there willfully, unlawfully, and feloniously have carnal knowledge of one [AAA], then an 8-year-old minor, against her will.

That the aggravating circumstance of relationship is attendant in the commission of the offense, the accused being the father of the offended party.[2] (Underscoring supplied)

Criminal Case No. 11726:

That in the year of 1997 at Brgy. xxx, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd designs, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one [AAA], then an 11-year old minor, against her will.

That the aggravating circumstance of relationship is attendant to the commission of the offense, the accused being the father of the offended party.[3]

Criminal Case No. 11727:

That in or about January, 2000 at Brgy. xxx, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd designs, by means of force, threat, and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one [AAA], then a 13-year old minor, against her will.

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[1] Records (Criminal Case No. 11724), p. 1.

[2] Records (Criminal Case No. 11725), p. 1.

[3] Records (Criminal Case No. 11726), p. 1.

That the aggravating circumstance of relationship is attendant in the commission of the offense, the accused being the father of the offended party.[4]

From the account of the private complainant AAA,[5] the following are gathered:

Sometime in 1993, while AAA, then seven years old, was left at home with her father-herein appellant, he carried her to a room in the house where he pulled down her underwear and undressed himself. He then forced her to lie down, kissed her breasts, and placed his penis into her sex organ, causing her to cry as she was in pain. She did not, however, disclose to anyone what appellant did to her because he had threatened to kill her mother if she did.

Sometime in August 1994, while the then eight year old AAA was again left alone at home with appellant, he inserted his hand inside her underwear, and touched her sex organ. He then undressed her, placed himself on top of her, and put his penis into her sex organ. Despite her pleas, appellant was not restrained. Again she did not disclose to anyone what appellant did to her under the same threat made by him.

Sometime in 1997, AAA, then 11 years old, was still again left alone at home with appellant. Anticipating that appellant might again do what he had previously done to her, she hid inside the bathroom, but appellant pursued her and once there he rubbed his penis against her sex organ. He then brought her to, and forced her to lie down on a bed and then inserted his penis into her sex organ, in the course of which something came out of appellant's penis which he wiped with a rug. She did not also disclose what appellant did to her under similar threats made by appellant.

Sometime in January 2000, AAA, then 13 years old and again left alone at home with appellant, the latter touched her breasts, made her lie down on his bed, and as appellant was consummating

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[4] Records (Criminal Case No. 11727), p. 1.

[5] TSN, August 8, 2001, pp. 2-15.

the sexual act, he withdrew his penis on hearing someone knock at the door, put on his short pants as she did hers. Her elder brother had arrived and on seeing her crying, he inquired why, but she kept mum. Later that day, however, when her mother, a laundrywoman, arrived home, she related all the incidents because she was "already *hirap na hirap*."[6]

To prove that AAA was below 12 years old at the time of the occurrence of the first, second, and third offenses and that appellant is her biological father,[7] the prosecution presented AAA's birth certificate.[8]

At the witness stand, Dr. Melodee Mercado (Dr. Mercado) who medically examined AAA[9] opined that her findings after her examination of AAA, *viz*:

> EXTERNAL GENITALIA: Normal looking (+) pubic hair, (+) incomplete healed laceration at 3 o'clock and complete healed laceration at 8 and 9 o'clock, (+) hyperemia of perihymenal area at 3 and 9 o'clock.
>
> INTERNAL EXAMINATION: Admits 1 finger with ease, 2 fingers with slight difficulty.
>
> xxx xxx xxx,[10]

could have resulted from penile penetration.[11]

Also at the witness stand, AAA's eldest sister BBB related[12] that when AAA told her about the rape incidents, she realized that like her, AAA was also being raped by appellant, drawing her (BBB) to file her own rape charge against him which was raffled to Branch 42 of the RTC of Batangas City.

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[6] TSN, August 8, 2001, p. 10.

[7] Records (Criminal Case No. 11724), pp. 65, 71.

[8] Exhibit "B", *Id.* at 67.

[9] TSN, September 12, 2001, pp. 2-5.

[10] Exhibit "C-1", records (Criminal Case No. 11724), p. 68.

[11] TSN, September 12, 2001, pp. 4-5.

[12] TSN, October 22, 2001, pp. 3-6.

Denying the charges, appellant surmised that AAA filed the cases against him at BBB's instigation because he was very strict with them and did not allow BBB to have a boyfriend as she was still studying.[13]

Branch 1 of the RTC of Batangas City, finding the positive testimony of AAA more credible than the denial of appellant, convicted him of all four charges, aggravated by relationship, by Consolidated Decision[14] of June 3, 2002, disposing as follows:

> WHEREFORE, the accused, LUSTRISIMO ARELLANO *y* ESPIRITU, is found guilty beyond reasonable doubt of THREE (3) COUNTS OF AGGRAVATED STATUTORY RAPE and ONE (1) COUNT OF AGGRAVATED RAPE under Articles 266-A and 266-B of the Revised Penal Code, and is hereby sentenced to suffer the supreme penalty of death for each one of the charges in these four (4) cases, with costs. He is further ordered to indemnify [AAA] with the sum of ₱50,000.00 for each of the four offenses or a total of ₱200,000.00 as moral damages.
>
> Considering that the capital punishment in these cases is imposed on the accused, their records are hereby directed to be forwarded immediately to the Supreme Court for automatic review under the law, and the accused is remanded to the New Bilibid Prisons in Muntinlupa City, there to await for the final judgment in these cases.
>
> SO ORDERED.[15] (Underscoring supplied)

By Decision[16] of July 31, 2006, the Court of Appeals, to which this Court forwarded the appeal following *People v. Mateo*,[17] resolving in the negative the sole issue raised by appellant— whether delay in reporting the incidents of rape affected the credibility of AAA, affirmed the trial court's decision.

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[13] TSN, February 6, 2002, pp. 3-9.

[14] Records (Criminal Case No. 11724), pp. 93-99.

[15] *Id.* at 98-99.

[16] Penned by Court of Appeals Associate Justice Vicente S.E. Veloso, with the concurrence of Associate Justices Conrado M. Vasquez, Jr. and Amelita G. Tolentino. CA *rollo*, pp. 95-117.

[17] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

It, however, modified the penalty by imposing *reclusion perpetua* instead of death, and additionally awarding ₱75,000 and ₱25,000 in each case representing civil indemnity and exemplary damages, respectively. Thus it disposed:

> WHEREFORE, the consolidated judgment of conviction in Criminal Cases Nos. 11724, 11725, 11726, and 11727 is **AFFIRMED** with the following **MODIFICATIONS:**
>
> (1) In **Criminal Case No. 11724**, the accused-appellant Lustrisimo E. Arellano is hereby sentenced to suffer the penalty of *reclusion perpetua* and to pay the victim [AAA], in addition to the award of moral damages, ₱75,000.00 as civil indemnity and ₱25,000.00 as exemplary damages.
>
> (2) In **Criminal Cases Nos. 11725, 11726, and 11727,** the penalty of death imposed on the accused-appellant for each count of qualified rape is hereby reduced to *reclusion perpetua*, pursuant to Republic Act No. 9346. The accused-appellant is also ordered to pay the victim, in addition to moral damages, ₱75,000.00 as civil indemnity and ₱25,000.00 as exemplary damages, for each count of the qualified rape committed.[18] (Underscoring supplied)

Hence, the present appeal.

The Office of the Solicitor General and appellant have manifested that their arguments were already exhaustively discussed in the respective briefs they filed before the Court of Appeals,[19] hence, they would no longer file Supplemental Briefs.

The appeal is bereft of merit.

Indeed, AAA's delay in filing the cases against appellant does not, in light of the attendant facts and circumstances, detract from her credibility. Delay in reporting a rape incident renders the charge doubtful only if the delay is unreasonable and unexplained.[20]

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[18] CA *rollo*, pp. 115-116.

[19] *Rollo*, pp. 27-33.

[20] *Vide People v. Audine*, G.R. No. 168649, December 6, 2006, 510 SCRA 531, 548.

In the case of AAA who was only seven years old when the first rape took place and still a minor at the time the fourth rape occurred, her explanation that appellant threatened to kill her mother if she disclosed what he did to her, coupled with the fact that appellant is her own father who exercises moral ascendancy over her, reasonably justifies the delay.

As in most criminal cases, decision thereof hinges on credibility— of witness and of testimony. This Court appreciates no reason to doubt AAA's credibility and that of her testimony *vis-à-vis* the findings of Dr. Mercado.[21] Appellant's bare denial of the charges fails to overcome the evidence against him.[22]

In Criminal Case Nos. 11724, 11725, 11726, the elements of statutory rape as defined by Article 266-A (1) (d) of the Revised Penal Code, which provides:

> Art. 266-A. *Rape, When and How Committed.*— Rape is committed—
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat, or intimidation;
>
> b) When the offended party is deprived of reason or is otherwise unconscious;
>
> c) By means of fraudulent machinations or grave abuse of authority;
>
> d) When the offended party is under twelve (12) years old of age or is demented, even though none of the circumstances mentioned above be present. (Underscoring supplied)
>
> xxx xxx xxx,

have been established by the prosecution. And so have the elements of simple rape in Criminal Case No. 11727. For in a

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[21] *Vide People v. Bidoc*, G.R. No. 169430, October 31, 2006, 506 SCRA 581, 495-496.

[22] *Id.* at 498.

rape committed by a father against his daughter, his moral ascendancy and influence over his daughter substitutes for violence or intimidation,[23] hence, evidence thereof is unnecessary to secure his conviction.[24]

The appellate court's Decision with modification is in order, except with respect to 1) its affirmance of the trial court's award of moral damages in the amount of ₱50,000 in Criminal Case Nos. 11725, 11726, and 11727, which amount must be increased to ₱75,000 following current jurisprudence[25]; and 2) its award of ₱75,000 as civil indemnity in Criminal Case No. 11724, which must be reduced to ₱50,000.

Following *People v. dela Cruz*,[26] ₱75,000 civil indemnity and ₱75,000 moral damages in rape cases are awarded only if they are classified as heinous. At the time the rape in Criminal Case No. 11724 took place in 1993, R.A. No. 7659, "AN ACT TO IMPOSE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL LAWS, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES," which was approved on December 13, 1993 and was to become effective fifteen days after its publication in two national newspapers of general circulations, was not yet effective.[27]

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[23] *Vide People v. Matrimonio*, G.R. Nos. 82223-24, November 13, 1992, 215 SCRA 613, 631.

[24] *People v. Servano*, 454 Phil. 256, 282 (2003).

[25] *Vide People v. Audine*, G.R. No. 168649, December 6, 2006, 510 SCRA 531, 553; *People v. Salome*, G.R. No. 169077, August 31, 2006, 500 SCRA 659, 676.

[26] 529 SCRA 109, 188 (2007).

[27] Footnote 35 of the Court of Appeals July 31, 2006 Decision reads:

Although the rape was committed sometime in 1993, the possibility that it was committed on December 31, 1993 is very remote since complainant [AAA] stated in her "*Salaysay*" given at the Police Station of Batangas City that the rape happened "*Noon pong ako ay* Grade 1, 1993 *magbabakasyon napo noon* x x x," which means that the crime could have happened near the end of the school year 1992-1993. See Exh. A, p. 8, CA *rollo*, pp. 95, 113.

With regard to Criminal Case Nos. 11725, 11726, and 11727, the award of ₱75,000 civil indemnity and moral damages of ₱75,000 is in order even if the penalty in each case has been modified to *reclusion perpetua*, qualified rape having remained classified as heinous.[28]

WHEREFORE, the challenged decision of the Court of Appeals dated July 31, 2006 is *AFFIRMED* with *MODIFICATION* in that the award of ₱50,000 moral damages in Criminal Cases Nos. 11725, 11726, and 11727 which it affirmed is increased to ₱75,000, and the civil indemnity and moral damages in Civil Case No. 11724 are both reduced to ₱50,000.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 177151. August 22, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARIEL JACOB *y* ZUÑEGA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF RAPE VICTIM CREDIBLE, CLEAR AND CONVINCING.— Central in the determination of guilt for the crime of rape is the credibility of the complainant's testimony. Rape is a crime largely committed in private where no witness other than the victim is available. For this reason, jurisprudence has recognized that the accused

[28] *Vide People v. Salome*, G.R. No. 169077, August 31, 2006, 500 SCRA 659, 676.

may be convicted solely on the testimony of the victim, provided the testimony is credible, natural, convincing and consistent with human nature and the normal course of things. AAA, while recounting her unfortunate ordeal, positively identified the appellant as the one who raped her. Her testimony dated September 18, 2001 was clear and straightforward; she was consistent in her recollection of the details of her defloration, and never wavered in pinpointing to the appellant as the one who raped her. x x x The trial court had this to say on this testimony: x x x This court was impressed by the testimony *(TSN Sept. 18, 2001, pp. 5, 6, 7, 8, 9 & 10)* of the complainant as straightforward and **"bore the hallmarks of truth."** Moreover, complainant withstood a punishing cross-examination without wavering despite some inconsistencies brought about by the minority (10 years old). Imagine a Grade 2 Pupil of Gaboc Elementary School testifying. She recounted vivid details of the said incident that could not have been concocted by a girl of tender age. She was able to establish that at about 1:00 o'clock in the afternoon of August 7, 2000, she was in the house not in school *(TSN, Sept. 18, 2002, pp. 15 & 18)*. Even the failure of a rape victim to relate certain details [of] the things done to her does not lessen her credibility — instead, it indicates her sincerity, candor and lack of outside suggestion. *(People vs. Pamor, 237 SCRA 22)*. The complainant's testimony similarly strikes us to be clear, convincing and credible, corroborated as it is in a major way by witnesses BBB and Dr. Mazo.

2. ID.; ID.; DEFENSE OF ALIBI; PHYSICAL IMPOSSIBILITY TO BE AT THE SCENE OF THE CRIME AT THE TIME OF COMMISSION, NOT ESTABLISHED.— The appellant's defense of alibi— *i.e.,* that he was on board a fishing vessel going to Lucena City on the date of the rape incident— comes with all the inherent weaknesses that jurisprudence has identified with this defense. It is an inherently weak defense that is viewed with suspicion because it is easy to fabricate. There is likewise the settled rule that a categorical and positive identification of an accused by an eyewitness who is not shown to have any ill-motive, prevails over alibi and denial. In sum, alibi and denial must be supported by strong corroborative evidence in order to merit credibility. In the present case, we find no evidence in the record to corroborate the appellant's claim that he went on board a fishing boat to Lucena City on the day

the rape was perpetrated. He did not know the owner of the boat, the pilot or any of its crew, and could offer no plausible explanation why he was allowed to board the fishing vessel. He also claimed that the fishing trip lasted for eight (8) days; surprisingly, he could not remember the names of any of his crewmates. His testimony, too, was full of inconsistencies regarding the exact time and date of his departure and arrival from Mercedes to Lucena City. These inconsistencies impact as well on a basic component of his defense of alibi — *i.e.*, that it was **physically impossible** for the appellant to be at the scene of the crime on the date of its commission. If the appellant cannot be consistent about his whereabouts, then he cannot hope to prove the physical impossibility that the defense of alibi requires in order to merit serious consideration.

3. CRIMINAL LAW; RAPE; ELEMENTS, ESTABLISHED.— [T]he prosecution positively established the elements of rape required under Article 266-A. *First*, the appellant succeeded in having **carnal knowledge** with the victim; AAA was steadfast in her assertion that the appellant inserted his penis into her vagina. *Second*, the appellant **employed force** in satisfying his lustful desires. AAA categorically stated that she boxed the appellant while the latter was inserting his penis into her vagina; the appellant however placed AAA's hand on her back, indicating resistance on the part of the victim that the appellant overpowered.

4. ID.; ID.; RAPE IS NOT NEGATED BY THE FACT THAT THE VICTIM'S HYMEN IS STILL INTACT.— The appellant also insists that no carnal knowledge took place because AAA's hymen is still intact, as the results of Dr. Mazo's genital examination showed. The condition of the woman's hymen, however, is not conclusive on the question of whether rape has or has not been committed as the mere introduction of the male organ into the *labia majora* of the *pudendum* is sufficient to consummate rape. AAA, being a child, would have difficulty testifying on the particular part of her vagina that was actually touched. What is certain, however, is that there was **touching of the *labia*** as AAA testified that the appellant's penis was **inserted** into her vagina, as a result of which **she felt pain.** She also testified that the penis of the appellant was inside her vagina **for a long time.** Several hours after the incident**,** AAA's vagina was **still aching**, as testified to by her mother,

BBB. More importantly, Dr. Mazo testified that there were reddish contusions on the ***labia majora*** of the victim's private part.

5. ID.; ID.; ID.; RELEVANT RULINGS, CITED.— [W]e regard with extreme disapproval the appellant's attempt to mislead this Court by citing the case of *People v. Bali-balita* to support his claim that "*mere touching of the labia will not constitute consummated rape*." We carefully read this cited case and found nothing therein that supports the appellant's contention. On the contrary, the case states in clear and categorical terms that *complete penetration of the penis is not essential to consummate rape; what is material is that there is the introduction of the male organ into the labia of the pudendum, no matter how slight.* Our rulings on this point have been clear and consistent. In *People vs. Dalisay*, we held that full penetration is not required to consummate carnal knowledge, as proof of entrance showing slightest penetration of the male organ within the *labia* or *pudendum* of the female organ is sufficient. *People v. Bascugin* is likewise a noteworthy case on the present issue as we categorically ruled there that for rape to be consummated, the hymen of the private complainant need not be penetrated or ruptured. It is enough that the penis reaches the *pudendum*, or, at the very least, the *labia*. The briefest of contacts under circumstances of force, intimidation or unconsciousness, even without laceration of the hymen, is deemed to be rape in our jurisprudence.

6. ID.; ID.; CIVIL LIABILITY; AWARD OF CIVIL INDEMNITY IS MANDATORY; MORAL DAMAGES AWARDED WITHOUT NEED OF PROOF.— The award of civil indemnity to the rape victim is mandatory upon the finding of the fact of rape. Thus, this Court affirms the award of ₱50,000.00 as civil indemnity based on prevailing jurisprudence. Moral damages are awarded to rape victims without need of proof other than the fact of rape under the assumption that the victim suffered moral injuries from the experience she underwent. This award is separate and distinct from the awarded civil indemnity. In light of current jurisprudence that pegs the award at ₱50,000.00, we increase the lower court's award of ₱30,000.00 to ₱50,000.00.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

BRION, *J.*:

This is an appeal from the September 21, 2006 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 01372 affirming the January 13, 2003 Decision[2] of the Regional Trial Court (*RTC*), Branch 38, Daet, Camarines Norte. The RTC decision found the appellant Ariel Jacob *y* Zuñega (*appellant*) guilty beyond reasonable doubt of the crime of rape and sentenced him to suffer the penalty of *reclusion perpetua*.

ANTECEDENT FACTS

The prosecution charged the appellant before the RTC with the crime of rape under an Information that states:

That on or about 1:00 in the afternoon of August 7, 2000 at Barangay Gaboc, municipality of Mercedes, province of Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force and intimidation, did, then and there willfully, unlawfully and feloniously had carnal knowledge of his cousin [AAA],[3] a minor, against her will and prejudicial to her development as a child, to her damage and prejudice.

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[1] Penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justice Andres B. Reyes, Jr. and Associate Justice Mariflor P. Punzalan Castillo; *rollo*, pp. 3-13.

[2] Penned by Judge Sancho Dames II; CA *rollo*, pp. 47-51.

[3] This appellation is pursuant to our ruling in *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, wherein this Court has resolved to withhold the real name of the victim-survivor and to use fictitious initials instead to represent her in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed.

CONTRARY TO LAW.[4]

On arraignment, the appellant pleaded not guilty to the charge. The prosecution presented the following witnesses in the trial on the merits that followed: BBB; AAA; and Dr. Virginia Barrameda-Mazo. The appellant took the witness stand for the defense and did not present any other witness.

BBB, mother of AAA, narrated that at around 11:00 o'clock in the morning of August 7, 2000, she and her daughter CCC went to Daet to buy school uniforms for her children. They left AAA alone in their house.[5] They returned to their house at around 4:30 in the afternoon and found it closed. Thinking that AAA was not inside, she opened the kitchen door by reaching for the barrel bolt.[6] She and CCC entered the house at the same time.[7] Soon after entry, CCC came running to her to report that AAA was lying in bed and was shaking. She rushed to AAA's side and asked her thrice why she was shaking. AAA, who appeared in shock, did not immediately answer. It was only after she spanked AAA on the hips that she appeared to regain her composure. AAA told her that her (AAA's) hips, legs and vagina were aching and that the appellant, also known as "*Kitot*," raped her.[8]

BBB testified further that she knows the appellant because he is the nephew of her present husband, DDD.[9] She also disclosed that her first husband, EEE, is the natural father of AAA.[10]

On September 18, 2001, AAA herself testified in court. The RTC succinctly summarized the material points of her testimony as follows:

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[4] Records, p. 1.

[5] TSN, March 26, 2001, p. 5.

[6] *Id.*, at p. 7.

[7] *Id.*, p. 16.

[8] *Id.*, pp. 7-8.

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

[10] TSN, August 14, 2001, p. 3.

She is the private complainant in this case and testified that on August 7, 2000, she was nine (9) years old.[11] While in their house at 1:00 o'clock in the afternoon, the accused arrived and showed to her his penis.[12] He removed her panty and thereafter inserted his penis inside her vagina. She felt pain.[13] She fought back, but the accused was strong.[14] After the raping [sic] incident, accused gave her two (2) pesos but the accused retrieved the money[15] and went home.

That [sic] her mother brought her to Dr. Virginia Mazo for genital examination and also to the Police Station of Mercedes. She filed a complaint for rape against the accused.[16] On cross examination, she testified that she did not report for school on August 7, 2000 because she was not permitted by her mother;[17] that her cousin FFF told her to file rape case against the accused;[18] that there was misunderstanding between the parents of Ariel Jacob and her parents.[19] *[Footnotes referring to the pertinent parts of the record supplied]*

Dr. Virginia Barrameda-Mazo (*Dr. Mazo*), the Municipal Health Officer of Paracale, Camarines Norte, narrated that she conducted a physical examination of AAA on August 10, 2000 at the Camarines Norte Provincial Hospital at the request of the Chief of Police.[20] The genital examination yielded the following findings:

GENITAL EXAMINATION

Pubic hair, no growth. *Labia majora*, coaptated, with elongated, semi-oblong reddish contusions on both sides, extending downwards

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[11] TSN, September 18, 2001, p. 3.

[12] *Id.*, pp. 6-7.

[13] *Id.*, pp. 7-8.

[14] *Id.*, p. 10.

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

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

[17] *Id.*, pp. 15-16.

[18] *Id.*, p. 21.

[19] *Id.*, pp. 19-20.

[20] TSN, June 18, 2002, pp. 2-4.

up to the fourchette area, beginning at the clitoris area. *Labia minora*, gaping. Fourchette, tense. *Vestibular mucosa*, pinkish. Hymen, short, thin intact. Hymenal orifice measures 1.0 cm. in diameter. Vaginal walls and rugosities cannot be reached by examining finger.[21]

The appellant was the sole defense witness and gave a different version of events. He testified that he was in Lucena City on August 7, 2000 on a fishing expedition. He left Barangay Gaboc, Mercedes, Camarines Norte on August 4, 2000 on board a fishing vessel (*basnigan*),[22] and reached Lucena City on August 6, 2000.[23] He returned to Mercedes only on August 12, 2000.[24]

The appellant denied knowing AAA[25] when so asked on cross-examination. He also claimed that he had asked for permission from the pilot of the fishing vessel to go on board in order to earn a living. He did not ask his companions in the vessel to execute affidavits to confirm that he was indeed on board the vessel on August 4, 2000.

The RTC primarily considered the testimonies and documentary evidence relevant to the elements of the crime of rape. It did not "find it necessary to inquire into the defense of alibi put up by the defense, it being an established doctrine that the accused [*sic*] conviction must rest on the strength of the evidence of the prosecution." Its decision of January 13, 2003 found the appellant guilty beyond reasonable doubt of the crime of rape and sentenced him to suffer the penalty of *RECLUSION PERPETUA* and to pay the offended party the amount of ₱50,000.00 as civil indemnity and ₱30,000.00 as moral damages.[26]

The records of this case were originally transmitted to this Court on appeal. Pursuant to *People v. Mateo*,[27] however, we

[21] Records, p. 7.

[22] TSN, October 15, 2002, p. 9.

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

[24] *Id.*, p. 12.

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

[26] CA *rollo*, pp. 12-16.

[27] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 656.

transferred the records to the CA for intermediate review and disposition.[28]

The CA, in a decision[29] dated September 21, 2006 firstly noted that the Office of the Solicitor General, representing the State, recommended that the appealed decision be affirmed as "the totality of the evidence indubitably established the appellant's guilt beyond reasonable doubt."[30] Significantly, it considered in its decision the claim of the accused about the absence of hymenal laceration; the alleged misunderstanding between the appellant's parents and those of the victim; the inconsistencies pointed out in the testimonies of the prosecution witnesses; and the appellant's defense of alibi. The appellate court considered all these contentions "untenable." Thus, the CA affirmed the RTC decision *in toto*.

In his Brief,[31] the appellant argues that the appellate court erred—

1. **in giving full faith and credence to the incredible testimonies of the prosecution witnesses; and**
2. **in convicting him of the crime charged despite the failure of the prosecution to prove his guilt beyond reasonable doubt.**

THE COURT'S RULING

After due consideration, we resolve to deny the appeal but modify the amount of the awarded moral damages.

Sufficiency of the Prosecution Evidence

The Revised Penal Code, as amended by Republic Act No. 8353,[32] defines and penalizes Rape under Article 266-A, paragraph 1, as follows:

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[28] Per our Resolution dated July 6, 2005, CA *rollo*, p. 85.

[29] *Rollo*, pp. 3-13.

[30] *Id.*, p. 6.

[31] CA *rollo*, pp. 35-45.

[32] The Anti-Rape Law of 1997.

ART. 266-A. *Rape; When and How Committed*.— Rape is committed—

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

xxx xxx xxx

Thus, for the charge of rape to prosper, the prosecution must prove that (1) **the offender had carnal knowledge of a woman, and** (2) **he accomplished such act through force or intimidation**, or when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented.[33]

Central in the determination of guilt for the crime of rape is the credibility of the complainant's testimony. Rape is a crime largely committed in private where no witness other than the victim is available.[34] For this reason, jurisprudence has recognized that the accused may be convicted solely on the testimony of the victim, provided the testimony is credible, natural, convincing and consistent with human nature and the normal course of things.[35]

AAA, while recounting her unfortunate ordeal, positively identified the appellant as the one who raped her. Her testimony dated September 18, 2001 was clear and straightforward; she

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[33] *People v. Dela Paz*, G.R. No. 177294, February 19, 2008.

[34] *People v. Umayam*, G.R. No. 147033, April 30, 2003, 402 SCRA 457.

[35] *People v Glivano*, G.R. No. 177565, January 28, 2008, 542 SCRA 656.

was consistent in her recollection of the details of her defloration, and never wavered in pinpointing to the appellant as the one who raped her. To directly quote from the records:

FISCAL FERRER:

Q: You know the accused Ariel Jacob *alias* Kitot?

[AAA]:

A: Yes, sir.

Q: Why do you know him?

A: Because he undressed me and he put out his penis and showed it to me.

Q: Your surname is Jacob and the surname of Ariel is also Jacob, is it not?

A: Yes, sir.

Q: Are you related to him?

A: Yes, sir.

Q: In what capacity?

A: He is my cousin.

Q: And you know him by his nickname Kitot?

A: Yes, sir.

Q: And the accused ***alias*** Kitot you know him for quite some time already?

A: Yes, sir.

Q: **And this accused *alias* Kitot is inside the courtroom, will you please point him out?**

A: **That one, Sir.**

(Witness pointing to the accused who gave his name as Ariel Jacob)

COURT:

How are you commonly called?

ACCUSED:

Kitot, your Honor.

xxx xxx xxx

FISCAL FERRER:

Q: A while ago, you said that Kitot showed to you his penis?

[AAA]:

A: Yes, sir.

Q: How did he do it?

A: **He inserted his penis into my vagina.**

Q: You mean to say **he placed his penis inside your vagina** which according to you his penis was still wet?

A: **Yes, sir.**

Q: Did he remove your panty?

A: Yes, sir.

Q: **Was he able to insert his penis inside your vagina?**

A: **Yes, sir**.

Q: **And what did you feel when his penis was inside your vagina?**

A: **It was painful**.

Q: When he was **inserting his penis inside your vagina** were you lying down?

A: **Yes, sir.**

Q: Where?

A: On the floor.

Q: **And for how long was his penis inside your vagina?**

A: **For a long time.**

Q: More than 2 minutes?

A: Yes, sir.

xxx xxx xxx

Q: And after Kitot **raped** you he gave you ₱2.00?

A: Yes, sir.

Q: And you accepted it?

A: Yes, sir.

Q: Why did you accept the ₱2.00 given by Kitot **after raping you**?

A: He claimed it back.

Q: After you were **raped** he retrieved the ₱2.00 from you?

A: Yes, sir.

Q: And you claim in your affidavit that your private organ was painful?

A: Yes, sir.

Q: Did you complain to Kitot? Did you ask him why he was **placing his penis inside your vagina?**

A: Yes, sir.

Q: What was the answer of Kitot?

A: He told me not to make noise [sic] because it might heard [sic] by our neighbors.

Q: Did you fight back to Kitot when he was **inserting his penis inside your vagina?**

A: Yes, sir.

Q: What did you do?

A: **I boxed him and he placed my hands on my back**.

Q: And because he was strong you were not able to fight him [sic] back?

A: Yes, sir.

Q: After **raping** you, where did he go?

A: He went home.

xxx xxx xxx[36] [Emphasis ours]

The trial court had this to say on this testimony:

x x x This court was impressed by the testimony *(TSN Sept. 18, 2001, pp. 5, 6, 7, 8, 9 & 10)* of the complainant as straightforward and "**bore the hallmarks of truth.**" Moreover, complainant withstood a punishing cross-examination without wavering despite some inconsistencies brought about by the minority (10 years old). Imagine a Grade 2 Pupil of Gaboc Elementary School testifying. She recounted vivid details of the said incident that could not have been concocted by a girl of tender age. She was able to establish that at about 1:00 o'clock in the afternoon of August 7, 2000, she was in the house not in school *(TSN, Sept. 18, 2002, pp. 15 & 18).*

Even the failure of a rape victim to relate certain details [of] the things done to her does not lessen her credibility—instead, it indicates her sincerity, candor and lack of outside suggestion. *(People vs. Pamor, 237 SCRA 22).*

The complainant's testimony similarly strikes us to be clear, convincing and credible, corroborated as it is in a major way by witnesses BBB and Dr. Mazo. Thus, to us, the prosecution positively established the elements of rape required under Article 266-A. *First*, the appellant succeeded in having **carnal knowledge** with the victim; AAA was steadfast in her assertion that the appellant inserted his penis into her vagina. *Second*, the appellant **employed force** in satisfying his lustful desires. AAA categorically stated that she boxed the appellant while the latter was inserting his penis into her vagina; the appellant however placed AAA's hand on her back, indicating resistance on the part of the victim that the appellant overpowered.

The appellant's defenses

In stark contrast with the prosecution's case is the appellant's weak and uncorroborated defense.

The appellant's bald claim that he did not know AAA borders on the incredible as they have common relations and they lived in the same rural community. It is likewise disproved by the

[36] TSN, September 18, 2001, pp. 5-10.

defense's own claim that there was a misunderstanding between their parents that motivated the charge of rape.[37] If their families were close enough to have a misunderstanding and the victim and her kin knew "Kitot," it is unlikely that the latter would not personally know the victim. Related to this is the glaring gap in the defense — its failure to effectively rebut the positive identification by the victim that "Kitot" raped her.

The appellant's defense of alibi — *i.e.*, that he was on board a fishing vessel going to Lucena City on the date of the rape incident — comes with all the inherent weaknesses that jurisprudence has identified with this defense. It is an inherently weak defense that is viewed with suspicion because it is easy to fabricate.[38] There is likewise the settled rule that a categorical and positive identification of an accused by an eyewitness who is not shown to have any ill-motive, prevails over alibi and denial.[39] In sum, alibi and denial must be supported by strong corroborative evidence in order to merit credibility.

In the present case, we find no evidence in the record to corroborate the appellant's claim that he went on board a fishing boat to Lucena City on the day the rape was perpetrated. He did not know the owner of the boat, the pilot or any of its crew, and could offer no plausible explanation why he was allowed to board the fishing vessel. He also claimed that the fishing trip lasted for eight (8) days; surprisingly, he could not remember the names of any of his crewmates. His testimony, too, was full of inconsistencies regarding the exact time and date of his departure and arrival from Mercedes to Lucena City. These inconsistencies impact as well on a basic component of his defense of alibi — *i.e.*, that it was **physically impossible** for the appellant to be at the scene of the crime on the date of its commission. If the appellant cannot be consistent about his whereabouts, then he cannot hope to prove the physical

[37] Records, p. 120.

[38] See *People v. Glodo*, G.R. No. 136085, July 7, 2004, 433 SCRA 535, citing *People v. Carinaga*, 409 SCRA 614 (2003).

[39] *People v. Bon*, G.R. No. 166401, October 30, 2006, 506 SCRA 168.

impossibility that the defense of alibi requires in order to merit serious consideration.

The appellant also insists that no carnal knowledge took place because AAA's hymen is still intact, as the results of Dr. Mazo's genital examination showed. The condition of the woman's hymen, however, is not conclusive on the question of whether rape has or has not been committed as the mere introduction of the male organ into the *labia majora* of the *pudendum*[40] is sufficient to consummate rape.[41]

AAA, being a child, would have difficulty testifying on the particular part of her vagina that was actually touched. What is certain, however, is that there was **touching of the *labia*** as AAA testified that the appellant's penis was **inserted** into her vagina, as a result of which **she felt pain**. She also testified that the penis of the appellant was inside her vagina **for a long time.** Several hours after the incident, AAA's vagina was **still aching**, as testified to by her mother, BBB. More importantly, Dr. Mazo testified that there were reddish contusions on the ***labia majora*** of the victim's private part, thus:

PROSECUTOR FERRER:

Q: What was the result of the physical and genital examination?

DR. MAZO:

A: There was only one pertinent findings [sic], **the contusions on the *labia majora***.

Q: And that was contained in this medical certificate?

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[40] The *pudendum* or vulva is the collective term for the female genital organs that are visible in the perineal area, *e.g.*, *mons pubis*, *labia majora*, *labia minora*, the hymen, the clitoris, and the vaginal orifice. The *mons pubis* is the rounded eminence that becomes hairy after puberty, and is instantly visible from the outside. The next layer is the *labia majora* or the outer lips of the female organ composed of the outer convex surface and the inner surface. See: *People v. Campuhan*, G.R. No. 129433, March 30, 2000, 329 SCRA 270, citing Mishell, Stenchever, Droegmueller, Herbst, *Comprehensive Gynecology*, 3rd Ed., 1997, pp. 42-44.

[41] *People v. Villarama*, G.R. No. 139211, February 12, 2003, 397 SCRA 306.

A: Yes, sir.

Q: Will you kindly pinpoint it?

A: The genital examination: "Pubic hair, no growth. *Labia majora*, coaptated, with elongated, semi-oblong reddish contusions on both sides, extending downwards up to the fourchette area, beginning at the clitoris area."

xxx xxx xxx

Q: Did you make a diagram on this findings that **there's a semi-oblong reddish contusions on both sides of the *labia majora***, extending downwards, beginning at the clitoris area?

A: At the bottom of the police report.

xxx xxx xxx

Q: The color of the contusion was still reddish?

A: It was already in the healing period.

Q: But considering your impression that **it was reddish contusion, it was recently inflicted on her *labia majora***?

A: **Yes, sir.**

Incidentally, we regard with extreme disapproval the appellant's attempt to mislead this Court by citing the case of *People v. Bali-balita*[42] to support his claim that "*mere touching of the labia will not constitute consummated rape.*"[43] We carefully

[42] *People v. Bali-balita*, G.R. No. 134266, September 15, 2000, 340 SCRA 450.

[43] The appellant, in his brief, quoted the separate opinion of Justice Bellosillo; however, it was taken out of context. We quote the pertinent portions of the said separate opinion: The *ponencia* also ruled that "as correctly pointed out by the trial court, hymenal lacerations which are usually inflicted when there is complete penetration are not essential in establishing the crime of rape *as it is enough that a slight penetration or entry of the penis into the lips of the vagina takes place.* To dispel any possible misunderstanding or confusion, this statement must be properly viewed in light of *People v. Campuhan*, G.R. No. 129433, *30 March 2000*, where this Court discussed quite extensively and differentiated attempted rape from consummated rape. Therein, the Court explicitly ruled that for rape to be considered consummated it must be established that the penis penetrated at the very least the labia of the external genitalia,

read this cited case and found nothing therein that supports the appellant's contention. On the contrary, the case states in clear and categorical terms that *complete penetration of the penis is not essential to consummate rape; what is material is that there is the introduction of the male organ into the labia of the pudendum, no matter how slight.*[44] Our rulings on this point have been clear and consistent.

In *People vs. Dalisay*,[45] we held that full penetration is not required to consummate carnal knowledge, as proof of entrance showing slightest penetration of the male organ within the *labia* or *pudendum* of the female organ is sufficient. *People v. Bascugin*[46] is likewise a noteworthy case on the present issue as we categorically ruled there that for rape to be consummated, the hymen of the private complainant need not be penetrated or ruptured. It is enough that the penis reaches the *pudendum*, or, at the very least, the *labia*. The briefest of contacts under circumstances of force, intimidation or unconsciousness, even without laceration of the hymen, is deemed to be rape in our jurisprudence.

An apparently desperation move by the appellant was his attempt to impute ill motive on the part of the victim by claiming that AAA's testimony could have been instigated by her parents.

We cannot give weight to this bare assertion in the absence of sufficient corroborative evidence. We note, too, that not a few offenders in rape cases attribute the charges against them to family feuds, resentment or revenge. These alleged motives, however, cannot prevail over the positive and credible testimonies of complainants who remain steadfast throughout the trial. [47] Moreover, it is unnatural for a parent to use his or her offspring

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which is actually beneath the *pudendum*, hence, the entry or penetration; otherwise, mere touching of the labia will not suffice to constitute consummated rape. [italics in the original]

[44] *People v. Bali-balita*, *supra* note 42.

[45] G.R. No. 133926, August 6, 2003, 408 SCRA 375.

[46] G.R. No. 144195, May 25, 2004, 429 SCRA 140.

[47] *People v. Dalisay*, G.R. No. 133926, August 6, 2003, 408 SCRA 375.

as an instrument of malice, since the ensuing case may subject a daughter to embarrassment and even to the mark of disgrace that a rape victim may undeservedly carry.[48]

Time and again, we have consistently held that when a woman states that she has been raped, she says in effect all that is necessary to show that rape was committed. For no woman, least of all a child, would weave a tale of sexual assault on her person, would open herself to examination of her private parts, and would risk a public trial and possible ridicule if she had not, in truth, been raped. That she came out in the open to complain clearly signals that she wanted to seek justice for the wrong done to her.[49]

The Proper Penalty

The applicable provisions of the Revised Penal Code, as amended by Republic Act No. 8353 (effective October 22, 1997), covering the crime of Rape are Articles 266-A and 266-B which provide:

Article 266-A. *Rape; When and How Committed*. — Rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

xxx xxx xxx

Article 266-B. Penalties. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

xxx xxx xxx

The lower courts therefore are correct in imposing the penalty of *reclusion perpetua* on the appellant.

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[48] *People v. Tuazon*, G.R. No. 168650, October 26, 2007, 537 SCRA 494.

[49] *People v. Corpuz*, G.R. No. 168101, February 13, 2006, 482 SCRA 435.

Proper Indemnity

The award of civil indemnity to the rape victim is mandatory upon the finding of the fact of rape. Thus, this Court affirms the award of ₱50,000.00 as civil indemnity based on prevailing jurisprudence.[50]

Moral damages are awarded to rape victims without need of proof other than the fact of rape under the assumption that the victim suffered moral injuries from the experience she underwent. This award is separate and distinct from the awarded civil indemnity.[51] In light of current jurisprudence that pegs the award at ₱50,000.00, we increase the lower court's award of ₱30,000.00 to ₱50,000.00.

WHEREFORE, in view of these considerations, we *AFFIRM* the September 21, 2006 Decision of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 01372 in all respects, except for the *award of moral damages* which we *INCREASE* from ₱30,000.00 *to ₱50,000,00.* Costs against the petitioner.

SO ORDERED.

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

[50] See *People v. Resuma*, G.R. No. 179189, February 26, 2008; *People v. Malicsi*, G.R. No. 175833, January 29, 2008.

[51] *People v. Nieto*, G.R. No. 177756, March 3, 2008.

THIRD DIVISION

[G.R. No. 180719. August 22, 2008]

CENTENNIAL TRANSMARINE, INC., CENTENNIAL MARITIME SERVICES CORPORATION AND/OR B+H EQUIMAR SINGAPORE, PTE. LTD., *petitioners, vs.* **RUBEN G. DELA CRUZ,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; DISMISSAL OF EMPLOYEE; BREACH OF TRUST AND CONFIDENCE AS A GROUND FOR DISMISSAL OF MANAGERIAL EMPLOYEE MUST BE BASED ON SUBSTANTIAL EVIDENCE; CASE AT BAR.— Petitioners allege loss of trust and confidence due to incompetence as the ground for respondent's dismissal. Loss of trust and confidence is premised on the fact that the employee holds a position whose functions may only be performed by someone who has the confidence of management. Such employee may be managerial or rank-and-file, but the nature of his position determines the requirements for a valid dismissal. With respect to a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Proof beyond reasonable doubt is not required, only substantial evidence which must establish clearly and convincingly the facts on which the loss of confidence rests. Article 627 of the Code of Commerce defines the Chief Mate, also called Chief Officer or Sailing Mate, as "the second chief of the vessel, and unless the agent orders otherwise, shall take the place of the captain in cases of absence, sickness, or death, and shall then assume all his powers, duties, and responsibilities." A Chief Officer, therefore, is second in command, next only to the captain of the vessel. Moreover, the Standards of Training, Certification and Watchkeeping for Seafarers 1978 (STCW '78), to which the Philippines is a signatory, defines a Chief Mate as "the deck officer next in rank to the master and upon whom the command of the ship will fall in the event of incapacity of the master." In *Association of Marine Officers*

and Seamen of Reyes and Lim Co. v. Laguesma, the Court held that the Chief Mate is a managerial employee because the said officer performed the functions of an executive officer next in command to the captain; that in the performance of such functions, he is vested with powers or prerogatives to lay down and execute management policies. The exercise of discretion and judgment in directing a ship's course is as much managerial in nature as decisions arrived at in the confines of the more conventional board room or executive office. Important functions pertaining to the navigation of the vessel like assessing risks and evaluating the vessel's situation are managerial in nature. Thus, respondent, as Chief Officer, is a managerial employee; hence, petitioners need to show by substantial evidence the basis for their claim that respondent has breached their trust and confidence.

2. ID.; ID.; ID.; ID.; UNAUTHENTICATED ENTRY IN THE SHIP'S LOGBOOK CANNOT BE THE BASIS FOR DISMISSING A MANAGERIAL EMPLOYEE; REASON.— Petitioners' basis for dismissing respondent was the alleged entry by Captain Kowalewski in the ship's logbook regarding respondent's inexperience and inefficiency. A ship's log/logbook is the official record of a ship's voyage which its captain is obligated by law to keep wherein he records the decisions he has adopted, a summary of the performance of the vessel, and other daily events. A logbook is a respectable record that can be relied upon when the entries therein are presented in evidence. In the instant case, however, respondent correctly pointed out that the issue is not whether an official logbook entry is acceptable in evidence, but whether a document purporting to be a copy of a logbook entry has been duly established to be authentic and not spurious. In *Wallem Maritime Services, Inc. v. National Labor Relations Commission*, citing *Haverton Shipping Ltd. v. National Labor Relations Commission*, the Court ruled that a **copy** of an official entry in the logbook is legally binding and serves as an exception to the hearsay rule. In the said case, however, there was no controversy as to the genuineness of the said entry and the authenticity of the copy presented in evidence. In the instant case, respondent has consistently assailed the genuineness of the purported entry and the authenticity of such copy. He alleged that before his repatriation, there was no entry in the ship's official logbook regarding any incident that might have caused his relief; that

Captain Kowalewski's signature in such purported entry was forged. In support of his allegations, respondent submitted three official documents bearing the signature of Capt. Sczepan Kowalewski which is different from the one appearing in Annex E. Thus, it was incumbent upon petitioners to prove the authenticity of Annex E, which they failed to do. Likewise, the purported report of Capt. Kowalewski dated September 1, 2000 (Annex D), and the statements of Safety Officer Khaldun Nacem Faridi and Chief Officer Josip Milin (Annexes G and H) also cannot be given weight for lack of authentication. Although technical rules of evidence do not strictly apply to labor proceedings, however, in the instant case, authentication of the above-mentioned documents is necessary because their genuineness is being assailed, and since petitioners offered no corroborating evidence. These documents and their contents have to be duly identified and authenticated lest an injustice would result from a blind adoption of such contents. Thus, the unauthenticated documents relied upon by petitioners are mere self-serving statements of their own officers and were correctly disregarded by the Court of Appeals.

3. ID.; ID.; ID.; EMPLOYER SHOULD DECIDE EARLY AS TO WHAT CAUSE HE IS DISMISSING AN EMPLOYEE AND HE CANNOT CHANGE IT IN THE LATTER STAGE OF THE PROCEEDING.— This Court notes that during the initial proceedings of the case, petitioners contend that respondent was not dismissed but only temporarily relieved from his position due to lack of skill or incompetence. However, as the case progressed, petitioners claimed that respondent was dismissed from employment because he committed certain violations of the vessel's safety rules. This is objectionable; a party should decide early what cause or defense he is going to advance; he cannot change his theory in the latter stage of the proceeding because it is contrary to the rules of fair play, justice and due process.

4. ID.; ID.; ID.; DENIAL OF DUE PROCESS, PRESENT.— Moreover, records show that respondent was not afforded due process. For officers and crew who are working in foreign vessels involved in overseas shipping, there must be compliance with the applicable laws on overseas employment as well as with the regulations issued by the Philippine Overseas Employment Administration (POEA), such as those embodied

in the Standard Contract for Seafarers Employed Abroad (Standard Contract). Except for the self-serving allegation that respondent was required to explain why he should not be relieved for being incompetent, petitioners offered no proof to show that they furnished respondent a written notice of the charges against him, or that there was a formal investigation of the charges, or that respondent was furnished a written notice of the penalty imposed upon him. Respondent was verbally ordered to disembark the vessel and was repatriated to the Philippines without being told of the reasons for his relief.

5. ID.; ID.; ID.; BENEFITS AND DAMAGES DUE TO AN ILLEGALLY DISMISSED CHIEF OFFICER.— Respondent's dismissal was not for just cause and without due process. He is therefore entitled to be paid his salaries for the unexpired portion of his employment contract. However, the payment of overtime pay and leave pay should be disallowed in light of our ruling in *Cagampan v. National Labor Relations Commission*, to wit: [T]he rendition of overtime work and the submission of sufficient proof that said work was actually performed are conditions to be satisfied before a seaman could be entitled to overtime pay which should be computed on the basis of 30% of the basic monthly salary. In short, the contract provision guarantees the right to overtime pay but the entitlement to such benefit must first be established. In the same vein, the claim for the day's leave pay for the unexpired portion of the contract is unwarranted since the same is given during the actual service of the seamen. Pursuant to Republic Act No. 8042, or the Migrant Workers and Overseas Filipino Act, respondent is also entitled to full reimbursement of his placement fee with interest at 12% per annum. Section 10 thereof provides: SECTION 10. Money Claims — x x x In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the worker shall be entitled to the full reimbursement of his placement fee with interest at twelve percent (12%) per annum, x x x. We affirm the award of moral damages in the amount of ₱50,000.00, exemplary damages in the amount of ₱50,000.00, and attorney's fees at the rate of 10% of the aggregate monetary award, the dismissal having been effected without just cause and without observance of due process.

APPEARANCES OF COUNSEL

Valdez Domondon & Espinoza for petitioners.
Renato G. Dela Cruz & Associates for respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition for review on *certiorari* assails the August 31, 2007 Decision[1] of the Court of Appeals in CA-G.R. SP No. 91054 reversing the Decision of the National Labor Relations Commission and finding that respondent Ruben G. Dela Cruz was illegally dismissed from service, as well as the November 16, 2007 Resolution[2] denying the motion for reconsideration.

On May 9, 2000, petitioner Centennial Transmarine, Inc., for and in behalf of its foreign principal, petitioner Centennial Maritime Services, Corp., hired respondent Dela Cruz as Chief Officer of the oil tanker vessel "MT Aquidneck," owned by petitioner B+H Equimar, Singapore, Pte. Ltd., for a period of nine months.

On May 15, 2000, respondent boarded "MT Aquidneck" and performed his functions as Chief Officer. However, on September 14, 2000, respondent was relieved of his duties and repatriated to the Philippines. Failing to get a satisfactory explanation from petitioners for his relief, respondent filed a complaint for illegal dismissal with prayer for payment of his salaries for the unexpired portion of contract, moral and exemplary damages and attorney's fees on October 7, 2000.

Respondent alleged that while the vessel was docked in Lake Charles in the United States, another Chief Officer boarded the vessel. He inquired from the master of the vessel, Captain

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[1] *Rollo*, pp. 48-59; penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Edgardo P. Cruz and Normandie B. Pizarro.

[2] *Id.* at 60-61.

Kowalewski, why he had a reliever, however the latter disclaimed any knowledge. At the same time, he showed respondent an electronic mail (e-mail) from petitioner B+H Equimar Singapore, Pte. Ltd. stating that there was an incoming Chief Officer who was to take over the operations upon boarding.

On September 19, 2000, Captain Kowalewski gave respondent his flight schedule. He was subsequently repatriated on September 22, 2000.[3]

Upon arrival in Manila, respondent inquired from Mr. Eduardo Jabla, President of petitioner Centennial Transmarine, Inc., why he was relieved. However, Jabla could only surmise that his relief was possibly due to the arguments he had with Capt. P. Bajaj, a company superintendent who came on board in August 2000 while the vessel was berthed in Los Angeles,[4] regarding deck operations and deck work, and documentation and safety procedures in the cargo control room.[5]

On the other hand, petitioner alleged that respondent was relieved of his functions as Chief Officer due to his inefficiency and lack of job knowledge. Capt. Kowalewski allegedly informed them of respondent's lack of experience in tanker operations which exposed the vessel and its crew to danger and caused additional expenses. Petitioners allegedly advised respondent to take a refresher course in order to facilitate his deployment to another vessel. However, instead of taking a refresher course, respondent filed a case for illegal dismissal.

On April 23, 2001,[6] Labor Arbiter Francisco A. Robles rendered a Decision dismissing respondent's complaint. He found that respondent was validly dismissed because he committed acts in violation of his duties as Chief Officer, amounting to breach of trust and confidence. He noted that on September 6, 2000, Capt. Kowalewski wrote in the official log book of the

[3] Records, p. 16.

[4] *Id.* at 38.

[5] *Id.* at 13.

[6] *Rollo*, pp. 89-107.

vessel that respondent failed to follow entry procedures in loading oil tanks while the vessel was navigating to Aruba; that the Safety Officer of the vessel also submitted a report on the violations committed by respondent regarding safety rules on entry procedures; that respondent admitted his inadequacy or lack of knowledge in tanker operations; and that respondent was properly apprised of his violations and was given ample opportunity to be heard.

Respondent appealed to the National Labor Relations Commission which rendered its Decision[7] on November 24, 2003 dismissing respondent's appeal for lack of merit.

Respondent filed a motion for reconsideration but it was denied.[8] Hence, he filed a petition for *certiorari* before the Court of Appeals which rendered the herein assailed Decision on August 31, 2007 disposing thus:

> WHEREFORE, the petition is granted and the Decision dated November 24, 2003 and Resolution dated April 20, 2005 of public respondent NLRC are reversed and set aside.
>
> Private respondents are ordered to pay petitioner the amount of unpaid salaries from the time of his dismissal on September 22, 2000 up to the expiration of the term of his employment contract, plus moral damages of ₱50,000.00, exemplary damages of ₱50,000.00 and attorney's fees of 10% of the aggregate monetary reward.
>
> SO ORDERED.[9]

According to the Court of Appeals, petitioners, as employers, have the burden of proof to show by substantial evidence that respondent's employment was validly terminated; that for a dismissal based on loss of trust and confidence, it is incumbent to establish that the employee holds a managerial position; that petitioners failed to adduce evidence showing that respondent

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[7] Records, pp. 180-188; penned by Commissioner Vicente S.E. Veloso and concurred in by Presiding Commissioner Roy V. Señeres and Commissioner Romeo L. Go.

[8] *Id.* at 214.

[9] CA *rollo*, p. 246.

was a managerial employee; that the log book entries of Capt. Kowalewski and the letter dated September 1, 2000 should be disregarded for being self-serving; that respondent was not apprised of the cause for his dismissal; that petitioners failed to observe the two-notice rule hence the dismissal was illegal; consequently, respondent is entitled to his salaries for the unexpired portion of the employment contract, full reimbursement of placement fee, moral and exemplary damages and attorney's fees.

Petitioners filed a motion for reconsideration but it was denied by the appellate court on November 16, 2007.

Hence, the instant petition raising the following issues:[10]

I

WHETHER OR NOT THIS CASE FALLS WITHIN THE EXCEPTION TO THE RULE THAT ONLY QUESTIONS OF LAW MAY BE RAISED ON APPEAL TO THIS HONORABLE COURT

II

WHETHER OR NOT THE POSITION OF CHIEF OFFICER OF AN OCEAN GOING VESSEL IS A MANAGERIAL POSITION OR ONE OF TRUST AND CONFIDENCE

III

WHETHER OR NOT ENTRIES IN THE OFFICIAL LOGBOOK OF A VESSEL SHOULD NOT BE GIVEN WEIGHT FOR BEING SELF-SERVING

IV

WHETHER OR NOT LACK OF SKILL OR INCOMPETENCE IN HANDLING AN OIL TANKER VESSEL MAY BE CONSIDERED AS AN ANALOGOUS CAUSE FOR A VALID TERMINATION OF EMPLOYMENT OF A CHIEF OFFICER

V

WHETHER OR NOT A CHIEF OFFICER OF AN OIL TANKER VESSEL REQUIRED TO EXPLAIN WHY HE SHOULD NOT BE RELIEVED FOR BEING INCOMPETENT WAS DEPRIVED OF DUE PROCESS OF LAW

[10] *Rollo,* pp. 17-18.

VI

WHETHER OR NOT MORAL DAMAGES AND ATTORNEYS FEES MAY BE AWARDED WITHOUT A CLEAR SHOWING THAT THE DISMISSAL OF AN EMPLOYEE WAS ATTENDED WITH BAD FAITH

The petition lacks merit.

Petitioners allege loss of trust and confidence due to incompetence as the ground for respondent's dismissal.[11] Loss of trust and confidence is premised on the fact that the employee holds a position whose functions may only be performed by someone who has the confidence of management.[12] Such employee may be managerial or rank-and-file, but the nature of his position determines the requirements for a valid dismissal.

With respect to a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Proof beyond reasonable doubt is not required, only substantial evidence which must establish clearly and convincingly the facts on which the loss of confidence rests.[13]

Article 627 of the Code of Commerce defines the Chief Mate, also called Chief Officer or Sailing Mate, as "the second chief of the vessel, and unless the agent orders otherwise, shall take the place of the captain in cases of absence, sickness, or death, and shall then assume all his powers, duties, and responsibilities." A Chief Officer, therefore, is second in command, next only to the captain of the vessel.

Moreover, the Standards of Training, Certification and Watchkeeping for Seafarers 1978 (STCW '78), to which the Philippines is a signatory, defines a Chief Mate as "the deck

[11] CA *rollo*, p. 146.

[12] *Mercury Drug Corp. v. Serrano*, G.R. No. 160509, March 10, 2006, 484 SCRA 434, 444.

[13] *Velez v. Shangri-La's Edsa Plaza Hotel*, G.R. No. 148261, October 9, 2006, 504 SCRA 13, 26.

officer next in rank to the master and upon whom the command of the ship will fall in the event of incapacity of the master."

In *Association of Marine Officers and Seamen of Reyes and Lim Co. v. Laguesma*,[14] the Court held that the Chief Mate is a managerial employee because the said officer performed the functions of an executive officer next in command to the captain; that in the performance of such functions, he is vested with powers or prerogatives to lay down and execute management policies.

The exercise of discretion and judgment in directing a ship's course is as much managerial in nature as decisions arrived at in the confines of the more conventional board room or executive office. Important functions pertaining to the navigation of the vessel like assessing risks and evaluating the vessel's situation are managerial in nature.[15]

Thus, respondent, as Chief Officer, is a managerial employee; hence, petitioners need to show by substantial evidence the basis for their claim that respondent has breached their trust and confidence.

Petitioners' basis for dismissing respondent was the alleged entry by Captain Kowalewski in the ship's logbook regarding respondent's inexperience and inefficiency. A ship's log/logbook is the official record of a ship's voyage which its captain is obligated by law to keep wherein he records the decisions he has adopted, a summary of the performance of the vessel, and other daily events. A logbook is a respectable record that can be relied upon when the entries therein are presented in evidence.

In the instant case, however, respondent correctly pointed out that the issue is not whether an official logbook entry is acceptable in evidence, but whether a document purporting to be a copy of a logbook entry has been duly established to be authentic and not spurious.[16]

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[14] G.R. No. 107761, December 27, 1994, 239 SCRA 460.

[15] *Id.* at 467.

[16] *Rollo*, p. 163.

The document dated September 6, 2000 (Annex E) purports to be a copy of an entry in the official logbook which reads:

Name of the ship: Aquidneck
Port of registry: Nassau, Bahamas
Official Number: 706596
Gross tonnage: 23709
Register (net) tonnage: 8517

Page: OFFICIAL LOG of the m/t Aquidneck
Entries required by Regulations made under Section 143 of the Merchant Shipping Act 1976

Date of the occurrence: 06.09.00. Pace: At Sea. Date of entry: 06.09.00

It was found today on the 06th September 2000 that C/O Mr. Ruben dela Cruz has breached all international safety rules regarding tank entry procedures. In spite of tank entry form properly filled, non-of safety precautions were implemented. Crew was working in cargo tanks without any supervision and without safety arrangement. Emergency rescue equipment was not readied on the scene. By this neglect safety and lives of working personnel in cargo tanks were put in potential hazard. As the senior officer responsible for the safety of his personnel he should be relieved from his duties as the Chief Officer.

Signed: S. Kowalewski, Master[17]

In *Wallem Maritime Services, Inc. v. National Labor Relations Commission*,[18] citing *Haverton Shipping Ltd. v. National Labor Relations Commission*,[19] the Court ruled that a **copy** of an official entry in the logbook is legally binding and serves as an exception to the hearsay rule. In the said case, however, there was no controversy as to the genuineness of the said entry and the authenticity of the copy presented in evidence.

In the instant case, respondent has consistently assailed the genuineness of the purported entry and the authenticity of such

[17] *Id.* at 67.

[18] 331 Phil. 476, 486 (1996).

[19] 220 Phil. 356, 362 (1985).

copy. He alleged that before his repatriation, there was no entry in the ship's official logbook regarding any incident that might have caused his relief;[20] that Captain Kowalewski's signature in such purported entry was forged.[21] In support of his allegations, respondent submitted three official documents[22] bearing the signature of Capt. Sczepan Kowalewski which is different from the one appearing in Annex E. Thus, it was incumbent upon petitioners to prove the authenticity of Annex E, which they failed to do. Likewise, the purported report of Capt. Kowalewski dated September 1, 2000 (Annex D),[23] and the statements of

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[20] Records, p. 16.

[21] *Id.* at 104.

[22] Respondent's Seafarer's Identification and Record Book, Certificate of Sea Service, and Certification on the Pressure-Testing of Deck Cargo Lines and Manifold Valves.

[23] *Rollo*, pp. 64-65. The report reads:

M/t "Aquidneck" Date 01st Sept.2000

To: The Managing Director
B+H Equimar Singapore

CC: Fleet Personnel Department

Subject: Ch.Officer Mr. Ruben Dela Cruz Performance.

I took command of m/t Aquidneck on 17th July 2000.

The previous master told me that Ch. Officer has a very little experience on the tankers but he learns fast, he needs only a little guidance. The full assistance was given to Mr. R. Dela Cruz but hardly he even asked for assistance or guidance.

Same time I was watching his performance providing any assistance that was required. Ch.Eng. was also ready to assist and to give any advice required on technical aspects.

The following is the statement of facts in respect of Ch.Off. performance.

1. Loading plan and stress calculations were not prepared as per requirement. Not all sequences of discharging/loading were covered. Lacks of signature of the officers were only minor omission.
2. Not all cargo v/vs were closed in pump room prior loading.
3. Have asked Ch.Off. to explain cargo pumps emergency shut off system. Being three months on board he was still not aware of location of emergency shut off.

Safety Officer Khaldun Nacem Faridi and Chief Officer Josip

4. He accepted stowage of paint inside of accommodation (in gymnasium) instead in paint locker.
5. He was asked if vessel has MMC sampler. He was unable to give a right answer. He said that vessel do not have one. It was located later on in Pump man workshop. This almost cased extra expenses for the company.
6. He does not consult technical work with Ch.Eng.
7. During discharge in Long Beach he have discharged last tank (9C) by this way loosing main COP priming ability. This caused delay in discharging/stripping.
8. Upon completion of discharge in Long Beach Berth 77 he was unable to drain cargo manifolds causing oil spill to manifold drip tray. Excessive time was used for disconnecting causing air pollution. He shows lack of understanding of basic physics. Liquid can not run upward. He did not opened drain valves on manifolds. Only cargo tank and manifold cross over valves were opened, therefore it took so long to disconnect manifolds.
9. During subsequent tank cleaning he was not stripping washed tanks simultaneously, allowing build up wash waters in cargo tanks. This caused substantial delay in tank cleaning and greater fuel consumption.
10. He was attempting to wash cargo tanks having 2-kg pressure in main tank cleaning line.
11. The understanding of suction gauge indication or pump suction creates some problems to him.
12. The problem of fault finding is almost non existent.
13. During tank ventilation it seems that he do not understand basic methods of tanker operation. Ventilation by dispersment was mixed with dilution methods. Which one was which and how to apply them he does not understand. As the example he was trying to ventilate 10 tanks at the same time. In this case the dilution method only could be used. The worst of that he do not like to consult any operation or he does not understand the needs for consultation. He is convinced that he knows everything.
14. The vetting surveyor inspecting the vessel in Long Beach in private conversation has stated "Your Ch. Off. Do not understand basics of tanker operation and should understudy first before Ch.Off. duties can be assigned to him".
15. Supervision and assistance given has a very little effect as he has his own ideas how to work and coming with not accurate information.
16. On the positive side he is good in paper work and can work long hours without complain.

Milin (Annexes G[24] and H[25]) also cannot be given weight for lack of authentication.

Although technical rules of evidence do not strictly apply to labor proceedings, however, in the instant case, authentication of the above-mentioned documents is necessary because their

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The following are true reconciliation of Ch.Off. Performance. Without any prejudice and in spite of all assistance given to Mr. Ruben Dela Cruz it is understood that at present state of his knowledge Mr. Ruben Dela Cruz should take a refreshment course of tanker operation first. The new Ch. Off should join the vessel ASAP to take over cargo related duties.

Mr. Ruben Dela Cruz should be relieved from his duties as the Ch.Off. to avoid delays in operation and extra unnecessary expenses for the company.

Capt. S. Kowalewski
Master m/t "Aquidneck"

[24] *Id.* at 68. The statement reads:

"On 06th Sept.2000 while vessel was bound for Aruba for orders crew were engaged in testing the cargo valves to prepare the vessel for next loading. Capt. D. Smith MSS safety consultant who joined the vessel in Panama on 5th Sept. was taking rounds on the deck on 06th September. He observed that enclosed space entry procedures were not being followed and completely overlooked, endangering crews lives working in cargo oil tanks. He informed the Master regarding this requesting to take proper action. Capt. Smith latter called all the officers and crew and said that enclosed space entry procedures not being followed is a serious breach of the IMO regulations and held Chief Officer Mr. Ruben Dela Cruz responsible for it."

[25] *Id.* at 69. The statement reads:

"During Loading Gasoline in Lake Charles No. 8C cargo tank was over presurised creating potential risk of tank rupture, explosion and oil pollution.

Loading into tank 8C was immediately stopped and pressure from the tank was released.

After investigation it has been found that inert gas vent line into tank 8C was blanked off and blank was not removed prior commencement of loading. Mr. Ruben Dela Cruz told me that he forgot to inform me about.

During inspection of pump room it was found that cargo is leaking from holed section of Stripping pump No 1 and Eductor No. 2. On investigation pumpman Mr. R. Alvarez told me that he informed Mr. Ruben Dela Cruz about holed in cargo system during tank washing prior arrival Lake Charles.

Cargo, deck maintenance and safety papers were totally disorganized. Safety equipment was wrongly tested and calibrated by Mr. Ruben Dela Cruz and therefore unsafe to use."

genuineness is being assailed, and since petitioners offered no corroborating evidence. These documents and their contents have to be duly identified and authenticated lest an injustice would result from a blind adoption of such contents.[26] Thus, the unauthenticated documents relied upon by petitioners are mere self-serving statements of their own officers and were correctly disregarded by the Court of Appeals.

This Court notes that during the initial proceedings of the case, petitioners contend that respondent was not dismissed but only temporarily relieved from his position due to lack of skill or incompetence. However, as the case progressed, petitioners claimed that respondent was dismissed from employment because he committed certain violations of the vessel's safety rules. This is objectionable; a party should decide early what cause or defense he is going to advance; he cannot change his theory in the latter stage of the proceeding because it is contrary to the rules of fair play, justice and due process.[27]

Moreover, records show that respondent was not afforded due process. For officers and crew who are working in foreign vessels involved in overseas shipping, there must be compliance with the applicable laws on overseas employment as well as with the regulations issued by the Philippine Overseas Employment Administration (POEA), such as those embodied in the Standard Contract for Seafarers Employed Abroad (Standard Contract).[28] Section 17 of the Standard Contract provides:

SEC. 17. DISCIPLINARY PROCEDURES.— The Master shall comply with the following disciplinary procedures against an erring seafarer:

A. The Master shall furnish the seafarer with a written notice containing the following:

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[26] *Wallem Maritime Services, Inc. v. National Labor Relations Commission, supra* note 18 at 486.

[27] *Dalisay v. Mauricio, Jr.*, G.R. No. 148893, July 12, 2006, 479 SCRA 307, 316.

[28] Timoteo B. Aquino and Ramon Paul L. Hernando, *Notes and Cases on the Law of Transportation and Public Utilities* (Manila: Rex Book Store, Inc. 2004), Chap. 8, p. 550.

1. Grounds for the charges as listed in Section 33 of this Contract or analogous act constituting the same;

2. Date, time and place for a formal investigation of the charges against the seafarer concerned.

B. The Master or his authorized representative shall conduct the investigation or hearing, giving the seafarer the opportunity to explain or defend himself against the charges. These procedures must be duly documented and entered into the ship's logbook.

C. If after investigation or hearing, the Master is convinced that imposition of a penalty is justified, the Master shall issue a written notice of penalty and the reasons for it to the seafarer, with copies furnished to the Philippine Agent.

D. Dismissal for just cause may be effected by the Master without furnishing the seafarer with a notice of dismissal if there is a clear and existing danger to the safety of the crew or the vessel. The Master shall send a complete report to the manning agency substantiated by witnesses, testimonies, and other documents in support thereof.

Except for the self-serving allegation that respondent was required to explain why he should not be relieved for being incompetent, petitioners offered no proof to show that they furnished respondent a written notice of the charges against him, or that there was a formal investigation of the charges, or that respondent was furnished a written notice of the penalty imposed upon him. Respondent was verbally ordered to disembark the vessel and was repatriated to the Philippines without being told of the reasons for his relief.

Respondent's dismissal was not for just cause and without due process. He is therefore entitled to be paid his salaries for the unexpired portion of his employment contract. However, the payment of overtime pay and leave pay should be disallowed in light of our ruling in *Cagampan v. National Labor Relations Commission*,[29] to wit:

[29] *Legahi v. National Labor Relations Commission*, G.R. No. 122240, November 18, 1999, 318 SCRA 446, 457.

[T]he rendition of overtime work and the submission of sufficient proof that said was actually performed are conditions to be satisfied before a seaman could be entitled to overtime pay which should be computed on the basis of 30% of the basic monthly salary. In short, the contract provision guarantees the right to overtime pay but the entitlement to such benefit must first be established.

In the same vein, the claim for the day's leave pay for the unexpired portion of the contract is unwarranted since the same is given during the actual service of the seamen.

Pursuant to Republic Act No. 8042, or the Migrant Workers and Overseas Filipino Act, respondent is also entitled to full reimbursement of his placement fee with interest at 12% per annum. Section 10 thereof provides:

SECTION 10. Money Claims –

xxx xxx xxx

In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the worker shall be entitled to the full reimbursement of his placement fee with interest at twelve percent (12%) per annum, x x x.

We affirm the award of moral damages in the amount of ₱50,000.00, exemplary damages in the amount of ₱50,000.00, and attorney's fees at the rate of 10% of the aggregate monetary award, the dismissal having been effected without just cause and without observance of due process.

WHEREFORE, in view of the foregoing, the petition is *DENIED*. The August 31, 2007 Decision of the Court of Appeals in CA-G.R. SP No. 91054 and its November 16, 2007 Resolution are *AFFIRMED with MODIFICATION*. Petitioners Centennial Transmarine, Inc., Centennial Maritime Services, Corp., and B+H Equimar, Singapore, Pte. Ltd. are ordered to pay, jointly and severally, respondent Ruben G. Dela Cruz: (1) his salaries corresponding to the unexpired portion of his employment contract, at the rate of USD1,750.00 monthly, or its peso equivalent at the time of actual payment;[30] (2) his placement

[30] *Skippers United Pacific, Inc. v. National Labor Relations Commission*, G.R. No. 148893, July 12, 2006, 494 SCRA 661, 673.

fee with 12% interest per annum, pursuant to Section 10 of Republic Act No. 8042; (3) ₱50,000.00 as moral damages; (4) ₱50,000.00 as exemplary damages; and (5) attorney's fees of 10% of the aggregate monetary award. Costs against petitioners.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and *Reyes, JJ.,* concur.

THIRD DIVISION

[A.M. No. P-06-2208. August 26, 2008]
(Formerly OCA IPI No. 04-1944-P)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **IRENE P. FUECONCILLO, formerly Officer-in-Charge and Interpreter I, Municipal Trial Court in Cities, Science City of Muñoz, Nueva Ecija,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CHARGE; UNDUE DELAY IN REMITTING COLLECTIONS AND FRAUDULENTLY WITHDRAWING AMOUNTS FROM THE JUDICIARY FUNDS CONSTITUTE GRAVE MISCONDUCT AND GROSS NEGLECT OF DUTY.— Fueconcillo, as the OIC/Clerk of Court, had the duty to completely and immediately deposit with the LBP the various funds she collected. She had no authority to keep any of the funds in her custody, or to use the same for her personal purpose. When she did so, she breached her fidelity to her duties. She

acted without due regard for her functions as a fiduciary officer of the judiciary. Reiterated is the rule that public office is a public trust. A public servant is expected to exhibit, at all times, the highest degree of honesty and integrity, and should be made accountable to all those he serves. Fueconcillo's undue delay in remitting collections, keeping some of the amounts collected for herself and spending it for her family consumption, and fraudulently withdrawing amounts from the judiciary funds, collectively constitute gross misconduct and gross neglect of duty. Pursuant to Section 52, Rule IV of the Civil Service Rules, gross misconduct and gross neglect of duty are grave offenses punishable with dismissal for the first offense.

2. ID.; ID.; ID.; CIRCUMSTANCES THAT MAY MITIGATE ADMINISTRATIVE LIABILITY; APPLICATION.— However, in several administrative cases, the Court has refrained from imposing the actual penalties in the presence of mitigating factors. Factors such as the respondent's length of service, the respondent's acknowledgement of his or her infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations, restitution of the amount unlawfully withheld, among other things, have had varying significance in the Court's determination of the imposable penalty. In the present case, dismissal from the service may be too harsh, considering the following circumstances, to wit: (1) this is Fueconcillo's first infraction after twenty (20) years of government service; (2) she restituted, albeit belatedly, ₱84,681.99, the total amount of her shortages before the complaint against her was filed; (3) humanitarian and family considerations; and (4) Fueconcillo's acknowledgment of her infractions and feelings of remorse. The Court also notes that Fueconcillo's salary has been withheld since October 2004 due to her non-submission of the required Monthly Reports. These are circumstances which sufficiently mitigate Fueconcillo's liability and keeps this Court from imposing the ultimate penalty of dismissal from service. Thus, suspension of one (1) year would suffice.

R E S O L U T I O N

CHICO-NAZARIO, *J.*:

Before this Court is an administrative matter involving an audit conducted from 6-10 February 2006 by the Office of the Court Administrator (OCA) on the books of accounts of Ardentor C. Ramos (Ramos) Clerk of Court II; and Irene P. Fueconcillo (Fueconcillo), former officer-in-charge (OIC) and Interpreter I of the Municipal Trial Court in Cities (MTCC) of Science City, Muñoz, Nueva Ecija. Fueconcillo was the OIC of the Office of the Clerk of Court of the MTCC for the period 1 March 1998 up to 31 October 2004, while Ramos assumed the said office beginning 1 November 2004 up to the present. The audit was conducted on account of the failure of Fueconcillo to submit the Monthly Report of Collections starting March 2002, which led to the withholding of her salary since October 2004.

After the audit, the OCA Financial Audit Team made a report with the following recommendations:

1. This report be docketed as a regular administrative matter against former Officer-in-Charge and Interpreter I of MTCC Science City of Muñoz Nueva Ecija, IRENE P. FUECONCILLO and that she be DIRECTED to EXPLAIN why she should not be administratively sanctioned for not remitting her collections on Clerk of Court General Fund, Judiciary Development Fund, Mediation Fund and the unauthorized withdrawal/non-remittance of collections of Fiduciary Fund.

2. MR. ARDENTOR C. RAMOS, Clerk of Court, MTCC Science City of Muñoz be DIRECTED to strictly comply with the issuances of the Court particularly the handling of judiciary funds;

3. HON. ELEANOR TF. MARBAS-VIZCARRA, Presiding Judge, be DIRECTED to:

    3.a. EXPLAIN within ten (10) days from notice why she approved the withdrawal made by Ms. Fueconcillo amounting to ₱20,000.00 when there is no court order to effect the same;

> 3.b. MONITOR the activities of the Clerk of Court in the "strict" implementation of the issuances of the court relative to handling of Judiciary funds.[1]

On 26 July 2006, the First Division of this Court approved the afore-quoted recommendations of the OCA Financial Audit Team,[2] thus:

> (a) NOTE the aforesaid report;
>
> (b) RE-DOCKET this report as a regular administrative matter against former Officer-in-Charge and Interpreter 1 of Municipal Trial Court in Cities, Science City of Munoz, Nueva Ecija, Irene P. Fueconcillo;
>
> (c) DIRECT Ms. Fueconcillo to EXPLAIN within ten (10) days from notice hereof why she should not be administratively sanctioned for not remitting her collections for Clerk of Court General Fund, Judiciary Development Fund, Mediation Fund and the unauthorized withdrawal/non-remittance of collections of Fiduciary Fund;
>
> (d) DIRECT Mr. Ardentor C. Ramos, Clerk of Court, Municipal Trial Court in Cities, Science City of Munoz to STRICTLY COMPLY with the issuances of the Court particularly the handling of judiciary funds;
>
> (e) DIRECT Hon. Eleanor TF. Marbas-Vizcarra, Presiding Judge, Municipal Trial Court in Cities, Science City of Munoz to: (1) EXPLAIN within ten (10) days from notice hereof why she approved the withdrawal made by Ms. Fueconcillo amounting to Twenty Thousand (₱20,000.00) Pesos which contain (sic) no court order for the withdrawal of the said fund; and (2) MONITOR the activities of the Clerk of Court in the "strict" implementation of the issuance of the court relative to the handling of Judiciary Funds.

Complying with the order of the Court, Judge Eleanor TF. Marbas-Vizcarra (Judge Vizcarra) submitted her explanation[3] to the Court on 2 October 2006. She stated therein that upon

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[1] *Rollo*, pp. 9-10.

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

[3] *Id.* at 41-43.

knowing of the alleged unauthorized withdrawal on 19 June 2002 by Fueconcillo from the judiciary fund, as discovered by the OCA Financial Audit Team, she required Fueconcillo to submit to the Court her explanation the soonest possible time, and to give her (Judge Vizcarra) a copy of said explanation with the withdrawal slip pertaining to the questioned withdrawal.

Judge Vizcarra explicated that considering the more than four years which had passed since the suspicious withdrawal was made on 19 June 2002 and the numerous withdrawal slips she had signed for several courts she was handling at that time, she needed to see first the withdrawal slip of 19 June 2002 to have an idea as to the circumstances surrounding the same. Thus, she directed the present Clerk of Court, Ramos, to secure a copy of the withdrawal slip dated 19 June 2002 from the Land Bank of the Philippines (LBP). However, according to the LBP personnel, it would be very difficult for the bank to locate the withdrawal slip from the year 2002, considering the volume of documents in the bank's archives. Judge Vizcarra then issued an Office Memorandum dated 11 August 2006 to Fueconcillo directing the latter to explain in writing the unauthorized withdrawal. It was only after Fueconcillo received the said Office Memorandum that she gave Judge Vizcarra the withdrawal slip dated 19 June 2002, as well as another withdrawal slip dated 25 September 2002.

Judge Vizcarra explained the standard procedure observed in all the courts being handled by her, as follows: Since her courts give priority to cases with orders of dismissal and for withdrawal of bonds, the corresponding withdrawal slips are prepared on the same day the orders are issued. As one copy is submitted to the bank, another to the Supreme Court and the last is kept for the file of the trial court concerned. Two sets of withdrawal slips are prepared to ensure that all the copies are clear. The withdrawal slips, though, are usually left undated, as they will be dated only on the exact day the claimant returns to the court, especially when the withdrawal slips are for large amounts. This is to prevent the money from being left in the hands of the OIC/Clerk of Court for a long period of time.

In the course of her investigation, Judge Vizcarra discovered that Fueconcillo, then the OIC/Clerk of Court, made two withdrawals based on Judge Vizcarra's Order dated 23 April 2002 provisionally dismissing Criminal Case No. 6656, entitled *People v. Ruben Briones, et al.*, and her corresponding Order of the same date directing the withdrawal of the cash bonds, amounting to ₱20,000.00, posted by the accused in said criminal case. The first withdrawal was made on 19 June 2002 and the second on 25 September 2002. Fueconcillo took advantage of the standard procedure of the court by twice withdrawing the amount of ₱20,000.00 from the LBP pursuant to the same order for withdrawal of the bonds issued in Criminal Case No. 6656, and using the extra set of withdrawal slips prepared pursuant to said order. Fueconcillo actually turned over ₱20,000.00 to the accused only on 25 September 2002.

According to Judge Vizcarra, Fueconcillo admitted that she pocketed the ₱20,000.00 she withdrew on 19 June 2002 for her personal needs, since her family was facing financial difficulties. Fueconcillo allegedly used the amount for her children's tuition fees; hence, the withdrawal was made only in June 2002 even though the order for the withdrawal of the bonds was issued and the withdrawal slips were prepared in April 2002.

Judge Vizcarra asserted that she would never allow the withdrawal of any amount from the bank without the proper court order. The unauthorized withdrawal by Fueconcillo was a very unfortunate incident, which happened only because of the trust Judge Vizcarra reposed upon her former OIC/Clerk of Court, and which the latter dismally betrayed. Judge Vizcarra then gave assurances that she would strictly monitor the faithful implementation of the issuances of this Court relative to judiciary funds.

On 20 October 2006, Fueconcillo asked for extension of time to submit her explanation on the ground that she was hospitalized from 1-6 October, as evidenced by the attached Medical Certificate.

In her undated Explanation,[4] received by this Court on 27 October 2006, Fueconcillo admitted the finding of the OCA Financial Audit Team that she incurred the following shortages:

Clerk of Court General Fund	- ₱9,919.99
JDF	- ₱25,762.00
Fiduciary Fund	- ₱40,000.00
Sheriff's Fee	- ₱9,000.00
TOTAL	- ₱84,681.99

She explained that due to financial difficulties arising from her meager salary, she used the money for her family's sustenance and her children's educational expenses. She claimed that when the OCA Financial Audit Team required her to restitute the amount, she readily did so by depositing the amount of ₱84,681.99 on 9 February 2006.

She likewise admitted the unauthorized withdrawal of ₱20,000.00 without the knowledge and consent of Judge Vizcarra. She confessed to withdrawing the amount using the Order dated 23 April 2002 issued by Judge Vizcarra for the withdrawal of the bonds posted by the accused in Criminal Case No. 6656. She presented the said Order to the LBP Branch, Science City, Muñoz, Nueva Ecija, twice — on 19 June 2002 and then on 25 September 2002 — together with the pre-signed withdrawal slips. She split the several copies of withdrawal slips signed by Judge Vizcarra to be able to make two withdrawals. She begged for the Court's consideration and understanding on the matter.

The Court, in its 7 February 2007 Resolution, referred the matter to the OCA for evaluation, report, and recommendation.

On 24 September 2007, the OCA submitted its report,[5] recommending the suspension of Fueconcillo, to wit:

> Premises considered, it is respectfully recommended for the consideration of the Honorable Court are our recommendations that: (a) that Ms. Fueconcillo, Interpreter 1 and former Officer-in-Charge of MTCC, Science City of Munoz, Nueva Ecija, be

[4] *Id.* at 54-55.

[5] *Id.* at 79.

SUSPENDED for one (1) year without pay for gross misconduct, gross neglect of duty and gross dishonesty amounting to malversation of public funds with stern warning that a repetition of the same or similar act shall be dealt with more severely; and (b) Judge Eleanor TF. Marbas-Vizcarra be ADMONISHED to be more careful in the supervision of personnel handling the court's funds.

On 12 November 2007, the Court required the parties to manifest within 10 days from notice if they were willing to submit the matter for resolution based on the pleadings filed.[6]

Fueconcillo failed to file a manifestation within the period given by the Court despite notice sent to and received by her; thus, the Court deemed as waived[7] her submission of supplemental comment/pleadings.

Resultantly, the administrative matter was submitted for decision based on the pleadings filed.

The Court agrees in the findings and recommendations made by the OCA in its report.

Records show that Fueconcillo was the OIC of the Office of the Clerk of Court of the MTCC, Science City, Muñoz, Nueva Ecija, from 1 March 1998 to 31 October 2004. As the accountable officer, she was the designated custodian of the funds, revenues, records, properties and premises of the court. She was also the court treasurer and accountant; and any loss, shortage or impairment of the funds and property of the court was her responsibility.

As the custodian of the court, Fueconcillo's duties have been defined by several circulars of this Court.

Section B(4) of Supreme Court (SC) Circular No. 50-95 on the collection and deposit of court fiduciary funds mandates that:

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[6] *Id.* at 80.

[7] *Id.* at 82.

(4) All collections from bail bonds, rental deposits, and other fiduciary funds shall be deposited within twenty-four (24) hours by the Clerk of Court concerned upon receipt thereof with the Land Bank of the Philippines.

SC Circulars No. 13-92 and No. 5-93 provide the guidelines for the proper administration of court funds.

SC Circular No. 13-92 commands that all fiduciary collections "shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank."

More explicitly, Section 3 in relation to Section 5 of SC Circular No. 5-93, which designated the LBP as the authorized government depositary of the JDF, states:

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

xxx xxx xxx

5. Systems and Procedures:

xxx xxx xxx

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

> Where there is no LBP branch at the station of the judge concerned, the collections shall be sent by postal money order payable to the Chief Accountant of the Supreme Court at the latest before 3:00 of that particular week.
>
> xxx xxx xxx
>
> d. Rendition of Monthly Report. — Separate "Monthly Report of Collections" shall be regularly prepared for the Judiciary Development Fund, which shall be submitted to the Chief Accountant of the Supreme Court within ten (10) days after the end of every month, together with the duplicate of the official receipts issued during such month covered and validated copy of the Deposit Slips.
>
> The aggregate total of the Deposit Slips for any particular month should always equal to, and tally with, the total collections for that month as reflected in the Monthly Report of Collections.
>
> If no collection is made during any month, notice to that effect should be submitted to the Chief Accountant of the Supreme Court by way of a formal letter within ten (10) days after the end of every month.

The Audit Report of the OCA Financial Audit Team clearly shows that Fueconcillo failed to comply with the mandates of the foregoing Circulars. It is her duty as custodian of funds of the court to perform her responsibilities faithfully, so that she can fully comply with the circulars on deposits of collections. And among her responsibilities is to deposit immediately, with authorized government depositaries, the various funds she has collected, because she is not authorized to keep those funds in her custody. The unwarranted failure to fulfill this responsibility deserves administrative sanction; and not even the full payment, as in this case, of the collection shortages will exempt the accountable officer from liability.

Fueconcillo does not dispute her failings as custodian of the court funds.

Records show that Fueconcillo incurred delay in depositing collections for the Mediation Fund, collected from 7 September

to 21 October 2004 in the amount of ₱9,000.00, as it were deposited only on 6 February 2006.

Fueconcillo not only incurred delay, but she did not at all deposit certain amounts collected to the account of the court. She admitted that she incurred shortages, totaling ₱84,681.99, in the amounts she collected and should have deposited to the Clerks of Court General Fund, Judiciary Development Fund, Sheriff's Trust Fund, Fiduciary Fund and Mediation Fund. She admitted that she used the money for her family's sustenance and her children's educational expenses because of the financial difficulties she was experiencing in light of her meager salary.

While Fueconcillo was subsequently able to account for the shortages, her restitution thereof was belatedly done as it was effected only after being directed to do so by the Audit Team.[8] Obviously, this will not exonerate her from liability.[9]

Fueconcillo also confessed to withdrawing twice the amount of ₱20,000.00 based on only one Order for withdrawal of bonds issued on 23 April 2002 in Criminal Case No. 6656 and fraudulently using the second set of LBP withdrawal slips signed by Judge Vizcarra pursuant to the same Order.

Fueconcillo, as the OIC/Clerk of Court, had the duty to completely and immediately deposit with the LBP the various funds she collected. She had no authority to keep any of the funds in her custody, or to use the same for her personal purpose. When she did so, she breached her fidelity to her duties. She acted without due regard for her functions as a fiduciary officer of the judiciary.

Reiterated is the rule that public office is a public trust. A public servant is expected to exhibit, at all times, the highest degree of honesty and integrity, and should be made accountable to all those he serves.[10]

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[8] *Id.* at 54.

[9] *Report on Anomalies of JDF Collections in MTCC, Angeles City v. Calaguas*, 326 Phil. 703, 708 (1996).

[10] *Id.*

Fueconcillo's undue delay in remitting collections, keeping some of the amounts collected for herself and spending it for her family consumption, and fraudulently withdrawing amounts from the judiciary funds, collectively constitute gross misconduct and gross neglect of duty. Pursuant to Section 52, Rule IV of the Civil Service Rules, gross misconduct and gross neglect of duty are grave offenses punishable with dismissal for the first offense.

However, in several administrative cases, the Court has refrained from imposing the actual penalties in the presence of mitigating factors. Factors such as the respondent's length of service,[11] the respondent's acknowledgement of his or her infractions and feeling of remorse,[12] family circumstances,[13] humanitarian and equitable considerations,[14] restitution of the amount unlawfully withheld,[15] among other things, have had varying significance in the Court's determination of the imposable penalty.

In the present case, dismissal from the service may be too harsh, considering the following circumstances, to wit: (1) this

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[11] *Buntag v. Paña*, G.R. No. 145564, 24 March 2006, 485 SCRA 302, 306-307; *Floria v. Sunga*, 420 Phil. 637, 651 (2001); *Concerned Taxpayer v. Doblada, Jr.*, A.M. No. P-99-1342, 20 September 2005, 470 SCRA 218, 222-223; *Civil Service Commission v. Belagan*, G.R. No. 132164, 19 October 2004, 440 SCRA 578, 601.

[12] *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, 19; *In Re: Irregularities in the Use of Logbook and Daily Time Records by Clerk of Court Raquel D.J. Razon, Cash Clerk Joel M. Magtuloy and Utility Worker Tiburcio O. Morales, MTC-OCC, Guagua, Pampanga*, A.M. No. P-06-2243, 26 September 2006, 503 SCRA 52, 62-63.

[13] *Id.*

[14] *In Re: Delayed Remittance of Collections of Odtuha*, 445 Phil. 220, 226-227 (2003); *In Re: Imposition of Corresponding Penalties for Habitual Tardiness Committed during the First and Second Semesters of 2003 by the Following Employees of this Court: Gerardo H. Alumbro*, A.M. No. 00-06-09-SC, 16 March 2004, 425 SCRA 534, 547.

[15] *In Re: Misappropriation of the Judiciary Fund Collections by Ms. Juliet C. Banag*, 465 Phil. 24, 38 (2004).

is Fueconcillo's first infraction after twenty (20) years of government service; (2) she restituted, albeit belatedly, ₱84,681.99, the total amount of her shortages before the complaint against her was filed; (3) humanitarian and family considerations; and (4) Fueconcillo's acknowledgment of her infractions and feelings of remorse. The Court also notes that Fueconcillo's salary has been withheld since October 2004 due to her non-submission of the required Monthly Reports. These are circumstances which sufficiently mitigate Fueconcillo's liability and keeps this Court from imposing the ultimate penalty of dismissal from service. Thus, suspension of one (1) year would suffice.

As to Judge Vizcarra, the Court finds her explanation less than satisfactory but enough to save her from administrative penalties. While she claimed that she did not allow unauthorized withdrawal of funds, she provided an opportunity for the commission of the same by leaving several copies of undated withdrawal slips in Fueconcillo's possession. The advance preparation of multiple copies of withdrawal slips enabled Fueconcillo to make the unauthorized withdrawal on 19 June 2002. However, considering Judge Vizcarra's numerous assignments to additional courts, this Court resolves not to impose sanctions for the lax standard of procedure adopted in her courts, and merely admonishes Judge Vizcarra for the same.

WHEREFORE, the Court *RESOLVES* as follows:

(1) To find Irene P. Fueconcillo, former Officer-in-Charge, Office of the Clerk of Court, Municipal Trial Court in Cities, Science City, Muñoz, Nueva Ecija, *GUILTY* of *GROSS MISCONDUCT AND GROSS NEGLIGENCE* and order her *SUSPENSION* for one (1) year without pay with a *WARNING* that a repetition of this or a similar offense will be dealt with more severely; and

(2) To *ADMONISH* Judge Eleanor TF. Marbas-Vizcarra to exercise effective supervision over the personnel of her court, especially those charged with collection of the Fiduciary Fund and other trust funds (Judiciary Development Fund and Sheriff's Trust Fund).

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 133608. August 26, 2008]

TIONG ROSARIO, *petitioner, vs.* **ALFONSO CO,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; CORPORATION LAW; P.D. NO. 902-A; SUSPENSION OF PAYMENT; CLAIM, DEFINED.— As early as *Finasia Investment and Finance Corp. v. Court of Appeals*, this Court clarified that the word "*claim"* used in Sec. 6 (c) of P.D. No. 902-A, as amended, refers to debts or demands of a pecuniary nature and the assertion of a right to have money paid. It is used in special proceedings like those before AN administrative court on insolvency. In *Arranza v. B.F. Homes, Inc*., "claim" was defined as an action involving monetary considerations. Clearly, the suspension contemplated under Sec. 6 (c) of P.D. No. 902-A refers only to claims involving actions which are pecuniary in nature.

2. ID.; ID.; ID.; ID.; PURPOSE.— The purpose of suspending the proceedings under P.D. No. 902-A is to prevent a creditor from obtaining an advantage or preference over another and to protect and preserve the rights of party litigants as well as the interest of the investing public or creditors. It is intended to give enough breathing space for the management committee or rehabilitation receiver to make the business viable again, without having to divert attention and resources to litigations in various *fora.* The suspension would enable the management committee or rehabilitation receiver to effectively exercise its/his powers

free from any judicial or extrajudicial interference that might unduly hinder or prevent the "rescue" of the debtor company. To allow such other action to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation instead of being directed toward its restructuring and rehabilitation.

3. CRIMINAL LAW; B.P. BLG. 22; RATIONALE.— [T]he *gravamen* of the offense punished by *B.P. Blg. 22* is the act of making and issuing a worthless check; that is, a check that is dishonored upon its presentation for payment. It is designed to prevent damage to trade, commerce, and banking caused by worthless checks. In *Lozano v. Martinez*, this Court declared that it is not the nonpayment of an obligation which the law punishes. The law is not intended or designed to coerce a debtor to pay his debt. The thrust of the law is to prohibit, under pain of penal sanctions, the making and circulation of worthless checks. Because of its deleterious effects on the public interest, the practice is proscribed by the law. The law punishes the act not as an offense against property, but an offense against public order. The prime purpose of the criminal action is to punish the offender in order to deter him and others from committing the same or similar offense, to isolate him from society, to reform and rehabilitate him or, in general, to maintain social order. Hence, the criminal prosecution is designed to promote the public welfare by punishing offenders and deterring others.

4. ID.; ID.; PROSECUTION FOR VIOLATION THEREOF IS A CRIMINAL ACTION, NOT A CLAIM THAT CAN BE ENJOINED WITHIN THE PURVIEW OF P.D. NO. 902-A.— [T]he filing of the case for violation of BP Blg. 22 is not a "claim" that can be enjoined within the purview of P.D. No. 902-A. True, although conviction of the accused for the alleged crime could result in the restitution, reparation or indemnification of the private offended party for the damage or injury he sustained by reason of the felonious act of the accused, nevertheless, prosecution for violation of B.P. Blg. 22 is a criminal action.

5. ID.; CRIMINAL ACTION; DUAL PURPOSE.— A criminal action has a dual purpose, namely, the punishment of the offender and indemnity of the offended party. The dominant and primordial objective of the criminal action is the punishment of the offender. The civil action is merely incidental to and

consequent to the conviction of the accused. The reason for this is that criminal actions are primarily intended to vindicate an outrage against the sovereignty of the state and to impose the appropriate penalty for the vindication of the disturbance to the social order caused by the offender. On the other hand, the action between the private complainant and the accused is intended solely to indemnify the former.

6. MERCANTILE LAW; CORPORATION LAW; P.D. NO. 902-A; SUSPENSION OF PAYMENT; EFFECTIVITY.— As to when the suspension commences, as held in *Rizal Commercial Banking Corporation v. Intermediate Appellate Court*: 1. All claims against corporations, partnerships, or associations that are pending before any court, tribunal, or board, without distinction as to whether or not a creditor is secured or unsecured, *shall be suspended effective upon the appointment of a management committee, rehabilitation receiver, board, or body* in accordance with the provisions of Presidential Decree No. 902-A. Otherwise stated, from the time a management committee, rehabilitation receiver, board or body is duly appointed pursuant to P.D. No. 902-A, all actions for claims against a distressed corporation pending before any court, tribunal, board or body shall be suspended accordingly. As rationalized in *RCBC*: It is thus adequately clear that suspension of claims against a corporation under rehabilitation is counted or figured up only upon the appointment of a management committee or a rehabilitation receiver. The holding that suspension of actions for claims against a corporation under rehabilitation takes effect as soon as the application or a petition for rehabilitation is filed with the SEC — may, to some, be more logical and wise but unfortunately, such is incongruent with the clear language of the law. To insist on such ruling, no matter how practical and noble, would be to encroach upon legislative prerogative to define the wisdom of the law — plainly judicial legislation.

APPEARANCES OF COUNSEL

Tan Acut & Lopez for petitioner.

Benjamin C. Santos & Ofelia Calcetas-Santos Law Offices for respondent.

D E C I S I O N

AZCUNA, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45, in relation to Section 2(c) of Rule 41 of the Rules of Court, assailing the Resolution[1] dated April 6, 1998, issued by the Regional Trial Court (RTC), Branch 161, Pasig City, in SCA No. 1259.

Petitioner Tiong Rosario is the proprietor of TR Mercantile (TRM), a single proprietorship engaged in the business of selling and trading paper products and supplies of various kinds; while respondent Alfonso Co is the Chairman and President of Modern Paper Products, Inc. (MPPI). In the course of its business, MPPI purchased from TRM a variety of paper products on credit.[2] As payment for his purchases, respondent issued the following China Banking Corporation checks in favor of TRM:

Check No.	Date	Amount
BO32101	February 15, 1995	₱3,000,000
BO32122	February 27, 1995	₱6,000,000
BO32138	March 6, 1995	₱1,900,000

Subsequently, on presentment for payment, Check Nos. B032101,[3] B032138[4] and B032122[5] were dishonored by the drawee bank on May 11, 1995, April 6, 1995, and April 28, 1995, respectively, for the reason that the payment was either stopped or that the checks were drawn against insufficient funds.[6]

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[1] *Rollo,* pp. 195-208.

[2] *Id.* at 3.

[3] *Id.* at 25-26.

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

[5] *Id.* at 27-28.

[6] *Id.* at 4.

In a letter[7] dated June 27, 1995, TRM demanded that respondent make good the checks and pay MPPI's outstanding obligations within five banking days from receipt of the letter, otherwise, it would be constrained to file both criminal and civil actions to protect its interest. Respondent, however, failed to heed the demand.

Thus, on July 21, 1995, petitioner filed a complaint against respondent for violation of Batas Pambansa (B.P.) Blg. 22 with the Office of the City Prosecutor, Pasig City. On November 6, 1995, finding probable cause against respondent, the investigating prosecutor filed three separate informations against him for violation of B.P. Blg. 22 before the Metropolitan Trial Court (MeTC), Pasig City, later docketed as Criminal Case Nos. 18521, 18522 and 18523.[8]

Prior thereto, or on May 12, 1995, MPPI and its principal stockholders, the Spouses Alfredo and Elizabeth Co filed before the Securities and Exchange Commission (SEC), under P.D. No. 902-A, a Petition for Suspension of Payments for Rehabilitation Purposes with prayer for the creation of a management committee and for a temporary restraining order and/or preliminary injunction, docketed as SEC Case No. 05-95-5054.

On October 3, 1995, the SEC issued an Omnibus Order creating a Management Committee and consequently suspending all actions for claims against MPPI pending before any court, tribunal, branch or body.[9]

Meanwhile, in the criminal cases pending before the MeTC, respondent was arraigned, and the cases were set for trial.[10]

Prior to initial trial, respondent filed a Motion to Suspend Proceedings.[11] In support of his motion, movant relied on the following grounds:

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[7] *Id.* at 31-32.

[8] *Id.* at 6.

[9] *Id.* at 232-233.

[10] *Id.* at 7.

[11] *Id.* at 41-52.

I.

A corporation under suspension of payments and corporate rehabilitation pursuant to P.D. No. 902-A, as amended, may not be validly charged for violation of B.P. Blg. 22, when demand on said corporation for dishonored checks was made subsequent to the filing of said petition for suspension of payments.

II.

Pursuant to Sec. 6 (c) of P.D. 902-A, as amended, and in view of the pendency of SEC Case No. 05-95-5054, as well as of the issuance of by the SEC of an order creating a management committee to oversee the operations of the corporation and suspending all actions for claims against the corporation, the suspension of the proceedings in the instant suit is warranted.

III.

Pendency of SEC Case No. 05-95-5054 presents a prejudicial question within the scope of Sections 5 and 6, Rule 111, New Rules of Criminal Procedure, and therefore warrants the suspension of the instant proceedings.[12]

Respondent prayed that the proceedings in the MeTC be suspended during the pendency of the SEC proceedings for rehabilitation and suspension of payments of MPPI.[13] Petitioner opposed said motion.[14]

Corollarilly, in an Order dated March 19, 1996, the SEC granted respondent's Motion to Compel Compliance and For Issuance of Orders of Suspension in the Criminal Cases. In said order, the SEC directed the creditors of MPPI, including TRM, to desist from filing and/or prosecuting cases for violations of B.P. Blg. 22, Estafa or other criminal cases against respondent and/or the officers of MPPI pursuant to its order dated October 3, 1995 and Sec. 6 (c) of P.D. No. 902-A.[15]

[12] *Id*. at 43.

[13] *Id*. at 52.

[14] *Id.* at 54-63.

[15] *Id*. at 233-234.

On September 3, 1996, the MeTC issued an Order[16] denying respondent's motion to suspend proceedings. It held that the issue raised in SEC Case No. 05-95-5054 is not similar or intimately related to the issue involved in the criminal cases before it and therefore the elements of a prejudicial question do not exist. Respondent filed a Motion for Reconsideration[17] but it was denied in the Order[18] dated October 30, 1996.

Aggrieved, respondent filed on December 19, 1996 a petition for *certiorari*[19] before the RTC questioning the above orders, later docketed as SCA No. 1259.

In his petition, respondent admitted that he issued the subject checks as a corporate officer of MPPI as payment for purchases made from TRM. He further claimed that he did not make good the checks upon demand because MPPI had already filed a petition for suspension of payments before the SEC which ordered that all actions for claims against MPPI be suspended.

On February 26, 1997, the RTC enjoined the MeTC from further proceeding with Criminal Case Nos. 18521-23 during the pendency of the action before it.[20] On April 17, 1997, petitioner filed a Motion for Partial Reconsideration.[21] However, upon agreement of the parties, resolution on the motion was held in abeyance awaiting the RTC resolution in the main case, the issues raised being identical.[22]

On April 6, 1998, the RTC issued the assailed Resolution[23] the decretal portion of which reads as follows:

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[16] *Id.* at 72.

[17] *Id.* at 73-80.

[18] *Id.* at 84.

[19] *Id.* at 85-108.

[20] *Id.* at 135-136.

[21] *Id.* at 137-147.

[22] *Id.* at 12.

[23] *Supra*, note 1.

IN VIEW OF THE FOREGOING, Respondent Court is directed to suspend the proceedings in Criminal Cases Nos. 18521-3 during the pendency of the petition in SEC Case No. 05-95-5054.[24]

In granting the petition, the RTC ratiocinated that from the time MPPI placed itself under the operation of P.D. No. 902-A on May 12, 1995, it was temporarily legally restricted to pay the holder of the subject checks or make arrangements for payment in full by the drawee. To hold otherwise would lead to the inevitable conclusion that respondent, so as to avoid being criminally sued for the returned checks, would personally make good the same.[25]

Hence, this petition assigning the following errors:

I

THE REGIONAL TRIAL COURT ERRED IN ORDERING THE SUSPENSION OF THE CRIMINAL PROCEEDINGS AGAINST RESPONDENT CO, IN THAT:

A. THERE IS NO LAW WHICH AUTHORIZES THE SUSPENSION OF CRIMINAL PROCEEDINGS AGAINST A CORPORATE OFFICER FOR VIOLATION OF B.P. 22 ON ACCOUNT OF THE PENDENCY OF A PETITION FOR SUSPENSION OF PAYMENTS FILED BY HIS CORPORATION.

B. CRIMINAL PROSECUTION CANNOT BE ENJOINED.

C. IN SEEKING SUSPENSION OF THE CRIMINAL PROCEEDINGS AGAINST HIM IN VIEW ALONE OF THE PENDENCY OF HIS CORPORATION'S PETITION FOR SUSPENSION OF PAYMENTS, RESPONDENT CO IN EFFECT PLEADS FINANCIAL HARDSHIPS AS A DEFENSE TO A B.P. 22 PROSECUTION, WHICH, HOWEVER, IS NOT RECOGNIZED.

II

IT WAS ERROR FOR THE REGIONAL TRIAL COURT, AS A CIVIL COURT IN A CIVIL PROCEEDING, TO TAKE

[24] *Id.* at 208.

[25] *Id.* at 207.

COGNIZANCE OF MATTERS OF DEFENSE WHICH COULD BE RAISED ONLY AT THE TRIAL IN THE CRIMINAL CASE BEFORE THE METROPOLITAN TRIAL COURT.[26]

The issue is:

WHETHER A CRIMINAL CASE AGAINST A CORPORATE OFFICER FOR VIOLATION OF BP 22 COULD BE SUSPENDED ON ACCOUNT OF THE PENDENCY OF A PETITION FOR SUSPENSION OF PAYMENTS FILED BY THAT OFFICER'S CORPORATION WITH THE SECURITIES AND EXCHANGE COMMISSION.[27]

Petitioner argues that nowhere in the Insolvency Law or P.D. No. 902-A is it provided that criminal prosecution of a corporate officer for violation of B.P. Blg. 22 shall be suspended on account of the pendency of a petition for suspension of payments. Under the Insolvency Law, the filing of a petition for suspension of payments will only result in the suspension of any execution pending against the debtor, and only upon request by the debtor to this effect, and that, generally, from the time of filing of the petition, no creditor may sue to collect his claim against the debtor.[28]

Petitioner adds that under P.D. No. 902-A, the appointment of a management committee, rehabilitation receiver, board or body in a petition for suspension of payments would only have the effect of suspending "all actions for claims" against the corporation, partnership, or association under management or receivership. Prosecution for violation of B.P. Blg. 22 is not an "action for claim" against a corporation but a criminal proceeding brought by the State against a violator of the law.[29]

To buttress her claim, petitioner contends that criminal prosecution of the respondent is specifically mandated by law considering that B.P. Blg. 22 states that where a check is drawn

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

[27] *Id.* at 14.

[28] *Id.* at 16.

[29] *Id.* at 17.

by a corporation, company or entity, the person or persons who actually signed the check in behalf of such drawer shall be liable.[30] Further, P.D. No. 902-A was never intended to suspend criminal proceedings for violation of B.P. Blg. 22.

Petitioner further argues that the general rule is that injunction or prohibition does not lie to restrain a criminal prosecution subject to well-defined exceptions which do not include the instant case.[31]

Petitioner maintains that a petition for suspension of payments is founded on the inability to pay a debt when it falls due which cannot stand as a ground to suspend criminal prosecution, especially where the individual defendant is not the party seeking suspension of payment but a corporation.[32]

Finally, petitioner contends that respondent's petition before the RTC presented an issue of whether his prosecution in the MeTC should be enjoined due to the pendency of MPPI's petition for suspension of payments in the SEC. However, the RTC, sitting in a civil court in a civil proceeding under Rule 65 of the Rules of Court, went beyond this issue and took cognizance of, and passed upon, an issue which could only be raised in the MeTC as a matter of defense.[33]

For his part, respondent posits that the filing and pendency of SEC Case No. 05-95-5054 prevented him from making good the subject checks. He maintains that while he could have funded the checks when demand was made by the petitioner, he could not legally do so. Had he made arrangements for the payment of the checks notwithstanding the pendency of the SEC case, such act would have had the effect of the corporation paying a creditor and giving it undue preference over the others, which is disallowed by law.[34]

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[30] *Id.*

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

[32] *Id.* at 18.

[33] *Id.* at 19.

[34] *Id.* at 240-242.

The petition is meritorious.

Stripped of the non-essentials, the issue before this Court is the propriety of the suspension of Criminal Case Nos. 18521, 18522, and 18523 during the pendency of SEC Case No. 05-95-5054. Considering that the rehabilitation proceedings result in the suspension of all claims against a corporation, the issue of whether or not the suspension includes the criminal cases against the respondent must be resolved.

The resolution of the above issues hinges on the determination of the following: (1) the meaning of "actions for claims" against the distressed corporation; and (2) the effectivity of the suspension.

Section 6 (c) of P.D. No. 902-A, as amended, provides:

> Section 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:
>
> xxx xxx xxx
>
> c) To appoint one or more receivers of the property, real or personal, which is the subject of the action pending before the Commission in accordance with the pertinent provisions of the Rules of Court in such other cases whenever necessary in order to preserve the rights of the parties-litigants and/or protect the interest of the investing public and creditors: ... *Provided, finally, That upon appointment of a management committee, the rehabilitation receiver, board or body, pursuant to this Decree, all actions for claims against corporations, partnerships, or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly*. (italics supplied)

As early as *Finasia Investment and Finance Corp. v. Court of Appeals*,[35] this Court clarified that the word "*claim*" used in Sec. 6 (c) of P.D. No. 902-A, as amended, refers to debts or demands of a pecuniary nature and the assertion of a right to have money paid. It is used in special proceedings like those before AN administrative court on insolvency.[36] In *Arranza v.*

[35] G.R. No. 107002, October 7, 1994, 237 SCRA 446.

[36] *Id.* at 450, citing Sibal, *PHIL. LEGAL ENCYCLOPEDIA*, p. 132, 1986 ed.

B.F. Homes, Inc.,[37] "claim" was defined as an action involving monetary considerations. Clearly, the suspension contemplated under Sec. 6 (c) of P.D. No. 902-A refers only to claims involving actions which are pecuniary in nature.

The purpose of suspending the proceedings under P.D. No. 902-A is to prevent a creditor from obtaining an advantage or preference over another and to protect and preserve the rights of party litigants as well as the interest of the investing public or creditors.[38] It is intended to give enough breathing space for the management committee or rehabilitation receiver to make the business viable again, without having to divert attention and resources to litigations in various *fora*.[39] The suspension would enable the management committee or rehabilitation receiver to effectively exercise its/his powers free from any judicial or extrajudicial interference that might unduly hinder or prevent the "rescue" of the debtor company. To allow such other action to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation instead of being directed toward its restructuring and rehabilitation.[40]

Whereas, the *gravamen* of the offense punished by *B.P. Blg. 22* is the act of making and issuing a worthless check; that is, a check that is dishonored upon its presentation for payment.[41] It is designed to prevent damage to trade, commerce, and banking caused by worthless checks. In *Lozano v. Martinez*,[42] this

[37] 389 Phil. 318 (2000).

[38] *Supra*, note 35 at 450-451.

[39] *Rubberworld (Phils.), Inc. v. NLRC*, 365 Phil. 273, 276-277 (1999).

[40] *Sobrejuanite v. ASB Development Corporation*, G.R. No. 165675, September 30, 2005, 471 SCRA 763, 771.

[41] *Ricaforte v. Jurado*, G.R. No. 154438, September 25, 2007, 532 SCRA 317, 330, citing *Ngo v. People of the Philippines*, G.R. No. 155815, July 14, 2004, 434 SCRA 522, 530-531, citing *Recuerdo v. People of the Philippines*, 443 Phil. 770, 777 (2003).

[42] *Lozano v. Martinez*, 230 Phil. 406, 421 (1986).

Court declared that it is not the nonpayment of an obligation which the law punishes. The law is not intended or designed to coerce a debtor to pay his debt. The thrust of the law is to prohibit, under pain of penal sanctions, the making and circulation of worthless checks. Because of its deleterious effects on the public interest, the practice is proscribed by the law. The law punishes the act not as an offense against property, but an offense against public order. The prime purpose of the criminal action is to punish the offender in order to deter him and others from committing the same or similar offense, to isolate him from society, to reform and rehabilitate him or, in general, to maintain social order.[43] Hence, the criminal prosecution is designed to promote the public welfare by punishing offenders and deterring others.

Consequently, the filing of the case for violation of B.P. Blg. 22 is not a "claim" that can be enjoined within the purview of P.D. No. 902-A. True, although conviction of the accused for the alleged crime could result in the restitution, reparation or indemnification of the private offended party for the damage or injury he sustained by reason of the felonious act of the accused, nevertheless, prosecution for violation of B.P. Blg. 22 is a criminal action.

A criminal action has a dual purpose, namely, the punishment of the offender and indemnity to the offended party. The dominant and primordial objective of the criminal action is the punishment of the offender. The civil action is merely incidental to and consequent to the conviction of the accused. The reason for this is that criminal actions are primarily intended to vindicate an outrage against the sovereignty of the state and to impose the appropriate penalty for the vindication of the disturbance to the social order caused by the offender. On the other hand, the action between the private complainant and the accused is intended solely to indemnify the former.[44]

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[43] *Quinto v. Andres*, G.R. No. 155791, March 16, 2005, 453 SCRA 511, 519.

[44] *Salazar v. People*, G.R. No. 151931, September 23, 2003, 411 SCRA 598, 605.

As to when the suspension commences, as held in *Rizal Commercial Banking Corporation v. Intermediate Appellate Court*[45]:

> 1. All claims against corporations, partnerships, or associations that are pending before any court, tribunal, or board, without distinction as to whether or not a creditor is secured or unsecured, *shall be suspended effective upon the appointment of a management committee, rehabilitation receiver, board, or body* in accordance with the provisions of Presidential Decree No. 902-A.[46] (italics supplied)

Otherwise stated, from the time a management committee, rehabilitation receiver, board or body is duly appointed pursuant to P.D. No. 902-A, all actions for claims against a distressed corporation pending before any court, tribunal, board or body shall be suspended accordingly. As rationalized in *RCBC*:

> It is thus adequately clear that suspension of claims against a corporation under rehabilitation is counted or figured up only upon the appointment of a management committee or a rehabilitation receiver. The holding that suspension of actions for claims against a corporation under rehabilitation takes effect as soon as the application or a petition for rehabilitation is filed with the SEC — may, to some, be more logical and wise but unfortunately, such is incongruent with the clear language of the law. To insist on such ruling, no matter how practical and noble, would be to encroach upon legislative prerogative to define the wisdom of the law — plainly judicial legislation.[47]

From the sequence of events, it is apparent that Check Nos. B032101, B032138, and B032122 were dishonored on May 11, 1995, April 6, 1995, and April 28, 1995, respectively. Respondent was formally notified of the dishonor when petitioner, in a letter dated June 27, 1995, demanded that he make good the checks and pay MPPI's outstanding obligations within five banking days from receipt. Yet, it was only on October 3, 1995,

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[45] G.R. No. 74851, December 9, 1999, 320 SCRA 279.

[46] *Id.* at 293.

[47] *Id.* at 288-289.

or more than three months after, that the SEC issued the omnibus order creating the Management Committee and ordering the suspension of all pending actions for claims against MPPI. Respondent was, thus, not precluded from making good the checks during that three-month gap when he received the letter and when the SEC issued the order.

It must be emphasized at this point that as far as the criminal aspect of the cases is concerned, the provisions of Sec. 6 (c) of P.D. No. 902-A should not interfere with the prosecution of a case for violation of B.P. Blg. 22, even if restitution, reparation or indemnification could be ordered, because an absurdity would result, *i.e.*, one who has engaged in criminal conduct could escape punishment by the mere filing of a petition for rehabilitation by the corporation of which he is an officer. At any rate, should the court deem it fit to award indemnification, such award would now fall under the category of a claim under Sec. 6 (c) of P.D. No. 902-A, considering that it is already one for monetary or pecuniary consideration. Only to this extent can the order of suspension be considered obligatory upon any court, tribunal, branch or body where there are pending actions for claims against the distressed corporation.

The trend is towards vesting administrative bodies like the SEC with the power to adjudicate matters coming under their particular specialization, to ensure a more knowledgeable solution of the problems submitted to them. This would also relieve the regular courts of a substantial number of cases that would otherwise swell their already clogged dockets. But as expedient as this policy may be, it should not deprive the courts of justice of their power to decide criminal cases. Otherwise, the creeping take-over by the administrative agencies of the judicial power vested in the courts would render the judiciary virtually impotent in the discharge of the duties assigned to it by the Constitution.[48]

WHEREFORE, the Petition is hereby *GRANTED*. The Resolution of the Regional Trial Court, Branch 161, Pasig City

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[48] *Saura v. Saura, Jr.*, G.R. No. 136159, September 1, 1999, 313 SCRA 465, 474, citing *Macapalan v. Katalbas-Moscardon*, G.R. No. 101711, October 1, 1993, 227 SCRA 49, 54-55.

in SCA No. 1259, dated April 6, 1998, is *REVERSED* and *SET ASIDE*. The Metropolitan Trial Court, Pasig City, is ordered to proceed with Criminal Case Nos. 18521, 18522 and 18523.

No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 153690. August 26, 2008]

DAVID LU, *petitioner, vs.* **PATERNO LU YM, SR., PATERNO LU YM, JR., VICTOR LU YM, *ET AL.* & LUYM DEVELOPMENT CORP.,** *respondents.*

[G.R. No. 157381. August 26, 2008]

PATERNO LU YM, SR., PATERNO LU YM, JR., VICTOR LU YM, JOHN LU YM, KELLY LU YM, and LUDO & LUYM DEVELOPMENT CORP., *petitioners, vs.* **DAVID LU,** *respondent.*

[G.R. No. 170889. August 26, 2008]

JOHN LU YM and LUDO & LUYM DEVELOPMENT CORPORATION, *petitioners, vs.* **THE HON. COURT OF APPEALS OF CEBU CITY (former Twentieth Division), DAVID LU, ROSA GO, SILVANO LUDO & CL CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; WHEN FILED.— Basic is the rule that a motion for the reconsideration of an assailed order may be filed by an aggrieved party within the reglementary period. No motion for leave to file such motion is required under the Rules or in any other circular of the Supreme Court. As long as the same is filed within fifteen (15) days from receipt of the assailed order, there is no reason for the courts not to entertain it. In fact, in some exceptional cases as when substantial justice so requires, a motion belatedly filed may still be taken cognizance of.

2. ID.; ID.; CERTIFICATION AGAINST FORUM SHOPPING; REQUIRED ONLY IN INITIATORY PLEADINGS.— As to the lack of certificate of non-forum shopping in the motion for reconsideration and supplement to the petition, we need only reiterate that the certificate is required only in cases of initiatory pleadings.

3. ID.; ID.; PROPER MODE TO CHALLENGE AN INTERLOCUTORY ORDER IS THROUGH A SPECIAL CIVIL ACTION FOR *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT.— While it is true that the Lu Ym father and sons questioned the admission of the aforesaid amended complaint before this Court, the same was done only through an Urgent Motion. Under the Rules of Court, the proper mode to challenge such an order, which undoubtedly is interlocutory, is through a special civil action for *certiorari* under Rule 65. This procedural defect, therefore, bars the Court from ruling on the propriety of such admission. We cannot take cognizance of proceedings before the RTC unless they are brought before us through the proper mode of review. To be sure, the Urgent Motion cannot be a substitute for the remedy of a special civil action for *certiorari*. Consequently, the amended complaint admitted by the RTC stands.

4. ID.; MOOT AND ACADEMIC QUESTION, DEFINED; COURTS DO NOT ENTERTAIN A MOOT AND ACADEMIC QUESTION.— It is settled that courts do not entertain a moot question. An issue becomes moot and academic when it ceases to present a justiciable controversy, so that a declaration on

the issue would be of no practical use or value. This Court, therefore, abstains from expressing its opinion in a case where no legal relief is needed or called for.

5. ID.; PROVISIONAL REMEDIES; INJUNCTION; MOOTED BY THE AMENDMENT OF THE COMPLAINT AND TRIAL COURT'S DECISION IN THE CASE ON THE MERITS THEREOF.— [T]he propriety of such injunction is mooted by the amendment of the complaint, and the RTC decision in the case on the merits thereof. The appellate court ordered that the hearing on the motion to lift the receivership be held in abeyance primarily because the original complaint was yet to be amended. Upon the amendment of the complaint and the admission thereof by the RTC, the reason for such injunction ceased to exist. Thus, the CA could resolve, as it in fact resolved, the question of whether or not the receivership should be lifted. The RTC decision on the merits of the case gives this Court more reasons to declare the mootness of the instant petition. It must be recalled that the motion to lift the receivership was filed before the RTC ancillary to the principal action, and what was sought to be enjoined was the hearing on that particular motion. With the decision on the merits rendered by the RTC, *albeit* still on appeal, there is nothing more to be enjoined. More importantly, the RTC ordered that the receivers cease from performing their functions and that a management committee be created. Clearly, these supervening events mooted the petition. Time and again, we have declared that a petition should be denied for the sole reason that the act sought to be enjoined is already *fait accompli*. To reiterate, the trial court's decision on the merits rendered the issue on the propriety of the injunction moot and academic.

6. ID.; MOOT AND ACADEMIC QUESTION; EXCEPTIONS; DO NOT OBTAIN IN CASE AT BAR.— It is true that we have held in a number of cases that the moot and academic principle is not a magical formula that can automatically dissuade the courts from resolving a case. Courts will still decide cases otherwise, moot and academic if: first, there is a grave violation of the Constitution; second, the exceptional character of the situation and the paramount public interest is involved; third, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and, fourth, the case is capable of repetition yet evading review.

However, not one of the enumerated exceptions obtains in the instant case. Thus, a denial of the instant petition is warranted.

7. ID.; JURISDICTION; PAYMENT OF FILING FEES, IMPORTANCE.— A court acquires jurisdiction over a case only upon the payment of the prescribed fees. The importance of filing fees cannot be gainsaid for these are intended to take care of court expenses in the handling of cases in terms of costs of supplies, use of equipment, salaries and fringe benefits of personnel, and others, computed as to man-hours used in the handling of each case. Hence, the non-payment or insufficient payment of docket fees can entail tremendous losses to the government in general and to the judiciary in particular.

8. ID.; ACTIONS; ACTION INCAPABLE OF PECUNIARY ESTIMATION; TEST.— The Court had, in the past, laid down the test in determining whether the subject matter of an action is incapable of pecuniary estimation by ascertaining the nature of the principal action or remedy sought. If the action is primarily for recovery of a sum of money, the claim is considered capable of pecuniary estimation. However, where the basic issue is something other than the right to recover a sum of money, the money claim being only incidental to or merely a consequence of, the principal relief sought, the action is incapable of pecuniary estimation.

9. ID.; JURISDICTION; ESTOPPEL; IF A PARTY INVOKES THE JURISDICTION OF A COURT, HE CANNOT THEREAFTER CHALLENGE THE COURT'S JURISDICTION IN THE SAME CASE; CASE AT BAR.— We note that the Lu Ym father and sons belatedly raised the issue of insufficient payment of docket fees in their motion for reconsideration before the CA. A perusal of the records reveals that the Lu Ym father and sons filed several pleadings before the RTC, specifically, a Motion to Dismiss and Motion to Lift the Appointment of a Receiver, among others. They, likewise, filed several pleadings before the Court of Appeals and before this Court either as initiatory pleadings or in opposition to those filed by the adverse party. Considering their prompt action and reaction to ensure that their rights are protected, their belated objection to the payment of docket fees is, therefore, inexcusable. Well-established is the rule that after vigorously participating in all stages of the case before

the trial court and even invoking the trial court's authority in order to ask for affirmative relief, John and LLDC are barred by estoppel from challenging the trial court's jurisdiction. If a party invokes the jurisdiction of a court, he cannot thereafter challenge the court's jurisdiction in the same case. To rule otherwise would amount to speculating on the fortune of litigation, which is against the policy of the Court. Thus, even if, indeed, the docket fees paid were inadequate, this allegation having been raised for the first time on appeal, should be disallowed.

10. ID.; ID.; PAYMENT OF FILING FEES; WHERE THERE WAS BAD FAITH BY THE PLAINTIFF AND A CLEAR INTENT TO AVOID PAYMENT OF THE REQUIRED DOCKET FEES, THE DISMISSAL OF THE CASE WAS WARRANTED.— While it is true that this Court had previously dismissed complaints for non-payment of docket fees, as in the early case of *Manchester Development Corporation v. Court of Appeals*, these cases uniformly involved bad faith on the part of the plaintiff, such that the correct amount of damages claimed was not specifically stated. The Court, in such cases, concluded that there was bad faith on the part of the complainant and a clear intent to avoid payment of the required docket fee, thus, the dismissal of the cases was warranted.

11. ID.; ID.; ID.; INSTANCES WHEN PAYMENT OF INSUFFICIENT FILING FEES DOES NOT WARRANT DISMISSAL OF THE COMPLAINT.— It may be recalled that despite the payment of insufficient fees, this Court refrained from dismissing the complaint/petition in *Intercontinental Broadcasting Corporation (IBC-13) v. Alonzo-Legasto, Yambao v. Court of Appeals* and *Ayala Land, Inc. v. Carpo.* In those cases, the inadequate payment was caused by the erroneous assessment made by the Clerk of Court. In *Intercontinental*, we declared that the payment of the docket fees, as assessed, negates any imputation of bad faith to the respondent or any intent of the latter to defraud the government. Thus, when insufficient filing fees were initially paid by the respondent, and there was no intention to defraud the government, the *Manchester* rule does not apply. In *Yambao*, this Court concluded that petitioners cannot be faulted for their failure to pay the required docket fees for, given the prevailing

circumstances, such failure was clearly not a dilatory tactic or intended to circumvent the Rules of Court. In *Ayala Land*, the Court held that despite the jurisdictional nature of the rule on payment of docket fees, the appellate court still has the discretion to relax the rule in meritorious cases.

12. ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; REQUISITES; NOT SATISFIED IN CASE AT BAR.— Section 3, Rule 58 of the Rules of Court sets forth the requisites for the issuance of a writ of preliminary injunction, thus: (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually; (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual. In the instant case, John and LLDC failed to satisfy the above requisites. Except for their claim of nullity of the RTC decision because of insufficient payment of docket fees, no evidence was offered to establish the existence of a clear and unmistakable right on their part that must be protected, as well as the serious damage or irreparable loss that they would suffer if the writ is not granted.

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D E C I S I O N

NACHURA, *J.*:

Before us are three consolidated petitions assailing the decisions rendered and the resolutions issued by the Court of Appeals (CA) in CA-G.R. SP No. 64523, CA-G.R. SP No. 73383 and CA-G.R. CV No. 81163.

In **G.R. No. 153690**, David Lu (David) prays that this Court annul and set aside the Decision[1] dated December 20, 2001 in CA-G.R. SP No. 64523 dismissing the initial complaint filed before the Regional Trial Court (RTC) of Cebu City, Branch 5[2] in Civil Case No. CEB-25502,[3] for non-compliance with the rules on non-forum shopping. Likewise assailed is the court's Resolution[4] dated May 28, 2002 denying his motion for reconsideration.

In **G.R. No. 157381**, Paterno Lu Ym, Sr. (Paterno Sr.), Paterno Lu Ym, Jr. (Paterno Jr.), John Lu Ym (John), Kelly Lu Ym (Kelly) (collectively referred to as the Lu Ym father and sons), and Ludo and Luym Development Corp. (LLDC) assail the CA Decision[5] dated February 27, 2003 ordering the RTC to desist from conducting any proceeding relating to the receivership over LLDC.

In **G.R. No. 170889**, John and LLDC question the CA Resolutions dated September 6, 2004[6] denying their application

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[1] Penned by Associate Justice Romeo A. Brawner, with Associate Justices Elvi John S. Asuncion and Juan Q. Enriquez, Jr., concurring, *rollo*, (G.R. No. 153690) pp. 69-78.

[2] It was later re-raffled to Branch 11.

[3] Pursuant to the Interim Rules of Procedure Governing Intra-Corporate Controversies under R.A. 8799, the case was re-docketed as SRC Case No. 021-CEB.

[4] *Rollo* (G.R. No. 153690), pp. 80-86.

[5] Penned by Associate Justice Eubolo G. Verzola, with Associate Justices Sergio L. Pestaño and Amelita G. Tolentino, concurring; *rollo* (G.R. No. 157381), pp. 313-319.

[6] Penned by Associate Justice Arsenio J. Magpale, with Associate Justices Vicente L. Yap and Ramon M. Bato, Jr., concurring; *rollo* (G.R. No. 170889), pp. 72-73.

for a writ of preliminary injunction; and dated December 8, 2005[7] denying their motion for reconsideration and further deferring the resolution of the issue on docket fees.

Factual and Procedural Antecedents

LLDC is a family corporation founded by Paterno Sr. and his brothers (the fathers of Rosa, Silvano and David), primarily to hold real estate for the family.[8] In 1997, LLDC's Board of Directors authorized the issuance of its 600,000 unsubscribed and unissued shares at par value of ₱100.00 per share. The Lu Ym father and sons subscribed to and paid most of such shares. David, *et al.*, however, claimed that the 600,000 LLDC stocks were issued in favor of the Lu Ym father and sons for less than their real values. Hence, the complaint[9] filed on August 14, 2000, by David, Rosa Go (Rosa), Silvano Ludo (Silvano) and CL Corporation (CL Corp.) against the Lu Ym father and sons, namely: Paterno Sr., Paterno Jr., Victor Lu Ym (Victor), John, Kelly, and LLDC, for *Declaration of Nullity of Share Issue, Receivership and Dissolution*, before the RTC of Cebu City. The case was raffled to Branch 5 and was docketed as Civil Case No. CEB-25502. In said complaint, David, *et al*. asked that the issuance of said shares be nullified.[10] They further asserted that the Lu Ym father and sons gravely abused their powers as members of LLDC's Board of Directors by issuing such shares, to the prejudice of David, *et al*. They, therefore, asked for the dissolution of the corporation as their ultimate remedy to obtain redress for their grievances.[11] To protect the interest of the corporation during the pendency of the case, David, *et al*. asked that a receiver for the corporation be appointed.[12]

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[7] *Rollo* (G.R. No. 170889), pp. 76-78.

[8] *Rollo* (G.R. No. 153690), p. 96.

[9] *Id.* at 95-102.

[10] *Id.* at 97.

[11] *Id.* at 99.

[12] *Id.* at 101.

On August 25, 2000, the Lu Ym father and sons moved to dismiss [13] the complaint for non-compliance with the Rules of Court on the required certificate of non-forum shopping, since only one of the four plaintiffs signed the same, without any showing that he was authorized to sign on behalf of the other parties. They, likewise, contended that the case was dismissible because they did not exert earnest efforts toward a compromise.

In a Resolution[14] dated December 4, 2000, the court denied the motion solely on the ground that the case was exempt from the observance of the *Katarungang Pambarangay Law*. In another Resolution[15] dated March 2, 2001, the court held that the signature of only one of the plaintiffs was a substantial compliance with the rules on the certificate of non-forum shopping.

On February 16, 2001, the court, on motion of David, *et al.*, placed LLDC under receivership *pendente lite*.[16] Consequently, the court appointed Atty. Edward U. Du and Mr. Luis A Cañete as receivers.[17]

Aggrieved, the Lu Ym father and sons elevated the matter to the Court of Appeals assailing the court's resolutions denying their motion to dismiss and their motion for reconsideration; and placing the corporation under receivership and appointing two persons as receivers. The case was docketed as CA-G.R. SP No. 64154, but the same was dismissed on the ground that the verification and certification against forum shopping were signed by only two petitioners.[18] They later refiled the case. This time, it was docketed as **CA-G.R. SP No. 64523**.

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[13] *Id.* at 103-108.

[14] *Id.* at 109-110.

[15] *Id.* at 117-118.

[16] *Id.* at 123-128.

[17] *Rollo (* G.R. No. 157381), pp. 181-182.

[18] *Rollo* (G.R. No. 153690), p. 555.

The appellate court initially dismissed[19] the petition, finding no grave abuse of discretion on the part of the RTC when it denied the Lu Ym father and sons' motion to dismiss and because of the prematurity of the petition on the issue of receivership (since there was still a motion for reconsideration pending before the RTC).[20] However, on motion of the Lu Ym father and sons, the court reconsidered its earlier ruling and, consequently, reinstated the earlier petition.[21] The Lu Yms then filed a Supplement to their petition.

On December 20, 2001, the CA granted[22] the Lu Ym father and sons' petition and, thus, dismissed the complaint filed by David Lu, *et al*. for the parties' (except David Lu) failure to sign the certificate of non-forum shopping. In ruling for the dismissal of the initiatory pleading, the court applied *Loquias v. Ombudsman*.[23] As a consequence of the dismissal of the complaint, the appellate court likewise annulled the resolutions placing the corporation under receivership and appointing the receivers.[24] On May 28, 2002, the CA denied the motion for reconsideration[25] filed by David Lu, *et al.* Hence, the petition for review on *certiorari* before this Court filed by David Lu alone in **G.R. No. 153690**.

Meanwhile, the Lu Ym father and sons filed a Motion for Inhibition against the then RTC Judge Ireneo Gako, Jr., which was granted on October 1, 2002. Thus, the case was re-raffled to Branch 11, presided by Judge Isaias Dicdican, who directed the parties to amend their respective pleadings in order to conform

[19] Penned by Associate Justice Ma. Alicia Austria-Martinez, with Associate Justices Hilarion L. Aquino and Jose L. Sabio, Jr., concurring, *rollo* (G.R. No. 153690), pp. 257-259.

[20] *Id.* at 257-259.

[21] *Id.* at 323-324.

[22] Penned by Associate Justice Romeo A. Brawner, with Associate Justices Elvi John S. Asuncion and Juan Q. Enriquez, Jr., concurring, *rollo* (G.R. No. 153690), pp. 69-78.

[23] G.R. No. 139396, August 15, 2000, 338 SCRA 62.

[24] *Rollo* (G.R. No. 153690), pp. 69-78.

[25] *Id.* at 80-86.

with the requirements laid down in Sections 4(2) and 6(7), Rule 2 of the Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act (R.A.) No. 8799.[26] The case was re-docketed as SRC Case No. 021-CEB.

On October 8, 2002, the Lu Ym father and sons filed in SRC Case No. 021-CEB a Manifestation and Motion praying for the immediate lifting of the receivership order over LLDC which was immediately set for hearing.[27] However, the hearing did not proceed as scheduled due to the repeated motions of David to stop it. It turned out later that David instituted a special civil action for *Certiorari* and Prohibition with the CA, with Urgent Application for Temporary Restraining Order (TRO) and Writ of Preliminary Injunction, on the sole issue of whether or not the RTC should proceed to hear the Lu Ym father and sons' motion to lift the receivership. The case was docketed as **CA-G.R. SP No. 73383**.[28]

On December 4, 2002, the CA issued a Resolution temporarily restraining the RTC from conducting any proceeding in SRC Case No. 021-CEB.[29] On February 27, 2003, the appellate court finally resolved to grant the petition and ordered the RTC to desist from conducting any proceeding relating to the receivership over LLDC.[30] The court concluded that the proceedings on receivership could not proceed without the parties complying first with the earlier court order which required the parties to amend their pleadings. The court ratiocinated that it could not rule on the propriety of the appointment of a receiver because it would have to base its decision on the pleadings that were yet to be amended. Besides, the pendency of **G.R. No. 153690** before this Court necessitated the deferment of any action on the lifting of receivership.

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[26] *Rollo* (G.R. No. 157381), p. 316.

[27] *Id.* at 24.

[28] *Id.* at 26.

[29] *Id.* at 317.

[30] Penned by Associate Justice Eubolo G. Verzola, with Associate Justices Sergio L. Pestaño and Amelita G. Tolentino, concurring; *id.* at 313-319.

Aggrieved, the Lu Ym father and sons instituted the instant petition in **G.R. No. 157381**.

Meanwhile, Judge Dicdican inhibited himself, and the case was thus transferred from Branch 11 to Branch 12.

On March 31, 2003, David filed a Motion to Admit Complaint to Conform to the Interim Rules Governing Intra-Corporate Controversies, which the court admitted on July 18, 2003. [31]

On January 23, 2004, the Lu Ym father and sons inquired from the Clerk of Court on the amount of docket fees paid by David, *et al*. John Lu Ym further inquired from the Office of the Court Administrator (OCA) as to the correctness of the amount paid by David, *et al*. After a series of letters sent to the OCA, the latter informed John that the matter of docket fees should be brought to the attention of the regular courts and not to the OCA which was not in the position to give an opinion.[32]

On March 1, 2004, the RTC rendered a decision[33] on the merits of the case, annulling the issuance of LLDC's 600,000 shares of stocks thereby divesting the Lu Ym father and sons of their shares and canceling their certificates of stocks. The court further ordered the dissolution of LLDC and the liquidation of its assets. Consequently, a management committee was created to take over LLDC, and the corporation's officers were stripped of their powers as such.[34] The court further declared that the decision was "immediately executory." Aggrieved, the Lu Ym father and sons seasonably filed a Notice of Appeal. The case was docketed as **CA-G.R. CV No. 81163**.

In view of the court's declaration of the executory nature of the assailed decision, the Lu Ym father and sons applied for a

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[31] *Rollo* (G.R. No. 170889), p. 16.

[32] *Id.* at 22-23.

[33] *Id.* at 106-121.

[34] *Id.* at 119-121.

Writ of Preliminary Injunction and/or Temporary Restraining Order (TRO),[35] which was opposed[36] by David.

On January 28, 2004, the appellate court issued a TRO valid for a period of sixty (60) days.[37] However, in a Resolution[38] dated September 6, 2004, the court denied the application for a writ of preliminary injunction. Since the original records had been transmitted to the appellate court, the RTC was divested of jurisdiction to resolve pending incidents therein. Thus, it ordered that all motions be filed with the CA.

In their motion for reconsideration,[39] the Lu Ym father and sons assailed the denial of their application for preliminary injunction and, in addition thereto, they questioned the sufficiency of the docket fees paid by David, *et al*. in the RTC where the original complaint was filed.

On December 8, 2005, the appellate court did not reconsider its earlier resolution. As to the sufficiency of the docket fees, it ruled that the matter be raised in their appellants' brief and that the issue be threshed out in the appeal on the merits.[40] Hence, this special civil action for *certiorari* and prohibition in **G.R. No. 170889.**

The Issues

G.R. No. 153690

David Lu raises the following issues for resolution.

[a] WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN DISREGARDING THE NUMEROUS FATAL DEFECTS AND RULES OF COURT AND IRCA VIOLATIONS OF

[35] *Id.* at 193-214.

[36] *Id.* at 215-221.

[37] *Id.* at 72.

[38] Penned by Associate Justice Arsenio J. Magpale, with Associate Justices Vicente L. Yap and Ramon M. Bato, Jr., concurring; *id.* at 72-73.

[39] *Rollo*, pp. 288-320.

[40] *Id.* at 76-78.

RESPONDENTS' APRIL 30, 2001 PETITION, MOTION AND SUPPLEMENT.

[b] WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN DISMISSING THE RTC CASE IN ITS ENTIRETY AND IN REFUSING TO PERMIT IT TO PROCEED AS TO PETITIONER DESPITE [I] PETITIONER'S EXECUTION OF A CERTIFICATION AGAINST FORUM SHOPPING FOR THE COMPLAINT AND [II] THE FACT [THAT] THE RTC CASE INVOLVES ONLY A PERMISSIVE JOINDER OF PARTIES.[41]

On August 19, 2003, the Lu Ym father and sons filed an Urgent Motion with Prayer for a TRO and/or Writ of Preliminary Injunction[42] before this Court questioning the RTC's admission of David Lu's amended complaint. They sought to enjoin said admission as it would render moot and academic the cases pending before this Court.

G.R. No. 157381

The Lu Ym father and sons base their petition on the following alleged errors:

I.

THE JUDGMENT OF THE COURT OF APPEALS IS NULL AND VOID ON ITS FACE FOR LACK OF JURISDICTION IN ENJOINING THE TRIAL COURT BECAUSE THE DISMISSAL OF THE CASE BELOW IS ALREADY PENDING APPEAL WITH THIS HONORABLE COURT AND IT IS, THEREFORE, THIS HONORABLE COURT THAT HAS EXCLUSIVE JURISDICTION OVER THE REMEDIES OF *CERTIORARI*, PROHIBITION AND INJUNCTION GRANTED BY THE COURT OF APPEALS.

II.

THE PETITION FOR *CERTIORARI* AND PROHIBITION WAS WRONGFULLY GRANTED BY THE COURT OF APPEALS BECAUSE ITS DECISION DID NOT CONTAIN THE BASIC FINDING THAT THE TRIAL COURT COMMITTED A GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS

[41] *Rollo* (G.R. No. 153690), p. 623.

[42] *Id.* at 646-664.

OF JURISDICTION, NOR DID IT EVEN DEFINE IT AS AN ISSUE IN THE CASE, NOR WAS THERE ANY GRAVE ABUSE OF DISCRETION.

III.

EVEN ASSUMING *IN GRATIA ARGUMENTI* THAT THE COURT OF APPEALS HAD JURISDICTION OVER THE CASE, IT HAD ABSOLUTELY NO LEGAL BASIS IN ENJOINING THE TRIAL COURT FROM ACTING ON THE URGENT MOTION OF THE PETITIONERS TO LIFT THE HIGHLY OPPRESSIVE ORDER OF RECEIVERSHIP.[43]

On June 7, 2006, David filed a Manifestation[44] that the cases pending before this Court are moot and academic — G.R. No. 153690 for the admission of the amended complaint which superseded the original complaint; and G.R. No. 157381 for the RTC's act of resolving the case on the merits.[45] For their part, the Lu Ym father and sons agree on the mootness of G.R. No. 153690, but not G.R. No. 157381. This is without prejudice to the resolution of the issue they raised on the propriety of the admission of the amended complaint.[46]

G.R. No. 170889

In coming before this Court in this special civil action for *certiorari* and prohibition, John Lu Ym and LLDC raise the following issues:

I.

WHETHER OR NOT THE RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN DENYING PETITIONERS' MOTION FOR RECONSIDERATION DESPITE THE FACT THAT THE TRIAL COURT DID NOT ACQUIRE JURISDICTION OVER THE SUBJECT MATTER OF THE CASE FOR FAILURE OF THE RESPONDENTS TO PAY

[43] *Rollo* (G.R. No. 157381), pp. 17-52.

[44] *Id.* at 645-649.

[45] *Id.* at 649.

[46] *Id.* at 654-658.

THE CORRECT DOCKET FEES WHEN THE ORIGINAL COMPLAINT WAS FILED.

II.

WHETHER OR NOT THE RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN NOT DISMISSING SRC CASE NO. 021-CEB DESPITE CLEAR SHOWING THAT RESPONDENTS WERE GUILTY OF BAD FAITH IN AVOIDING PAYMENT OF THE CORRECT DOCKET FEES.[47]

On January 23, 2006, we issued a *Status Quo* Order specifically enjoining the implementation of the CA resolutions denying the application for a writ of preliminary injunction. [48]

Stripped of the non-essentials and combining all the arguments set forth in the consolidated petitions, the issues for our resolution are as follows:

I. Whether the original complaint filed before the RTC should have been dismissed for:

   A. non-compliance with the rules on certificate of non-forum shopping; and

   B. non-payment of the correct docket fees

II. Whether the receivership proceedings were validly suspended pending the amendment of the initial complaint in compliance with the Interim Rules of Procedure for Intra-Corporate Controversies

III. Whether a writ of preliminary injunction should have been issued pending the resolution of the appeal on the merits filed before the Court of Appeals.

The Ruling of This Court

In G.R. No. 153690, David claims that the Lu Ym father and sons' petition (in CA-G.R. SP No. 64523) before the CA should not have been entertained because of the following fatal

[47] *Rollo* (G.R. No. 170889), pp. 483-484.

[48] *Id.* at 141-142.

defects: 1) the petition questioning the approval of the receivership was prematurely filed because of the pendency of their motion for reconsideration before the RTC; 2) their motion and supplement were filed without asking leave of court to do so; 3) considering that the motion and supplement contained new allegations, there was a failure to attach a new certificate of non-forum shopping; and 4) the motion and supplement were filed out of time.[49]

At the outset, we find the procedural issues raised by David to be of no moment. Basic is the rule that a motion for the reconsideration of an assailed order may be filed by an aggrieved party within the reglementary period. No motion for leave to file such motion is required under the Rules or in any other circular of the Supreme Court. As long as the same is filed within fifteen (15) days from receipt of the assailed order, there is no reason for the courts not to entertain it. In fact, in some exceptional cases as when substantial justice so requires, a motion belatedly filed may still be taken cognizance of. As to the supplemental petition filed without leave of court, suffice it to state that the CA entertained the same, required David to comment thereon, and decided the case on the basis thereof. Such actions of the appellate court adequately show that the supplemental petition was admitted. Lastly, as to the lack of certificate of non-forum shopping in the motion for reconsideration and supplement to the petition, we need only reiterate that the certificate is required only in cases of initiatory pleadings.[50]

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[49] *Rollo* (G.R. No. 153690), pp. 613-637.

[50] Section 5, Rule 7 of the Rules of Court provides:

SEC. 5. *Certification against forum shopping.*— The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Now on the substantial issues.

In G.R. No. 153690, the assailed CA decision dismissed David, *et al.*'s original complaint for their failure to sign the verification and certification of non-forum shopping. Subsequent to the aforesaid decision, however, the RTC ordered David, *et al*. to amend the complaint to conform to the interim rules of procedure for intra-corporate controversy. In compliance with the order, David, *et al*. amended the complaint and filed the same with leave of court. The RTC, thereafter, admitted the amended complaint, proceeded to hear the case, and decided the same on the merits.

While it is true that the Lu Ym father and sons questioned the admission of the aforesaid amended complaint before this Court, the same was done only through an Urgent Motion.[51] Under the Rules of Court, the proper mode to challenge such an order, which undoubtedly is interlocutory, is through a special civil action for *certiorari* under Rule 65. This procedural defect, therefore, bars the Court from ruling on the propriety of such admission. We cannot take cognizance of proceedings before the RTC unless they are brought before us through the proper mode of review. To be sure, the Urgent Motion cannot be a substitute for the remedy of a special civil action for *certiorari*.[52] Consequently, the amended complaint admitted by the RTC stands.

With the issue of admission of the amended complaint resolved, the question of whether or not the original complaint should have been dismissed was mooted. Section 8, Rule 10 of the

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Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

[51] *Rollo* (G.R. No. 153690), pp. 646-664.

[52] See *Air Materiel Wing Savings and Loan Association, Inc., et al. v. Manay, et al.*, G.R. No. 175338, April 29, 2008.

Rules of Court specifically provides that ***an amended pleading supersedes the pleading that it amends***. In this case, the original complaint was deemed withdrawn from the records upon the admission of the amended complaint.[53] This conclusion becomes even more pronounced in that the RTC already rendered a decision on the merits of the said amended complaint, not to mention the Lu Ym father and sons' concurrence in the mootness of the issue in the instant petition.[54]

It is settled that courts do not entertain a moot question. An issue becomes moot and academic when it ceases to present a justiciable controversy, so that a declaration on the issue would be of no practical use or value.[55] This Court, therefore, abstains from expressing its opinion in a case where no legal relief is needed or called for.[56]

In G.R. No. 157381, the Lu Ym father and sons insist that the CA had no jurisdiction to issue the writ of preliminary injunction, more so, to make the same permanent, in view of the pendency of G.R. No. 153690. They argue that the application for a writ should have been filed before this Court and not through a separate special civil action before the CA. They further assert that the CA should not have issued a writ as there was no finding of grave abuse of discretion, to begin with. Lastly, they argue that the order of the trial court requiring the parties to amend their pleadings did not bar the RTC from acting on the provisional remedy of receivership. Since this Court did not issue a restraining order, the receivership proceedings could still proceed.[57]

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[53] *Figuracion v. Libi*, G.R. No. 155688, November 28, 2007, citing *The Philippine American Life & General Insurance Company v. Breva*, 442 SCRA 217, 223 (2004); *Negros Merchants Enterprises, Inc. v. China Banking Corporation*, G.R. No. 150918, August 17, 2007, 530 SCRA 478, 487.

[54] *Rollo* (G.R. No. 157381), pp. 654-657.

[55] *Pulido v. Abu*, G.R. No. 170924, July 4, 2007, 526 SCRA 483, 496; *Garayblas v. Atienza, Jr.*, G.R. No. 149493, June 22, 2006, 492 SCRA 202, 216.

[56] *Pulido v. Abu, id.* at 496.

[57] *Rollo* (G.R. No. 157381), pp. 17-52.

It is noteworthy at this point to reiterate the factual circumstances surrounding the instant petition. G.R. No. 157381 has its origin in the Lu Ym father and sons' motion to lift the receivership over LLDC. David, for his part, went up to the CA and asked that the RTC be enjoined from hearing said motion pending resolution of his petition before this Court in G.R. No. 153690 and the amendment of his complaint as ordered by the RTC. David's petition was granted by the appellate court in the assailed decision. It ratiocinated that any matter, principal or collateral, should be held in abeyance pending the amendment of the original complaint. Besides, said the appellate court, the dismissal of the original complaint on which the Lu Ym father and sons based their motion to lift receivership was still the subject of an appeal before this Court.

Again, the propriety of such injunction is mooted by the amendment of the complaint, and the RTC decision in the case on the merits thereof. The appellate court ordered that the hearing on the motion to lift the receivership be held in abeyance primarily because the original complaint was yet to be amended. Upon the amendment of the complaint and the admission thereof by the RTC, the reason for such injunction ceased to exist. Thus, the CA could resolve, as it in fact resolved, the question of whether or not the receivership should be lifted.

The RTC decision on the merits of the case gives this Court more reasons to declare the mootness of the instant petition. It must be recalled that the motion to lift the receivership was filed before the RTC ancillary to the principal action, and what was sought to be enjoined was the hearing on that particular motion. With the decision on the merits rendered by the RTC, *albeit* still on appeal, there is nothing more to be enjoined. More importantly, the RTC ordered that the receivers cease from performing their functions and that a management committee be created.[58] Clearly, these supervening events mooted the petition. Time and again, we have declared that a petition should be

[58] *Rollo* (G.R. No. 170889), pp. 119-120.

denied for the sole reason that the act sought to be enjoined is already *fait accompli*.[59]

To reiterate, the trial court's decision on the merits rendered the issue on the propriety of the injunction moot and academic, notwithstanding the fact that said decision has been appealed to the Court of Appeals.[60] Courts are called upon to resolve actual cases and controversies, not to render advisory opinions.[61]

It is true that we have held in a number of cases that the moot and academic principle is not a magical formula that can automatically dissuade the courts from resolving a case. Courts will still decide cases otherwise, moot and academic if: first, there is a grave violation of the Constitution; second, the exceptional character of the situation and the paramount public interest is involved; third, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and, fourth, the case is capable of repetition yet evading review.[62] However, not one of the enumerated exceptions obtains in the instant case. Thus, a denial of the instant petition is warranted.

In G.R. No. 170889, John Lu Ym and LLDC explain that while it may be possible to raise the issue of docket fees in their appellants' brief as suggested by the CA, it would already be too late because the issue would be rendered moot and academic by the dissolution of the corporation. They further question the propriety of the creation of the management committee, arguing that there was non-observance of substantive and procedural rules. As to the issue of estoppel, they claim that they first raised the issue of docket fees only in their motion for reconsideration before the CA because they had yet to await

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[59] *Caneland Sugar Corporation v. Alon*, G.R. No. 142896, September 12, 2007, 533 SCRA 28, 32.

[60] See *Kho v. Court of Appeals*, G.R. No. 115758, March 19, 2002; See also *La Vista Association, Inc. v. Court of Appeals*, 278 SCRA 498 (2002).

[61] *Ticzon v. Videopost, Manila*, 389 Phil. 20,30 (2000).

[62] *Manalo v. Calderon*, G.R. No. 178920, October 15, 2007, 536 SCRA 290, 303.

the OCA's response to their inquiry on the correct docket fees. Lastly, they argue that David, *et al*. are now precluded from paying the correct docket fees by the lapse of the prescriptive period. Neither can a lien be created on the judgment in lieu of dismissal.[63]

In short, John and LLDC seek the dismissal of the initial complaint on the ground of lack of jurisdiction occasioned by the insufficient payment of docket fees.

A court acquires jurisdiction over a case only upon the payment of the prescribed fees. The importance of filing fees cannot be gainsaid for these are intended to take care of court expenses in the handling of cases in terms of costs of supplies, use of equipment, salaries and fringe benefits of personnel, and others, computed as to man-hours used in the handling of each case. Hence, the non-payment or insufficient payment of docket fees can entail tremendous losses to the government in general and to the judiciary in particular.[64]

In the instant case, however, we cannot grant the dismissal prayed for because of the following reasons: *First*, the case instituted before the RTC is one incapable of pecuniary estimation. Hence, the correct docket fees were paid. *Second*, John and LLDC are estopped from questioning the jurisdiction of the trial court because of their active participation in the proceedings below, and because the issue of payment of insufficient docket fees had been belatedly raised before the Court of Appeals, *i.e.*, only in their motion for reconsideration. *Lastly*, assuming that the docket fees paid were truly inadequate, the mistake was committed by the Clerk of Court who assessed the same and not imputable to David; and as to the deficiency, if any, the same may instead be considered a lien on the judgment that may thereafter be rendered.

The Court had, in the past, laid down the test in determining whether the subject matter of an action is incapable of pecuniary

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[63] *Rollo* (G.R. No. 170889), pp. 464-559.

[64] *Far East Bank and Trust Company v. Shemberg Marketing Corporation*, G.R. No. 163878, December 12, 2006, 510 SCRA 685, 700.

estimation by ascertaining the nature of the principal action or remedy sought. If the action is primarily for recovery of a sum of money, the claim is considered capable of pecuniary estimation. However, where the basic issue is something other than the right to recover a sum of money, the money claim being only incidental to or merely a consequence of, the principal relief sought, the action is incapable of pecuniary estimation.[65]

In the current controversy, the main purpose of the complaint filed before the RTC was the annulment of the issuance of the 600,000 LLDC shares of stocks because they had been allegedly issued for less than their par value. Thus, David sought the dissolution of the corporation and the appointment of receivers/ management committee.[66] To be sure, the annulment of the shares, the dissolution of the corporation and the appointment

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[65] *Far East Bank and Trust Company v. Shemberg Marketing Corporation, id.* at 700, citing *Singson v. Isabela Sawmill*, 88 SCRA 623 (1970); *Russell v. Hon. Vestil*, 364 Phil. 392, 400 (1999).

[66] In their original complaint, David, *et al*. specifically prayed:

WHEREFORE, based on the foregoing premises, it is respectfully prayed that this Honorable Court rule in favor of the Plaintiffs, as follows:

1. Declare null and void the issuance of 600,000 unsubscribed and unissued shares to Defendants Lu Ym father and sons and their spouses, children and holding companies, for a price of only one-eighteenth of their real value, as having been done in breach of directors' fiduciary duty to stockholders, in violation of Plaintiffs' minority stockholders' rights, and in unjust enrichment of the Defendants, majority/controlling stockholders/directors, at the expense of their cousins, the other stockholders.
2. Order the dissolution of Defendant Ludo and LuYm Development Corporation, in order to protect the rights and redress the injuries of Plaintiffs;
3. During the pendency of the instant case, order the appointment of a receiver *pendente lite* for LuDo and LuYm Development Corporation.

Such other reliefs as may be just and equitable on the premises are likewise prayed for, *rollo*, G.R. No. 170889, pp. 84-85.

In his amended complaint, David specifically prayed:

WHEREFORE, based on the foregoing premises, it is respectfully prayed that this Honorable Court rule in favor of the Plaintiffs, as follows:

of receivers/management committee are actions which do not consist in the recovery of a sum of money. If, in the end, a sum of money or real property would be recovered, it would simply be the consequence of such principal action. Therefore, the case before the RTC was ***incapable of pecuniary estimation***. Accordingly, John's and LLDC's contention cannot be sustained. And since David paid the docket fees for an action the subject of which was incapable of pecuniary estimation, as computed by the Clerk of Court, the trial court validly acquired jurisdiction over the case.

Even assuming that the subject in the instant case is capable of pecuniary estimation, still, the case should not be dismissed because the insufficiency of the fees actually paid was belatedly raised; David relied on the assessment made by the Clerk of Court; and if there is a deficiency, it may instead be considered a lien on the judgment that may hereafter be rendered.

We note that the Lu Ym father and sons belatedly raised the issue of insufficient payment of docket fees in their motion for reconsideration before the CA. A perusal of the records reveals that the Lu Ym father and sons filed several pleadings before the RTC, specifically, a Motion to Dismiss and Motion to Lift the Appointment of a Receiver, among others. They, likewise, filed several pleadings before the Court of Appeals and before

1. Declare null and void the issuance of 600.000 unsubscribed and unissued shares of the defendant corporation to Defendants Lu Ym father and sons and their spouses, children, and holding companies, for a price of one-eighteenth of their real value, for being inequitable, having been done in breach of director's fiduciary duty to stockholders, in violation of Plaintiffs' minority stockholders' rights, and in unjust enrichment of the Defendants, majority controlling stockholders/ directors, at the expense of their cousins, the other stockholders.
2. Order the dissolution of Defendant Ludo and Luym Development Corporation, in order to protect the rights and redress the injuries of Plaintiffs;
3. Order the creation of a management committee *pendente lite*, and order receiver Luis Cañete to turn over all assets and records to the management committee.

Such other relief as may be just and equitable on the premises are likewise prayed for. [*Rollo* (G.R. No. 153690), pp. 689-690.]

this Court either as initiatory pleadings or in opposition to those filed by the adverse party. Considering their prompt action and reaction to ensure that their rights are protected, their belated objection to the payment of docket fees is, therefore, inexcusable. Well-established is the rule that after vigorously participating in all stages of the case before the trial court and even invoking the trial court's authority in order to ask for affirmative relief, John and LLDC are barred by estoppel from challenging the trial court's jurisdiction.[67] If a party invokes the jurisdiction of a court, he cannot thereafter challenge the court's jurisdiction in the same case. To rule otherwise would amount to speculating on the fortune of litigation, which is against the policy of the Court.[68] Thus, even if, indeed, the docket fees paid were inadequate, this allegation having been raised for the first time on appeal, should be disallowed. [69]

While it is true that this Court had previously dismissed complaints for non-payment of docket fees, as in the early case of *Manchester Development Corporation v. Court of Appeals*,[70] these cases uniformly involved bad faith on the part of the plaintiff, such that the correct amount of damages claimed was not specifically stated. The Court, in such cases, concluded that there was bad faith on the part of the complainant and a clear intent to avoid payment of the required docket fee, thus, the dismissal of the cases was warranted.

It may be recalled that despite the payment of insufficient fees, this Court refrained from dismissing the complaint/petition in *Intercontinental Broadcasting Corporation (IBC-13) v. Alonzo-Legasto*,[71] *Yambao v. Court of Appeals*[72] and *Ayala Land, Inc.*

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[67] *Heirs of Bertuldo Hinog v. Melicor*, G.R. No. 140954, April 12, 2005, 455 SCRA 460, 473; *Pantranco North Express, Inc. v. Court of Appeals*, G.R. No. 105180, July 5, 1993, 224 SCRA 477, 491.

[68] *Heirs of Bertuldo Hinog v. Melicor*, *id.* at 473.

[69] *Idolor v. Court of Appeals*, G.R. No. 161028, January 31, 2005, 450 SCRA 396, 404.

[70] No. 75919, May 7, 1987, 149 SCRA 562.

[71] G.R. No. 169108, April 18, 2006, 487 SCRA 339.

[72] G.R. No. 140894, November 27, 2000, 346 SCRA 141.

v. Carpo.[73] In those cases, the inadequate payment was caused by the erroneous assessment made by the Clerk of Court. In *Intercontinental*,[74] we declared that the payment of the docket fees, as assessed, negates any imputation of bad faith to the respondent or any intent of the latter to defraud the government. Thus, when insufficient filing fees were initially paid by the respondent, and there was no intention to defraud the government, the *Manchester* rule does not apply. In *Yambao*,[75] this Court concluded that petitioners cannot be faulted for their failure to pay the required docket fees for, given the prevailing circumstances, such failure was clearly not a dilatory tactic or intended to circumvent the Rules of Court. In *Ayala Land*,[76] the Court held that despite the jurisdictional nature of the rule on payment of docket fees, the appellate court still has the discretion to relax the rule in meritorious cases.

In the instant case, David paid the docket fees as assessed by the Clerk of Court. Even if the amount was insufficient, as claimed by John and LLDC, fraud and bad faith cannot be attributed to David to warrant the dismissal of his complaint. Consistent with the principle of liberality in the interpretation of the Rules, in the interest of substantial justice, this Court had repeatedly refrained from dismissing the case on that ground alone. Instead, it considered the deficiency in the payment of the docket fees as a lien on the judgment which must be remitted to the Clerk of Court of the court *a quo* upon the execution of the judgment.[77]

Lastly, we now resolve the issue of whether or not the CA abused its discretion in denying the Lu Ym father and sons' application for a writ of preliminary injunction. Section 3, Rule 58

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[73] G.R. No. 140162, November 22, 2000, 345 SCRA 579.

[74] *Supra* note 71, at 350.

[75] *Supra* note 72, at 148.

[76] *Supra* note 73, at 585.

[77] *Moskowsky v. Court of Appeals*, 366 Phil. 189, 196 (1999); *Pantranco North Express, Inc. v. Court of Appeals*, G.R. No. 105180, July 5, 1993, 224 SCRA 477, 491.

of the Rules of Court sets forth the requisites for the issuance of a writ of preliminary injunction, thus:

> (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;
>
> (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
>
> (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

In the instant case, John and LLDC failed to satisfy the above requisites. Except for their claim of nullity of the RTC decision because of insufficient payment of docket fees, no evidence was offered to establish the existence of a clear and unmistakable right on their part that must be protected, as well as the serious damage or irreparable loss that they would suffer if the writ is not granted.

It has been consistently held that there is no power, the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion, or more dangerous in a doubtful case than the issuance of an injunction. It is the strong arm of equity that should never be extended unless to cases of great injury, where courts of law cannot afford an adequate or commensurate remedy in damages. Every court should remember that an injunction is a limitation upon the freedom of action of the defendant and should not be granted lightly or precipitately. It should be granted only when the court is fully satisfied that the law permits it and the emergency demands it.[78]

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[78] *Yujuico v. Quiambao*, G.R. No. 168639, January 29, 2007, 513 SCRA 243, 263; *MIAA v. Court of Appeals*, 445 Phil. 369, 382 (2003), citing *Garcia v. Burgos*, 291 SCRA 546 (1998).

Clearly then, no grave abuse of discretion can be attributed to the Court of Appeals in denying the Lu Ym father and sons' application for a writ of preliminary injunction.

One final note. We observe that these consolidated cases involve interlocutory orders of the RTC. The delay in the disposition of the main case, which is now pending appeal before the CA, was occasioned by the actions of all the contending parties in seeking affirmative relief before the Court of Appeals and before this Court. Our disposition of these three petitions should now pave the way for the final resolution of the corporate dispute which started as early as 2000.

In view of the above disquisitions, we deem it proper to lift the *status quo* order which this Court issued on January 23, 2006. The CA is directed to proceed to rule on the appeal with dispatch.

WHEREFORE, premises considered, the petitions in G.R. Nos. 153690 and 157381 are *DENIED* for being moot and academic; while the petition in G.R. No. 170889 is *DISMISSED* for lack of merit. Consequently, the *Status Quo* Order dated January 23, 2006 is hereby *LIFTED*.

The Court of Appeals is *DIRECTED* to proceed with CA-G.R. CV No. 81163 and to resolve the same with dispatch.

SO ORDERED.

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

[*] Additional member replacing Associate Justice Alicia Austria-Martinez per raffle dated July 30, 2008.

FIRST DIVISION

[G.R. No. 155553. August 26, 2008]

NIMFA MITRE REYES, BEATRIZ FELICIANO, DOLORES "Baby" ALVAREZ, BABY JAVIER, FERNANDO FRIAS, REMEDIOS MAYMIERO, ROMULO MARCA, SALVADOR NEBRES, VIVIAN SAZON and ERLINDA CORONADO, *petitioners, vs.* **HEIRS OF EUDOSIA D. DAEZ, as represented by CECILIA D. DAEZ,**[1] **Attorney-in-Fact,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; COURT OF APPEALS NOT SUFFICIENTLY SHOWN TO HAVE COMMITTED ANY REVERSIBLE ERROR TO WARRANT THE EXERCISE OF THE COURT'S DISCRETIONARY APPELLATE JURISDICTION.— Considering the allegations, issues and arguments adduced, this Court resolves to deny this petition for failure of petitioners to sufficiently show that the Court of Appeals committed any reversible error in the assailed decision and resolution as to warrant the exercise of this Court's discretionary appellate jurisdiction. Moreover, a careful consideration of this petition indicates the failure of petitioners to show any cogent reason why the actions of the three (3) courts which have passed upon the same issues should be reversed. They failed to show that the courts' factual findings are not based on substantial evidence or that their decisions are contrary to applicable law and jurisprudence.

APPEARANCES OF COUNSEL

Antonio C. Ravelo for petitioners.

Ernesto G. Del Rosario for respondents.

[1] Included in this case are Concordia D. Daez, Lope D. Daez, Jr., Petronilo D. Daez (in his behalf and as attorney-in-fact of Cresenciana D. Jurey), Adriano D. Daez, Leonora D. Mendoza, Gertrudes D. Evangelista, and Mariano D. Daez.

D E C I S I O N

AZCUNA, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court challenges the July 23, 2002 Decision[2] as well as the September 27, 2002 Resolution[3] of the Court of Appeals sustaining the September 28, 2001 Decision[4] of the Regional Trial Court (RTC), Branch 122, Caloocan City, which affirmed *in toto* the September 30, 1999 Decision[5] of the Metropolitan Trial Court (MeTC), Branch 49, Caloocan City, in Civil Case No. 23664 for Ejectment, ordering petitioners to vacate the leased premises.

On September 23, 1997, Cecilia D. Daez filed an Ejectment case against Nimfa Mitre Reyes, Pamela Tabon, Allen Pascual, Erlinda Coronado, Beatriz Feliciano, Dolores Alvarez, Virginia Ocampo, Federico Mateo, Fernando Frias, Baby Javier, Romulo Marca, Remedios Maymiero, Flor Masmela, Vivian Sazon, and Salvador Nebres. The complaint alleged that:

xxx xxx xxx

3. Plaintiffs are the heirs of the deceased EUDOSIA D. DAEZ. Part of the estate left by said deceased is a certain property consisting of a lot and apartment units situated at 654 McArthur Highway, Bonifacio, Caloocan City[,] and covered by TCT No. 21852 still in the name of deceased EUDOSIA D. DAEZ. Copy of TCT No. 21852 is hereto attached as Annex "B";

4. Defendants are the tenants and actual occupants of the aforesaid apartment units on a verbal lease agreement on a [month-to-month] basis. The apartment units consisting of two (2) buildings were erected way back in [1950s];

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[2] Penned by Associate Justice Eliezer R. De los Santos, with Associate Justices Cancio C. Garcia (now retired Supreme Court Justice) and Marina L. Buzon, concurring; CA *rollo*, pp. 249-253.

[3] *Id.* at 276.

[4] Penned by Judge Remigio E. Zari; *records*, pp. 193-197.

[5] Penned by Judge Belen B. Ortiz; *id.* at 139-144.

5. Sometime in 1996, plaintiffs observed that the buildings are already getting old and dilapidated. Thinking of the safety of its tenants/occupants, plaintiffs requested the City Engineer's Office to inspect the building. After inspection, the City Engineer's Building Inspector rendered a report recommending the immediate restructuring or general repair of the building to avoid accident and hazard to lives and properties of the tenants. Copy of the report dated December 12, 1996 is hereto attached as Annex "C";

6. [On] January 21, 1997[,] plaintiffs through DAN DAEZ received a letter from the City Engineer's Office requiring plaintiffs to comply with the recommendation of the Building Inspector by restructuring the buildings;

7. Pursuant to said letter dated January 21, 1997 sent to plaintiffs by the City Engineer, plaintiffs sent formal notice to vacate upon defendants terminating the verbal lease contract on a [month-to-month] basis for the purpose of effecting the necessary restructuring of the buildings;

8. Defendants despite receipt of the letter failed [and] refused to vacate thereby endangering not only their lives and properties but that of the public as well. [Copies] of the individual letters are hereto attached as Annexes "D" to "R";

9. Under Sec. 5(e) of the B.P. 877[,] otherwise known as [the] Rent Control Law, need of the lessor to make the necessary repairs of the leased premises which is the subject of an existing order of condemnation by proper authorities concerned to make said premises safe and habitable is a ground for ejectment, hence this case;

10. Defendants should be held liable for [plaintiffs'] litigation expenses and costs in the amount [not] less than ₱20,000;

11. This dispute is exempted from the barangay conciliatory proceedings as the parties are residents of different cities.[6]

Except for Virginia Ocampo, all defendants filed their jointly executed Answer with Counterclaims, averring that:

xxx xxx xxx

10. Defendants are bonafide tenants/lessees of [the] [Daez] apartment located at 654 McArthur Highway, Bonifacio, Caloocan

[6] *Id.* at 3-4.

City for the past many years, as follows: Nimfa Mitre Reyes, 29 yrs[.]; Pamela Tabon, 32 yrs[.]; Allen Pascual, 35 yrs[.]; Linda Coronado, 24 yrs[.]; Betty Feliciano, 31 yrs[.]; Baby Alvarez, 25 yrs[.]; Virginia Ocampo, 10 yrs[.]; Federico Mateo, 20 yrs[.]; Fernando Frias, 19 yrs[.]; Baby Javier, 21 yrs[.]; Romulo Marca, 28 yrs[.]; Remedios [Maymiero], 22 yrs[.]; Flor Masmela, 22 yrs[.]; Vivian [Sazon], 20 yrs[.]; and Salvador Nebres, 27 yrs[.];

11. The lease agreement of defendants is with the lessors, Sps. Lope [Daez] and Eudosia Diaz Daez and were and still are originally covered by the Rent Control Law, BP 877 and its extending laws, Republic Act 7644, hence within [their] mantle and ambit of [their] coverage;

12. That during all the years that herein defendants had occupied their respective apartments at the agreed monthly rentals, and as subsequently provided under the Rent Control Law, defendants had religiously paid their monthly rentals and had not violated any of the terms and conditions of their lease agreement with the said Sps. Lope [Daez] and Eudosia Diaz Daez;

13. That during all the years that herein defendants had occupied their respective apartments, the [lessors-owners] thereof, had refused and failed to adequately maintain the two building apartments, so that for the past many years, defendants had maintained the same, spending for themselves the necessary repairs of the said apartments to maintain the same to be a safe and sound dwelling place, as evidenced by the pictures hereto attached x x x;

14. That contrary to the allegations of the plaintiff that the building apartments subject of this case are dilapidated and no longer safe as dwelling houses, Annexes ["1" to "33"] will readily show that the said apartments are in good, sound, and safe conditions in view of the fact that[,] as already alleged herein[,] defendants had taken [care] of the proper repairs and maintenance of their respective apartments and readily contributed to the general repairs and maintenance of the two (2) building apartments except those which were recently damaged by the typhoon which is the responsibility of the [lessors-owners] thereof;

15. That the alleged findings of the City Engineer of Caloocan City x x x in fact will readily show that the alleged [damage/s] to the apartments are superficial and mere ordinary wear and tear[;] and that while it recommended re-structuring, it did not specify, much

less gave any plans and specifications [on] what is meant by re-structuring of the building[,] so that the report of the said City Engineer and/or Inspecting Engineer is merely to undertake general repairs of the exterior portions of the apartments in question;

16. That whatever exterior repairs which might be undertaken by the [lessors-owners] thereof could be accomplished without ejecting herein defendants except if plaintiff in this case has other motive in filing this instant case other than [what is] alleged in the complaint[;] hence[,] Sec. 5(e) of BP 877 will not necessarily apply and/or be operative as against the defendants;

17. That the claim of plaintiff for all the defendants to pay monthly rentals of ₱2,000.00 from the day defendants should vacate per notice sent by plaintiff is without just and valid basis both as to facts and law considering that [defendants'] lease agreement with the [lessors-owners], SPS. LOPE AND [EUDOSIA] DAEZ are within the coverage of the Rent Control Law;

18. That TCT No. [21852] x x x show that the land and the two (2) apartment buildings occupied by the defendants [are] still registered in the name of [EUDOSIA] DIAZ DAEZ, married to LOPE DAEZ[,] and[,] therefore[,] the plaintiff, more particularly CECILIA D. DAEZ had no right much less any legal personality to file this instant case, being that the mere allegations that the [complainants] are the heirs of [EUDOSIA] D. DAEZ represented by CECILIA D. DAEZ [as] Attorney-in-Fact is insufficient to clothe CECILIA D. DAEZ that power to file this instant case[,] exercising power of dominion over the said real property covered by TCT No. [21852];

19. That plaintiff has no cause of action as against herein defendants and that there was failure on the part of the plaintiff to comply with the provisions of PD 1508[,] as amended by the provisions of [the] Local Government Code with reference to the [arbitration] powers and functions of the Katarungang Pambarangay where the real property in question is located;[7]

Ocampo briefly added in her separately filed Answer that the Heirs of Daez have no cause of action inasmuch as their perceived motive in requesting for the inspection of the building was only to obtain a legal basis to eject defendants, and that she must be reimbursed in the amount of ₱100,000 for the expenses

[7] *Id.* at 49-52.

she incurred in the repair of the toilet and water drainage, repainting of the walls and ceiling, and other improvements in her unit.

In the preliminary conference held on March 25, 1999, the parties agreed on the following issues for resolution:

1) Whether there is a real need to renovate the subject premises[;] [and]

2) Whether there is a need to vacate the premises during the renovation.[8]

On the bases of the foregoing issues, the parties were ordered to submit the affidavits of their witnesses and other evidence, together with their respective position papers.

The Position Paper of respondents advanced substantially the same allegations stated in their complaint. In addition to the documents attached thereto, they submitted in evidence the tax declaration of the subject property, the 12 November 1996 letter of Dan Daez to the City Engineer requesting the building inspection and the 21 January 1997 advisory of the latter to the former regarding compliance to the recommendation of the Building Inspector, the yet to be approved Building Permit as well as the Specifications and Plans on the proposed establishment of Sacred Heart Memorial Chapel,[9] and the pictures of the façade of the apartment buildings.

For their part, however, it appears on record that none of the defendants submitted a position paper or evidence, documentary or otherwise, to support their allegations.

On September 30, 1999, the MeTC rendered its Decision in favor of respondents, the dispositive portion of which stated:

Wherefore, [judgment] is hereby rendered in favor of the plaintiffs ordering the [afore-named] defendants and all persons claiming right under them:

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[8] *Id.* at 87-88.

[9] Respondents alleged that they plan to convert the apartment building into a memorial chapel if defendants would not avail of their right to lease or could no longer afford to rent the newly renovated premises.

1. To vacate the premises in question and restore possession thereof to the plaintiffs;

2. To pay plaintiffs thru their attorney-in-fact, Cecilia D. Daez, the reasonable compensation for their use of the premises at the rate of ₱500.00 per month per unit from April 1997 until the premises is fully vacated;

3. To reimburse to plaintiff the amount of ₱10,000.00 as and for attorney's fees and for costs and litigation expenses.

SO ORDERED.[10]

Defendants appealed to the RTC. In their Appeal Memorandum,[11] they contended that an examination of the complaint would reveal that key jurisdictional allegations supporting an action for ejectment were lacking. In particular, they claimed that neither was there an allegation of prior material possession by respondents (in case of forcible entry) or a showing that the Heirs gave them the right to occupy the premises (in case of unlawful detainer). Defendants posited that the proper legal recourse should have been an *accion publiciana* or *accion reivindicatoria*, either of which is within the jurisdiction of the RTC.

This time, the appealed case was submitted for resolution without respondents' Memorandum.[12]

On September 28, 2001, the RTC affirmed *in toto* the challenged Decision. The RTC ruled that the allegation in Paragraph 4 of the Complaint points out the fact that defendants' possession of the subject property is by virtue of a verbal lease contract they entered into with the late Eudosia Daez, and that upon her death, respondents, as heirs, merely step into the shoes of their predecessor-in-interest.

The case was elevated to the Court of Appeals. Aside from reiterating their allegations in Paragraphs 13 to 16 of their Answer

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[10] *Records*, pp. 143-144.

[11] Only one of the original defendants, Romulo Marca, signed the verification of the Appeal Memorandum.; *id.* at 177-181.

[12] *Id.* at 193.

before the MTC, petitioners[13] argued, for the first time, that the Position Paper submitted by respondents in the MTC was not verified and that they failed to submit direct testimony, in violation of the Revised Rule on Summary Procedure; thereby, making the decisions of the MTC and RTC based on hearsay evidence.

In their Comment,[14] respondents countered that the order of condemnation issued by the City Engineer was never seasonably appealed by petitioners before the Secretary of Public Works and Highways pursuant to the provisions of Presidential Decree No. 1096 (or the National Building Code); thus, the said order stands and remains valid and could not be refuted by mere self-serving allegations that there is no need to effect the restructuring being required. They also invoked the legal presumption that official duty has been regularly performed.[15] Further, respondents asserted that the issue on their failure to sign the verification in the Position Paper was never raised before the RTC; hence, could not be assigned as an error before the appellate court. And even if the Position Paper was not verified, they contended that the documentary evidence adduced was of public nature which may be presented and admitted without reference to any affidavit. Moreover, the omission is not fatal because all the allegations in the Position Paper were mere reiterations of those stated in the Complaint, which was verified. Respondents averred that petitioners had the opportunity to contradict their allegations by submitting and marking countervailing evidence but they did

[13] Per CA Resolution dated December 21, 2001, the case was initially dismissed since only Beatriz Feliciano signed the verification and certification of non-forum shopping without showing that she was duly authorized by the other defendants to sign for and in their behalf. Subsequently, in their Motion for Reconsideration with Prayer to Admit Amended Petition for Review, only Reyes, Tabon, Coronado, Feliciano, Alvarez, Mateo, Frias, Javier, Marca, and Maymiero signed the verification and certification. On February 7, 2002, the CA resolved to order the filing of another amended petition and advised petitioners who are interested to proceed with the case to drop the names of other parties who are not willing to sign the petition. Eventually, a Second Amended Petition for Review was filed with Reyes, Tabon, Coronado, Feliciano, Alvarez, Mateo, Frias, Javier, Marca, Maymiero, Sazon, and Nebres as signatories.

[14] CA *rollo*, pp. 242-246.

[15] REVISED RULES OF COURT, Rule 131, Sec. 3 (m).

not. Lastly, they noted that petitioners' pleadings before the lower and appellate courts were not also verified by all the original defendants yet these were still considered. The principle of *in pari delicto* and estoppel should, therefore, operate against them.

On July 23, 2002, the CA rendered its Decision affirming the RTC ruling. It held that petitioners never contested the ocular inspection of the Building Inspector, who is presumed to have regularly performed her official duty. Likewise, they failed to raise the omission of respondents at the earliest opportune time by moving that the unverified Position Paper be expunged from the records.

Petitioners moved to reconsider[16] the Decision but it was denied; hence, this petition.[17]

For petitioners, the Court of Appeals committed grave and serious error of law and facts amounting to grave abuse of discretion resulting to lack of jurisdiction when:

a. It failed to consider the constitutional mandate that all decisions of the court shall be supported with evidence, such that the CA erred to have affirmed the appealed Decision despite respondents' failure to submit their affidavit of direct testimony and their Position Paper was unverified;

b. It concluded that the assigned error regarding the absence of affidavits and failure on the part of respondents to verify their Position Paper was not raised at the earliest possible opportunity; and

c. It failed to consider the substantial evidence rule.

Petitioners argue that Sec. 9 in relation to Sec. 3 (B) of the Revised Rule on Summary Procedure absolutely requires the submission of affidavit/s of witnesses and verified Position Paper. Compliance is mandatory since the Summary Procedure is a departure from the Rules on Trial Order under Rule 30 and the

[16] CA *rollo*, pp. 257-267.

[17] Notably, the signatories of the verification and certification of non-forum shopping of the petition before this Court were only Reyes, Coronado, Feliciano, Alvarez, Frias, Javier, Marca, Maymiero, Sazon, and Nebres.

Rules on Evidence under Rules 128 to 130 of the Revised Rules of Court. Moreover, as provided for in Sec. 10 of the Summary Procedure, the affidavits and the verified Position Paper are the bases upon which the court shall rely on in determining the law and the facts applicable to the case. Thus, with the non-observance of the Rules, the lower courts did not render decisions pursuant to the constitutional proscription that "[no] decision shall be rendered x x x without expressing therein clearly and distinctly the facts and the law on which it is based,"[18] and the Decision of the MTC, as affirmed by the RTC and Court of Appeals, was founded on hearsay evidence. According to petitioners, the absence of substantial evidence upon which the lower courts' decisions must have been based deprived them of their right to due process.

The petition has no merit.

Considering the allegations, issues and arguments adduced, this Court resolves to deny this petition for failure of petitioners to sufficiently show that the Court of Appeals committed any reversible error in the assailed decision and resolution as to warrant the exercise of this Court's discretionary appellate jurisdiction.

Moreover, a careful consideration of this petition indicates the failure of petitioners to show any cogent reason why the actions of the three (3) courts which have passed upon the same issues should be reversed. They failed to show that the courts' factual findings are not based on substantial evidence or that their decisions are contrary to applicable law and jurisprudence.

WHEREFORE, the petition is *DENIED*. The July 23, 2002 Decision as well as the September 27, 2002 Resolution of the Court of Appeals in CA-G.R. SP No. 67300 are hereby *AFFIRMED*.

Costs against petitioners.

SO ORDERED.

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

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[18] 1987 CONSTITUTION, Art. VIII, Sec. 14.

EN BANC

[G.R. No. 167916. August 26, 2008]

SARAH P. AMPONG, *petitioner, vs.* **CIVIL SERVICE COMMISSION, CSC-Regional Office No. 11,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE COMMISSION; POWER OF CONTROL OVER CIVIL SERVICE EXAMINATIONS CARRIES WITH IT THE RIGHT TO TAKE COGNIZANCE OF ANY IRREGULARITY OR ANOMALY CONNECTED WITH THE EXAMINATIONS.— It is true that the CSC has administrative jurisdiction over the civil service. As defined under the Constitution and the Administrative Code, the civil service embraces every branch, agency, subdivision, and instrumentality of the government, and government-owned or controlled corporations. Pursuant to its administrative authority, the CSC is granted the power to "control, supervise, and coordinate the Civil Service examinations." This authority grants to the CSC the right to take cognizance of any irregularity or anomaly connected with the examinations.

2. ID.; CONSTITUTIONAL LAW; DOCTRINE OF SEPARATION OF POWERS; NO OTHER BRANCH OF GOVERNMENT MAY INTRUDE INTO THE POWER OF THE SUPREME COURT TO OVERSEE THE JUDGES' AND COURT PERSONNEL'S COMPLIANCE WITH ALL LAWS, RULES AND REGULATIONS.— [T]he Constitution provides that the Supreme Court is given exclusive administrative supervision over all courts and judicial personnel. By virtue of this power, it is only the Supreme Court that can oversee the judges' and court personnel's compliance with all laws, rules and regulations. It may take the proper administrative action against them if they commit any violation. No other branch of government may intrude into this power, without running afoul of the doctrine of separation of powers. Thus, this Court ruled that the Ombudsman cannot justify its investigation of a judge on the powers granted to it by the Constitution. It violates the specific mandate of the Constitution

granting to the Supreme Court supervisory powers over all courts and their personnel; it undermines the independence of the judiciary.

3. ID.; ADMINISTRATIVE LAW; IMPERSONATING AN EXAMINEE OF A CIVIL SERVICE EXAMINATION IS AN ACT OF DISHONESTY; CSC WAS CORRECT IN FILING THE NECESSARY CHARGES BEFORE THE OFFICE OF THE COURT ADMINISTRATOR AS THE OFFENDER INVOLVED IS A JUDICIAL EMPLOYEE.— In *Civil Service Commission v. Sta. Ana*, this Court held that impersonating an examinee of a civil service examination is an act of dishonesty. But because the offender involved a judicial employee under the administrative supervision of the Supreme Court, the CSC filed the necessary charges before the Office of the Court Administrator (OCA), a procedure which this Court validated. A similar fate befell judicial personnel in *Bartolata v. Julaton*, involving judicial employees who also impersonated civil service examinees. As in *Sta. Ana*, the CSC likewise filed the necessary charges before the OCA because respondents were judicial employees. Finding respondents guilty of dishonesty and meting the penalty of dismissal, this Court held that "respondents' machinations reflect their dishonesty and lack of integrity, rendering them unfit to maintain their positions as public servants and employees of the judiciary." x x x **The bottom line is administrative jurisdiction over a court employee belongs to the Supreme Court, regardless of whether the offense was committed before or after employment in the judiciary.** Indeed, the standard procedure is for the CSC to bring its complaint against a judicial employee before the OCA. Records show that the CSC did not adhere to this procedure in the present case.

4. CIVIL LAW; ESTOPPEL; CSC RULING UPHELD BASED ON THE PRINCIPLE OF ESTOPPEL; ELUCIDATED.— However, We are constrained to uphold the ruling of the CSC based on the principle of **estoppel.** The previous actions of petitioner have estopped her from attacking the jurisdiction of the CSC. A party who has affirmed and invoked the jurisdiction of a court or tribunal exercising quasi-judicial functions to secure an affirmative relief may not afterwards deny that same jurisdiction to escape a penalty. As this Court declared in *Aquino v. Court of Appeals*: In the interest of

sound administration of justice, such practice cannot be tolerated. If we are to sanction this argument, then all the proceedings had before the lower court and the Court of Appeals while valid in all other respects would simply become useless. Under the principle of estoppel, a party may not be permitted to adopt a different theory on appeal to impugn the court's jurisdiction. In *Emin v. De Leon*, this Court sustained the exercise of jurisdiction by the CSC, while recognizing at the same time that original disciplinary jurisdiction over public school teachers belongs to the appropriate committee created for the purpose as provided for under the Magna Carta for Public School Teachers. It was there held that a party who fully participated in the proceedings before the CSC and was accorded due process is estopped from subsequently attacking its jurisdiction.

5. POLITICAL LAW; ADMINISTRATIVE LAW; ASSISTANCE OF COUNSEL IS NOT AN ABSOLUTE REQUIREMENT IN AN ADMINISTRATIVE INQUIRY.— But while a party's right to the assistance of counsel is sacred in proceedings criminal in nature, there is **no** such requirement in administrative proceedings. In *Lumiqued v. Exevea*, this Court ruled that a party in an administrative inquiry may or may not be assisted by counsel. Moreover, the administrative body is under no duty to provide the person with counsel because assistance of counsel is not an absolute requirement.

6. ID.; ID.; DISHONESTY, DEFINED; CASE AT BAR.— The CSC found petitioner guilty of dishonesty. It is categorized as "an act which includes the procurement and/or use of fake/spurious civil service eligibility, the giving of assistance to ensure the commission or procurement of the same, *cheating*, *collusion*, *impersonation*, or any other anomalous act which amounts to any violation of the Civil Service examination." Petitioner impersonated Decir in the PBET exam, to ensure that the latter would obtain a passing mark. By intentionally practicing a deception to secure a passing mark, their acts undeniably involve dishonesty. This Court has defined dishonesty as the "(d)isposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray." Petitioner's dishonest act as a civil servant renders her unfit to be a judicial employee. Indeed,

We take note that petitioner should not have been appointed as a judicial employee had this Court been made aware of the cheating that she committed in the civil service examinations. Be that as it may, petitioner's present status as a judicial employee is not a hindrance to her getting the penalty she deserves.

7. ID.; ID.; CODE OF CONDUCT FOR COURT PERSONNEL; CONDUCT AND BEHAVIOR OF EVERYONE CONNECTED WITH AN OFFICE CHARGED WITH THE DISPENSATION OF JUSTICE IS CIRCUMSCRIBED WITH A HEAVY BURDEN OF RESPONSIBILITY.— The conduct and behavior of everyone connected with an office charged with the dispensation of justice is circumscribed with a heavy burden or responsibility. The image of a court, as a true temple of justice, is mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel. As the Court held in another administrative case for dishonesty: x x x *Any act which diminishes or tends to diminish the faith of the people in the judiciary shall not be countenanced.* We have not hesitated to impose the utmost penalty of dismissal for even the slightest breach of duty by, and the slightest irregularity in the conduct of, said officers and employees, if so warranted. Such breach and irregularity detract from the dignity of the highest court of the land and erode the faith of the people in the judiciary. x x x As a final point, we take this opportunity to emphasize that no quibbling, much less hesitation or circumvention, on the part of any employee to follow and conform to the rules and regulations enunciated by this Court and the Commission on Civil Service, should be tolerated. *The Court, therefore, will not hesitate to rid its ranks of undesirables who undermine its efforts toward an effective and efficient system of justice.*

APPEARANCES OF COUNSEL

Arlyn Joy C. Allosa-Alaba for petitioner.
The Solicitor General for respondent.

D E C I S I O N

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

Can the Civil Service Commission (CSC) properly assume jurisdiction over administrative proceedings against a judicial employee involving acts of dishonesty as a teacher, committed **prior** to her appointment to the judiciary?

Before Us is a petition for review on *certiorari* assailing the Decision[1] of the Court of Appeals (CA) affirming the CSC's exercise of administrative jurisdiction over petitioner.

The Facts

The following facts are uncontroverted:

On November 10, 1991, a Professional Board Examination for Teachers (PBET)[2] was held in Davao City. A certain Evelyn Junio-Decir[3] applied for and took the examination at Room 16, Kapitan Tomas Monteverde Elementary School. She passed with a rating of 74.27%.[4]

At the time of the PBET examinations, petitioner Sarah P. Ampong (nee Navarra) and Decir were public school teachers under the supervision of the Department of Education, Culture and Sports (DECS).[5] Later, on August 3, 1993, Ampong transferred to the Regional Trial Court (RTC) in Alabel, Sarangani Province, where she was appointed as Court Interpreter III.

On July 5, 1994, a woman representing herself as Evelyn Decir went to the Civil Service Regional Office (CSRO) No. XI, Davao City, to claim a copy of her PBET Certificate of Eligibility. During the course of the transaction, the CSRO personnel noticed

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[1] Penned by Acting Presiding Justice Eubulo G. Verzola, with Associate Justices Jose L. Sabio, Jr. and Noel G. Tijam, concurring; *rollo,* pp. 19-27.

[2] Now known as the Examination for Teachers.

[3] Formerly Evelyn B. Junio.

[4] *Rollo,* p. 34.

[5] Now Department of Education.

that the woman did not resemble the picture of the examinee in the Picture Seat Plan (PSP). Upon further probing, it was confirmed that the person claiming the eligibility was different from the one who took the examinations. It was petitioner Ampong who took and passed the examinations under the name Evelyn Decir.

The CSRO conducted a preliminary investigation and determined the existence of a *prima facie* case against Decir and Ampong for Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service. On August 23, 1994, they were formally charged and required to file answers under oath. The formal charge reads:

> That sometime before the conduct of the November 10, 1991 Professional Board Examination for Teachers (PBET), a certain Ms. Evelyn B. Junio (now Decir) took the said examination at Rm. 16 Kapitan Tomas Monteverde Elementary School, Davao City, with a passing rate of 74.27%; That on July 5, 1994 she appeared before the CSC Region XI Office to get her Guro Certificate; That upon verification, it was found out that the picture attached in the Picture Seat Plan, marked as Annex "A" and "A-1", respectively, were not the same compared to the picture attached in the CSC Form 212 of Evelyn Junio-Decir marked herein as Annex "B", "B-1", respectively. There was also a marked difference in the signatures affixed in the said annexes; *That further investigations revealed that it was the pictures of Ms. Sarah Navarra, wife of her husband's first cousin, who took the said examination in behalf of Ms. Evelyn Junio-Decir, a provisional teacher; That the said act of Mesdames Decir and Navarra are acts of dishonesty and conduct prejudicial to the best interest of the service;* that in (*sic*) taking the CS examination for and in behalf of another undermines the sanctity of the CS examinations; All these contrary to existing civil service laws and regulations. (Emphasis supplied)

In her sworn statement dated November 3, 1994, Decir denied the charges against her. She reasoned out that it must have been the examination proctor who pasted the wrong picture on the PSP and that her signatures were different because she was still signing her maiden name at the time of the examination. In her Answer, Decir contended that:

2. The same accusation is denied, the truth being:

   a. When I took the Professional Board Examination for Teachers (PBET) in the year 1991, I handed my 1x1 I.D. picture to the proctor assigned in the examination room who might have inadvertently pasted in the Seat Plan [the] wrong picture instead [of] my own picture;

   b. With respect to the marked difference in my signature both appearing in the aforesaid Seat Plan and also with the Form 212, the disparity lies in that in the year 1991, when I took the afroresaid examination, I was still sporting my maiden name Evelyn B. Junio in order to coincide with all my pertinent supporting papers, like the special order (s.o.), appointment and among others, purposely to take said communications. However, immediately after taking the PBET Examination in 1991, I started using the full name of Evelyn Junio-Decir.[6]

Even before filing an Answer, petitioner Ampong voluntarily appeared at the CSRO on February 2, 1995 and admitted to the wrongdoing. When reminded that she may avail herself of the services of counsel, petitioner voluntarily waived said right.

On March 13, 1995, petitioner gave another admission in the following tenor:

Q: Now, what is then your intention in coming to this Region inasmuch as you are still intending to file an answer to the formal charge?

A: *I came here because I want to admit personally. So that I will not be coming here anymore. I will submit my case for Resolution.*

Q: So, you intend to waive your right for the formal hearing and you also admit orally on the guilt of the charge on the Formal Charge dated August 24, 1994?

A: Yes, Ma'am.

Q: What else do you want to tell the Commission?

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[6] *Rollo*, p. 35.

A: x x x Inasmuch as I am already remorseful, I am repenting of the wrong that I have done. I am hoping that the Commission can help x x x so that I will be given or granted another chance to serve the government.

xxx xxx xxx

Q: Now inasmuch as you have declared that you have admitted the guilt that you took the examination for and in behalf of Evelyn Junio Decir, are you telling this to the Commission without the assistance of the counsel or waiver of your right to be assisted by counsel.

A: Yes, Ma'am. I am waiving my right.[7] (Emphasis supplied)

Petitioner reiterated her admission in her sworn Answer dated March 16, 1995:

3. That, during the commission of the act, I was still under the Department of Education, Culture and Sports, as Teacher in-charge of San Miguel Primary School, Malungon North District, way back in 1991, when *the husband of Evelyn Junio-Decir, my husband's cousin came to me and persuaded me to take the examination in behalf of his wife to which I disagreed but he earnestly begged so that I was convinced to agree because I pity his wife* considering that she is an immediate relative, and there was no monetary consideration involved in this neither a compensatory reward for me, as I was overcome by their persuasion;

4. That, despite the fact that I was a teacher, I was not aware that the acts I was charged, is a ground for disciplinary action and punishable by dismissal;

5. That I should not have conformed to this anomalous transaction considering that I was born in a Christian family, and was brought up in the fear of Lord, and had been a consistent officer of the Church Board, had been a religious leader for so many years, and had been the organizer of the Music Festival of the Association of Evangelical Churches of Malungon, Sarangani Province, thus I was devoted to church work and was known to be of good conduct; and that my friends and acquaintances can vouch to that, *but I was just*

[7] CA *rollo*, pp. 27-28.

forced by circumstances to agree to the spouses Godfre and Evelyn Decir.[8] (Emphasis added)

CSC Finding and Penalty

On March 21, 1996, the CSC found petitioner Ampong and Decir guilty of dishonesty, dismissing them from the service. The dispositive part of the CSC resolution states:

WHEREFORE, the Commission hereby finds Evelyn J. Decir and Sarah P. Navarra guilty of Dishonesty. Accordingly, they are meted the penalty of dismissal with all its accessory penalties. The PBET rating of Decir is revoked.[9]

Petitioner moved for reconsideration, raising for the first time the issue of jurisdiction.[10] She argued that the exclusive authority to discipline employees of the judiciary lies with the Supreme Court; that the CSC acted with abuse of discretion when it continued to exercise jurisdiction despite her assumption of duty as a judicial employee. She contended that at the time the case was instituted on August 23, 1994, the CSC already lost jurisdiction over her. She was appointed as Interpreter III of the RTC, Branch 38, Alabel, Sarangani Province on August 3, 1993.

The CSC denied the motion for reconsideration.[11] According to the Commission, to allow petitioner to evade administrative liability would be a mockery of the country's administrative disciplinary system. It will open the floodgates for others to escape prosecution by the mere expedient of joining another branch of government. In upholding its jurisdiction over petitioner, the CSC differentiated between administrative supervision exercised by the Supreme Court and administrative jurisdiction granted to the Commission over all civil service employees:

Moreover, it must be pointed out that administrative supervision is distinct from administrative jurisdiction. *While it is true that*

[8] *Id.* at 30.

[9] *Id.* at 36.

[10] *Id.* at 32-38. Motion for Reconsideration dated July 1, 1996.

[11] Records, pp. 45-48. Resolution No. 9671516.

this Commission does not have administrative supervision over employees in the judiciary, it definitely has concurrent jurisdiction over them. Such jurisdiction was conferred upon the Civil Service Commission pursuant to existing law specifically Section 12(11), Chapter 3, Book V of the Administrative Code of 1987 (Executive Order No. 292) which provides as follows:

> *"(11) Hear and decide administrative cases instituted by or through it directly or on appeal, including contested appointment, and review decisions and actions of its offices and of the agencies attached to it x x x."*

The fact that court personnel are under the administrative supervision of the Supreme Court does not totally isolate them from the operations of the Civil Service Law. Appointments of all officials and employees in the judiciary is governed by the Civil Service Law (Section 5(6), Article VIII, 1987 Constitution). (Emphasis supplied)

CA Disposition

Via petition for review under Rule 43, petitioner elevated the matter to the CA.[12] She insisted that as a judicial employee, it is the Supreme Court and not the CSC that has disciplinary jurisdiction over her.

In a Decision dated November 30, 2004,[13] the CA denied the petition for lack of merit.

The CA noted that petitioner never raised the issue of jurisdiction until after the CSC ruled against her. Rather, she willingly appeared before the commission, freely admitted her wrongdoing, and even requested for clemency. Thus, she was estopped from questioning the Commission's jurisdiction. The appellate court opined that while lack of jurisdiction may be assailed at any stage, a party's active participation in the proceedings before a court, tribunal or body will estop such party from assailing its jurisdiction.

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[12] CA *rollo*, pp. 2-16. Petition for *Certiorari* With Prayer for the Issuance of A Writ of Preliminary Injunction and Temporary Restraining Order dated February 11, 1997.

[13] *Rollo*, pp. 19-27.

The CA further ruled that a member of the judiciary may be under the jurisdiction of two different bodies. As a public school teacher or a court interpreter, petitioner was part of the civil service, subject to its rules and regulations. When she committed acts in violation of the Civil Service Law, the CSC was clothed with administrative jurisdiction over her.

Issue

Petitioner, through this petition, assigns the lone error that:

> The Honorable Court of Appeals-First Division decided a question of substance in a way not in accord with law and jurisprudence, gravely erred in facts and in law, and has sanctioned such departure and grave error because it **ignored** or was not aware of *Garcia v. De la Peña*, 229 SCRA 766 (1994) and Adm. Matter No. OCA I.P.I. 97-329-P (*CSC v. Ampong*) dated January 31, 2001, which reiterate **the rule that exclusive authority to discipline employees of the judiciary lies with the Supreme Court**, in issuing the questioned decision and resolution; which grave error warrant reversal of the questioned decision and resolution.[14]

Put simply, the issue boils down to whether the CSC has administrative jurisdiction over an employee of the Judiciary for acts committed while said employee was still with the Executive or Education Department.

Our Ruling

The answer to the question at the outset is in the negative but We rule against the petition on the ground of estoppel.

It is true that the CSC has administrative jurisdiction over the civil service. As defined under the Constitution and the Administrative Code, the civil service embraces every branch, agency, subdivision, and instrumentality of the government, and government-owned or controlled corporations.[15] Pursuant to its administrative authority, the CSC is granted the power to "control, supervise, and coordinate the Civil Service

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[14] *Id.* at 6.

[15] CONSTITUTION (1987), Art. IX(B), Secs. 1-2; The Administrative Code (1987), Executive Order 292, Sec. 6.

examinations."[16] This authority grants to the CSC the right to take cognizance of any irregularity or anomaly connected with the examinations.[17]

However, the Constitution provides that the Supreme Court is given exclusive administrative supervision over all courts and judicial personnel.[18] By virtue of this power, it is only the Supreme Court that can oversee the judges' and court personnel's compliance with all laws, rules and regulations. It may take the proper administrative action against them if they commit any violation. No other branch of government may intrude into this power, without running afoul of the doctrine of separation of powers.[19] Thus, this Court ruled that the Ombudsman cannot justify its investigation of a judge on the powers granted to it by the Constitution. It violates the specific mandate of the Constitution granting to the Supreme Court supervisory powers over all courts and their personnel; it undermines the independence of the judiciary.[20]

In *Civil Service Commission v. Sta. Ana*,[21] this Court held that impersonating an examinee of a civil service examination is an act of dishonesty. But because the offender involved a judicial employee under the administrative supervision of the Supreme Court, the CSC filed the necessary charges before the Office of the Court Administrator (OCA), a procedure which this Court validated.

A similar fate befell judicial personnel in *Bartolata v. Julaton*,[22] involving judicial employees who also impersonated civil service

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[16] The Administrative Code (1987), Executive Order 292, Secs. 12(2) & (7), respectively.

[17] *Cruz v. Civil Service Commission*, 422 Phil. 236 (2001).

[18] CONSTITUTION (1987), Art. VIII, Sec. 6.

Sec. 6. The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

[19] *Maceda v. Vasquez*, G.R. No. 102781, April 22, 1993, 221 SCRA 464.

[20] *Id*.

[21] A.M. No. P-03-1696, April 30, 2003, 402 SCRA 49.

[22] A.M. No. P-02-1638, July 6, 2006, 494 SCRA 433.

examinees. As in *Sta. Ana,* the CSC likewise filed the necessary charges before the OCA because respondents were judicial employees. Finding respondents guilty of dishonesty and meting the penalty of dismissal, this Court held that "respondents' machinations reflect their dishonesty and lack of integrity, rendering them unfit to maintain their positions as public servants and employees of the judiciary."[23]

Compared to *Sta. Ana* and *Bartolata,* the present case involves a similar violation of the Civil Service Law by a judicial employee. But this case is slightly different in that petitioner committed the offense **before** her appointment to the judicial branch. At the time of commission, petitioner was a public school teacher under the administrative supervision of the DECS and, in taking the civil service examinations, under the CSC. Petitioner surreptitiously took the CSC-supervised PBET exam in place of another person. When she did that, she became a party to cheating or dishonesty in a civil service-supervised examination.

That she committed the dishonest act before she joined the RTC does not take her case out of the administrative reach of the Supreme Court.

The bottom line is administrative jurisdiction over a court employee belongs to the Supreme Court, regardless of whether the offense was committed before or after employment in the judiciary.

Indeed, the standard procedure is for the CSC to bring its complaint against a judicial employee before the OCA. Records show that the CSC did not adhere to this procedure in the present case.

However, We are constrained to uphold the ruling of the CSC based on the principle of **estoppel**. The previous actions of petitioner have estopped her from attacking the jurisdiction of the CSC. A party who has affirmed and invoked the jurisdiction of a court or tribunal exercising quasi-judicial functions to secure an affirmative relief may not afterwards deny that same jurisdiction

[23] *Bartolata v. Julaton, id.* at 440.

to escape a penalty.[24] As this Court declared in *Aquino v. Court of Appeals*:[25]

> In the interest of sound administration of justice, such practice cannot be tolerated. If we are to sanction this argument, then all the proceedings had before the lower court and the Court of Appeals while valid in all other respects would simply become useless.[26]

Under the principle of estoppel, a party may not be permitted to adopt a different theory on appeal to impugn the court's jurisdiction.[27] In *Emin v. De Leon*,[28] this Court sustained the exercise of jurisdiction by the CSC, while recognizing at the same time that original disciplinary jurisdiction over public school teachers belongs to the appropriate committee created for the purpose as provided for under the Magna Carta for Public School Teachers.[29] It was there held that a party who fully participated in the proceedings before the CSC and was accorded due process is estopped from subsequently attacking its jurisdiction.

Petitioner was given ample opportunity to present her side and adduce evidence in her defense before the CSC. She filed with it her answer to the charges leveled against her. When the CSC found her guilty, she moved for a reconsideration of the

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[24] *Aquino v. Court of Appeals*, G.R. No. 91896, November 21, 1991, 204 SCRA 240.

[25] *Id.*

[26] *Id.* at 247.

[27] *Lozon v. National Labor Relations Commission*, 310 Phil. 1 (1995).

[28] G.R. No. 139794, February 27, 2002, 378 SCRA 143.

[29] Republic Act No. 4670 (1966), Sec. 9 states: "*Administrative Charges.* —Administrative charges against a *teacher* shall be heard initially by a committee composed of the corresponding School Superintendent of the Division or a duly authorized representative who should at least have the rank of a division supervisor, where the teacher belongs, as chairman, a representative of the local, or, in its absence, any existing provincial or national teacher's organization and a supervisor of the Division, the last two to be designated by the Director of Public Schools within thirty days from the termination of the hearings: Provided, however, That where the school superintendent is the complainant or an interested party, all the members of the committee shall be appointed by the Secretary of Education."

ruling. These circumstances all too clearly show that due process was accorded to petitioner.

Petitioner's admission of guilt stands. Apart from her full participation in the proceedings before the CSC, petitioner admitted to the offense charged — that she impersonated Decir and took the PBET exam in the latter's place. We note that even before petitioner filed a written answer, she voluntarily went to the CSC Regional Office and admitted to the charges against her. In the same breath, she waived her right to the assistance of counsel. Her admission, among others, led the CSC to find her guilty of dishonesty, meting out to her the penalty of dismissal.

Now, she assails said confession, arguing that it was given without aid of counsel. In police custodial investigations, the assistance of counsel is necessary in order for an extra-judicial confession to be made admissible in evidence against the accused in a criminal complaint. If assistance was waived, the waiver should have been made with the assistance of counsel.[30]

But while a party's right to the assistance of counsel is sacred in proceedings criminal in nature, there is **no** such requirement in administrative proceedings. In *Lumiqued v. Exevea*,[31] this Court ruled that a party in an administrative inquiry may or may not be assisted by counsel. Moreover, the administrative body is under no duty to provide the person with counsel because assistance of counsel is not an absolute requirement.[32]

Petitioner's admission was given freely. There was no compulsion, threat or intimidation. As found by the CSC, petitioner's admission was substantial enough to support a finding of guilt.

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[30] CONSTITUTION (1987), Art. III, Sec. 12(1). Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel. See also *People v. Patungan*, G.R. No. 138045, March 14, 2001, 354 SCRA 413; *People v. Salcedo*, G.R. No. 100920, June 17, 1997, 273 SCRA 473.

[31] G.R. No. 117565, November 18, 1997, 282 SCRA 125.

[32] *Lumiqued v. Exevea, id.*

The CSC found petitioner guilty of dishonesty. It is categorized as "an act which includes the procurement and/or use of fake/ spurious civil service eligibility, the giving of assistance to ensure the commission or procurement of the same, *cheating, collusion, impersonation,* or any other anomalous act which amounts to any violation of the Civil Service examination."[33] Petitioner impersonated Decir in the PBET exam, to ensure that the latter would obtain a passing mark. By intentionally practicing a deception to secure a passing mark, their acts undeniably involve dishonesty.[34]

This Court has defined dishonesty as the "(d)isposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."[35] Petitioner's dishonest act as a civil servant renders her unfit to be a judicial employee. Indeed, We take note that petitioner should not have been appointed as a judicial employee had this Court been made aware of the cheating that she committed in the civil service examinations. Be that as it may, petitioner's present status as a judicial employee is not a hindrance to her getting the penalty she deserves.

The conduct and behavior of everyone connected with an office charged with the dispensation of justice is circumscribed with a heavy burden or responsibility. The image of a court, as a true temple of justice, is mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel.[36] As the Court held in another administrative case for dishonesty:

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[33] CSC Memorandum Circular No. 15, Series of 1991.

[34] *Biteng v. Department of Interior and Local Government*, G.R. No. 153894, February 16, 2005, 451 SCRA 520.

[35] *Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Sec I & Angelita C. Esmerio, Clerk III, Office of Clerk of Court,* A.M. 2001-7-SC, July 22, 2005, 464 SCRA 1.

[36] *Soliman v. Soriano,* 457 Phil. 291 (2003).

x x x *Any act which diminishes or tends to diminish the faith of the people in the judiciary shall not be countenanced*. We have not hesitated to impose the utmost penalty of dismissal for even the slightest breach of duty by, and the slightest irregularity in the conduct of, said officers and employees, if so warranted. Such breach and irregularity detract from the dignity of the highest court of the land and erode the faith of the people in the judiciary.

xxx xxx xxx

As a final point, we take this opportunity to emphasize that no quibbling, much less hesitation or circumvention, on the part of any employee to follow and conform to the rules and regulations enunciated by this Court and the Commission on Civil Service, should be tolerated. *The Court, therefore, will not hesitate to rid its ranks of undesirables who undermine its efforts toward an effective and efficient system of justice*.[37] (Emphasis added)

We will not tolerate dishonesty for the Judiciary expects the best from all its employees.[38] ***Hindi namin papayagan ang pandaraya sapagkat inaasahan ng Hudikatura ang pinakamabuti sa lahat nitong kawani***.

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

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.

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[37] *Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Sec I & Angelita C. Esmerio, Clerk III, Office of Clerk of Court, supra* note 36, at 15-16.

[38] *Re: Administrative Case for Dishonesty and Falsification of Official Document Against Benjamin Katly,* A.M. No. 2003-9-SC, March 25, 2004, 426 SCRA 236.

THIRD DIVISION

[G.R. No. 170528. August 26, 2008]

HEIRS OF JULIAN TIRO, *petitioners, vs.* **PHILIPPINE ESTATES CORPORATION,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND TITLES AND DEEDS; INDEFEASIBILITY OF TORRENS TITLE; SHOULD NOT BE USED AS A MEANS TO PERPETRATE FRAUD AGAINST THE RIGHTFUL OWNER OF REAL PROPERTY; GOOD FAITH MUST CONCUR WITH REGISTRATION.— Insofar as a person who has fraudulently obtained property is concerned, the consequently fraudulent registration of the property in the name of such person would not be sufficient to vest in him or her title to the property. Certificates of title merely confirm or record title already existing and vested. The indefeasibility of the torrens title should not be used as a means to perpetrate fraud against the rightful owner of real property. Good faith must concur with registration because, otherwise, registration would be an exercise in futility. However, where good faith is established, as in the case of an innocent purchaser for value, a forged document may become the root of a valid title.

2. ID.; ID.; ID.; A TITLE PROCURED BY FRAUD OR MISREPRESENTATION CAN STILL BE THE SOURCE OF A COMPLETELY LEGAL AND VALID TITLE IF THE SAME IS IN THE HANDS OF AN INNOCENT PURCHASER FOR VALUE; INNOCENT PURCHASER FOR VALUE, DEFINED.— A person is considered in law as an innocent purchaser for value when he buys the property of another, without notice that some other person has a right or an interest in such property, and pays a full price for the same at the time of such purchase, or before he has notice of the claims or interest of some other person in the property. A person dealing with registered land may safely rely on the correctness of the certificate of title of the vendor/transferor, and the law will in no way oblige him to go behind the certificate to determine the condition of the property. The courts cannot disregard the rights of innocent third persons, for that would impair or erode

public confidence in the torrens system of land registration. Thus, a title procured by fraud or misrepresentation can still be the source of a completely legal and valid title if the same is in the hands of an innocent purchaser for value.

3. ID.; ID.; ANNULMENT OF TITLE; MUST ALLEGE THAT THE PURCHASER WAS AWARE OF THE DEFECT IN THE TITLE THEREIN SO THAT THE CAUSE OF ACTION AGAINST HIM OR HER WILL BE SUFFICIENT; CASE AT BAR.— [I]t is crucial that a complaint for annulment of title must allege that the purchaser was aware of the defect in the title, so that the cause of action against him or her will be sufficient. Failure to do so, as in the case at bar, is fatal for the reason that the court cannot render a valid judgment against the purchaser who is presumed to be in good faith in acquiring said property. Failure to prove, much less impute, bad faith to said purchaser who has acquired a title in his or her favor would make it impossible for the court to render a valid judgment thereon, due to the indefeasibility and conclusiveness of his or her title. In this case, petitioners directed all allegations of bad faith solely at Ochea. The property in question had already been the subject of five succeeding transfers to persons who were not accused of having purchased the same in bad faith. Petitioners' attempt, therefore, to have respondent's certificate of title to the disputed property annulled, must fail.

4. ID.; ID.; ID.; ID.; A TITLE ISSUED TO AN INNOCENT PURCHASER AND FOR VALUE CANNOT BE REVOKED ON THE BASIS THAT THE DEED OF SALE WAS FALSIFIED, IF HE HAD NO KNOWLEDGE OF THE FRAUD COMMITTED; REMEDY OF THE PERSON PREJUDICED THEREBY.— A title issued to an innocent purchaser and for value cannot be revoked on the basis that the deed of sale was falsified, if he had no knowledge of the fraud committed. The Court also provided the person prejudiced with the following recourse: x x x "The right of an innocent purchaser for value must be respected and protected, even if the seller obtained his title through fraud. **The remedy of the person prejudiced is to bring an action for damages against those who caused or employed the fraud, and if the latter are insolvent, an action against the Treasurer of the Philippines may be filed for recovery of damages against the Assurance Fund."**

APPEARANCES OF COUNSEL

M.B. Mahinay & Associates for petitioners.
Batuhan Blando Concepcion for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated 1 July 2005, rendered by the Court of Appeals in CA-G.R. CV No. 78582, which affirmed the Decision[2] dated 16 April 2002 of the Regional Trial Court (RTC), Branch 54, Lapu-Lapu City, in Civil Case No. 4824-L dismissing petitioners' complaint and declaring the respondent as the owner of the disputed property.

Petitioners Guillerma Tiro, Dominga Tiro Nunez and Maximo Tiro filed before the RTC a Complaint for Quieting of Title against respondent Philippine Estates Corporation, a corporation duly organized and existing under the laws of the Philippines. The complaint was docketed as Civil Case No. 4824-L. Petitioners alleged that they are the children of the late Julian Tiro and the authorized representatives of the Heirs of the late Pedro Tiro. Both decedents were purportedly, during their lifetime, the lawful absolute and registered owners of the disputed land as evidenced by Original Certificate of Title (OCT) No. RO-1121.[3] The disputed property is herein described as follows:

> A parcel of land (Lot 2914 of the Cadastral Survey of Opon, L.R.C. Record No. 1003) situated in the Barrio of Marigondon, Municipality of Opon, Province of Cebu, Island of Mactan x x x; containing an area of EIGHT THOUSAND ONE HUNDRED TWENTY (8,120) SQUARE METERS.[4]

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[1] Penned by Associate Justice Isaias P. Dicdican with Associate Justices Sesinando E. Villon and Enrico A. Lanzanas, concurring. *Rollo*, pp. 39-48.

[2] Penned by Judge Rumoldo R. Fernandez. *Id.* at 64-69.

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

[4] *Id.* at 71.

Petitioners averred that they and their predecessors-in-interest had been in actual possession of the disputed land since time immemorial until they were prevented from entering the same by persons claiming to be the new owners sometime in 1995. After examining the records found in the Office of the Register of Deeds of Lapu-Lapu City, they discovered that OCT No. RO-1121 had already been cancelled as early as 1969 and that the subject property, after several other transfers, was presently registered in the name of respondent under Transfer Certificate of Title (TCT) No. 35672.[5]

The records in the Office of the Register of Deeds showed each transfer involving the disputed land. Petitioners learned that OCT No. RO-1121, registered in the names of Julian and Pedro Tiro, was cancelled on 10 September 1969. In its place, TCT No. 2848 was issued in favor of Spouses Julio Baba and Olimpia Mesa. The registration of the disputed property in favor of the Spouses Baba was supported by two documents: (1) an Extrajudicial Declaration of Heir and Confirmation of Sale[6] dated 20 August 1969, executed by Maxima Ochea (Ochea), claiming to be the only surviving heir of Julian and Pedro Tiro, wherein she confirmed and ratified an alleged sale of the subject land made before World War II by Julian and Pedro Tiro in favor of Spouses Bibiano Amores and Isabel Digno; and (2) another document entitled "Deed of Confirmation,[7] " also dated 20 August 1969, executed by the Spouses Amores, wherein they verified that they subsequently transferred the disputed property to the Spouses Baba sometime in 1947.

On 20 June 1979, TCT No. 2848 was cancelled to give way to the issuance of TCT No. 9415 in the name of Spouses Ronaldo Velayo and Leonor Manuel, after the Spouses Baba sold the disputed property to them.[8] Subsequently, the same property was sold by the Spouses Velayo to Pacific Rehouse Corporation,

[5] *Id.* at 64-65.

[6] *Id.* at 72.

[7] *Id.* at 73.

[8] *Id.* at 99.

as a consequence of which TCT No. 9415 was cancelled and TCT No. 30186 was issued in the name of the latter on 16 February 1995.[9] Finally, on 25 October 1996, following the sale of the disputed land to respondent, TCT No. 30186 was cancelled and TCT No. 35672 was issued in its name.[10]

Petitioners averred that Ochea, who executed the document "Extrajudicial Declaration of Heir and Confirmation of Sale," which resulted in the cancellation of OCT No. RO-1121 in the name of Julian and Pedro Tiro, was not in any way related to Julian and Pedro Tiro. It was the petitioners' contention that since Ochea was not an heir of the original registered owners, she had no right to cause the transfer of the disputed property and, thus, her transfer and all subsequent transfers of said property, including that made to respondent, were invalid.[11] Instead of presenting documents to evidence their relationship to the decedents Julian and Pedro Tiro, petitioners offered the testimonies of petitioners Maximo Tiro[12] and his son-in-law Joveniano Diasana.[13] Finally, the petitioners prayed that all the transactions emanating from the "Extrajudicial Declaration of Heirs and Confirmation of Sale," executed by Maxima Ochea, be declared void, including the transfer made in favor of the respondent; that the title which was issued in the name of respondent be cancelled; and that the property be restored and registered in the name of the petitioners.[14]

In its Answer dated 10 February 1998, respondent claimed that its predecessor-in-interest Pacific Rehouse Corporation acquired the subject land from the Spouses Velayo, the registered owners of the property who were also in possession of the same at the time of the sale. There was nothing in the title or any circumstances during the sale that would indicate any defect

[9] *Id.* at 100.

[10] *Id.* at 97.

[11] *Id.* at 65.

[12] TSN, 29 June 1999

[13] TSN, 2 September 1999 and 31 January 2000.

[14] *Rollo,* p. 65.

in the Spouses Velayo's title to the property. Respondent pointed out that 27 years had elapsed since the cancellation of OCT No. RO-1121 before petitioners asserted their rights over the disputed land. Moreover, petitioners' predecessors-in-interest Julian and Pedro Tiro did not question the cancellation of their title to the property during their lifetimes. Hence, respondent argued that petitioners' action for quieting of title was barred by laches and prescription.[15]

To support its allegations, respondent presented TCT No. 2914 in the name of the Spouses Velayo as proof that they were the registered owners of the disputed property at the time they sold it to Pacific Rehouse Corporation.[16] Additionally, respondent presented a Decision[17] dated 28 June 1994 in Civil Case No. R-1202, entitled *Spouses Velayo v. Spouses Tiro*, rendered by the Municipal Trial Court (MTC) of Lapu-Lapu City to further prove that the Spouses Velayo were also in possession of the disputed property at the time of its sale to Pacific Rehouse Corporation. Civil Case No. R-1202 was a case for Forcible Entry with Writ of Preliminary Mandatory Injunction, and in its Decision dated 28 June 1994, the MTC declared the Spouses Velayo the rightful possessors of the subject property and ordered petitioner Maximo Tiro and his co-defendant spouse to vacate the portion of the property which they forcibly entered on 7 May 1994. Respondent likewise presented the Deed of Sale[18] dated 4 October 1994 executed by the Spouses Velayo in favor of Pacific Rehouse Corporation; the Deed of Transfer[19] dated 23 October 1996 executed by Pacific Rehouse Corporation in favor of respondent; and various tax declarations issued in the names of the Spouses Baba, Spouses Velayo, Pacific Rehouse Corporation, and respondent during the years that each of them claimed ownership over the disputed property.[20]

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[15] *Id.* at 65-66.

[16] Records, p. 197.

[17] *Id.* at 194-196.

[18] *Id.* at 167-169.

[19] *Id.* at 159-166.

[20] *Id.* at 170-183.

On 16 April 2002, the RTC issued a Decision[21] in Civil Case No. 4824-L dismissing petitioners' Complaint. The trial court noted that petitioners' claims of filiation to Julian and Pedro Tiro were not supported by documents. The testimonies of petitioners' witnesses were also inconsistent as to the location of the disputed land, as well as the number of Pedro Tiro's children. The RTC stressed that even assuming that petitioners were heirs of the late Julian and Pedro Tiro, and Maxima Ochea was in no way related to them, petitioners' claims had already prescribed, considering that the Complaint was filed more than ten years since the registration of the disputed property in the name of the Spouses Baba in 1969. Petitioners' allegation that they were in continuous possession of the subject property until 1995 was also belied by the Decision dated 28 June 1994 of the MTC in Civil Case No. R-1202, ordering petitioners to vacate the disputed property, which they forcibly entered, and to restore possession to the Spouses Velayo. Lastly, the RTC ruled that respondent was an innocent purchaser for value who relied on the correctness of the certificate of title in the name of the vendor.

Petitioners filed a Notice of Appeal on 2 May 2002 questioning the 16 April 2002 Decision of the RTC. The petitioners filed with the Court of Appeals an appeal docketed as CA-G.R. CV No. 78582, questioning the decision rendered by the trial court.

However, instead of filing an Appellants' Brief as required by the Court of Appeals, petitioners filed before the Court of Appeals in CA-G.R. CV No. 78582 a Motion to Grant New Trial Pursuant to Section 1, Rule 53,[22] on 8 January 2004. They attached as annexes to their motion the following documents to prove that Julian Tiro was their father: (1) Certificates of Baptism of Pastor Tiro and Dominga Tiro;[23] (2) marriage contract

[21] *Rollo*, pp. 101-106.

[22] CA *rollo*, p. 12-15.

[23] *Id.* at 18-19. Pastor Tiro is mentioned in the petition for the first time, while Dominga Tiro is one of the petitioners. In both of their Certificates of Baptism, Julian Tiro is named as their father.

of Dominga Tiro;[24] (3) Certificate of Marriage of Guillerma Tiro;[25] (4) Certification of Marriage of Pastor Tiro;[26] and (5) Certificate of Baptism of Victoria Tiro.[27] In a Resolution[28] dated 5 August 2004, the appellate court denied the motion.

In its Decision dated 1 July 2005, the Court of Appeals likewise denied the petitioners' appeal in CA-G.R. CV No. 78582 and affirmed the RTC Decision dated 16 April 2002 in Civil Case No. 4824-L. The appellate court found that petitioners failed to prove that they were the heirs of Julian and Pedro Tiro. It also took into account the fact that during their lifetime, Julian and Pedro Tiro never questioned the transactions which affected their land. The Court of Appeals gave significant weight to the respondent's statements that it had acquired the subject property from the registered owners, supported by the registered titles that were presented in court. Thus, the Court of Appeals held that even assuming that the first few transfers turned out to be fraudulent, the transfer to respondent, a purchaser in good faith, may be the root of a valid title.[29]

Petitioners filed a Motion for Reconsideration dated 25 July 2005,[30] which the Court of Appeals denied in a Resolution dated 28 October 2005.[31]

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[24] *Id.* at 20. In Dominga Tiro's Marriage Contract, Julian Tiro is named as her father.

[25] *Id.* at 21. Guillerma Tiro is one of the petitioners in this case. In Guillerma Tiro's Certificate of Marriage, Julian Tiro is named as father.

[26] *Id.* at 22. Pastor Tiro is mentioned in the petition for the first time. In his Certificate of Marriage, Julian Tiro is named as their father.

[27] *Id.* at 23. Witness Joveniano Diasana testified that Victoria Tiro is his wife and the daughter of Maximo Tiro. Victoria Tiro's Certificate of Baptism states that her father is Julian Tiro. It should further be noted that no document proving filiation with Pedro Tiro was offered by petitioners. TSN, 2 September 1999, p. 4.

[28] *Id.* at 38-41.

[29] *Rollo*, pp. 44-47.

[30] CA *rollo*, pp. 130-138.

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

Hence, the present Petition, in which petitioners make the following assignment of errors:

I

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT FINDING THAT THE ACT OF THE REGISTER (sic) OF DEEDS OF REGISTERING A CLEARLY VOID AND UNREGISTRABLE DOCUMENT CONFERS NO VALID TITLE ON THE PRESENTOR AND HIS SUCCESSORS-IN-INTEREST.

II

THE COURT OF APPEALS GRAVELY ERRED IN NOT APPLYING THE DOCTRINE IN *SPOUSES SANTIAGO, ET AL. VS. COURT OF APPEALS, ET AL.*, G.R. [NO.] 103959, AUGUST 21, 1997 WHEREBY IT IS HELD [THAT] "THE TORRENS SYSTEM DOES NOT CREATE OR VEST TITLE. IT ONLY CONFIRMS AND RECORDS TITLE ALREADY EXISTING AND VESTED. IT DOES NOT PROTECT A USURPER FROM THE TRUE OWNER NOR CAN IT BE A SHIELD IN THE COMMISSION OF FRAUD. WHERE ONE DOES NOT HAVE ANY RIGHTFUL CLAIM OVER A REAL PROPERTY, THE TORRENS SYSTEM OF REGISTRATION CONFIRM[S] OR RECORD[S] NOTHING.[32]

This Petition lacks merit.

Petitioners' main contention is, since Ochea was not even related to either Julian or Pedro Tiro, the "Declaration of Heir and Confirmation of Sale" which she executed could not have resulted in the cancellation of OCT No. RO-1121 in the names of Julian and Pedro Tiro. They further argue that since the initial transfer of the disputed land was fraudulent, therefore, all the subsequent transfers, including that made to respondent, were all invalid.

Petitioners' arguments are unfounded.

Insofar as a person who has fraudulently obtained property is concerned, the consequently fraudulent registration of the property in the name of such person would not be sufficient to

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

vest in him or her title to the property. Certificates of title merely confirm or record title already existing and vested. The indefeasibility of the torrens title should not be used as a means to perpetrate fraud against the rightful owner of real property. Good faith must concur with registration because, otherwise, registration would be an exercise in futility.[33] However, where good faith is established, as in the case of an innocent purchaser for value, a forged document may become the root of a valid title. [34]

A person is considered in law as an innocent purchaser for value when he buys the property of another, without notice that some other person has a right or an interest in such property, and pays a full price for the same at the time of such purchase, or before he has notice of the claims or interest of some other person in the property. A person dealing with registered land may safely rely on the correctness of the certificate of title of the vendor/transferor, and the law will in no way oblige him to go behind the certificate to determine the condition of the property. The courts cannot disregard the rights of innocent third persons, for that would impair or erode public confidence in the torrens system of land registration. Thus, a title procured by fraud or misrepresentation can still be the source of a completely legal and valid title if the same is in the hands of an innocent purchaser for value.[35]

In the present case, respondent was clearly an innocent purchaser for value. It purchased the disputed property from Pacific Rehouse Corporation, along with other parcels of land for a valuable consideration, *i.e.*, shares of common stock of respondent with a value of ₱148,100,400.00. Pacific Rehouse Corporation, in turn, purchased the property from Spouses Velayo,

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[33] *Heirs of Severa P. Gregorio v. Court of Appeals*, 360 Phil. 753, 765 (1998).

[34] *Lim v. Chuatoco*, G.R. No. 161861,11 March 2005, 453 SCRA 308, 316-317.

[35] *Spouses Chu, Sr. v. Benelda Estate Development Corporation*, 405 Phil. 936, 947 (2001); *Heirs of Severa P. Gregorio v. Court of Appeals*, *supra* note 33 at 766.

also for valuable consideration in the amount of ₱1,461,600.00. The certificates of title of Pacific Rehouse Corporation and the Spouses Velayo were clean and appeared valid on their face, and there was nothing therein which should have put the respondent on its guard of some defect in the previous registered owners' title to the disputed property. In addition to their certificate of title, the Spouses Velayo even presented to Pacific Rehouse Corporation a copy of the MTC Decision dated 28 June 1994 in Civil Case No. R-1202 ordering petitioners to vacate the disputed property, which they forcibly entered, and to restore possession thereof to the Spouses Velayo. The said Decision supported the Spouses Velayo's claim of title to the disputed property.

In *Spouses Chu, Sr. v. Benelda Estate Development Corporation*,[36] this Court pronounced that it is crucial that a complaint for annulment of title must allege that the purchaser was aware of the defect in the title, so that the cause of action against him or her will be sufficient. Failure to do so, as in the case at bar, is fatal for the reason that the court cannot render a valid judgment against the purchaser who is presumed to be in good faith in acquiring said property. Failure to prove, much less impute, bad faith to said purchaser who has acquired a title in his or her favor would make it impossible for the court to render a valid judgment thereon, due to the indefeasibility and conclusiveness of his or her title.

In this case, petitioners directed all allegations of bad faith solely at Ochea. The property in question had already been the subject of five succeeding transfers to persons who were not accused of having purchased the same in bad faith. Petitioners' attempt, therefore, to have respondent's certificate of title to the disputed property annulled, must fail.

In *Veloso v. Court of Appeals*,[37] this Court enunciated that a title issued to an innocent purchaser and for value cannot be revoked on the basis that the deed of sale was falsified, if he

[36] *Id.* at 947.

[37] *Veloso v. Court of Appeals*, 329 Phil. 398, 407-408 (1996), citing *Tenio-Obsequio v. Court of Appeals*, G.R. No. 107967, 1 March 1994, 230 SCRA 550, 560-561.

had no knowledge of the fraud committed. The Court also provided the person prejudiced with the following recourse:

> Even granting for the sake of argument, that the petitioner's signature was falsified and consequently, the power of attorney and the deed of sale were null and void, such fact would not revoke the title subsequently issued in favor of private respondent Aglaloma. In *Tenio-Obsequio v. Court of Appeals*, it was held, *viz*:
>
> > "The right of an innocent purchaser for value must be respected and protected, even if the seller obtained his title through fraud. **The remedy of the person prejudiced is to bring an action for damages against those who caused or employed the fraud, and if the latter are insolvent, an action against the Treasurer of the Philippines may be filed for recovery of damages against the Assurance Fund**." (Emphasis supplied.)

Petitioners cite *Sps. Santiago v. Court of Appeals*.[38] In *Santiago*, the plaintiff and the defendants were the parties to the void contract of sale of the disputed property. The contract was considered simulated for lack of consideration and given the fact that defendants failed to take possession of the subject property. For this reason, the Court did not hesitate to cancel the certificates of title in the defendants' names, since they were found not to be the rightful owners of the property. More importantly, the defendants were not innocent purchasers for value, since they were privy to the nullity of the contract of sale covering the property. *Santiago* is clearly inapplicable to the present case. Respondent herein who paid adequate consideration for the disputed land, took possession of the same, and is already the fifth transferee following the allegedly fraudulent initial transfer of the land, cannot be placed in the same position as a vendor who was a party to a simulated sale of a real property.

IN VIEW OF THE FOREGOING, the instant Petition is *DENIED*. The assailed Decision of the Court of Appeals in CA-G.R. CV No. 78582, promulgated on 1 July 2005, is *AFFIRMED*. Costs against petitioners.

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[38] 343 Phil. 612 (1997).

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 171121. August 26, 2008]

GINA DIAZ *y* JAUD, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; ESTAFA; ELEMENTS IN GENERAL.— In general, the elements of *estafa* are: (1) that the accused defrauded another (a) by abuse of confidence or (b) by means of deceit; and (2) that damage or prejudice capable of pecuniary estimation is caused the offended party or third person. **Deceit is not an essential requisite of *estafa* with abuse of confidence, since the breach of confidence takes the place of the fraud or deceit, which is a usual element in the other *estafas*.**

2. ID.; ID.; ESTAFA WITH ABUSE OF CONFIDENCE; ELEMENTS; ESTABLISHED IN CASE AT BAR.— The **elements of estafa with abuse of confidence are as follows:** (a) that money, goods or other personal property is received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return the same; (b) that there be misappropriation or conversion of such money or property by the offender or denial on his part of such receipt; (c) that such misappropriation or conversion or denial is to the prejudice of another; and (d) that there is a demand made by the offended party on the offender. All the aforesaid elements were amply and clearly established in the case at bar.

3. ID.; ID.; ID.; ID.; MATERIAL AND JURIDICAL POSSESSION, WHEN ACQUIRED; JURIDICAL POSSESSION, DEFINED.— It is well-settled that when the money, goods, or any other personal property is received by the offender from the offended party **in trust** or on commission or for administration, the **offender acquires both material or physical possession and juridical possession of the thing received. Juridical possession means a possession which gives the transferee a right over the thing which the transferee may set up even against the owner.**

4. REMEDIAL LAW; EVIDENCE; ESTAFA BY MISAPPROPRIATION OR CONVERSION MAY BE PROVEN BY DIRECT EVIDENCE OR CIRCUMSTANTIAL EVIDENCE; FAILURE TO ACCOUNT UPON DEMAND FOR FUNDS OR PROPERTY HELD IN TRUST IS CIRCUMSTANTIAL EVIDENCE OF MISAPPROPRIATION.— [T]here exists a fiduciary relationship between the petitioner and the private complainant which is an essential element of *estafa* by misappropriation or conversion. Misappropriation or conversion may be proved by the prosecution by direct evidence or by circumstantial evidence. The failure to account upon demand for funds or property held in trust is circumstantial evidence of misappropriation.

5. ID.; ID.; FACTUAL FINDINGS AND CONCLUSIONS OF TRIAL COURT AND COURT OF APPEALS ARE ENTITLED TO GREAT WEIGHT AND RESPECT ON APPEAL.— [F]actual findings and conclusions of the trial court and the Court of Appeals are 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 or circumstances which would substantially affect the disposition of the case. The jurisdiction of this Court over cases elevated from the Court of Appeals is limited to reviewing or revising errors of law ascribed to the Court of Appeals. The factual findings of the appellate court generally are conclusive, and carry even more weight when said court affirms the findings of the trial court, absent any showing that the findings are totally devoid of support in the record or that they are so glaringly erroneous as to constitute grave abuse of discretion. In this case, we find no cogent reason to reverse the aforesaid findings.

6. CRIMINAL LAW; ESTAFA; IMPOSABLE PENALTY.— We now apply the Indeterminate Sentence Law in computing the proper penalty imposable in the case at bar. Since the penalty prescribed by law for the *estafa* charge against petitioner is *prision correccional* maximum to *prision mayor* minimum, the penalty next lower would then be *prision correccional* in its minimum to medium periods. **Thus, the minimum term of the indeterminate sentence should be anywhere from 6 months and 1 day to 4 years and 2 months, while the maximum term of the indeterminate sentence should not exceed 20 years of *reclusion temporal***. In the case at bar, the RTC imposed on petitioner an indeterminate sentence of 6 years of *prision correccional* as minimum to 20 years of *reclusion temporal* as maximum. **The maximum term imposed is correct because it does not exceed the 20-year maximum period allowed by law. However, the minimum term thereof is wrong. The minimum term of the indeterminate sentence should be anywhere from 6 months and 1 day to 4 years and 2 months. We therefore impose on petitioner the indeterminate sentence of 4 years and 2 months of *prision correccional* as minimum** to 20 years of *reclusion temporal* as maximum.

APPEARANCES OF COUNSEL

Fornier Fornier and Lagumbay 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 1997 Revised Rules of Civil Procedure which seeks to reverse and set aside (1) the Decision[1] of the Court of Appeals in CA-G.R. CR No. 28751, dated 29 September 2005, which affirmed *in toto* the Decision[2] of the Regional Trial Court (RTC)

[1] Penned by Associate Justice Rodrigo V. Cosico with Associate Justices Regalado E. Maambong and Lucenito N. Tagle, concurring; *rollo*, pp. 59-65.

[2] Penned by Judge Henrick F. Gingoyon; *rollo*, pp. 43-48.

of Pasay City, Branch 117, in Criminal Case No. 02-1840, dated 11 December 2003, finding herein petitioner Gina Diaz *y* Jaud guilty beyond reasonable doubt of the crime of *Estafa* under paragraph 1(b),[3] Article 315 of the Revised Penal Code; and (2) the Resolution[4] of the appellate court, dated 10 January 2006, which denied herein petitioner's Motion for Reconsideration.

On 14 August 2002, an Information[5] was filed against the petitioner before the RTC of Pasay City, Branch 117, charging her with the crime of *Estafa* under paragraph 1(b), Article 315 of the Revised Penal Code committed as follows:

> That on or about the **13th day of May 2002**, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named [petitioner], **received in trust** from complainant **Erwina Sanuelle**[6] **-Orallo**, cash amount of **Two Hundred Sixty Five Thousand and Nine Hundred (Php265,900.00) Pesos** under the express obligation of returning the same anytime upon demand of complainant, but the herein [petitioner], once in possession of the said amount, and far from complying with her obligation aforesaid, did then and there wilfully (sic), unlawfully and feloniously misappropriate, misapply and convert the said cash amount to her own personal use and benefit to the damage and prejudice of said complainant in the amount of **Php265,900.00 Pesos**. (Emphases supplied.)

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[3] ART. 315. *Swindling* (*estafa*). — x x x.

1. With unfaithfulness or abuse of confidence, namely:

(a) x x x.

(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

[4] *Rollo*, pp. 71-72.

[5] Records, p. 1.

[6] The correct spelling of the surname of the private complainant is "Sanuele" and not "Sanuelle."

Petitioner was arrested on 22 October 2002[7] but was released after she posted a bail bond for ₱40,000.00.[8]

Upon arraignment, the petitioner, assisted by counsel *de oficio*,[9] pleaded NOT GUILTY to the crime charged. During the pre-trial conference, petitioner admitted she is the same person charged in the Information and that she and Erwina Sanuele-Orallo, the private complainant, know each other. Petitioner then interposed the defense of denial. Pre-trial was terminated.[10] Thereafter, trial on the merits ensued.

The prosecution presented the private complainant as the principal and rebuttal witness. It also offered in evidence a document denominated as "Certification"[11] which was marked as Exhibit "A".

Private complainant testified that she knows the petitioner because the latter was her former neighbor in Villamor Air Base until 1991. She disclosed that the petitioner is also her friend and their friendship developed as the latter frequented her house, as well as her barber shop, which was located in her residence. They frequently talked to each other and, as a result, they were able to establish a close relationship.[12]

Sometime in the year 2001, petitioner borrowed from her various amounts of money, to wit: ₱3,000.00, ₱5,000.00 and

[7] As evidenced by the Arrest Report, dated 22 October 2002; records, p. 12.

[8] Records, pp. 19-24.

[9] While the present case was still pending before this Court and before it was submitted for Decision, the petitioner engaged the services of another counsel to represent her. Thus, her counsel *de oficio*, through the Public Attorney's Office, filed before this Court a Motion to Withdraw Appearance as Counsel for the Petitioner, dated 16 August 2007. (See *Rollo*, pp. 105-106.) The petitioner is now being represented by Fornier, Fornier and Lagumbay Law Office, as evidenced by a Formal Entry of Appearance, dated 22 August 2007. (See *rollo*, pp. 108-109.)

[10] As evidenced by the Order penned by Judge Henrick F. Gingoyon; records, p. 51.

[11] *Id.* at 7.

[12] TSN, 7 February 2003, pp. 3-5.

₱10,000.00. There was no consideration for lending the money to the petitioner other than their friendship. The same was not also subject to any interest. The petitioner simply promised that she would pay back the money on a day certain upon demand. The petitioner then was able to pay her back the aforesaid amounts in a span of five days, or sometimes within 15 days, or even within a period of one month.[13]

Again, on 13 May 2002, private complainant lent to petitioner the amount of ₱265,900.00. Their arrangement as regards the said amount was embodied in a notarized document captioned "Certification," which was then marked as Exhibit "A". The "Certification" states:

> THIS IS TO CERTIFY that **I received in trust TWO HUNDRED SIXTY FIVE THOUSAND NINE HUNDRED (₱265,900.00) PESOS from MRS. ERWINA SANUELE-ORALLO**.
>
> **This certifies further that at anytime upon demand I shall return the said amount** of TWO HUNDRED SIXTY FIVE THOUSAND NINE HUNDRED PESOS (₱265,900.00) for herein MRS. ERWINA SANUELE-ORALLO **without any interest**.
>
> IN WITNESS WHEREOF, we hereunto affix our signatures this 13th day of May 2002 at Villamor Air Base, Pasay City.[14] (Emphases supplied.)

The afore-quoted document was signed by her as "trustor" and by the petitioner as "trustee."

Private complainant confirmed that she gave the amount of ₱265,900.00 to the petitioner because she trusted her and she was a good payer before. In other words, she lent to petitioner that big amount of money because of their friendship. She likewise affirmed that the petitioner had the freedom on how to spend, use or dispose of the money the latter borrowed from her.[15]

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[13] *Id.* at 6-8.

[14] Records, p. 7.

[15] TSN, 7 February 2003, pp. 11-12.

On 30 May 2002, she demanded payment[16] of the aforesaid amount from the petitioner. The petitioner, however, failed to pay without giving any reason for her failure to do so. She then brought the matter before the *barangay* for conciliation,[17] but the petitioner ignored the same.[18] Consequently, she instituted a criminal complaint for *Estafa* under paragraph 1(b), Article 315 of the Revised Penal Code against the petitioner.

For its part, the defense presented the petitioner to refute the allegations of the private complainant. It also presented several pieces of documentary evidence which were marked as Exhibits "1" to "14".[19]

During her testimony, petitioner admitted that she entered into a transaction with the private complainant wherein she borrowed money from her in the amount of ₱100,000.00 subject to interest payment.[20] Together with the agreed interest, her total obligation to the private complainant amounted to ₱264,000.00. She claimed that out of the said amount, she had already paid the private complainant a total of ₱209,000.00. And as proof of payment, she presented lists of payment[21] made by different people.[22]

Petitioner revealed that the private complainant was involved in a money-lending business. The borrowers made payments to the petitioner every day. The ₱100,000.00 borrowed by her from the private complainant was distributed to different people, and the private complainant did not interfere on how she used the said money. The only thing she had to do was to pay back the amount to the private complainant.[23]

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[16] Records, p. 5.

[17] *Id.* at 6.

[18] TSN, 7 February 2003, p. 13.

[19] Records, p. 111.

[20] The petitioner never mentioned the rate of interest imposed by the private complainant.

[21] The lists of payment were later marked as Exhibits "1 to 14".

[22] TSN, 5 September 2003, pp. 3-5.

[23] *Id.* at 7.

Petitioner further explained that the aforesaid business was hers and that of the private complainant. The money would come from the private complainant and she would be the one in-charge of looking for clients to whom she would distribute the money that she obtained from the private complainant in the nature of a loan. Thereafter, she would collect from the borrowers and she would remit to the private complainant the payments on a daily basis. The private complainant acknowledged the receipts of payment every day by her signature affixing thereto. This was the reason why the lists of payment shown by her before the court *a quo* were made by different people and why the receipts were named after different persons.[24]

On her cross-examination, petitioner admitted having signed a document captioned "Certification," wherein she acknowledged that she received the amount of ₱265,900.00 from the private complainant on 13 May 2002.[25]

Petitioner further alleged that the ₱100,000.00 obtained by her from the private complainant was not given to her in full but in staggered sums. She affirmed that every time someone wanted to borrow money from her, the private complainant would give her the amount. Private complainant never met any of the borrowers because it was only her who had contact with them. She was the one who would guarantee the payments of the borrowers. **Petitioner stated that the private complainant simply gave her the money without any knowledge to whom she would lend the same because the former trusted her.**[26]

Petitioner affirmed that the names in the receipts, which were marked as Exhibits "1" to "14", represented the names of the people to whom she lent the money. **The money she got from the private complainant was the very same money she distributed to other people.** She admitted that she was collecting the debts of the borrowers on behalf of the private complainant. She also revealed that she was acting as an agent of the private

[24] *Id.* at 8.

[25] *Id.* at 9-10.

[26] *Id.* at 10-13.

complainant in lending money to the borrowers. **The money that private complainant gave her was not loaned to her but was loaned to other people**. **Thus, she only held the money in trust to be lent to other people**.[27] Her money-lending transaction with the private complainant lasted only for nine (9) months.[28]

To refute the testimony of the petitioner that most of the ₱265,900.00, which she received in trust from the private complainant had been paid as shown by the receipts marked as Exhibits "1" to "14", the prosecution again called the private complainant to the witness stand.

On rebuttal, private complainant clarified that the receipts presented by the petitioner before the court *a quo* as proofs of payment were receipts of the money which had already been paid. These receipts, however, did not include the amount mentioned in a document captioned "Certification," which both of them signed on 13 May 2002. Private complainant stated that the listings, which had been marked as Exhibits "1" to "14", were indeed proofs of payment. These, however, were proofs of payment of the previous amounts given to the petitioner. The said listings did not include the amount received by the petitioner as reflected in the "Certification." Thus, the amount of ₱265,900.00 remained unpaid.[29]

Finally, private complainant emphasized that the first phase of her transaction with the petitioner wherein the amount involved was ₱100,000.00 happened between July or August, 2001 and November 2001; the second phase involving the amount of ₱265,900.00 started on 13 May 2002.[30] **Private complainant affirmed that the amount of ₱265,900.00 she gave to the petitioner was not a loan. The same was given to the petitioner in trust, to be loaned by the petitioner to other people**. She considered it a loan when the petitioner failed to

[27] TSN, 18 September 2003, p. 3.

[28] TSN, 5 September 2003, pp. 9-10.

[29] TSN, 7 November 2003, p. 6-7.

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

return the money to her. Likewise, it was the petitioner alone who released the money to the borrowers and collected their payments.[31]

On 11 December 2003, the RTC rendered a Decision finding the petitioner guilty beyond reasonable doubt of the crime of *Estafa* under paragraph 1(b), Article 315 of the Revised Penal Code. The dispositive portion of the said Decision reads:

> WHEREFORE, [herein petitioner] **GINA DIAZ *Y* JAUD** is hereby found **GUILTY** beyond reasonable doubt of the crime of **ESTAFA** under paragraph 1(b), Article 315 of the Revised Penal Code.
>
> Accordingly, she is hereby sentenced to suffer an indeterminate penalty of **SIX (6) YEARS** of *prision correccional* as minimum, to **TWENTY (20) YEARS** of *reclusion temporal* as maximum.
>
> Moreover, said [petitioner] is ordered to indemnify **ERWINA SANUELE-ORALLO** the sum of **₱265,900.00** as actual damages.[32] (Emphases supplied.)

Aggrieved, the petitioner seasonably appealed[33] the aforesaid Decision of the RTC to the appellate court assigning the following error:

> THE TRIAL COURT ERRED IN CONVICTING THE [PETITIONER] DESPITE THE FACT THAT HER GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[34]

In a Decision dated 29 September 2005, the Court of Appeals affirmed the trial court's Decision *in toto*. Petitioner's Motion for Reconsideration was likewise denied in a Resolution dated 10 January 2006.

Hence, this Petition.

Petitioner now comes before this Court with a sole assignment of error:

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[31] *Id.* at 15-18.

[32] *Rollo*, p. 32.

[33] CA *rollo*, pp. 19-20.

[34] Appellant's Brief filed before the Court of Appeals, *rollo*, p. 39.

THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE TRIAL COURT'S FINDING THAT THE PETITIONER IS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ESTAFA.[35]

In her Memorandum,[36] petitioner argues that the true nature of the agreement between her and the private complainant was that of a simple loan. This was evident from the fact that she had the freedom to dispose of the money given to her by the private complainant. Moreover, the notarized document captioned "Certification," which was signed by her and by the private complainant, appears to be a simple receipt evidencing a simple loan of money. This proves beyond cavil that the element of "trust" was not present in their transaction. Absent such element of trust, petitioner maintains she cannot be held guilty of the crime of *Estafa* under paragraph 1(b), Article 315 of the Revised Penal Code.

Lastly, petitioner asserts that the prosecution failed to sufficiently establish the fact that she misappropriated or converted the amount of ₱265,900.00 to her own personal use or benefit. What was only proven by the prosecution, she claims, was the existence of a lending business between her and the private complainant; and the aforesaid amount, which was the money subject of the document captioned "Certification," was used in the said business. Without proof that she collected the total amount of ₱265,900.00 and that she failed to remit the same, the fact of her non-payment of the said amount cannot constitute the crime of *Estafa* under paragraph 1(b), Article 315 of the Revised Penal Code. As the prosecution failed to prove beyond reasonable doubt the existence of deceit or abuse of confidence, she should not be allowed to suffer imprisonment for non-payment of a purely civil obligation.

The present Petition is without merit.

Primarily, the petitioner insists that the nature of her transaction with the private complainant was just a simple loan.

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[35] *Rollo,* p. 16.

[36] *Id.* at 120-136.

It bears emphasis that the agreement of the petitioner and the private complainant was embodied in a document captioned "Certification." **It was expressly stated therein that the amount of ₱265,900.00 was received by the petitioner in trust for the private complainant, and that the said amount must be returned to the latter anytime upon demand**. Indeed, the said "Certification" did not state that the money given in trust to the petitioner should be lent to other people. From the following testimonies of both the petitioner and the private complainant before the court *a quo*, it can be clearly inferred that their transaction was not really a simple loan, as the money placed in trust with the petitioner was intended to be loaned to other people. Petitioner testified as follows:

Q: And whose business is this money lending venture that you engaged in?

A: It's [private complainant's] money lending business.

Q: How it become (sic) the business of [private complainant] when the money is yours to dispose it freely without the interference of [private complainant]?

A: No, your Honor, she told me this money lending business and I will be the one in-charge looking for customers or clients to distribute the money that I got from her and I will remit to her the payment everyday.[37]

Cross-examination:

Q: Ms. Witness, you stated during the last hearing that the money you got from the private complainant were the money you distributed to the other people, is that correct?

A: Yes, Ma'am.

Q: You also stated that you were only collecting the amount in behalf of [private complainant]?

xxx xxx xxx

[37] TSN, 5 September 2003, p. 8.

A: Yes, Ma'am.

Q: What you actually did was you lent the money, Ms. Witness. That these amount which were lent to these people x x x represent the amount that [private complainant] gave you to lend these people, is that correct?

A: Yes, Ma'am.

Q: In effect Ms. Witness, you are acting as an agent of [private complainant], is that correct?

A: Yes, Ma'am.

Q: So, you are actually stating that this money that [private complainant] had given to you to be lent x x x but to these people like Suay, Mayet, Jurado, *etc*?

A: Yes, Ma'am.

Q: **In effect these were only given to you or entrusted to you to give them to the people.**

A: Yes, Ma'am.[38]

The aforesaid testimony of the petitioner was affirmed by the private complainant, thus:

Q: Ms. Witness, during the testimony of the [petitioner] Gina Diaz, she stated that the amount of ₱265,000.00[39] **was not actually given to her by you but was given in trust by you to her, can you comment on that statement of the [petitioner]?**

xxx xxx xxx

A: That amount was really given in trust to her not as a loan but to be loan by others.

Q: Could you explain that for what purpose when you said gave in trust to her to be loan to others what does that mean?

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[38] TSN, 18 September 2003, p. 3.

[39] Based on the document signed by both parties captioned "Certification," the amount received in trust by the petitioner from the private complainant was ₱265,900.00.

ATTY. MANGABAT:

> I think that was already answered, there is nothing to explain, your Honor.

COURT:

Witness may answer.

A: What I mean is that she will be the one responsible in the releasing of the money and the only person to collect the same.

xxx xxx xxx

Q: How can you say that the amount of ₱265,000.00 which was given was not a loan to the [petitioner]?

xxx xxx xxx

A: It was really not a loan for her because I gave the money to her for her to loan to others, it became her loan when I asked her to return the money and she was not able to return it.[40]

Given the foregoing, it is beyond doubt that the transaction between the petitioner and the private complainant was not a simple loan. **The money given to the petitioner and held in trust by her was to be loaned by her to other people**. Further, both lower courts held that because private complainant trusted the petitioner, the former entrusted the aforesaid amount of money to the latter and the latter had the authority to freely dispose of the same. The private complainant never had the opportunity of meeting the borrowers to whom the petitioner lent out the money, because it was only the latter who had contact with the borrowers. In turn, the petitioner had the responsibility to collect the money loaned to other people and thereafter to remit the same to the private complainant. With that kind of setup, the transaction between the petitioner and the private complainant cannot be mistaken to be a simple loan.

In general, the elements of *estafa* are: (1) that the accused defrauded another (a) by abuse of confidence or (b) by means

[40] TSN, 7 November 2003, pp. 15-17.

of deceit; and (2) that damage or prejudice capable of pecuniary estimation is caused the offended party or third person. **Deceit is not an essential requisite of *estafa* with abuse of confidence, since the breach of confidence takes the place of the fraud or deceit, which is a usual element in the other *estafas*.**[41]

The **elements of *estafa* with abuse of confidence are as follows**: (a) that money, goods or other personal property is received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return the same; (b) that there be misappropriation or conversion of such money or property by the offender or denial on his part of such receipt; (c) that such misappropriation or conversion or denial is to the prejudice of another; and (d) that there is a demand made by the offended party on the offender.[42]

All the aforesaid elements were amply and clearly established in the case at bar.

It is well-settled that when the money, goods, or any other personal property is received by the offender from the offended party **in trust** or on commission or for administration, the **offender acquires both material or physical possession and juridical possession of the thing received**. **Juridical possession means a possession which gives the transferee a right over the thing which the transferee may set up even against the owner**.[43]

As stated by the petitioner and by the private complainant in their testimonies before the court *a quo*, the amount of ₱265,900.00 was **received in trust by the former from the latter in order to be lent to other people**. The moment the petitioner received the aforesaid amount from the private complainant, the petitioner acquired not just material or physical possession but also juridical possession. The petitioner was given the freedom to dispose of the said money, *i.e.*, to loan it to

[41] *Chua-Burce v. Court of Appeals*, 387 Phil. 15, 25 (2000).

[42] *Pangilinan v. Court of Appeals*, 378 Phil. 670, 675 (1999).

[43] *Chua-Burce v. Court of Appeals*, *supra* note 41 at 13.

people who borrowed money from her. The private complainant did not interfere as to whom she would lend the money. The private complainant herself never met any of the borrowers, because it was only the petitioner who had contact with them. **Petitioner, though, had the corresponding obligation of returning the aforesaid amount anytime upon demand**.

Further, during the private complainant's testimony before the court *a quo*, she never failed to state that the only consideration for lending the subject money to the petitioner was their friendship. The private complainant bestowed her trust on the petitioner because of the said friendship. Indeed, the money was given to the petitioner by the private complainant without any interest at all. **Thus, there exists a fiduciary relationship between the petitioner and the private complainant which is an essential element of *estafa* by misappropriation or conversion**.[44]

Misappropriation or conversion may be proved by the prosecution by direct evidence or by circumstantial evidence.[45] **The failure to account upon demand for funds or property held in trust is circumstantial evidence of misappropriation**.[46]

The private complainant sent a letter to the petitioner wherein she demanded payment of the amount of ₱265,900.00 from the petitioner. The latter, however, failed to pay the same without giving any reason for her failure to do so. When the private complainant brought the matter before the *barangay* for conciliation, the petitioner deliberately ignored the same. Such failure of the petitioner to account upon demand for the money she held in trust is already evidence that she misappropriated or converted the money to her own personal use, and that the same caused damage or prejudice to the private complainant.

Thus, this Court affirms the findings of both lower courts that all the elements of *estafa* by abuse of confidence through

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[44] *Murao v. People*, G.R. No. 141485, 30 June 2005, 462 SCRA 366, 378.

[45] *Lee v. People*, G.R. No. 157781, 11 April 2005, 455 SCRA 256, 267.

[46] *Id*.

misappropriation or conversion had been satisfactorily complied with and proven by the prosecution.

In addition, it is well-settled that factual findings and conclusions of the trial court and the Court of Appeals are 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 or circumstances which would substantially affect the disposition of the case. The jurisdiction of this Court over cases elevated from the Court of Appeals is limited to reviewing or revising errors of law ascribed to the Court of Appeals. The factual findings of the appellate court generally are conclusive, and carry even more weight when said court affirms the findings of the trial court, absent any showing that the findings are totally devoid of support in the record or that they are so glaringly erroneous as to constitute grave abuse of discretion.[47] In this case, we find no cogent reason to reverse the aforesaid findings.

Petitioner's defense that she had already paid the money given to her by the private complainant cannot even hold water. The proofs of payment presented by the petitioner before the court *a quo* were evidence of payment of her previous transaction with the private complainant involving the amount of ₱100,00.00. The said proofs of payment were all made during the year 2001, while their transaction involving the amount of ₱265,900.00, as embodied in a document captioned "Certification," was only entered into in the year 2002, absolutely negating that the said amount had already been paid by the petitioner.

As to penalty. Article 315, paragraph 1 of the Revised Penal Code provides for the penalty in *estafa* cases, where the amount defrauded exceeds ₱22,000.00, as in the present case, to wit:

> ART. 315. *Swindling (estafa).*— Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

[47] *Libuit v. People*, G.R. No. 154363, 13 September 2005, 469 SCRA 610, 618.

1st. **The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period**, if the amount of the fraud is over 12,000 but does not exceed 22,000.00 pesos, and **if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period**, adding one year for each additional 10,000; **but the total penalty which may be imposed shall not exceed twenty years**. In such case, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, **the penalty shall be termed *prision mayor* to *reclusion temporal*, as the case may be**.

The penalty prescribed in the afore-quoted provision is composed of two, not three, periods, in which case, Article 65[48] of the same code requires the division of the time included in the penalty into three equal portions of time included in the penalty imposed, forming one period of each of the three portions.[49] Applying the latter provisions, the minimum, medium and maximum periods of the penalty given are:

Minimum – 4 years, 2 months, 1 day to 5 years, 5 months, 10 days

Medium – 5 years, 5 months, 11 days to 6 years, 8 months, 20 days

Maximum – 6 years, 8 months, 21 days to 8 years

In this case, since the amount involved is ₱265,900.00, which amount exceeds ₱22,000.00, the penalty imposable should be within the maximum period of 6 years, 8 months and 21 days to 8 years of *prision mayor*. Article 315 further states that a period of one year shall be added to the penalty for every additional ₱10,000.00 defrauded in excess of ₱22,000.00, but

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[48] ART. 65. *Rule in cases in which the penalty is not composed of three periods*. — In cases in which the penalty prescribed by law is not composed of three periods, the courts shall apply the rules contained in the foregoing articles, dividing into three equal portions of time included in the penalty prescribed, and forming one period of each of the three portions.

[49] *People v. Gabres*, 335 Phil. 242, 257 (1997); *Dela Cruz v. Court of Appeals*, 333 Phil. 126, 141 (1996).

in no case shall the total penalty which may be imposed exceed 20 years.[50]

We now apply the Indeterminate Sentence Law in computing the proper penalty imposable in the case at bar. Since the penalty prescribed by law for the *estafa* charge against petitioner is *prision correccional* maximum to *prision mayor* minimum, the penalty next lower would then be *prision correccional* in its minimum to medium periods. **Thus, the minimum term of the indeterminate sentence should be anywhere from 6 months and 1 day to 4 years and 2 months, while the maximum term of the indeterminate sentence should not exceed 20 years of *reclusion temporal*.**[51]

In the case at bar, the RTC imposed on petitioner an indeterminate sentence of 6 years of *prision correccional* as minimum to 20 years of *reclusion temporal* as maximum. **The maximum term imposed is correct because it does not exceed the 20-year maximum period allowed by law**. **However, the minimum term thereof is wrong**. **The minimum term of the indeterminate sentence should be anywhere from 6 months and 1 day to 4 years and 2 months**.[52] We therefore impose on petitioner the indeterminate sentence of **4 years and 2 months of *prision correccional* as minimum** to 20 years of *reclusion temporal* as maximum.

The trial court is correct in ordering the petitioner to indemnify the private complainant in the sum of ₱265,900.00 as actual damages because the said amount represents the money that was not yet paid by the petitioner in favor of the private complainant.

WHEREFORE, premises considered, the instant Petition is hereby *DENIED*. The Decision and Resolution of the Court of Appeals in CA-G.R. CR No. 28751, dated 29 September 2005 and 10 January 2006, respectively finding herein petitioner guilty beyond reasonable doubt of the crime of *Estafa* under

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[50] *Id*.

[51] *Id*.

[52] *Id*.

paragraph 1(b), Article 315 of the Revised Penal Code are hereby *AFFIRMED* with the *modification* that the minimum term of the indeterminate sentence to be imposed upon the petitioner should be *4 years and 2 months of* ***prision correccional***. Costs against appellant.

SO ORDERED.

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

Reyes, J., he dissents on the penalty in view of his stand in *People v. Tamparada* pending in *Banc*.

THIRD DIVISION

[G.R. No. 173176. August 26, 2008]

JUDY ANNE L. SANTOS, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and BUREAU OF INTERNAL REVENUE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; MOTION TO QUASH; SHOULD BE BASED ON A DEFECT IN THE INFORMATION WHICH IS EVIDENT ON ITS FACE; NOT PROPER IN CASE AT BAR.— A motion to quash should be based on a defect in the information which is evident on its face. The same cannot be said herein. The Information against petitioner appears valid on its face; and that it was filed in violation of her constitutional rights to due process and equal protection of the laws is not evident on the face thereof. As

[*] Justice Antonio T. Carpio was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 21 January 2008.

pointed out by the CTA First Division in its 11 May 2006 Resolution, the more appropriate recourse petitioner should have taken, given the dismissal of similar charges against Velasquez, was to appeal the Resolution dated 21 October 2005 of the Office of the State Prosecutor recommending the filing of an information against her with the DOJ Secretary.

2. POLITICAL LAW; CONSTITUTIONAL LAW; DUE PROCESS; NO DENIAL OF DUE PROCESS WHEN PETITIONER WAS GIVEN OPPORTUNITY TO FILE HER AFFIDAVITS AND OTHER PLEADINGS AND SUBMIT EVIDENCE DURING THE PRELIMINARY INVESTIGATION.— Petitioner cannot claim denial of due process when she was given the opportunity to file her affidavits and other pleadings and submit evidence before the DOJ during the preliminary investigation of her case and before the Information was filed against her. Due process is merely an opportunity to be heard.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; NOT A TRIAL OF THE CASE ON THE MERITS; PURPOSE.— Preliminary investigation conducted by the DOJ is merely inquisitorial. It is not a trial of the case on the merits. Its sole purpose is to determine whether a crime has been committed and whether the respondent therein is probably guilty of the crime. It is not the occasion for the full and exhaustive display of the parties' evidence. Hence, if the investigating prosecutor is already satisfied that he can reasonably determine the existence of probable cause based on the parties' evidence thus presented, he may terminate the proceedings and resolve the case.

4. POLITICAL LAW; CONSTITUTIONAL LAW; EQUAL PROTECTION CLAUSE; ELUCIDATED.— The equal protection clause exists to prevent undue favor or privilege. It is intended to eliminate discrimination and oppression based on inequality. Recognizing the existence of real differences among men, the equal protection clause does not demand absolute equality. It merely requires that all persons shall be treated alike, under like circumstances and conditions, both as to the privileges conferred and liabilities enforced.

5. ID.; ID.; ID.; ID.; UNLAWFUL ADMINISTRATION BY OFFICERS OF A STATUTE FAIR ON ITS FACE, RESULTING IN ITS UNEQUAL APPLICATION TO THOSE

WHO ARE ENTITLED TO BE TREATED ALIKE, IS NOT A DENIAL OF EQUAL PROTECTION UNLESS THERE IS SHOWN TO BE PRESENT IN IT AN ELEMENT OF INTENTIONAL OR PURPOSEFUL DISCRIMINATION.— In *People v. Dela Piedra*, this Court explained that: The prosecution of one guilty person while others equally guilty are not prosecuted, however, is not, by itself, a denial of the equal protection of the laws. Where the official action purports to be in conformity to the statutory classification, an erroneous or mistaken performance of the statutory duty, although a violation of the statute, is not without more a denial of the equal protection of the laws. The unlawful administration by officers of a statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination. This may appear on the face of the action taken with respect to a particular class or person, or it may only be shown by extrinsic evidence showing a discriminatory design over another not to be inferred from the action itself. **But a discriminatory purpose is not presumed, there must be a showing of "clear and intentional discrimination.**" Appellant has failed to show that, in charging appellant in court, that there was a "clear and intentional discrimination" on the part of the prosecuting officials. There is also common sense practicality in sustaining appellant's prosecution. **While all persons accused of crime are to be treated on a basis of equality before the law, it does not follow that they are to be protected in the commission of crime.** It would be unconscionable, for instance, to excuse a defendant guilty of murder because others have murdered with impunity. **The remedy for unequal enforcement of the law in such instances does not lie in the exoneration of the guilty at the expense of society** x x x. Protection of the law will be extended to all persons equally in the pursuit of their lawful occupations, but no person has the right to demand protection of the law in the commission of a crime.

APPEARANCES OF COUNSEL

Law Firm of Habitan Ferrer Chan Tagapan Patriarca & Associates for petitioner.

The Solicitor General 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 Judy Anne L. Santos (Santos) seeking the reversal and setting aside of the Resolution,[2] dated 19 June 2006, of the Court of Tax Appeals (CTA) *en banc* in C.T.A. EB. CRIM. No. 001 which denied petitioner's Motion for Extension of Time to File Petition for Review. Petitioner intended to file the Petition for Review with the CTA *en banc* to appeal the Resolutions dated 23 February 2006[3] and 11 May 2006[4] of the CTA First Division in C.T.A. Crim. Case No. 0-012 denying, respectively, her Motion to Quash the Information filed against her for violation of Section 255, in relation to Sections 254 and 248(B) of the National Internal Revenue Code (NIRC), as amended; and her Motion for Reconsideration.

There is no controversy as to the facts that gave rise to the present Petition.

On 19 May 2005, then Bureau of Internal Revenue (BIR) Commissioner Guillermo L. Parayno, Jr. wrote to the Department of Justice (DOJ) Secretary Raul M. Gonzales a letter [5] regarding the possible filing of criminal charges against petitioner. BIR Commissioner Parayno began his letter with the following statement:

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[1] *Rollo*, pp. 3-24.

[2] Signed by Associate Justices Juanito C. Castañeda, Jr, Lovell R. Bautista, Erlinda P. Uy, and Caesar A. Casanova; with Presiding Justice Ernesto D. Acosta and Associate Justice Olga Palanca-Enriquez, on leave. *Id.* at 25-28.

[3] Signed by Caesar A. Casanova, with a Separate Concurring Opinion penned by Presiding Justice Ernesto D. Acosta; Associate Justice Lovell R. Bautista, on leave. *Id.* at 340-342.

[4] Signed by Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista and Caesar A. Casanova. *Id.* at 364-372.

[5] *Id.* at 298-299.

I have the honor to refer to you for preliminary investigation and filing of an information in court if evidence so warrants, the herein attached Joint Affidavit of **RODERICK C. ABAD, STIMSON P. CUREG, VILMA V. CARONAN, RHODORA L. DELOS REYES** under Group Supervisor **TEODORA V. PURINO**, of the National Investigation Division, BIR National Office Building, BIR Road, Diliman, Quezon City, recommending the criminal prosecution of **MS. JUDY ANNE LUMAGUI SANTOS** for **substantial underdeclaration of income, which constitutes as *prima facie* evidence of false or fraudulent return** under Section 248(B) of the NIRC and punishable under Sections 254 and 255 of the Tax Code.

In said letter, BIR Commissioner Parayno summarized the findings of the investigating BIR officers that petitioner, in her Annual Income Tax Return for taxable year 2002 filed with the BIR, declared an income of ₱8,033,332.70 derived from her talent fees solely from ABS-CBN; initial documents gathered from the BIR offices and those given by petitioner's accountant and third parties, however, confirmed that petitioner received in 2002 income in the amount of at least ₱14,796,234.70, not only from ABS-CBN, but also from other sources, such as movies and product endorsements; the estimated tax liability arising from petitioner's underdeclaration amounted to ₱1,718,925.52, including incremental penalties; the non-declaration by petitioner of an amount equivalent to at least 84.18% of the income declared in her return was considered a substantial underdeclaration of income, which constituted *prima facie* evidence of false or fraudulent return under Section 248(B)[6]

[6] SEC. 248. *Civil Penalties.* —

xxx xxx xxx

(b) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is wilfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: *Provided,* That a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute *prima facie* evidence of a false or fraudulent return: *Provided, further,* That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a

of the NIRC, as amended; and petitioner's failure to account as part of her income the professional fees she received from sources other than ABS-CBN and her underdeclaration of the income she received from ABS-CBN amounted to manifest violations of Sections 254[7] and 255,[8] as well as Section 248(B) of the NIRC, as amended.

After an exchange of affidavits and other pleadings by the parties, Prosecution Attorney Olivia Laroza-Torrevillas issued a Resolution[9] dated 21 October 2005 finding probable cause and recommending the filing of a criminal information against petitioner for violation of Section 255 in relation to Sections 254 and 248(B) of the NIRC, as amended. The said Resolution was approved by Chief State Prosecutor Jovencito R. Zuno.

Pursuant to the 21 October 2005 DOJ Resolution, an Information[10] for violation of Section 255 in relation to Sections

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claim of deductions in an amount exceeding (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein.

[7] SEC. 254. *Attempt to Evade or Defeat Tax.* — Any person who willfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment thereof shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine not less than Thirty thousand pesos (₱30,000) but not more than One hundred thousand pesos (₱100,000) and suffer imprisonment of not less than two (2) years but not more than four (4) years: *Provided*, That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes.

[8] SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* — Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply any correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (₱10,000) nor more than Fifty thousand pesos (₱50,000.00) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

[9] *Rollo*, pp. 322-330.

[10] *Id.* at 331-333.

254 and 248(B) of the NIRC, as amended, was filed with the CTA on 3 November 2005 and docketed as C.T.A. Crim. Case No. 0-012. However, the CTA First Division, after noting several discrepancies in the Information filed, required the State Prosecutor to clarify and explain the same, and to submit the original copies of the parties' affidavits, memoranda, and all other evidence on record.[11]

Consequently, Prosecution Attorney Torrevillas, on behalf of respondent People, submitted on 1 December 2005 a Compliance with *Ex Parte* Motion to Admit Attached Information.[12] Prosecution Attorney Torrevillas moved that the documents submitted be admitted as part of the record of the case and the first Information be substituted by the attached second Information. The second Information[13] addressed the discrepancies noted by the CTA in the first Information, by now reading thus:

> The undersigned Prosecution Attorney of the Department of Justice hereby accuses **JUDY ANNE SANTOS *y* Lumagui** of the offense of violation of Section 255, of Republic Act No. 8424, otherwise known as the "Tax Reform Act of 1997," as amended, committed as follows:
>
> > "That on or about the 15th day of April, 2003, at Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there, willfully, unlawfully, and feloniously file a false and fraudulent income tax return for taxable year 2002 by indicating therein a gross income of ₱8,033,332.70 when in truth and in fact her correct income for taxable year 2002 is ₱16,396,234.70 or a gross underdeclaration/difference of ₱8,362,902 resulting to an income tax deficiency of ₱1,395,116.24 excluding interest and penalties thereon of ₱1,319,500.94 or a total income tax deficiency of ₱2,714,617.18 to the damage and prejudice of the government of the same amount.["]

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[11] CTA First Division Resolution, dated 14 November 2005. *Id.* at 212-214.

[12] *Id.* at 215-217.

[13] *Id.* at 334-336.

In a Resolution[14] dated 8 December 2005, the CTA First Division granted the People's *Ex Parte* Motion and admitted the second Information.

The CTA First Division then issued on 9 December 2005 a warrant for the arrest of petitioner.[15] The tax court lifted and recalled the warrant of arrest on 21 December 2005 after petitioner voluntarily appeared and submitted herself to its jurisdiction and filed the required bail bond in the amount of ₱20,000.00.[16]

On 10 January 2006, petitioner filed with the CTA First Division a Motion to Quash[17] the Information filed in C.T.A. Crim. Case No. 0-012 on the following grounds:

1. The facts alleged in the INFORMATION do not constitute an offense;

2. The officer who filed the information had no authority to do so;

3. The Honorable Court of Tax Appeals has no jurisdiction over the subject matter of the case; and

4. The information is void ***ab initio***, being violative of due process, and the equal protection of the laws.

In a Resolution[18] dated 23 February 2006, the CTA First Division denied petitioner's Motion to Quash and accordingly scheduled her arraignment on 2 March 2006 at 9:00 a.m. Petitioner filed a Motion for Reconsideration and/or Reinvestigation,[19] which was again denied by the CTA First Division in a Resolution[20] dated 11 May 2006.

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[14] Signed by Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista and Caesar A. Casanova. *Id.* at 218.

[15] *Id.* at 219.

[16] CTA First Division Resolution signed by Associate Justices Lovell R. Bautista and Caesar A. Casanova, with Presiding Justice Ernesto D. Acosta, on leave. *Id.* at 220.

[17] *Id.* at 337-339.

[18] *Id.* at 340-342.

[19] *Id.* at 347-354.

[20] *Id.* at 364-372.

Petitioner received a copy of the 11 May 2006 Resolution of the CTA First Division on 17 May 2006. On 1 June 2006, petitioner filed with the CTA *en banc* a Motion for Extension of Time to File Petition for Review, docketed as C.T.A. EB. CRIM. No. 001. She filed her Petition for Review with the CTA *en banc* on 16 June 2006. However, in its Resolution[21] dated 19 June 2006, the CTA *en banc* denied petitioner's Motion for Extension of Time to File Petition for Review, ratiocinating that:

> In the case before Us, the petitioner is asking for an extension of time to file her Petition for Review to appeal the denial of her motion to quash in C.T.A. Crim. Case No. 0-012. As stated above, a resolution denying a motion to quash is not a proper subject of an appeal to the Court *En Banc* under Section 11 of R.A. No. 9282 because a ruling denying a motion to quash is only an interlocutory order, as such, it cannot be made the subject of an appeal pursuant to said law and the Rules of Court. Section 1 of Rule 41 of the Rules of Court provides that "no appeal may be taken from an interlocutory order" and Section 1 (i) of Rule 50 provides for the dismissal of an appeal on the ground that "the order or judgment appealed from is not appealable". Time and again, the Supreme Court had ruled that the remedy of the accused in case of denial of a motion to quash is for the accused to enter a plea, go to trial and after an adverse decision is rendered, to appeal therefrom in the manner authorized by law.
>
> Since a denial of a Motion to Quash is not appealable, granting petitioner's Motion for Extension of Time to File Petition for Review will only be an exercise in futility considering that the dismissal of the Petition for Review that will be filed by way of appeal is mandated both by law and jurisprudence.[22]

Ultimately, the CTA *en banc* decreed:

> WHEREFORE, premises considered, petitioner's Motion for Extension of Time to File Petition for Review filed on June 1, 2006 is hereby DENIED for lack of merit.[23]

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

[22] *Id.* at 27-28.

[23] *Id.* at 28.

Now comes petitioner before this Court raising the sole issue of:

> WHETHER A RESOLUTION OF A CTA DIVISION DENYING A MOTION TO QUASH IS A PROPER SUBJECT OF AN APPEAL TO THE CTA *EN BANC* UNDER SECTION 11 OF REPUBLIC ACT NO. 9282, AMENDING SECTION 18 OF REPUBLIC ACT NO. 1125.[24]

Section 18 of Republic Act No. 1125,[25] as amended by Republic Act No. 9282,[26] provides:

> SEC. 18. *Appeal to the Court of Tax Appeals En Banc*. – No civil proceedings involving matters arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.
>
> A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *en banc*.

Petitioner's primary argument is that a resolution of a CTA Division denying a motion to quash is a proper subject of an appeal to the CTA *en banc* under Section 18 of Republic Act No. 1125, as amended, because the law does not say that only a resolution that constitutes a final disposition of a case may be appealed to the CTA *en banc*. If the interpretation of the law by the CTA *en banc* prevails, a procedural void is created leaving the parties, such as petitioner, without any remedy involving erroneous resolutions of a CTA Division.

The Court finds no merit in the petitioner's assertion.

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[24] *Id.* at 10.

[25] An Act Creating the Court of Tax Appeals.

[26] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging Its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

The petition for review under Section 18 of Republic Act No. 1125, as amended, may be new to the CTA, but it is actually a mode of appeal long available in courts of general jurisdiction.

Petitioner is invoking a very narrow and literal reading of Section 18 of Republic Act No. 1125, as amended.

Indeed, the filing of a petition for review with the CTA *en banc* from a decision, resolution, or order of a CTA Division is a remedy newly made available in proceedings before the CTA, necessarily adopted to conform to and address the changes in the CTA.

There was no need for such rule under Republic Act No. 1125, prior to its amendment, since the CTA then was composed only of one Presiding Judge and two Associate Judges.[27] Any two Judges constituted a quorum and the concurrence of two Judges was necessary to promulgate any decision thereof.[28]

The amendments introduced by Republic Act No. 9282 to Republic Act No. 1125 elevated the rank of the CTA to a collegiate court, with the same rank as the Court of Appeals, and increased the number of its members to one Presiding Justice and five Associate Justices.[29] The CTA is now allowed to sit *en banc* or in two Divisions with each Division consisting of three Justices. Four Justices shall constitute a quorum for sessions *en banc*, and the affirmative votes of four members of the Court *en banc* are necessary for the rendition of a decision or resolution; while two Justices shall constitute a quorum for sessions of a Division and the affirmative votes of two members of the Division shall be necessary for the rendition of a decision or resolution.[30]

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[27] Section 1 of Republic Act No. 1125.

[28] Section 2 of Republic Act No. 1125.

[29] Section 1 of Republic Act No. 9282.

[30] Section 2 of Republic Act No. 9282.

In A.M. No. 05-11-07-CTA, the Revised CTA Rules, this Court delineated the jurisdiction of the CTA *en banc* [31] and in Divisions.[32] Section 2, Rule 4 of the Revised CTA Rules recognizes the exclusive appellate jurisdiction of the CTA *en banc* to review by appeal the following decisions, resolutions, or orders of the CTA Division:

SEC. 2. *Cases within the jurisdiction of the Court en banc.* – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

(2) Local tax cases decided by the Regional Trial Courts in the exercise of their original jurisdiction; and

(3) Tax collection cases decided by the Regional Trial Courts in the exercise of their original jurisdiction involving final and executory assessments for taxes, fees, charges and penalties, where the principal amount of taxes and penalties claimed is less than one million pesos;

xxx xxx xxx

(f) Decisions, resolutions or orders on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive original jurisdiction over cases involving criminal offenses arising from violations of the National Internal Revenue Code or the Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or Bureau of Customs.

(g) Decisions, resolutions or order on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over criminal offenses mentioned in the preceding subparagraph; x x x.

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[31] Section 2, Rule 4.

[32] Section 3, Rule 4.

Although the filing of a petition for review with the CTA *en banc* from a decision, resolution, or order of the CTA Division, was newly made available to the CTA, such mode of appeal has long been available in Philippine courts of general jurisdiction. Hence, the Revised CTA Rules no longer elaborated on it but merely referred to existing rules of procedure on petitions for review and appeals, to wit:

RULE 7

PROCEDURE IN THE COURT OF TAX APPEALS

SEC. 1. *Applicability of the Rules of the Court of Appeals*. – The procedure in the Court *en banc* or in Divisions in original and in appealed cases shall be the same as those in petitions for review and appeals before the Court of Appeals **pursuant to the applicable provisions of Rules 42, 43, 44 and 46 of the Rules of Court**, except as otherwise provided for in these Rules.

RULE 8

PROCEDURE IN CIVIL CASES

xxx xxx xxx

SEC. 4. Where *to appeal; mode of appeal.* –

xxx xxx xxx

(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review **as provided in Rule 43 of the Rules of Court**. The Court *en banc* shall act on the appeal.

xxx xxx xxx

RULE 9

PROCEDURE IN CRIMINAL CASES

SEC. 1. *Review of cases in the Court.* – The review of criminal cases in the Court *en banc* or in Division shall be governed by the applicable provisions of Rule 124 of the Rules of Court.

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SEC. 9. *Appeal; period to appeal.* –

xxx xxx xxx

(b) An appeal to the Court *en banc* in criminal cases decided by the Court in Division shall be taken by filing a petition for review as provided in **Rule 43 of the Rules of Court** within fifteen days from receipt of a copy of the decision or resolution appealed from. The Court may, for good cause, extend the time for filing of the petition for review for an additional period not exceeding fifteen days. (Emphasis ours.)

Given the foregoing, the petition for review to be filed with the CTA *en banc* as the mode for appealing a decision, resolution, or order of the CTA Division, under Section 18 of Republic Act No. 1125, as amended, is not a totally new remedy, unique to the CTA, with a special application or use therein. To the contrary, the CTA merely adopts the procedure for petitions for review and appeals long established and practiced in other Philippine courts. Accordingly, doctrines, principles, rules, and precedents laid down in jurisprudence by this Court as regards petitions for review and appeals in courts of general jurisdiction should likewise bind the CTA, and it cannot depart therefrom.

General rule: The denial of a motion to quash is an interlocutory order which is not the proper subject of an appeal or a petition for certiorari.

According to Section 1, Rule 41 of the Revised Rules of Court, governing appeals from the Regional Trial Courts (RTCs) to the Court of Appeals, an appeal may be taken only from a judgment or final order that completely disposes of the case or of a matter therein when declared by the Rules to be appealable. Said provision, thus, explicitly states that no appeal may be taken from an interlocutory order.[33]

The Court distinguishes final judgments and orders from interlocutory orders in this wise:

Section 2, Rule 41 of the Revised Rules of Court provides that "(o)nly final judgments or orders shall be subject to appeal." Interlocutory or incidental judgments or orders do not stay the progress of an action nor are they subject of appeal "until final judgment or

[33] Section 1(c), Rule 41 of the Revised Rules of Court.

order is rendered for one party or the other." The test to determine whether an order or judgment is interlocutory or final is this: "Does it leave something to be done in the trial court with respect to the merits of the case? If it does, it is interlocutory; if it does not, it is final". A court order is final in character if it puts an end to the particular matter resolved or settles definitely the matter therein disposed of, such that no further questions can come before the court except the execution of the order. The term "final" judgment or order signifies a judgment or an order which disposes of the cause as to all the parties, reserving no further questions or directions for future determination. The order or judgment may validly refer to the entire controversy or to some definite and separate branch thereof. "In the absence of a statutory definition, a final judgment, order or decree has been held to be x x x one that finally disposes of, adjudicates, or determines the rights, or some right or rights of the parties, either on the entire controversy or on some definite and separate branch thereof, and which concludes them until it is reversed or set aside." The central point to consider is, therefore, the effects of the order on the rights of the parties. A court order, on the other hand, is merely interlocutory in character if it is provisional and leaves substantial proceeding to be had in connection with its subject. The word "interlocutory" refers to "something intervening between the commencement and the end of a suit which decides some point or matter but is not a final decision of the whole controversy."[34]

In other words, after a final order or judgment, the court should have nothing more to do in respect of the relative rights of the parties to the case. Conversely, "an order that does not finally dispose of the case and does not end the Court's task of adjudicating the parties' contentions in determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is interlocutory."[35]

The rationale for barring the appeal of an interlocutory order was extensively discussed in *Matute v. Court of Appeals*,[36] thus:

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[34] *De la Cruz v. Paras*, G.R. No. L-41053, 27 February 1976, 69 SCRA 556, 560-561.

[35] *BA Finance Corporation v. Court of Appeals*, G.R. No. 84294, 16 October 1989, 178 SCRA 589, 596.

[36] 136 Phil. 157, 203-204 (1969).

It is settled that an "interlocutory order or decree made in the progress of a case is always under the control of the court until the final decision of the suit, and may be modified or rescinded upon sufficient grounds shown at any time before final judgment . . ." Of similar import is the ruling of this Court declaring that "it is rudimentary that such (interlocutory) orders are subject to change in the discretion of the court." Moreover, one of the inherent powers of the court is "To amend and control its process and orders so as to make them conformable to law and justice. In the language of Chief Justice Moran, paraphrasing the ruling in *Veluz vs. Justice of the Peace of Sariaya*, "since judges are human, susceptible to mistakes, and are bound to administer justice in accordance with law, they are given the inherent power of amending their orders or judgments so as to make them conformable to law and justice, and they can do so before they lose their jurisdiction of the case, that is before the time to appeal has expired and no appeal has been perfected." And in the abovecited *Veluz* case, this Court held that "If the trial court should discover or be convinced that it had committed an error in its judgment, or had done an injustice, before the same has become final, it may, upon its own motion or upon a motion of the parties, correct such error in order to do justice between the parties. . . . It would seem to be the very height of absurdity to prohibit a trial judge from correcting an error, mistake, or injustice which is called to his attention before he has lost control of his judgment." Corollarily, it has also been held "that a judge of first instance is not legally prevented from revoking the interlocutory order of another judge in the very litigation subsequently assigned to him for judicial action."

Another recognized reason of the law in permitting appeal only from a final order or judgment, and not from an interlocutory or incidental one, is to avoid multiplicity of appeals in a single action, which must necessarily suspend the hearing and decision on the merits of the case during the pendency of the appeal. If such appeal were allowed, the trial on the merits of the case would necessarily be delayed for a considerable length of time, and compel the adverse party to incur unnecessary expenses, for one of the parties may interpose as many appeals as incidental questions may be raised by him, and interlocutory orders rendered or issued by the lower court. [37]

[37] *Sitchon v. Sheriff of Occidental Negros*, 80 Phil. 397, 399 (1948).

There is no dispute that a court order denying a motion to quash is interlocutory. The denial of the motion to quash means that the criminal information remains pending with the court, which must proceed with the trial to determine whether the accused is guilty of the crime charged therein. Equally settled is the rule that an order denying a motion to quash, being interlocutory, is not immediately appealable,[38] nor can it be the subject of a petition for *certiorari*. Such order may only be reviewed in the ordinary course of law by an appeal from the judgment after trial.[39]

The Court cannot agree in petitioner's contention that there would exist a procedural void following the denial of her Motion to Quash by the CTA First Division in its Resolutions dated 23 February 2006 and 11 May 2006, leaving her helpless. The remedy of an accused from the denial of his or her motion to quash has already been clearly laid down as follows:

> An order denying a Motion to Acquit (like an order denying a motion to quash) is interlocutory and not a final order. It is, therefore, not appealable. Neither can it be the subject of a petition for *certiorari*. Such order of denial may only be reviewed, in the ordinary course of law, by an appeal from the judgment, after trial. As stated in *Collins vs. Wolfe*, and reiterated in *Mill vs. Yatco*, the accused, after the denial of his motion to quash, should have proceeded with the trial of the case in the court below, and if final judgment is rendered against him, he could then appeal, and, upon such appeal, present the questions which he sought to be decided by the appellate court in a petition for *certiorari*.
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> In *Acharon vs. Purisima*, the procedure was well defined, thus:
>
> > "Moreover, when the motion to quash filed by Acharon to nullify the criminal cases filed against him was denied by the Municipal Court of General Santos his remedy was not to file a petition for *certiorari* but to go to trial without prejudice on his part to reiterate the special defenses he had invoked in his motion and, if, after trial on the merits, an adverse decision

[38] *Villasin v. Seven-Up Bottling Co. of the Philippines*, 107 Phil. 801, 802 (1960).

[39] *Gamboa v. Cruz*, G.R. No. 56291, 27 June 1988, 162 SCRA 642, 652.

> is rendered, to appeal therefrom in the manner authorized by law. This is the procedure that he should have followed as authorized by law and precedents. Instead, he took the usual step of filing a writ of *certiorari* before the Court of First Instance which in our opinion is unwarranted it being contrary to the usual course of law."[40]

Hence, the CTA *en banc* herein did not err in denying petitioner's Motion for Extension of Time to File Petition for Review, when such Petition for Review is the wrong remedy to assail an interlocutory order denying her Motion to Quash.

While the general rule proscribes the appeal of an interlocutory order, there are also recognized exceptions to the same. The general rule is not absolute. Where special circumstances clearly demonstrate the inadequacy of an appeal, then the special civil action of *certiorari* or prohibition may exceptionally be allowed.[41] This Court recognizes that under certain situations, recourse to extraordinary legal remedies, such as a petition for *certiorari*, is considered proper to question the denial of a motion to quash (or any other interlocutory order) in the interest of a "more enlightened and substantial justice";[42] or to promote public welfare and public policy;[43] or when the cases "have attracted nationwide attention, making it essential to proceed with dispatch in the consideration thereof";[44] or when the order was rendered with grave abuse of discretion.[45] *Certiorari* is an appropriate remedy to assail an interlocutory order (1) when the tribunal issued such order without or in excess of jurisdiction or with grave abuse of discretion; and (2) when the assailed interlocutory

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[40] *Id.* at 652-653.

[41] *Principio v. Barrientos*, G.R. No. 167025, 19 December 2005, 478 SCRA 639, 646.

[42] *Mead v. Hon. Argel*, 200 Phil. 650, 656 (1982); *Yap v. Lutero*, 105 Phil. 1307, 1308 (1959).

[43] *Pineda v. Bartolome*, 95 Phil. 930, 937 (1954), citing *People v. Zulueta*, 89 Phil. 752, 756 (1951).

[44] *Id.*

[45] *Id.*

order is patently erroneous, and the remedy of appeal would not afford adequate and expeditious relief.[46]

Recourse to a petition for *certiorari* to assail an interlocutory order is now expressly recognized in the ultimate paragraph of Section 1, Rule 41 of the Revised Rules of Court on the subject of appeal, which states:

> In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

As to whether the CTA *en banc*, under its expanded jurisdiction in Republic Act No. 9282, has been granted jurisdiction over special civil actions for *certiorari* is not raised as an issue in the Petition at bar, thus, precluding the Court from making a definitive pronouncement thereon. However, even if such an issue is answered in the negative, it would not substantially affect the ruling of this Court herein, for a party whose motion to quash had been denied may still seek recourse, under exceptional and meritorious circumstances, *via* a special civil action for *certiorari* with this Court, refuting petitioner's assertion of a procedural void.

The CTA First Division did not commit grave abuse of discretion in denying petitioner's Motion to Quash.

Assuming that the CTA *en banc*, as an exception to the general rule, allowed and treated petitioner's Petition for Review in C.T.A. EB. CRIM. No. 001 as a special civil action for *certiorari*,[47] it would still be dismissible for lack of merit.

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[46] *Casil v. Court of Appeals*, 349 Phil. 187, 196-197 (1998).

[47] This Court proceeds with the discussion on the assumption that the CTA *en banc* has jurisdiction over special civil actions for *certiorari*. The issue on whether the CTA, under its expanded jurisdiction in Republic Act No. 9282, has been granted jurisdiction over special civil actions for *certiorari* is not raised in the Petition at bar, thus, precluding the Court from making a definitive pronouncement thereon. If such an issue is subsequently ruled upon by this Court in the negative, it would not substantially alter the ruling

An act of a court or tribunal may only be considered as committed in grave abuse of discretion when the same was performed in a capricious or whimsical exercise of judgment, which is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility. In this connection, it is only upon showing that the court acted without or in excess of jurisdiction or with grave abuse of discretion that an interlocutory order such as that involved in this case may be impugned. Be that as it may, it must be emphasized that this practice is applied only under certain exceptional circumstances to prevent unnecessary delay in the administration of justice and so as not to unduly burden the courts.[48]

Certiorari is not available to correct errors of procedure or mistakes in the judge's findings and conclusions of law and fact. It is only in the presence of extraordinary circumstances evincing a patent disregard of justice and fair play where resort to a petition for *certiorari* is proper. A party must not be allowed to delay litigation by the sheer expediency of filing a petition for *certiorari* under Rule 65 of the Revised Rules of Court based on scant allegations of grave abuse.[49]

A writ of *certiorari* is not intended to correct every controversial interlocutory ruling: it is resorted to only to correct a grave abuse of discretion or a whimsical exercise of judgment equivalent to lack of jurisdiction. Its function is limited to keeping an inferior court within its jurisdiction and to relieve persons from arbitrary acts — acts which courts or judges have no power or

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of this Court herein, for under exceptional and meritorious circumstances, a party whose motion to quash has been denied may still seek recourse via a special civil action for *certiorari* with this Court.

[48] *Yee v. Bernabe*, G.R. No. 141393, 19 April 2006, 487 SCRA 385, 393.

[49] *La Campana Development Corp. v. See*, G.R. No. 149195, 26 June 2006, 492 SCRA 584, 590.

authority in law to perform. It is not designed to correct erroneous findings and conclusions made by the courts.[50]

The Petition for Review which petitioner intended to file before the CTA *en banc* relied on two grounds: (1) the lack of authority of Prosecuting Attorney Torrevillas to file the Information; and (2) the filing of the said Information in violation of petitioner's constitutional rights to due process and equal protection of the laws.

Anent the first ground, petitioner argues that the Information was filed without the approval of the BIR Commissioner in violation of Section 220 of NIRC, as amended, which provides:

> SEC. 220. *Form and Mode of Proceeding in Actions Arising under this Code.* — Civil and criminal actions and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and shall be conducted by legal officers of the Bureau of Internal Revenue but no civil or criminal action for the recovery of taxes or the enforcement of any fine, penalty or forfeiture under this Code shall be filed in court without the approval of the Commissioner.

Petitioner's argument must fail in light of BIR Commissioner Parayno's letter dated 19 May 2005 to DOJ Secretary Gonzales referring "for preliminary investigation **and filing of an information in court** if evidence so warrants," the findings of the BIR officers recommending the criminal prosecution of petitioner. In said letter, BIR Commissioner Parayno already gave his prior approval to the filing of an information in court should the DOJ, based on the evidence submitted, find probable cause against petitioner during the preliminary investigation. Section 220 of the NIRC, as amended, simply requires that the BIR Commissioner approve the institution of civil or criminal action against a tax law violator, but it does not describe in what form such approval must be given. In this case, BIR

[50] *Bonifacio Construction Management Corporation v. Perlas-Bernabe*, G.R. No. 148174, 30 June 2005, 462 SCRA 392, 396-397, citing *Indiana Aerospace University v. Commission on Higher Education*, 408 Phil. 483, 501 (2001).

Commissioner Parayno's letter of 19 May 2005 already states his express approval of the filing of an information against petitioner and his signature need not appear on the Resolution of the State Prosecutor or the Information itself.

Still on the purported lack of authority of Prosecution Attorney Torrevillas to file the Information, petitioner asserts that it is the City Prosecutor under the Quezon City Charter, who has the authority to investigate and prosecute offenses allegedly committed within the jurisdiction of Quezon City, such as petitioner's case.

The Court is not persuaded. Under Republic Act No. 537, the Revised Charter of Quezon City, the City Prosecutor shall have the following duties relating to the investigation and prosecution of criminal offenses:

> SEC. 28. *The City Attorney — His assistants — His duties.* —
>
> xxx xxx xxx
>
> (g) He shall also have charge of the prosecution of all crimes, misdemeanors, and violations of city ordinances, in the Court of First Instance and the municipal courts of the city, and shall discharge all the duties in respect to the criminal prosecutions enjoined by law upon provincial fiscals.
>
> (h) He shall cause to be investigated all charges of crimes, misdemeanors, and violations of ordinances and have the necessary information or complaints prepared or made against the persons accused. He or any of his assistants may conduct such investigations by taking oral evidence of reputable witnesses, and for this purpose may issue subpoena, summon witnesses to appear and testify under oath before him, and the attendance or evidence of an absent or recalcitrant witness may be enforced by application to the municipal court or the Court of First Instance. No witness summoned to testify under this section shall be under obligation to give any testimony which tend to incriminate himself.

Evident from the foregoing is that the City Prosecutor has the power to investigate crimes, misdemeanors, and violations of ordinances committed within the territorial jurisdiction of the city, and which can be prosecuted before the trial courts of

the said city. The charge against petitioner, however, is already within the exclusive original jurisdiction of the CTA,[51] as the Information states that her gross underdeclaration resulted in an income tax deficiency of ₱1,395,116.24, excluding interest and penalties. The City Prosecutor does not have the authority to appear before the CTA, which is now of the same rank as the Court of Appeals.

In contrast, the DOJ is the principal law agency of the Philippine government which shall be both its legal counsel and prosecution arm.[52] It has the power to investigate the commission of crimes, prosecute offenders and administer the probation and correction system.[53] Under the DOJ is the Office of the State Prosecutor whose functions are described as follows:

Sec. 8. *Office of the Chief State Prosecutor.* — The Office of the Chief State Prosecutor shall have the following functions:

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[51] According to Section 7(b)(1) of Republic Act No. 1125, as amended by Republic Act No. 9282:

SEC. 7. *Jurisdiction.* – The CTA shall exercise:

xxx xxx xxx

(b) Jurisdiction over cases involving criminal offenses as herein provided:

(1) Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs: Provided, however, That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (₱1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate. Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action shall be recognized.

[52] Section 1, Chapter 1, Title III, Book IV of Executive Order No. 292, otherwise known as the Administrative Code of 1987.

[53] Section 3(2), Chapter 1, Title III, Book IV of the Administrative Code of 1987.

(1) Assist the Secretary in the performance of powers and functions of the Department relative to its role as the prosecution arm of the government;

(2) Implement the provisions of laws, executive orders and rules, and carry out the policies, plans, programs and projects of the Department relative to the investigation and prosecution of criminal cases;

(3) Assist the Secretary in exercising supervision and control over the National Prosecution Service as constituted under P.D. No. 1275 and/or otherwise hereinafter provided; and

(4) Perform such other functions as may be provided by law or assigned by the Secretary.[54]

As explained by CTA First Division in its Resolution dated 11 May 2006:

> [T]he power or authority of the Chief State Prosecutor Jovencito Zuño, Jr. and his deputies in the Department of Justice to prosecute cases is national in scope; and the Special Prosecutor's authority to sign and file informations in court proceeds from the exercise of said person's authority to conduct preliminary investigations.[55]

Moreover, there is nothing in the Revised Quezon City Charter which would suggest that the power of the City Prosecutor to investigate and prosecute crimes, misdemeanors, and violations of ordinances committed within the territorial jurisdiction of the city is to the exclusion of the State Prosecutors. In fact, the Office of the State Prosecutor exercises control and supervision over City Prosecutors under Executive Order No. 292, otherwise known as the Administrative Code of 1987.

As regards petitioner's second ground in her intended Petition for Review with the CTA *en banc*, she asserts that she has been denied due process and equal protection of the laws when similar charges for violation of the NIRC, as amended, against Regina Encarnacion A. Velasquez (Velasquez) were dismissed by the DOJ in its Resolution dated 10 August 2005 in I.S.

[54]Chapter 2, Title III, Book IV of the Administrative Code of 1987.

[55]*Rollo*, pp. 369-370.

No. 2005-330 for the reason that Velasquez's tax liability was not yet fully determined when the charges were filed.

The Court is unconvinced.

First, a motion to quash should be based on a defect in the information which is evident on its face.[56] The same cannot be said herein. The Information against petitioner appears valid on its face; and that it was filed in violation of her constitutional rights to due process and equal protection of the laws is not evident on the face thereof. As pointed out by the CTA First Division in its 11 May 2006 Resolution, the more appropriate recourse petitioner should have taken, given the dismissal of similar charges against Velasquez, was to appeal the Resolution dated 21 October 2005 of the Office of the State Prosecutor recommending the filing of an information against her with the DOJ Secretary.[57]

Second, petitioner cannot claim denial of due process when she was given the opportunity to file her affidavits and other pleadings and submit evidence before the DOJ during the preliminary investigation of her case and before the Information was filed against her. Due process is merely an opportunity to be heard. In addition, preliminary investigation conducted by the DOJ is merely inquisitorial. It is not a trial of the case on the merits. Its sole purpose is to determine whether a crime has been committed and whether the respondent therein is probably guilty of the crime. It is not the occasion for the full and exhaustive display of the parties' evidence. Hence, if the investigating prosecutor is already satisfied that he can reasonably determine the existence of probable cause based on the parties' evidence thus presented, he may terminate the proceedings and resolve the case.[58]

Third, petitioner cannot likewise aver that she has been denied equal protection of the laws.

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[56] *Gozos v. Hon. Tac-An*, 360 Phil. 453, 464 (1998).

[57] *Rollo*, pp. 370-371.

[58] *De Ocampo v. Secretary of Justice*, G.R. No. 147932, 25 January 2006, 480 SCRA 71, 81-82.

The equal protection clause exists to prevent undue favor or privilege. It is intended to eliminate discrimination and oppression based on inequality. Recognizing the existence of real differences among men, the equal protection clause does not demand absolute equality. It merely requires that all persons shall be treated alike, under like circumstances and conditions, both as to the privileges conferred and liabilities enforced.[59]

Petitioner was not able to duly establish to the satisfaction of this Court that she and Velasquez were indeed similarly situated, *i.e.*, that they committed identical acts for which they were charged with the violation of the same provisions of the NIRC; and that they presented similar arguments and evidence in their defense — yet, they were treated differently.

Furthermore, that the Prosecution Attorney dismissed what were supposedly similar charges against Velasquez did not compel Prosecution Attorney Torrevillas to rule the same way on the charges against petitioner. In *People v. Dela Piedra*,[60] this Court explained that:

> The prosecution of one guilty person while others equally guilty are not prosecuted, however, is not, by itself, a denial of the equal protection of the laws. Where the official action purports to be in conformity to the statutory classification, an erroneous or mistaken performance of the statutory duty, although a violation of the statute, is not without more a denial of the equal protection of the laws. The unlawful administration by officers of a statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination. This may appear on the face of the action taken with respect to a particular class or person, or it may only be shown by extrinsic evidence showing a discriminatory design over another not to be inferred from the action itself. **But a discriminatory purpose is not presumed, there must be a showing of "clear and intentional discrimination."** Appellant has failed to show that,

[59] *Himagan v. People*, G.R. No. 113811, 7 October 1994, 237 SCRA 538, 551.

[60] 403 Phil. 31, 54-56 (2001).

in charging appellant in court, that there was a "clear and intentional discrimination" on the part of the prosecuting officials.

The discretion of who to prosecute depends on the prosecution's sound assessment whether the evidence before it can justify a reasonable belief that a person has committed an offense. **The presumption is that the prosecuting officers regularly performed their duties, and this presumption can be overcome only by proof to the contrary, not by mere speculation.** Indeed, appellant has not presented any evidence to overcome this presumption. The mere allegation that appellant, a Cebuana, was charged with the commission of a crime, while a Zamboangueña, the guilty party in appellant's eyes, was not, is insufficient to support a conclusion that the prosecution officers denied appellant equal protection of the laws.

There is also common sense practicality in sustaining appellant's prosecution.

While all persons accused of crime are to be treated on a basis of equality before the law, it does not follow that they are to be protected in the commission of crime. It would be unconscionable, for instance, to excuse a defendant guilty of murder because others have murdered with impunity. **The remedy for unequal enforcement of the law in such instances does not lie in the exoneration of the guilty at the expense of society** x x x. Protection of the law will be extended to all persons equally in the pursuit of their lawful occupations, but no person has the right to demand protection of the law in the commission of a crime.

Likewise, [i]f the failure of prosecutors to enforce the criminal laws as to some persons should be converted into a defense for others charged with crime, the result would be that the trial of the district attorney for nonfeasance would become an issue in the trial of many persons charged with heinous crimes and the enforcement of law would suffer a complete breakdown. (Emphasis ours.)

In the case at bar, no evidence of a clear and intentional discrimination against petitioner was shown, whether by Prosecution Attorney Torrevillas in recommending the filing of Information against petitioner or by the CTA First Division in denying petitioner's Motion to Quash. The only basis for petitioner's claim of denial of equal protection of the laws was

the dismissal of the charges against Velasquez while those against her were not.

And lastly, the Resolutions of the CTA First Division dated 23 February 2006 and 11 May 2006 directly addressed the arguments raised by petitioner in her Motion to Quash and Motion for Reconsideration, respectively, and explained the reasons for the denial of both Motions. There is nothing to sustain a finding that these Resolutions were rendered capriciously, whimsically, or arbitrarily, as to constitute grave abuse of discretion amounting to lack or excess of jurisdiction.

In sum, the CTA *en banc* did not err in denying petitioner's Motion for Extension of Time to File Petition for Review. Petitioner cannot file a Petition for Review with the CTA *en banc* to appeal the Resolution of the CTA First Division denying her Motion to Quash. The Resolution is interlocutory and, thus, unappealable. Even if her Petition for Review is to be treated as a petition for *certiorari*, it is dismissible for lack of merit.

WHEREFORE, premises considered, the instant Petition for Review is hereby *DENIED*. Costs against petitioner.

SO ORDERED.

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

[*] Justice Renato C. Corona was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 3 January 2008.

THIRD DIVISION

[G.R. No. 173312. August 26, 2008]

ESTATE OF LINO OLAGUER, Represented by Linda O. Olaguer, and LINDA O. MONTAYRE, *petitioners, vs.* **EMILIANO M. ONGJOCO,** *respondent.*

SYLLABUS

1. CIVIL LAW; AGENCY; FORM OF AGENCY; AUTHORITY TO SELL SHALL BE IN WRITING, OTHERWISE THE SALE SHALL BE VOID; SPECIAL POWER OF ATTORNEY, WHEN NECESSARY.— According to the provisions of Article 1874 of the Civil Code on Agency, when the sale of a piece of land or any interest therein is made through an agent, the authority of the latter shall be in writing. Absent this requirement, the sale shall be void. Also, under Article 1878, a special power of attorney is necessary in order for an agent to enter into a contract by which the ownership of an immovable property is transmitted or acquired, either gratuitously or for a valuable consideration.

2. ID.; ID.; ID.; ID.; SPECIAL POWER OF ATTORNEY CAN BE INCLUDED IN THE GENERAL POWER WHEN THE ACT OR TRANSACTION FOR WHICH THE SPECIAL POWER IS REQUIRED IS SPECIFIED THEREIN; CASE AT BAR.— As regards Lots Nos. 76-D, 76-E, 76-F and 76-G, Ongjoco was able to present a general power of attorney that was executed by Virgilio Olaguer. While the law requires a special power of attorney, the general power of attorney was sufficient in this case, as Jose A. Olaguer was expressly empowered to sell any of Virgilio's properties; and to sign, execute, acknowledge and deliver any agreement therefor. Even if a document is designated as a general power of attorney, the requirement of a special power of attorney is met if there is a clear mandate from the principal specifically authorizing the performance of the act. The special power of attorney can be included in the general power when the act or transaction for which the special power is required is specified therein.

3. REMEDIAL LAW; EVIDENCE; A DULY NOTARIZED POWER OF ATTORNEY IS CONSIDERED A PUBLIC DOCUMENT AND IT HAS IN ITS FAVOR THE PRESUMPTION OF AUTHENTICITY AND DUE EXECUTION; CASE AT BAR.— [T]he written power of attorney contained the signature of Virgilio Olaguer and was duly notarized. As such, the same is considered a public document and it has in its favor the presumption of authenticity and due execution, which can only be contradicted by clear and convincing evidence. No evidence was presented to overcome the presumption in favor of the duly notarized power of attorney. Neither was there a showing of any circumstance involving the said document that would arouse the suspicion of respondent and spur him to inquire beyond its four corners, in the exercise of that reasonable degree of prudence required of a man in a similar situation. We therefore rule that respondent Ongjoco had every right to rely on the power of attorney in entering into the contracts of sale of Lots Nos. 76-D to 76-G with Jose A. Olaguer.

4. CIVIL LAW; SALES; IN DETERMINING WHETHER OR NOT A BUYER IS IN GOOD FAITH, TIME WHEN THE PARTIES ENTERED INTO THE CONTRACT OF SALE IS MATERIAL.— With respect to the affidavit of Virgilio Olaguer in which he allegedly disavowed any claim or participation in the purchase of any of the properties of the deceased Lino Olaguer, we hold that the same is rather irrelevant. The affidavit was executed only on 1 August 1986 or six years after the last sale of the properties was entered into in 1980. In the determination of whether or not a buyer is in good faith, the point in time to be considered is the moment when the parties actually entered into the contract of sale.

APPEARANCES OF COUNSEL

J.V. Bautista for petitioners.

Abesamis Law Offices for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] is the Decision[2] of the Court of Appeals dated 27 February 2006 in CA-G.R. CV No. 71710. Said decision modified the Decision[3] and the subsequent Order[4] of the Regional Trial Court (RTC) of Legazpi City, Branch 6, in Civil Case No. 6223, and upheld the validity of the sales of properties to respondent Emiliano M. Ongjoco.

The relevant factual antecedents of the case, as found by the trial court and adapted by the Court of Appeals, are as follows:

> The plaintiffs Sor Mary Edith Olaguer, Aurora O. de Guzman, Clarissa O. Trinidad, Lina Olaguer and Ma. Linda O. Montayre are the legitimate children of the spouses Lino Olaguer and defendant Olivia P. Olaguer.
>
> Lino Olaguer died on October 3, 1957 so Special Proceedings No. 528 for probate of will was filed in the then Court of First Instance of Albay. Defendant Olivia P. Olaguer was appointed as administrator pursuant to the will. Later, defendant Eduardo Olaguer was appointed as co-administrator. x x x
>
> On October 15, 1959 defendant Olivia P. Olaguer got married to defendant Jose A. Olaguer before the then Justice of the Peace of Sto. Domingo (Libog) Albay. (Exhibit "NNNN") On January 24, 1965 they were married in church. (Exhibit "XX")
>
> In the order of the probate court dated April 4, 1961, some properties of the estate were authorized to be sold to pay obligations of the estate. Pursuant to this authority, administrators Olivia P. Olaguer and Eduardo Olaguer on December 12, 1962 sold to Pastor

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[1] *Rollo*, pp. 9-36.

[2] Penned by Associate Justice Eliezer R. de Los Santos with Associate Justices Jose C. Reyes, Jr. and Arturo G. Tayag, concurring; *rollo*, pp. 37-64.

[3] Penned by Judge Vladimir B. Brusola; *rollo*, pp. 79-95.

[4] *Rollo*, pp. 96-97.

Bacani for [₱]25,000 Pesos, twelve (12) parcels of land, particularly, Lots 4518, 4526, 4359, 8750, 7514, 6608, 8582, 8157, 7999, 6167, 8266, and **76** with a total area of 99 hectares. (Exhibit "A" – Deed of Sale notarized by defendant Jose A. Olaguer)

This sale of twelve (12) parcels of land to Pastor Bacani was approved by the Probate Court on December 12, 1962. (Exhibit "15")

The following day, December 13, 1962, Pastor Bacani sold back to Eduardo Olaguer and Olivia Olaguer for [₱]12,000.00 Pesos, one of the twelve (12) lots he bought the day before, particularly, Lot No. 76 in the proportion of 7/13 and 6/13 pro-indiviso respectively. (Exhibit "B" – Deed of Sale notarized by Felipe A. Cevallos, Sr.)

Simultaneously, on the same day December 13, 1962, Pastor Bacani sold back to Olivia Olaguer and Eduardo Olaguer the other eleven (11) parcels he bought from them as follows:

> To Olivia Olaguer – Four (4) parcels for 10,700 Pesos, particularly Lots 4518, 4526, 4359, 8750 with a total area of 84 hectares. (Exhibit "E" – Deed of Sale notarized by Felipe A. Cevallos, Sr.)
>
> To Eduardo Olaguer – Seven (7) parcels of land for 2,500 Pesos, particularly Lots 7514, 6608, 8582, 8157, 7999, 6167, and 8266 with a total area of 15 hectares. (Exhibit "C" – Deed of Sale notarized by defendant Jose A. Olaguer)

Relying upon the same order of April 4, 1961 but without prior notice or permission from the Probate Court, defendants Olivia P. Olaguer and Eduardo Olaguer on November 1, 1965 sold to Estanislao Olaguer for 7,000 Pesos, ten (10) parcels of land, particularly, (a) TCT No. T-4011 – Lot No. 578, (b) TCT No. T-1417 – Lot No. 1557, (c) TCT No. T-4031 – Lot No. 1676, (d) TCT No. T-4034 – Lot No. 4521, (e) TCT No. T-4035 – Lot No. 4522, (f) TCT No. 4013 – Lot No. 8635, (g) TCT No. T-4014 – Lot 8638, (h) TCT No. T-4603 – Lot No. 7589, (i) TCT No. 4604 – Lot No. 7593, and (j) TCT No. T-4605 – Lot No. 7396. (Exhibit "D" – Deed of Sale notarized by Rodrigo R. Reantaso)

This sale to Estanislao Olaguer was approved by the Probate Court on November 12, 1965.

After the foregoing sale to Estanislao Olaguer, the following transactions took place:

1) **On July 7, 1966, defendant Olivia P. Olaguer executed a Special Power of Attorney notarized by Rodrigo R. Reantaso (Exhibit "T") in favor of defendant Jose A. Olaguer, authorizing the latter to "sell, mortgage, assign, transfer, endorse and deliver" the properties covered by TCT No. 14654 for Lot 76 6/13 share only**, T-13983, T-14658, T-14655, T-14656, and T-14657.

2) On July 7, 1966, Estanislao Olaguer executed a Special Power of Attorney in favor of Jose A. Olaguer (Exhibit "X") notarized by Rodrigo R. Reantaso authorizing the latter to "sell, mortgage, assign, transfer, endorse and deliver" the properties covered by TCT No. T-20221, T-20222, T-20225 for Lot No. 8635, T-20226 for Lot No. 8638, T-20227, T-20228, and T-20229.

By virtue of this Special Power of Attorney, on March 1, 1967, Jose A. Olaguer as Attorney-in-Fact of Estanislao Olaguer mortgaged Lots 7589, 7593 and 7396 to defendant Philippine National Bank (PNB) as security for a loan of 10,000 Pesos. The mortgage was foreclosed by the PNB on June 13, 1973 and the properties mortgage were sold at public auction to PNB. On December 10, 1990, the PNB transferred the properties to the Republic of the Philippines pursuant to Exec. Order No. 407 dated June 14, 1990 for agrarian reform purposes. (records, vol. 1, page 66)

3) On October 29, 1966, Estanislao Olaguer executed a General Power of Attorney notarized by Rodrigo R. Reantaso (Exhibit "Y") in favor of Jose A. Olaguer, authorizing the latter to exercise general control and supervision over all of his business and properties, and among others, to sell or mortgage any of his properties.

4) On December 29, 1966, Estanislao Olaguer sold to Jose A. Olaguer for 15,000 Pesos, (Exhibit "UU") the ten (10) parcels of land (Lots 578, 4521, 4522, 1557, 1676, 8635, 8638, 7589, 7593 and 7396) he bought from Olivia P. Olaguer and Eduardo Olaguer under Exhibit "D".

5) On March 16, 1968, Estanislao Olaguer sold to Jose A. Olaguer for 1 Peso and other valuable consideration Lot No. 4521 – TCT No. T-20223 and Lot 4522 – TCT No. 20224 with a total area of 2.5 hectares. (records, vol. 1, page 33)

6) On June 5, 1968, Estanislao Olaguer sold Lot No. 8635 under TCT No. T-20225, and Lot No. 8638 under TCT No. 20226 to Jose A. Olaguer for 1 Peso and other valuable consideration. (Exhibit "F") Deed of Sale was notarized by Rodrigo R. Reantaso.

7) On May 13, 1971, Jose A. Olaguer in his capacity as Attorney in-Fact of Estanislao Olaguer sold to his son Virgilio Olaguer for 1 Peso and other valuable consideration Lot No. 1557 – TCT No. 20221 and Lot No. 1676 – TCT No. 20222. The deed of sale was notarized by Otilio Sy Bongon.

8) On July 15, 1974, Jose A. Olaguer sold to his son Virgilio Olaguer Lot No. 4521 and Lot No. 4522 for 1,000 Pesos. Deed of Sale was notarized by Otilio Sy Bongon. (records, vol. 1, page 34)

9) On September 16, 1978 Virgilio Olaguer executed a General Power of Attorney in favor of Jose A. Olaguer notarized by Otilio Sy Bongon (Exhibit "V") authorizing the latter to exercise general control and supervision over all of his business and properties and among others, to sell or mortgage the same.

Olivia P. Olaguer and Eduardo Olaguer were removed as administrators of the estate and on February 12, 1980, plaintiff Ma. Linda Olaguer Montayre was appointed administrator by the Probate Court.

Defendant Jose A. Olaguer died on January 24, 1985. (Exhibit "NN") He was survived by his children, namely the defendants Nimfa Olaguer Taguay, Corazon Olaguer Uy, Jose Olaguer, Jr., Virgilio Olaguer, Jacinto Olaguer, and Ramon Olaguer.

Defendant Olivia P. Olaguer died on August 21, 1997 (Exhibit "OO") and was survived by all the plaintiffs as the only heirs.

The decedent Lino Olaguer have had three marriages. He was first married to Margarita Ofemaria who died April 6, 1925. His second wife was Gloria Buenaventura who died on July 2, 1937. The third wife was the defendant Olivia P. Olaguer.

Lot No. 76 with an area of 2,363 square meters is in the heart of the Poblacion of Guinobatan, Albay. The deceased Lino Olaguer inherited this property from his parents. On it was erected their ancestral home.

As already said above, Lot No. 76 was among the twelve (12) lots sold for 25,000 Pesos, by administrators Olivia P. Olaguer

and Eduardo Olaguer to Pastor Bacani on December 12, 1962. The sale was approved by the probate court on December 12, 1962.

But, the following day, December 13, 1962 Pastor Bacani sold back the same 12 lots to Olivia P. Olaguer and Eduardo Olaguer for 25,200 Pesos, as follows:

a) **Lot No. 76 was sold back to Olivia P. Olaguer and Eduardo Olaguer for 12,000 Pesos, in the proportion of [6/13] and [7/13] respectively.** (Exhibit "B")

b) 4 of the 12 lots namely, Lots 4518, 4526, 4359, and 8750 were sold back to Olivia Olaguer for 10,700 Pesos. (Exhibit "E")

c) 7 of the 12 lots namely, Lots 7514, 6608, 8582, 8157, 7999, 6167, and 8266 were sold back to Eduardo Olaguer for 2,500 Pesos. (Exhibit "C")

d) **Lot No. 76 was thus issued TCT No. T-14654 on December 13, 1962 in the names of Eduardo B. Olaguer married to Daisy Pantig and Olivia P. Olaguer married to Jose A. Olaguer to the extent of 7/13 and 6/13 pro-indiviso, respectively.** (Exhibit "FF" also "14-a)

e) **It appears from Plan (LRC) Psd-180629 (Exhibit "3") that defendant Jose A. Olaguer caused the subdivision survey of Lot 76 into eleven (11) lots, namely, 76-A, 76-B, 76-C, 76-D, 76-E, 76-F, 76-G, 76-H, 76-I, 76-J, and 76-K, sometime on April 3, 1972. The subdivision survey was approved on October 5, 1973. After the approval of the subdivision survey of Lot 76, a subdivision agreement was entered into on November 17, 1973, among Domingo Candelaria, Olivia P. Olaguer, Domingo O. de la Torre and Emiliano M. [Ongjoco].** (records, vol. 2, page 109).

This subdivision agreement is annotated in TCT No. 14654 (Exhibit "14" – "14-d") as follows:

Owner	Lot No.	Area in sq. m.	TCT No.	Vol.	Page
Domingo Candelaria	76-A	300	T-36277	206	97
Olivia P. Olaguer	**76-B**	200	T-36278	"	98

- do -	**76-C**	171	T-36279	"	99
- do -	**76-D**	171	T-36280	"	100
- do -	**76-E**	171	T-36281	"	101
- do -	**76-F**	171	T-36282	"	102
- do -	**76-G**	202	T-36283	"	103
Domingo O. de la Torre	76-H	168	T-36284	"	104
- do -	76-I	168	T-36285	"	105
- do -	76-J	168	T-36286	"	106
Emiliano M. [Ongjoco]	76-K	473	T-36287	"	107

After Lot 76 was subdivided as aforesaid, Jose A. Olaguer as attorney-in-fact of Olivia P. Olaguer, sold to his son Virgilio Olaguer Lots 76-B, 76-C, 76-D, 76-E, 76-F, and 76-G on January 9, 1974 for 3,000 Pesos. (Exhibit "G") The deed of absolute sale was notarized by Otilio Sy Bongon.

Lots 76-B and 76-C were consolidated and then subdivided anew and designated as Lot No. 1 with an area of 186 square meters and Lot No. 2 with an area of 185 square meters of the Consolidation Subdivision Plan (LRC) Pcs-20015. (Please sketch plan marked as Exhibit "4", records, Vol. 2, page 68)

On January 15, 1976, Jose A. Olaguer claiming to be the attorney-in-fact of his son Virgilio Olaguer under a general power of attorney Doc. No. 141, Page No. 100, Book No. 7, Series of 1972 of Notary Public Otilio Sy Bongon, sold Lot No. 1 to defendant Emiliano M. [Ongjoco] for 10,000 Pesos per the deed of absolute sale notarized by Otilio Sy Bongon. (Exhibit "H") **The alleged general power of attorney however was not presented or marked nor formally offered in evidence.**

On September 7, 1976, Jose A. Olaguer again claiming to be the attorney-in-fact of Virgilio Olaguer under the same general power of attorney referred to in the deed of absolute sale of Lot 1, sold Lot No. 2 to Emiliano M. [Ongjoco] for 10,000 Pesos. (Exhibit "I") The deed of absolute sale was notarized by Otilio Sy Bongon.

On July 16, 1979, Jose A. Olaguer as attorney-in-fact of Virgilio Olaguer under a general power of attorney Doc. No. 378, Page No. 76, Book No. 14, Series of 1978 sold Lot No. 76-D to Emiliano M. [Ongjoco] for 5,000 Pesos. The deed of absolute

sale is Doc. No. 571, Page No. 20, Book No. 16, Series of 1979 of Notary Public Otilio Sy Bongon. (Exhibit "K")

The same Lot No. 76-D was sold on October 22, 1979 by Jose A. Olaguer as attorney-in-fact of Virgilio Olaguer under a general power of attorney Doc. No. 378, Page No. 76, Book No. 14, Series of 1978 of Notary Public Otilio Sy Bongon sold Lot No. 76-D to Emiliano M. [Ongjoco] for 10,000 Pesos. The deed of absolute sale is Doc. No. 478, Page No. 97, Book NO. XXII, Series of 1979 of Notary Public Antonio A. Arcangel. (Exhibit "J")

On July 3, 1979, Jose A. Olaguer as attorney-in-fact of Virgilio Olaguer sold Lots 76-E and 76-F to Emiliano M. [Ongjoco] for 15,000 Pesos. The deed of absolute sale is Doc. No. 526, Page No. 11, Book No. 16, Series of 1979 of Notary Public Otilio Sy Bongon. (Exhibit "M")

The same Lots 76-E and 76-F were sold on October 25, 1979, by Jose A. Olaguer as attorney-in-fact of Virgilio Olaguer under the same general power of attorney of 1978 referred to above to Emiliano M. [Ongjoco] for 30,000 Pesos. The deed of absolute sale is Doc. No. 47, Page No. 11, Book No. XXIII, Series of 1972 of Notary Public Antonio A. Arcangel. (Exhibit "L")

On July 2, 1979 Jose A. Olaguer as attorney-in-fact of Virgilio Olaguer sold Lot No. 76-G to Emiliano M. [Ongjoco] for 10,000 Pesos. The deed of sale is Doc. No. 516, Page No. 9, Book No. 16, Series of 1979 of Notary Public Otilio Sy Bongon. (Exhibit "N")

The same Lot 76-G was sold on February 29, 1980 by Jose A. Olaguer as attorney-in-fact of Virgilio Olaguer under the same general power of attorney of 1978 referred to above to Emiliano M. [Ongjoco] for 10,000 Pesos. The deed of absolute sale is Doc. No. l02, Page No. 30, Book No. 17, Series of 1980 of Notary Public Otilio Sy Bongon. (Exhibit "O")[5] (Emphases ours.)

Thus, on 28 January 1980, the Estate of Lino Olaguer represented by the legitimate children of the spouses Lino Olaguer and defendant Olivia P. Olaguer, namely, Sor Mary Edith Olaguer, Aurora O. de Guzman, Clarissa O. Trinidad, Lina Olaguer and Ma. Linda O. Montayre, as attorney-in-fact and in her own

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

behalf, filed an action for the Annulment of Sales of Real Property and/or Cancellation of Titles [6] in the then Court of First Instance of Albay.[7]

Docketed as Civil Case No. 6223, the action named as defendants the spouses Olivia P. Olaguer and Jose A. Olaguer; Eduardo Olaguer; Virgilio Olaguer; Cipriano Duran; the Heirs of Estanislao O. Olaguer, represented by Maria Juan Vda. de Olaguer; and the Philippine National Bank (PNB).

In the original complaint, the plaintiffs therein alleged that the sales of the following properties belonging to the Estate of Lino Olaguer to Estanislao Olaguer were absolutely simulated or fictitious, particularly: Lots Nos. 578, 1557, 1676, 4521,

[6] Records, Vol. 1, pp. 1-14.

[7] The other related cases concerning the Estate of Lino Olaguer are as follows:

After the death of Lino Olaguer on 3 October 1957, Olivia P. Olaguer filed a Petition for Probate of Will and Issuance of Letters of Administration on 21 October 1957. The case was docketed as SPECIAL PROC. NO. 528.

On 24 September 1979, Olivia P. Olaguer filed an action for Quieting of Title and Damages with Petition for Injunction against Linda Olaguer Montayre, assisted by her husband Nelson Montayre, Lina P. Olaguer, Faustino Adra, Celso Llagas, Mariano Orfano, Estelita Almorfe Orfano, Geminiano Llagas, Lorenzo Llagas and Serafin Gustilo. The case was docketed as CIVIL CASE No. 6146.

On 20 March 1980, the Estate of Lino Olaguer, represented by the children of the first marriage of Lino Olaguer, filed an action for the Annulment of Donation and Recovery of Possession and Ownership with Damages against Olivia P. Olaguer, then married to Jose A. Olaguer. The case was docketed as CIVIL CASE No. 6253.

In the order of the Executive Judge of the RTC of Legazpi City, Branch 6 dated 15 June 1983, SPECIAL PROC. NO. 528, CIVIL CASE NO. 6146 and CIVIL CASE NO. 6253 were consolidated with the instant case (CIVIL CASE NO. 6223).

On 9 February 1987, the trial court dismissed all the cases for failure to prosecute.

On 3 March 1987, the trial court reconsidered and set aside the order of dismissal dated 9 February 1987 but ordered the four (4) cases archived.

On 15 January 1998, the records of these cases were again consolidated with the instant case.

4522, 8635, 8638, 7589, 7593, and 7396. In praying that the sale be declared as null and void, the plaintiffs likewise prayed that the resulting Transfer Certificates of Title issued to Jose Olaguer, Virgilio Olaguer, Cipriano Duran and the PNB be annulled.

Defendant PNB claimed in its Answer,[8] *inter alia*, that it was a mortgagee in good faith and for value of Lots Nos. 7589, 7593 and 7396, which were mortgaged as security for a loan of ₱10,000.00; the mortgage contract and other loan documents were signed by the spouses Estanislao and Maria Olaguer as registered owners; the proceeds of the loan were received by the mortgagors themselves; Linda Olaguer Montayre had no legal capacity to sue as attorney-in-fact; plaintiffs as well as Maria Olaguer were in estoppel; and the action was already barred by prescription. PNB set up a compulsory counterclaim for damages, costs of litigation and attorney's fees. It also filed a cross-claim against Maria Olaguer for the payment of the value of the loan plus the agreed interests in the event that judgment would be rendered against it.

Defendants Olivia P. Olaguer, Jose A. Olaguer and Virgilio Olaguer, in their Answer,[9] denied the material allegations in the complaint. They maintained that the sales of the properties to Pastor Bacani and Estanislao Olaguer were judicially approved; the complaint did not state a sufficient cause of action; it was barred by laches and/or prescription; *lis pendens* existed; that the long possession of the vendees have ripened into acquisitive prescription in their favor, and the properties no longer formed part of the Estate of Lino Olaguer; until the liquidation of the conjugal properties of Lino Olaguer and his former wives, the plaintiffs were not the proper parties in interest to sue in the action; and in order to afford complete relief, the other conjugal properties of Lino Olaguer with his former wives, and his capital property that had been conveyed without the approval of the testate court should also be included for recovery in the instant case.

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[8] Records, Vol. 1, pp. 69-75.

[9] *Id.* at 76-83.

Defendant Maria Juan *Vda. de* Olaguer, representing the heirs of Estanislao Olaguer, in her Answer,[10] likewise denied the material allegations of the complaint and insisted that the plaintiffs had no valid cause of action against the heirs of the late Estanislao Olaguer, as the latter did not participate in the alleged transfer of properties by Olivia P. Olaguer and Eduardo Olaguer in favor of the late Estanislao Olaguer.

Defendant Cipriano Duran claimed, in his Answer,[11] that the complaint stated no cause of action; he was merely instituted by his late sister-in-law Josefina Duran to take over the management of Lots Nos. 8635 and 8638 in 1971; and the real party-in-interest in the case was the administrator of the estate of Josefina Duran.

On 11 January 1995, an Amended Complaint[12] was filed in order to implead respondent Emiliano M. Ongjoco as the transferee of Virgilio Olaguer with respect to portions of Lot No. 76, namely Lots Nos. 1, 2, 76-D, 76-E, 76-F, and 76-G.

In his Answer with Counterclaim and Motion to Dismiss,[13] respondent Ongjoco denied the material allegations of the amended complaint and interposed, as affirmative defenses the statute of limitations, that he was a buyer in good faith, that plaintiffs had no cause of action against him, and that the sale of property to Pastor Bacani, from whom Ongjoco derived his title, was judicially approved.

On 23 January 1996, plaintiffs filed a Re-Amended Complaint,[14] in which the heirs of Estanislao Olaguer were identified, namely, Maria Juan *Vda. de* Olaguer, Peter Olaguer, Yolanda Olaguer and Antonio Bong Olaguer.

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[10] *Id.* at 103-105.

[11] *Id.* at 109-110.

[12] *Id.* at 173-190.

[13] *Id.* at 220-223.

[14] *Id.* at 348-363.

In their Answer,[15] the heirs of Estanislao Olaguer reiterated their claim that Estanislao Olaguer never had any transactions or dealings with the Estate of Lino Olaguer; nor did they mortgage any property to the PNB.

On 5 August 1998, the heirs of Estanislao Olaguer and petitioner Ma. Linda Olaguer Montayre submitted a compromise agreement,[16] which was approved by the trial court.

On 6 October 1999, Cipriano Duran filed a Manifestation [17] in which he waived any claim on Lots Nos. 8635 and 8638. Upon motion, Duran was ordered dropped from the complaint by the trial court in an order[18] dated 20 October 1999.

In a Decision[19] dated 13 July 2001, the RTC ruled in favor of the plaintiffs. The pertinent portions of the decision provide:

> The entirety of the evidence adduced clearly show that the sale of the 12 lots to Pastor Bacani pursuant to Exhibit "A" and the sale of the 10 lots to Estanislao Olaguer pursuant to Exhibit "D" were absolutely simulated sales and thus void *ab initio*. The two deeds of sales Exhibits "A" and "D" are even worse than fictitious, they are completely null and void for lack of consideration and the parties therein never intended to be bound by the terms thereof and the action or defense for the declaration of their inexistence does not prescribe. (Art. 1410, Civil Code) Aside from being simulated they were clearly and unequivocally intended to deprive the compulsory heirs of their legitime x x x.
>
> The deeds of sale, Exhibits "A" and "D" being void *ab initio*, they are deemed as non-existent and the approval thereof by the probate court becomes immaterial and of no consequence, because the approval by the probate court did not change the character of the sale from void to valid x x x.
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> xxx xxx xxx

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[15] *Id.* at 439-443.

[16] Records, Vol. 2, pp. 57-59.

[17] *Id.* at 150.

[18] *Id.* at 155.

[19] *Rollo*, pp. 79-95.

Defendant Jose A. Olaguer simulated the sales and had them approved by the probate court so that these properties would appear then to cease being a part of the estate and the vendee may then be at liberty to dispose of the same in any manner he may want. They probably believed that by making it appear that the properties were bought back from Pastor Bacani under a simulated sale, they (Olivia Olaguer and Eduardo Olaguer) would appear then as the owners of the properties already in their personal capacities that disposals thereof will no longer require court intervention. x x x.

xxx xxx xxx

[Jose A. Olaguer] had Olivia P. Olaguer execute a Special Power of Attorney (Exhibit "T") authorizing him (Jose A. Olaguer) to sell or encumber the properties allegedly bought back from Pastor Bacani which Jose A. Olaguer did with respect to the 6/13 share of Olivia P. Olaguer on Lot No. 76 by selling it to his son Virgilio for only 3,000 Pesos, then caused Virgilio to execute a power of attorney authorizing him to sell or encumber the 6/13 share which he did by selling the same to defendant Emiliano M. [Ongjoco].

Virgilio Olaguer however executed an affidavit (Exhibit "CC") wherein he denied having bought any property from the estate of Lino Olaguer and that if there are documents showing that fact he does not know how it came about. x x x.

The 1972 power of attorney referred to by Jose A. Olaguer as his authority for the sale of Lots 1 and 2 (formerly lots 76-B and 76-C) was not presented nor offered in evidence.

There are two deeds of sale over Lot 76-D, (Exhibits "K" and "J") in favor of defendant Emiliano M. [Ongjoco] with different dates of execution, different amount of consideration, different Notary Public.

There are two deeds of sale over Lots 76-E and 76-F (Exhibits "M" and "L") in favor of defendant Emiliano M. [Ongjoco] with different dates of execution, different amount of consideration and different Notary Public.

There are two deeds of sale over Lot 76-G (Exhibits "N" and "O") in favor of Emiliano M. [Ongjoco] with different dates of execution with the same amount of consideration and the same Notary Public.

While Lot 76-D was allegedly sold already to Emiliano M. [Ongjoco] in 1979, yet it was still Jose A. Olaguer who filed a petition for the issuance of a second owner's copy as attorney in fact of Virgilio Olaguer on August 8, 1980 (Exhibit "SS") and no mention was made about the sale.

Under these circumstances, the documents of defendant Emiliano M. [Ongjoco] on lots 76 therefore, in so far as the portions he allegedly bought from Jose A. Olaguer as attorney in fact of Virgilio Olaguer suffers seriously from infirmities and appear dubious.

Defendant Emiliano M. [Ongjoco] cannot claim good faith because according to him, when these lots 76-[B] to 76-G were offered to him his condition was to transfer the title in his name and then he pays. He did not bother to verify the title of his vendor. x x x.

So with respect to the sale of Lots 76-B to 76-G, Emiliano M. [Ongjoco] has no protection as innocent purchaser for good faith affords protection only to purchasers for value from the registered owners. x x x. Knowing that he was dealing only with an agent x x x, it behooves upon defendant Emiliano M. [Ongjoco] to find out the extent of the authority of Jose A. Olaguer as well as the title of the owner of the property, because as early as 1973 pursuant to the subdivision agreement, (records, Vol. 2, page 109 and Exhibit "14" and "14-d") he already knew fully well that Lots 76-B to 76-G he was buying was owned by Olivia P. Olaguer and not by Virgilio Olaguer.

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With respect to the 10 lots sold to [Eduardo] Olaguer (Exhibit "D") Jose A. Olaguer had Estanislao Olaguer execute a power of attorney (Exhibit "X") authorizing him (Jose A. Olaguer) to sell or encumber the 10 lots allegedly bought by Estanislao from the estate. With this power of attorney, he mortgaged lots 7589, 7593 and 7398 to the PNB. He sold lots 1557 and 1676 to his son Virgilio Olaguer. While under Exhibit "UU" dated December 29, 1966, he bought the 10 parcels of land, among which is lots 4521 and 4522 from Estanislao Olaguer, yet, on March 16, 1968, he again bought lots 4521 and 4522 (records, Vol. 1, page 38) from Estanislao Olaguer. While lots 8635 and 8638 were among those sold to him under Exhibit "UU", it appears that he again bought the same on June 5, 1968 under Exhibit "F".

The heirs of Estanislao Olaguer however denied having bought any parcel of land from the estate of Lino Olaguer. Estanislao Olaguer's widow, Maria Juan *vda. de* Olaguer, executed an affidavit (Exhibit "BB") that they did not buy any property from the estate of Lino Olaguer, they did not sell any property of the estate and that they did not mortgage any property with the PNB. She repeated this in her deposition. (records, vol. 2, page 51) This was corroborated by no less than former co-administrator Eduardo Olaguer in his deposition too (Exhibit "RRRR") that the sale of the 10 parcels of land to Estanislao Olaguer was but a simulated sale without any consideration. x x x.

xxx xxx xxx

A partial decision was already rendered by this court in its order of August 5, 1998 (records, vol. 2, page 64) approving the compromise agreement with defendants Heirs of Estanislao Olaguer. (records, Vol. 2 page 57).

Defendant Cipriano Duran was dropped from the complaint per the order of the court dated October 20, 1999 (records, vol. 2, page 155) because he waived any right or claim over lots 8635 and 8638. (records, Vol. 2, page 150). (Emphasis ours.)

The dispositive portion of the above decision was, however, amended by the trial court in an Order[20] dated 23 July 2001 to read as follows:

WHEREFORE, premises considered, decision is hereby rendered in favor of the plaintiffs as follows:

1) The deed of sale to Pastor Bacani (Exhibit "A") and the deed of sale to Estanislao Olaguer (Exhibit "D") are hereby declared as null and void and without force and effect and all the subsequent transfers and certificates arising therefrom likewise declared null and void and cancelled as without force and effect, except as herein provided for.

2) **Lot Nos. 4518, 4526, 4359 and 8750 are hereby ordered reverted back to the estate of Lino Olaguer and for this purpose, within ten (10) days from the finality of this decision, the heirs of Olivia P. Olaguer (the plaintiffs herein)** [sic] **are hereby ordered to execute the necessary document of reconveyance,**

[20] *Id.* at 96-97.

failure for which, the Clerk of Court is hereby ordered to execute the said deed of reconveyance.

3) **Lot Nos. 7514, 6608, 8582, 8157, 7999, 6167 and 8266 are hereby ordered reverted back to the estate of Lino Olaguer and for this purpose, within ten (10) days from the finality of this decision, defendant Eduardo Olaguer is hereby ordered to execute the necessary document of reconveyance, failure for which, the Clerk of Court is hereby ordered to execute the said deed of reconveyance.**

4) Lots 1 and 2, Pcs-20015, and Lots 76-D, 76-E, 76-F and 76-G, Psd-180629 sold to Emiliano M. [Ongjoco] are hereby ordered reverted back to the estate of Lino Olaguer. For this purpose, within ten (10) days from the finality of this decision, defendant Emiliano M. [Ongjoco] is hereby ordered to execute the necessary deed of reconveyance, otherwise, the Clerk of Court shall be ordered to execute the said reconveyance and have the same registered with the Register of Deeds so that new titles shall be issued in the name of the estate of Lino Olaguer and the titles of Emiliano [Ongjoco] cancelled.

5) The parties have acquiesced to the sale of the 7/13 portion of Lot 76 to Eduardo Olaguer as well as to the latter's disposition thereof **and are now in estoppel to question the same**. The court will leave the parties where they are with respect to the 7/13 share of Lot 76.

6) Lots 578, 1557, 1676, 4521, 4522, 8635, 8638, are hereby reverted back to the estate of Lino Olaguer and for this purpose, the Clerk of [Court] is hereby ordered to execute the necessary deed of reconveyance within ten days from the finality of this decision and cause its registration for the issuance of new titles in the name of the Estate of Lino Olaguer and the cancellation of existing ones over the same.

7) While the mortgage with the defendant PNB is null and void, Lots 7589, 7593 and 7396 shall remain with the Republic of the Philippines as a transferee in good faith.

Both the petitioners and respondent filed their respective Notices of Appeal[21] from the above decision. The case was

[21] Records, Vol. 2, pp. 383, 386-389.

docketed in the Court of Appeals as CA-G.R. CV No. 71710.

In their Plaintiff-Appellant's Brief[22] filed before the Court of Appeals, petitioner Estate argued that the trial court erred in not ordering the restitution and/or compensation to them of the value of the parcels of land that were mortgaged to PNB, notwithstanding the fact that the mortgage was declared null and void. Petitioners maintain that the PNB benefited from a void transaction and should thus be made liable for the value of the land, minus the cost of the mortgage and the reasonable expenses for the foreclosure, consolidation and transfer of the lots.

Ongjoco, on the other hand, argued in his Defendant-Appellant's Brief[23] that the trial court erred in: declaring as null and void the Deeds of Sale in favor of Pastor Bacani and Eduardo Olaguer and the subsequent transfers and certificates arising therefrom; ordering the reconveyance of the lots sold to him (Ongjoco); and failing to resolve the affirmative defenses of prescription, the authority of Olivia and Eduardo to dispose of properties formerly belonging to the estate of Lino Olaguer, recourse in a court of co-equal jurisdiction, and forum shopping.

Petitioner Linda O. Montayre was likewise allowed to file a Brief[24] on her own behalf, as Plaintiff-Appellee and Plaintiff-Appellant.[25] She refuted therein the assignment of errors made by Defendant-Appellant Ongjoco and assigned as error the ruling of the trial court that the lots mortgaged to the PNB should remain with the Republic of the Philippines as a transferee in good faith.

On 27 February 2006, the Court of Appeals rendered the assailed Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the appealed Decision is hereby MODIFIED, in that Paragraph 4 of the amended decision is

[22] CA *rollo*, pp. 93-113.

[23] *Id.* at 38-74.

[24] *Id.* at 179-198.

[25] *Id.* at 201.

hereby Ordered Deleted, and the questioned sales to defendant-appellant Emiliano M. Ongjoco are UPHELD.[26]

In denying the appeal interposed by petitioners, the appellate court reasoned that the claim for the value of the lots mortgaged with the PNB were not prayed for in the original Complaint, the Amended Complaint or even in the Re-Amended Complaint. What was sought therein was merely the declaration of the nullity of the mortgage contract with PNB. As the relief prayed for in the appeal was not contained in the complaint, the same was thus barred.

The Court of Appeals also ruled that the evidence of petitioners failed to rebut the presumption that PNB was a mortgagee in good faith. Contrarily, what was proven was the fact that Olivia Olaguer and Jose A. Olaguer were the persons responsible for the fraudulent transactions involving the questioned properties. Thus, the claim for restitution of the value of the mortgaged properties should be made against them.

As regards the appeal of respondent Ongjoco, the appellate court found the same to be meritorious. The said court ruled that when the sale of real property is made through an agent, the buyer need not investigate the principal's title. What the law merely requires for the validity of the sale is that the agent's authority be in writing.

Furthermore, the evidence adduced by petitioners was ruled to be inadequate to support the conclusion that Ongjoco knew of facts indicative of the defect in the title of Olivia Olaguer or Virgilio Olaguer.

Petitioners moved for a partial reconsideration[27] of the Court of Appeals' decision in order to question the ruling that respondent Ongjoco was a buyer in good faith. The motion was, however, denied in a Resolution[28] dated 29 June 2006.

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[26] *Id.* at 229.

[27] *Rollo*, pp. 67-78.

[28] *Id.* at 65-66.

Aggrieved, petitioners filed the instant Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, raising the following assignment of errors:

I.

THE COURT OF APPEALS COMMITTED AN ERROR IN LAW WHEN IT RULED, ON SPECULATION, THAT RESPONDENT EMILIANO M. ONGJOCO WAS A BUYER IN GOOD FAITH OF THE PROPERTIES OF THE ESTATE OF LINO OLAGUER, DESPITE THE EXISTENCE OF FACTS AND CIRCUMSTANCES FOUND BY THE TRIAL COURT THAT OUGHT TO PUT EMILIANO M. ONGJOCO ON NOTICE THAT THE PETITIONERS-APPELLANTS HAVE A RIGHT OR INTEREST OVER THE SAID PROPERTIES, AND CONTRARY TO PREVAILING JURISPRUDENCE.

II.

THE COURT OF APPEALS COMMITTED AN ERROR IN LAW WHEN IT DISREGARDED THE CLEAR FINDINGS OF FACTS AND CONCLUSIONS MADE BY THE TRIAL COURT, IN THE ABSENCE OF ANY STRONG AND COGENT REASONS TO REVERSE THE SAID FINDINGS, CONTRARY TO PREVAILING JURISPRUDENCE.[29]

Essentially, the question that has been brought before us for consideration is whether or not, under the facts and circumstances of this case, respondent Ongjoco can be considered an innocent purchaser for value.

Petitioners agree with the pronouncement of the trial court that respondent Ongjoco could not have been a buyer in good faith since he did not bother to verify the title and the capacity of his vendor to convey the properties involved to him. Knowing that Olivia P. Olaguer owned the properties in 1973 and that he merely dealt with Jose A. Olaguer as an agent in January 1976, Ongjoco should have ascertained the extent of Jose's authority, as well as the title of Virgilio as the principal and owner of the properties.

[29] *Id.* at 21.

Petitioners likewise cite the following incidents that were considered by the trial court in declaring that respondent was a buyer in bad faith, namely: (1) that Virgilio Olaguer executed an affidavit,[30] wherein he denied having bought any property from the estate of Lino Olaguer, and that if there are documents showing that fact, he does not know how they came about; (2) that the power of attorney referred to by Jose A. Olaguer as his authority for the sale of Lots 1 and 2 (formerly Lots 76-B and 76-C) was not presented or offered in evidence; (3) that there are two deeds of sale[31] over Lot 76-D in favor of Ongjoco; (4) that there are two deeds of sale[32] over Lots 76-E and 76-F in favor of Ongjoco; (5) that there are two deeds of sale[33] over Lot 76-G in favor of Ongjoco; and (6) that while Lot 76-D was already sold to Ongjoco in 1979, it was still Jose A. Olaguer as attorney in fact of Virgilio Olaguer who filed on 8 August 1980 a petition for the issuance of a second owner's copy[34] of the title to the property, and no mention was made about the sale to Ongjoco.

Respondent Ongjoco, on the other hand, invokes the ruling of the Court of Appeals that he was an innocent purchaser for value. His adamant stance is that, when he acquired the subject properties, the same were already owned by Virgilio Olaguer. Respondent insists that Jose A. Olaguer was duly authorized by a written power of attorney when the properties were sold to him (Ongjoco). He posits that this fact alone validated the sales of the properties and foreclosed the need for any inquiry beyond the title to the principal. All the law requires, respondent concludes, is that the agent's authority be in writing in order for the agent's transactions to be considered valid.

Respondent Ongjoco's posture is only partly correct.

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[30] Exhibit "CC", Exhibits for the Plaintiffs, p. 52.

[31] Exhibits "J" and "K", *id.* at 33-35.

[32] Exhibits "L" and "M", *id.* at 36-39.

[33] Exhibits "N" and "O", *id.* at 40-41.

[34] Exhibit "SS", *id.* at 67-69.

According to the provisions of Article 1874[35] of the Civil Code on Agency, when the sale of a piece of land or any interest therein is made through an agent, the authority of the latter shall be in writing. Absent this requirement, the sale shall be void. Also, under Article 1878,[36] a special power of attorney is necessary in order for an agent to enter into a contract by which the ownership of an immovable property is transmitted or acquired, either gratuitously or for a valuable consideration.

We note that the resolution of this case, therefore, hinges on the existence of the written power of attorney upon which respondent Ongjoco bases his good faith.

When Lots Nos. 1 and 2 were sold to respondent Ongjoco through Jose A. Olaguer, the Transfer Certificates of Title of said properties were in Virgilio's name.[37] Unfortunately for respondent, the power of attorney that was purportedly issued by Virgilio in favor of Jose Olaguer with respect to the sale of Lots Nos. 1 and 2 was never presented to the trial court. Neither was respondent able to explain the omission. Other than the self-serving statement of respondent, no evidence was offered at all to prove the alleged written power of attorney. This of course was fatal to his case.

As it stands, there is no written power of attorney to speak of. The trial court was thus correct in disregarding the claim of its existence. Accordingly, respondent Ongjoco's claim of good faith in the sale of Lots Nos. 1 and 2 has no leg to stand on.

As regards Lots Nos. 76-D, 76-E, 76-F and 76-G, Ongjoco was able to present a general power of attorney that was executed

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[35] Art. 1874. When a sale of a piece of land or any interest therein is through an agent, the authority of the latter shall be in writing; otherwise, the sale shall be void.

[36] Art. 1878. Special powers of attorney are necessary in the following cases:

xxx xxx xxx

(5) To enter into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration;

[37] Exhibits "5-a", and "6-a-6-b", Exhibits for the Defendants, pp. 4-5.

by Virgilio Olaguer. While the law requires a special power of attorney, the general power of attorney was sufficient in this case, as Jose A. Olaguer was expressly empowered to sell any of Virgilio's properties; and to sign, execute, acknowledge and deliver any agreement therefor.[38] Even if a document is designated as a general power of attorney, the requirement of a special power of attorney is met if there is a clear mandate from the principal specifically authorizing the performance of the act.[39] The special power of attorney can be included in the general power when the act or transaction for which the special power is required is specified therein.[40]

On its face, the written power of attorney contained the signature of Virgilio Olaguer and was duly notarized. As such, the same is considered a public document and it has in its favor the presumption of authenticity and due execution, which can only be contradicted by clear and convincing evidence.[41]

No evidence was presented to overcome the presumption in favor of the duly notarized power of attorney. Neither was there a showing of any circumstance involving the said document that would arouse the suspicion of respondent and spur him to inquire beyond its four corners, in the exercise of that reasonable degree of prudence required of a man in a similar situation.

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[38] The specific provisions of the General Power of Attorney authorizes Jose A. Olaguer, among other powers:

3. To buy or otherwise acquire, to hire or lease, and to pledge, mortgage or otherwise hypothecate, sell, assign and dispose of any and all my property, real, personal or mixed, of any kind whatsoever and wheresoever situated, or any interest therein, upon such terms and conditions and under such covenants as my said attorney shall deem fit and proper, and to execute in or other writings therefore, or in any way connected therewith or with my business or property.

[39] *Bravo-Guerrero v. Bravo*, G.R. No. 152658, 29 July 2005, 465 SCRA 244, 259.

[40] *Veloso v. Court of Appeals*, 329 Phil. 398, 405 (1996), cited in *Bravo-Guerrero v. Bravo, id.*

[41] *Domingo v. Robles*, G.R. No. 153743, 18 March 2005, 453 SCRA 812, 818-819.

We therefore rule that respondent Ongjoco had every right to rely on the power of attorney in entering into the contracts of sale of Lots Nos. 76-D to 76-G with Jose A. Olaguer.

With respect to the affidavit of Virgilio Olaguer in which he allegedly disavowed any claim or participation in the purchase of any of the properties of the deceased Lino Olaguer, we hold that the same is rather irrelevant. The affidavit was executed only on 1 August 1986 or six years after the last sale of the properties was entered into in 1980. In the determination of whether or not a buyer is in good faith, the point in time to be considered is the moment when the parties actually entered into the contract of sale.

Furthermore, the fact that Lots Nos. 76-D to 76-G were sold to respondent Ongjoco twice does not warrant the conclusion that he was a buyer in bad faith. While the said incidents might point to other obscured motives and arrangements of the parties, the same do not indicate that respondent knew of any defect in the title of the owner of the property.

As to the petition filed by Jose A. Olaguer for the issuance of a second owner's copy of the title to Lot No. 76-D, after the property was already sold to respondent Ongjoco, the same does not inevitably indicate that respondent was in bad faith. It is more likely that Jose A. Olaguer was merely compiling the documents necessary for the transfer of the subject property. Indeed, it is to be expected that if the title to the property is lost before the same is transferred to the name of the purchaser, it would be the responsibility of the vendor to cause its reconstitution.

In sum, we hold that respondent Emiliano M. Ongjoco was in bad faith when he bought Lots Nos. 1 and 2 from Jose A. Olaguer, as the latter was not proven to be duly authorized to sell the said properties.

However, respondent Ongjoco was an innocent purchaser for value with regard to Lots Nos. 76-D, 76-E, 76-F and 76-G since it was entirely proper for him to rely on the duly notarized written power of attorney executed in favor of Jose A. Olaguer.

WHEREFORE, premises considered, the instant petition is hereby *PARTIALLY GRANTED*. The assailed Decision of the Court of Appeals dated 27 February 2006 in CA-G.R. CV NO. 71710 is *MODIFIED* in that Paragraph 4 of the Decision dated 13 July 2001 of the Regional Trial Court of Legazpi City, Branch 6, and the Order dated 23 July 2001 shall read as follows:

4) **Lots 1 and 2**, Pcs-20015 sold to Emiliano M. Ongjoco are hereby ordered reverted back to the estate of Lino Olaguer. For this purpose, within ten (10) days from the finality of this decision, defendant Emiliano M. Ongjoco is hereby ordered to execute the necessary deed of reconveyance, otherwise, the Clerk of Court shall be ordered to execute the said reconveyance and have the same registered with the Register of Deeds so that new titles shall be issued in the name of the estate of Lino Olaguer and the titles of Emiliano Ongjoco cancelled.

No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 174405. August 26, 2008]

FLORA BAUTISTA, *petitioner, vs.* **FELICIDAD CASTILLO MERCADO,** *respondent*.

SYLLABUS

1. CRIMINAL LAW; ESTAFA WITH ABUSE OF CONFIDENCE; ELEMENTS.— The elements of estafa under paragraph 1(b), Article 315 of the Revised Penal Code, are: (1) the offender

receives the money, goods or other personal property in trust, or on commission, or for administration, or under any other obligation involving the duty to deliver, or to return, the same; (2) the offender misappropriates or converts such money or property or denies receiving such money or property; (3) the misappropriation or conversion or denial is to the prejudice of another; and (4) the offended party demands that the offender return the money or property.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; GENERALLY, FACTUAL FINDINGS OF THE TRIAL COURT ARE ENTITLED TO RESPECT AND NOT TO BE DISTURBED ON APPEAL.— The credibility of witnesses is a matter best examined by, and left to, the trial courts. When the factual findings of the trial court are affirmed by the appellate court, the general rule applies. This Court will not consider factual issues and evidentiary matters already passed upon. The petitioner raises the same issues she brought before the appellate court, which gave credence to the findings and decision of the trial court. Factual findings of the trial court are entitled to respect and are not to be disturbed on appeal, unless some facts or circumstances of weight and substance, having been overlooked or misinterpreted, might materially affect the disposition of the case. The assessment by the trial court of the credibility of a witness is entitled to great weight. It is even conclusive and binding if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence.

3. CRIMINAL LAW; ESTAFA; IMPOSABLE PENALTY; CASE AT BAR.— In this case, since the amount involved is ₱100,000.00, which amount exceeds ₱22,000.00, the penalty imposable should be within the maximum period of 6 years, 8 months and 21 days to 8 years of *prision mayor*. Article 315 further states that a period of one year shall be added to the penalty for every additional ₱10,000.00 defrauded in excess of ₱22,000.00, but in no case shall the total penalty which may be imposed exceed 20 years. Applying the Indeterminate Sentence Law, since the penalty prescribed by law for the *estafa* charge against Flora is *prision correccional* maximum to *prision mayor* minimum, the penalty next lower would then be *prision correccional* in its minimum and medium periods. Thus, the minimum term of the indeterminate sentence should

be anywhere from 6 months and 1 day to 4 years and 2 months. The amount defrauded by Flora was ₱100,000.00. Hence, the penalty prescribed above should be imposed in its maximum period. The maximum period thereof following the rule prescribed in the last paragraph of Article 77 of the Revised Penal Code ranges from six (6) years, eight (8) months and twenty one (21) days to eight (8) years. Inasmuch as the amount of ₱100,000.00 is ₱78,000.00 more than the above-mentioned benchmark of ₱22,000.00, then, adding one year for each additional ₱10,000.00, the maximum period of 6 years, 8 months and 21 days to 8 years of *prision mayor* minimum would be increased by 7 years. Taking the maximum of the prescribed penalty, which is 8 years, plus an additional 7 years, the maximum of the indeterminate penalty is 15 years. Finding no error in the penalty imposed by the Court of Appeals, the Court sustains the same.

APPEARANCES OF COUNSEL

Aguas Law Office for petitioner.

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. 25426 which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of Manila, Branch 36, finding petitioner Flora Bautista *y* Maniego (Flora) guilty beyond reasonable doubt of the crime of Estafa under Article 315, par. 1(b) of the Revised Penal Code.

On 13 February 1976, an Information for Estafa was filed before the RTC against petitioner, which was docketed as

[1] Penned by Associate Edgardo F. Sundiam with Associate Justices Martin S. Villarama, Jr. and Japar B. Dimaampao, concurring. *Rollo*, pp. 60-70.

[2] Penned by Judge Wilfredo D. Reyes, *rollo*, pp. 19-34.

Criminal Case No. 82-3506. The accusatory portion of the Information reads:

> That sometime in the month of January, 1972, in the City of Manila, Philippines, the accused did then and there willfully, unlawfully and feloniously defraud one Felicidad Castillo Mercado in the following manner to wit: the said accused received in trust from the said Felicidad Castillo Mercado Transfer Certificate of Title No. 4031 covering a parcel of land located at Barrio Ulat, Silang, Cavite, containing an area of 29,234 sq. m. more or less, with the understanding and under express obligation on the part of said accused of mortgaging the same as evidenced by Special Power of Attorney executed by Felicidad Castillo Mercado in favor of said accused and turning over the proceeds of the said loan, if mortgaged, or of returning the said certificate of titles to said Felicidad Castillo Mercado, if unable to do so, upon demand, but the said accused hence, having successfully mortgaged the above described property and having thereby received the loan in the amount of ₱100,000.00 far from applying with her aforesaid obligation, despite repeated demands made upon her to do so, with intent to defraud, willfully, unlawfully and feloniously misapplied, misappropriated and converted the proceeds of the said loan in the amount of ₱100,000.00 to her own personal use and benefit to the damage and prejudice of the said Felicidad Castillo Mercado, in the aforesaid sum of ₱100,000.00, Philippine Currency.[3]

When arraigned, petitioner pleaded not guilty, whereupon trial was held.

At the trial, the prosecution presented the following witnesses: (1) Technical Sergeant (T/SGT.) Romeo Cudia, the Office of the Criminal Investigation Service (CIS), Camp Crame, Quezon City, who investigated the complaint for Estafa filed by respondent Felicidad Castillo Mercado against Flora; (2) Alicia Ignacio, representative of Feati Bank and Trust Company (Feati Bank), who testified that Flora was able to obtain ₱100,000.00 loan by means of a special power of attorney signed by Felicidad with TCT No. 4031 as collateral, and that the said amount was released to Flora; (3) Felicidad Castillo Mercado (Felicidad), the alleged victim in this case, who testified that she and Flora

[3] Records, p. 3.

agreed to enter into a piggery business together and that pursuant thereto, she gave to the petitioner two titles to her lands and executed a special power of attorney in favor of petitioner to use the same as collaterals for a loan, with the understanding that the latter would turn over to her the proceeds thereof; (4) Francisca Mercado Abinante (Francisca), the sister in-law of Felicidad, whose testimony corroborated that of the victim; (5) Atty. Tomas Torneros Jr., the Acting Register of Deeds of Tagaytay City, whose testimony confirmed that Transfer Certificate of Title No. 4031 was mortgaged to Feati Bank, that the mortgage was executed by Felicidad through her attorney-in-fact Flora Bautista, and that said property was foreclosed and sold at public auction to Feati Bank.

As documentary evidence, the prosecution offered the following: Exhibit "A" – Transfer Certificate of Title No. 4031; Exhibit "A-6" – the Special Power of Attorney executed by Felicidad in favor of Flora; Exhibit "C" – the Real Estate Mortgage executed between Flora, as attorney-in-fact, and Feati Bank; Exhibit "D" — the Notice of Sale of the land covered by TCT No. 4031; and Exhibit "E" — the Final Deed of Sale of the mortgaged property covered by TCT NO. 4031 in favor of Feati Bank.

The collective evidence adduced by the prosecution shows that in the afternoon of the last week of January 1972, Felicidad, a resident of Silang, Cavite, went to the nearby house of her sister-in-law Francisca. Francisca and Flora were conversing when Felicidad arrived. In the course of their conversation, Flora introduced her plan to engage in a piggery business and to obtain the capital thereof from a loan to be granted by the Development Bank of the Philippines (DBP) and to be collateralized by a real estate mortgage. Upon knowing that Felicidad had titled parcels of land, Flora invited her to be part of the business plan. Flora urged Felicidad to have her real properties mortgaged with DBP and use the proceeds of the loan as capital for the business proposal. Felicidad told Flora that she had no time to process the papers for the loan application. Flora, however, responded that she would be the one to take care of the loan application. Flora also requested Felicidad to

execute a Special Power of Attorney (SPA) in her favor authorizing her to use the two parcels of land (covered by Transfer Certificate of Title [TCT] Nos. 4030 and 4031, both located in Tagaytay City) as collaterals for the loan application. Before signing the SPA, Felicidad made it clear that she wanted the proceeds of the loan handed to her. With Flora's assurance that she would take steps towards the procurement of the loan, and that she would turn over the proceeds of the loan to Felicidad, the latter signed the SPA. Felicidad then delivered the titles covering the two parcels of land to Francisca who, in turn, gave the same to Flora. Whenever Flora visited Felicidad, she would tell her that the loan application was already being processed by the DBP. After several months had elapsed, Flora stopped visiting and informing Felicidad of the status of the loan. Suspicious of Flora's disappearance, Felicidad sent Francisca to the DBP to withdraw the loan application. Francisca discovered that only one parcel of land covered by TCT No. 4030 was used in the loan application with the DBP; hence, only one title was returned by the bank. Later, Felicidad received a demand letter dated 9 March 1973 from Feati Bank and Trust Company, informing her of her failure to settle her obligations with the said bank in the amount of ₱73,000.00.

Upon verification, it was disclosed that the other piece of land owned by Felicidad and covered by TCT No. 4031 was used by Flora as a collateral for two loan applications dated 5 April 1972 and 14 June 1972 for the amounts of ₱30,000.00 and ₱70,000.00, respectively, with Feati Bank. It was also revealed that the proceeds of the two loans were released by the bank to Flora.

Felicidad requested Francisca to look for Flora. When Francisca finally located Flora, she and Felicidad confronted Flora who admitted that she had already spent the proceeds of the loans and promised to pay the loans with Feati. A year elapsed, and Felicidad received a notice from the provincial sheriff of Cavite informing her that her property covered by TCT No. 4031 would be foreclosed and sold at public auction. Felicidad and Francisca again tried to approach Flora, who was nowhere to be found. This prompted Felicidad to bring the matter to the CIS for

investigation. After investigating the case, the CIS endorsed the same to the Office of the Prosecutor.

The defense presented Flora, its lone witness. Flora testified that she knows Felicidad and Francisca, the latter being the aunt of her husband. She came to know Felicidad because Francisca introduced Felicidad to her. Flora averred that she and Francisca were engaged in the rice-dealing business, she being the supplier of Francisca. For every delivery, Francisca paid Flora on installment. This transaction lasted for two or three years until Francisca incurred obligations to Flora in the amount of ₱30,000.00 for the rice deliveries.[4] In order to pay off her debts to Flora, Francisca delivered to the former two titles to lands which were in the name of Felicidad. In order to make use of the titles, Flora asked Francisca to obtain an SPA from Felicidad authorizing her to mortgage the two parcels of land. She, however, stressed that the transaction was between her and Francisca only. After Francisca delivered to her the titles and the SPA, Flora used the titles and the SPA to obtain personal loans with the Feati Bank in the total amount of ₱100,000.00.

On 2 June 2000,[5] the RTC rendered a decision finding Flora guilty beyond reasonable doubt of the crime charged. The decretal portion of the RTC decision reads:

> WHEREFORE, the penalty that should be imposed upon accused Flora Bautista is the indeterminate penalty of Three (3) Years, Two (2) Months and Eleven (11) Days of *prision correccional* as minimum to Twelve (12) Years, Four (4) Months and One (1) Day of *reclusion temporal*, as maximum. Accused Flora Bautista is also ordered to indemnify the complaining witness, Felicidad Castillo Mercado the sum of ₱100,000.00 and to suffer the accessory penalties provided for by law and to pay the costs.[6]

[4] TSN, 26 January 1999, p. 6.

[5] The disposition of this case suffered a long delay because the records were destroyed by fire that gutted the 4th floor of the Manila City Hall on 19 November 1981. Upon the motion of the prosecution, the testimonies of the prosecution witnesses were again heard by the RTC on 11 January 1982 onwards. After numerous postponements due to petitioner's non-appearance, the defense finished the presentation of its evidence on 1 March 1999.

[6] CA *rollo*, p. 94.

Dissatisfied with the ruling of the RTC, Flora elevated the case to the Court of Appeals. In a decision dated 30 January 2006, the Court of Appeals affirmed the decision of the RTC, with modification on the penalty imposed, thus:

> WHEREFORE, above premises considered, the Decision appealed from convicting accused-appellant Flora Bautista *y* Maniego of the crime of Estafa is AFFIRMED with MODIFICATION that accused-appellant shall suffer the indeterminate penalty of imprisonment ranging from THREE (3) YEARS, TWO (2) MONTHS and ELEVEN (11) DAYS of *prision correccional* as minimum to FIFTEEN (15) YEARS of *reclusion temporal* as maximum. All the other aspects of the judgment STAND.[7]

On 25 April 2006, Flora filed a Motion for Reconsideration, which was denied by the Court of Appeals in a Resolution dated 18 August 2006.

Hence, the instant recourse.

Flora asserts that the RTC erred in declaring that the ₱100,000.00 loan was granted by Feati Bank in favor of Felicidad and not in her own. She also insists that she has no obligation to account for the proceeds of the loan she obtained from the bank, since it was contracted for her personal benefit. Absent such obligation to account for the proceeds of the said loan, she could not have committed the crime of estafa through misappropriation or conversion as charged. Stated otherwise, she maintains that the first element of estafa under Article 315 paragraph 1(b) is lacking.

Flora's arguments are not persuasive.

Flora is charged with committing the crime of estafa under paragraph 1(b), Article 315 of the Revised Penal Code, which provides:

> 315. Swindling (estafa).— Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

[7] *Rollo*, pp. 97-98.

1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos; and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be;

2nd. The penalty of *prision correccional* in its minimum and medium periods, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos;

3rd. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, if such amount is over 200 pesos but does not exceed 6,000 pesos; and

4th. By *arresto mayor* in its medium and maximum periods, if such amount does not exceed 200 pesos, provided that in the four cases mentioned, the fraud be committed by any of the following means:

1. With unfaithfulness or abuse of confidence, namely:

(a) By altering the substance, quantity, or quality of anything of value which the offender shall deliver by virtue of an obligation to do so, even though such obligation be based on an immoral or illegal consideration;

(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property;

The elements of estafa under paragraph 1(b), Article 315 of the Revised Penal Code, are:

(1) the offender receives the money, goods or other personal property in trust, or on commission, or for administration, or under any other obligation involving the duty to deliver, or to return, the same;

(2) the offender misappropriates or converts such money or property or denies receiving such money or property;

(3) the misappropriation or conversion or denial is to the prejudice of another; and

(4) the offended party demands that the offender return the money or property.[8]

Petitioner wants this Court to weigh the credibility of the prosecution witnesses *vis-a-vis* the defense witnesses. It has often been said, however, that the credibility of witnesses is a matter best examined by, and left to, the trial courts.[9] When the factual findings of the trial court are affirmed by the appellate court, the general rule applies.[10] This Court will not consider factual issues and evidentiary matters already passed upon. The petitioner raises the same issues she brought before the appellate court, which gave credence to the findings and decision of the trial court.

Factual findings of the trial court are entitled to respect and are not to be disturbed on appeal, unless some facts or circumstances of weight and substance, having been overlooked or misinterpreted, might materially affect the disposition of the case.[11] The assessment by the trial court of the credibility of a witness is entitled to great weight. It is even conclusive and binding if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence.

In the case under consideration, we find that the trial court did not overlook, misapprehend, or misapply any fact of value for us to overturn the findings of the trial court.

Contrary to Flora's claim, the prosecution was able to establish the first element of estafa under paragraph 1(b) of Article 315. *Flora received in trust Transfer Certificate of Title Nos. 4030*

[8] *Salazar v. People*, G.R. No. 149472, 18 August 2004, 437 SCRA 41, 46; *Serona v. Court of Appeals*, 440 Phil. 508, 517 (2002).

[9] *People v. Matito*, 468 Phil. 14, 24 (2004).

[10] *People v. Gallego*, 453 Phil. 825, 849 (2003).

[11] *People v. Piedad*, 441 Phil. 818, 838-839 (2002).

and 4031 from Felicidad for the specific purpose of using the same as collateral and with the obligation to turn over the proceeds of the mortgage to Felicidad. Hence, a fiduciary relationship between Flora and Felicidad existed. Flora, who was admittedly a business-minded person, came up with the idea of establishing a piggery business. Lacking necessary funds to raise such project, and knowing that respondent had titled lands in her name, petitioner convinced respondent to be her partner in the piggery business. Petitioner focused on respondent because she was aware that the DBP had a loan accommodation program for individuals interested in piggery business, and that DBP would grant such loan conditioned upon the applicant's capacity to offer titled land as collateral. Having been swayed by the bright prospect of the project, respondent acceded to be a part of the business venture. Respondent then entrusted her transfer certificates of title covering two parcels of land to petitioner. Flora lost no time in securing a special power of attorney from respondent authorizing her to secure a mortgage loan with the DBP. Persuaded by the promises of Flora that she would have the loan approved and that she would turn over the proceeds of the loan to respondent, the latter parted with titles to her two properties and the SPA and handed them to Flora, thus:

Q: Now, do you know the accused Flora Bautista *y* Maniego?

A: Yes, sir because I have a business transaction with her.

Q: And what is that business transaction you had with her?

A: That happened in the last week of January 1972 when this woman Flora Bautista in the house of my sister-in-law and during that time they were talking about the piggery business. When she knew that I had a piece of land she tried to convince me to be her partner in the piggery project.

xxx xxx xxx

Q: What was your participation supposed to be in the business?

Q: When she learned that I had a piece of land, she told me if we could be partners and I told her that I had no time to expedite the papers for the loan.

xxx xxx xxx

A: With all her assurances, she told me that she will expedite the loan, the papers for the loan in the DBP.

Q: When she told you and with her assurance, what steps were taken towards the procurement of the loan?

A: She requested for a special power of attorney made in her favor.

Q: For what was that special power of attorney?

A: To mortgage my two parcels of land as security for the loan.

Fiscal Mendoza —

Q: Did you agree to that proposition?

A: At first I did not sign the special power of attorney but because I had trust and confidence in her and with all the assurances she is going to give to me the proceeds of the loan, and I will be the one to deposit the money for said business, so I signed the special power of attorney.[12]

Witness Francisca corroborated Felicidad in this wise:

Fiscal

Q: And what topic if any was taken up among the three of you?

A: We three talked about piggery business where Flora Bautista said that if Fely had any title it would be easy to secure an application for loan with the DBP.

Q: And how did Felicidad Castillo react to that suggestion?

A: Felicidad Castillo was very much interested because it was a business.

Q: So, being interested in the piggery business, what did she do if any?

A: Both of them agreed that Fely will give Flora Bautista her title, sir.

Q: And what was the agreement about the giving of title to Flora Bautista?

[12] TSN, 27 February 1978, pp. 4-8.

A: It was agreed that if they could get the loan the amount would be given to Felicidad Castillo.[13]

It is ineluctably clear that Flora has the responsibility of turning over the proceeds of the loan obtained through the land covered by TCT No. 4031. However, Flora failed to turn over the proceeds to Felicidad since she used the same for her own benefit.

With the overwhelming evidence adduced by the prosecution against Flora, her contention that she used Felicidad's title as collateral to obtain a loan because the latter's sister-in-law, Francisca, owed her money, is just a desperate attempt to exculpate herself from the wrongdoing she knowingly committed.

Petitioner likewise makes much of the fact that the prosecution did not adduce written evidence that Flora and Felicidad had formally agreed and entered into a piggery business. She states that in a business partnership, no matter how small, there are certain aspects that have to be delineated, such as the amount of the capital, the contribution of each partner and the percentage of dividend to be received.

This contention is not well-taken. Although there was no written evidence to prove that Flora and Felicidad agreed to engage in a piggery business as partners, the prosecution was able to present credible testimonies to establish such fact.

The Court of Appeals imposed upon Flora an indeterminate penalty ranging from 3 years, 2 months and 11 days of *prision correccional* as minimum, to 15 years of *reclusion temporal* as maximum.

Article 315, paragraph 1(b) of the Revised Penal Code provides for the penalty in *estafa* cases where the amount defrauded exceeds ₱22,000.00, as in the present case, to wit:

ART. 315. *Swindling (estafa).*–Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

1st. **The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period**, if the amount of the

[13] TSN, 6 November 1978, pp. 11-13.

fraud is over 12,000 pesos but does not exceed 22,000.00 pesos; and **if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period**, adding one year for each additional 10,000 pesos; **but the total penalty which may be imposed shall not exceed twenty years**. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, **the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be**.

The penalty prescribed in the aforementioned provision is composed of two, not three, periods, in which case, Article 65[14] of the same code requires the division of the time included in the penalty into three equal portions of time included in the penalty imposed forming one period of each of the three portions.[15] Applying the latter provision, the minimum, medium and maximum periods of the penalty given are:

Minimum – 4 years, 2 months, 1 day to 5 years, 5 months, 10 days

Medium – 5 years, 5 months, 11 days to 6 years, 8 months, 20 days

Maximum – 6 years, 8 months, 21 days to 8 years

In this case, since the amount involved is ₱100,000.00, which amount exceeds ₱22,000.00, the penalty imposable should be within the maximum period of 6 years, 8 months and 21 days to 8 years of *prision mayor*. Article 315 further states that a period of one year shall be added to the penalty for every additional ₱10,000.00 defrauded in excess of ₱22,000.00, but in no case shall the total penalty which may be imposed exceed 20 years.[16]

[14] ART. 65. *Rule in cases in which the penalty is not composed of three periods*. – In cases in which the penalty prescribed by law is not composed of three periods, the courts shall apply the rules contained in the foregoing articles, dividing into three equal portions the time included in the penalty prescribed, and forming one period of each of the three portions.

[15] *People v. Gabres*, 335 Phil. 242, 257 (1997); *Dela Cruz v. Court of Appeals*, 333 Phil. 126, 140-141 (1996).

[16] *Id*.

Applying the Indeterminate Sentence Law, since the penalty prescribed by law for the *estafa* charge against Flora is *prision correccional* maximum to *prision mayor* minimum, the penalty next lower would then be *prision correccional* in its minimum and medium periods. Thus, the minimum term of the indeterminate sentence should be anywhere from 6 months and 1 day to 4 years and 2 months.[17]

The amount defrauded by Flora was ₱100,000.00. Hence, the penalty prescribed above should be imposed in its maximum period. The maximum period thereof following the rule prescribed in the last paragraph of Article 77 of the Revised Penal Code ranges from six (6) years, eight (8) months and twenty one (21) days to eight (8) years.

Inasmuch as the amount of ₱100,000.00 is ₱78,000.00 more than the above-mentioned benchmark of ₱22,000.00, then, adding one year for each additional ₱10,000.00, the maximum period of 6 years, 8 months and 21 days to 8 years of *prision mayor* minimum would be increased by 7 years. Taking the maximum of the prescribed penalty, which is 8 years, plus an additional 7 years, the maximum of the indeterminate penalty is 15 years. Finding no error in the penalty imposed by the Court of Appeals, the Court sustains the same.

Also affirmed is the Court of Appeals decision ordering Flora to indemnify Felicidad in the sum of ₱100,000.00 as actual damages, because the said amount represents the money that was not yet paid by Flora in favor of Felicidad.

WHEREFORE, the Decision of the Court of Appeals, dated 30 January 2006 in CA-G.R. CR. No. 25426 finding Flora Bautista *y* Maniego *GUILTY* of Estafa under paragraph 1(b) of Article 315 of the Revised Penal Code and sentencing her to suffer the prison term ranging from 3 years, 2 months and 11 days of *prision correccional* as minimum, to 15 years of *reclusion temporal* as maximum, and ordering her to indemnify Felicidad Castillo Mercado in the amount of ₱100,000.00 as actual damages, is hereby *AFFIRMED in toto*.

[17] *Id*.

SO ORDERED.

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

Reyes, J., he dissents on the penalty in view of his stand in *People v. Tamparada* pending in *Banc*.

THIRD DIVISION

[G.R. No. 174633. August 26, 2008]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **GREGORIA L. DILOY,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND TITLES AND DEEDS; ADVERSE POSSESSION; REQUISITES FOR FILING OF AN APPLICATION FOR REGISTRATION OF TITLE.— Three requisites for the filing of an application for registration of title under the first category are: (1) that the **property in question is alienable and disposable land of the public domain;** (2) that **the applicants by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation;** and (3) that **such possession is under a *bona fide* claim of ownership since 12 June 1945 or earlier**. In effect, the period of possession — open, continuous, exclusive and notorious — must at least be 30 years computed from 12 June 1945 to the effectivity of Presidential Decree No. 1529 on 11 June 1978.

2. ID.; ID.; ID.; ID.; ANY PERIOD OF POSSESSION PRIOR TO THE DATE WHEN THE SUBJECT LOT WAS CLASSIFIED AS ALIENABLE AND DISPOSABLE IS INCONSEQUENTIAL AND SHOULD BE EXCLUDED

FROM THE COMPUTATION OF THE PERIOD OF POSSESSION; SUCH POSSESSION CAN NEVER RIPEN INTO OWNERSHIP.— Prior to its declaration as alienable land in 1982, any occupation or possession thereof could not be considered in the counting of the 30-year possession requirement. The period of possession by the respondent of the subject property cannot be considered to have started in 1979, when the same was conveyed to her by her mother. Neither can her possession of the subject property be tacked to that of her predecessors-in-interest, even if they had occupied and were in possession of the same since 1948, because **during those periods, the subject property had not yet been classified as alienable and disposable land capable of private appropriation.** Possession of the subject property could only start to ripen into ownership on 15 March 1982, when the same became alienable and disposable. **Any period of possession prior to the date when the subject lot was classified as alienable and disposable is inconsequential** and should be excluded from the computation of the period of possession; **such possession can never ripen into ownership and, unless the land has been classified as alienable and disposable, the rules on the confirmation of imperfect title shall not apply thereto. The adverse possession which may be the basis of a grant of title or confirmation of an imperfect title refers only to alienable or disposable portions of the public domain. There can be no imperfect title to be confirmed over lands not yet classified as disposable or alienable.** In the absence of such classification, the land remains unclassified public land until released therefrom and open to disposition. Possession of the land by the respondent under the circumstances, whether spanning decades or centuries, can never ripen into ownership.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Anarna Law Office for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure seeking to set aside the Decision[1] dated 7 February 2006 and Resolution[2] dated 30 August 2006 of the Court of Appeals in CA-G.R. CV No. 75028. The Court of Appeals Decision denied the appeal filed before it by the Republic of the Philippines (Republic) and affirmed the Decision[3] of the 2nd Municipal Circuit Trial Court (MCTC) of Silang-Amadeo, Silang, Cavite, dated 5 May 1999 in LRC Case No. 97-063, granting the application for registration of title filed before it by the herein respondent Gregoria L. Diloy over a parcel of land located in Barangay Dagatan, Municipality of Amadeo, Province of Cavite, covering an area of 22,249 square meters. The Resolution denied the Motion for Reconsideration filed by the Republic.

The antecedent facts of this case are as follows:

As early as 1948, Crispin Leaban had already declared the subject property for taxation purposes under his name, as evidenced by Tax Declaration (T.D.) No. 2708.[4] He was then succeeded by his son, Eusebio Leaban, who filed the following T.D. Nos.[5] 4501, 3710 and 2855 in his name from the period covering the years 1951-1969. Thereafter, in 1974, the subject property was transferred to Eusebio Leaban's daughter, Pacencia Leaban, who, in turn, declared the same for taxation purposes under her name. It was evidenced by T.D. Nos. 8672, 7282 and 6231.[6] On 15 June 1979, the subject property was then

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[1] Penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Elvi John S. Asuncion and Noel G. Tijam, concurring; *rollo*, pp. 30-36.

[2] *Rollo*, pp. 37-38.

[3] Penned by Presiding Judge Ma. Victoria N. Cupin-Tesorero. *Rollo*, pp. 42-45.

[4] Records, p. 72.

[5] *Id.* at 73-75.

[6] *Id.* at 76-78.

conveyed by Pacencia Leaban to her daughter, herein respondent Gregoria L. Diloy, by virtue of a Deed of Absolute Sale.[7]

In 1997, respondent Gregoria L. Diloy, now married to Joselito C. Espiritu, filed an Application[8] for Registration of Title over the subject property under Section 14 of Presidential Decree No. 1529[9] before the 2nd MCTC of Silang-Amadeo, Silang, Cavite. The subject property was particularly described as Lot No. 2280, Cad-482-D, Amadeo Cadastre, Ap-04-010073, with an area of 22,249 square meters located in Barangay Dagatan, Amadeo, Cavite.

To establish the jurisdictional requirements required by the aforesaid law, the respondent submitted and marked the following documents, to wit: (1) **Application for Registration** as Exhibits "A"; "A-1" to "A-4";[10] (2) **Notice of Initial Hearing** dated 17 July 1997 as Exhibits "B" and "B-1";[11] (3) **Certificate of Publication**[12] by the Land Registration Authority (LRA) as Exhibit "C" **and Certificate of Notification**[13] by the LRA as Exhibit "C-1"; (4) **Certificate of Publication issued by the National Printing Office (NPO)** as Exhibit "D"[14] **and a copy of the Official Gazette (O.G.)**, Volume 93, No. 39, 29 September 1997[15] as Exhibits "D-1" to "D-3"; (5) **Affidavit of Publication**[16] issued by the *We Forum* newspaper [17] as Exhibits "E", "E-1" and "E-1-A"; (6) **Registry Receipts sent to the government agencies concerned as well as to the adjoining**

[7] *Id.* at 71.

[8] *Id.* at 1-5.

[9] Property Registration Decree. It was approved on 11 June 1978.

[10] Records, pp. 1-5.

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

[12] *Id.* at 40.

[13] *Id.* at 41.

[14] *Id.* at 38.

[15] *Id.* at 35-37.

[16] *Id.* at 18.

[17] *Id.* at 19-24.

owners as Exhibits "F", "F-1" to "F-16", inclusive; and (7) **Certificate of Posting**[18] as Exhibit "G".

Since the Public Prosecutor did not interpose any objection, the court *a quo* admitted the aforementioned Exhibits.[19]

The Office of the Solicitor General (OSG), however, on behalf of the Republic, filed an Opposition[20] to the aforesaid Application for Registration of Title. It filed a Notice of Appearance,[21] but in a letter[22] dated 18 November 1997, deputized the Provincial Prosecutor of Silang, Cavite, to represent its interest therein.

During the hearing of the Application for Registration of Title, respondent presented her father, Rustico Diloy, and Armando Ramos as witnesses to strengthen her claim that her predecessors-in-interest had been in actual, continuous, open, notorious and adverse possession of the subject property.

Rustico Diloy testified that the first time he came to know of the subject property was in 1952 when he was twenty years old, because he used to work on the said property. When he married Pacencia Leaban, the owner of the subject property was Eusebio Leaban, the father of Pacencia Leaban. Said property was inherited by his wife from her father. It then came to the possession of the respondent by virtue of a Deed of Absolute Sale executed between her and her mother, Pacencia Leaban. According to him, from the time he came to know of the subject property up to the present, it was continuously declared for taxation purposes. He also affirmed that the subject property has an area of 22,249 square meters, and it is located in Barangay Dagatan, Amadeo, Cavite. He came to know of said information because he was the one who had it surveyed. The survey of the land was made and approved by the Director of Lands and

[18] *Id.* at 34.

[19] As evidenced by an Order dated 26 August 1998, penned by Acting MCTC Judge Jose A. Mendoza. *Id.* at 70.

[20] *Id.* at 42-44.

[21] *Id.* at 45-46.

[22] *Id.* at 47.

reapproved by the Bureau of Lands. The subject property was fenced with barbed wire and shrubs.[23]

To corroborate the testimony of Rustico Diloy, Armando Ramos, 81 years old and presently residing in Barangay Dagatan, Amadeo, Cavite, stated that he was the owner of the land adjoining the subject property, and that he knew the previous owners of the same. He disclosed that he knew the subject property even before the Japanese Occupation because he became the husband of one of the heirs of the owner thereof. Prior to the Japanese Occupation, he said the owner of the subject property was his father-in-law, Narciso Leaban. Then, in 1948, Crispin Leaban came into the possession of said land. From Crispin Leaban, he confirmed that the subject property was inherited by Eusebio Leaban, the son of Crispin Leaban. Eusebio Leaban, in turn, transferred the same to his daughter, Pacencia Leaban. Then, in 1979, Pacencia Leaban conveyed the subject property to her daughter, the respondent, who is the present owner of the subject property where she plants coffee.[24]

The MCTC rendered a Decision dated 5 May 1999 in favor of the respondent, thereby granting her application for registration over the subject property. The dispositive portion reads as follows:

> WHEREFORE, this Court hereby APPROVES the Application for Registration filed by [respondent], married to Joselito C. Espiritu. Thus, Lot 2280, Amadeo Cadastre, Ap-04-010073 is placed under the operation of Act. 141, Act 495 and/or P.D. 1529, otherwise known as Property Registration Law. Which property is situated in Barangay Dagatan, Municipality of Amadeo, Cavite, with an area of 22,249 square meters, and the same is covered by an approved Technical Description and Subdivision Plan AP-04-010073. These documents form part of the records of the case, in addition to other proofs adduced by herein [respondent].
>
> Once this Decision becomes final and executory, the corresponding decree of registration shall forthwith issue.

[23] TSN, 8 July 1998, pp. 2-7.

[24] *Id.* at 9-12.

Furnish a copy of this Decision to the Office of the Solicitor General, the [LRA], the Land Management Sector, Regional (sic) IV, Manila, the Register of Deeds of Cavite, the [Community Environment and Natural Resources Office] CENRO, Trece Martires City, Department of Agrarian Reform and the Department of Public Works and Highways, as well as the party and counsel.[25]

From the aforesaid Decision, the Republic filed a Motion for Reconsideration[26] arguing that the respondent failed to prove her possession as required under Presidential Decree No. 1529. In an Order[27] dated 27 March 2001, the said Motion for Reconsideration was denied.

As a result thereof, the Republic appealed the Decision of the MCTC to the Court of Appeals assigning the following error:

THE TRIAL COURT ERRED IN RULING THAT THE APPLICANT PROVED A REGISTRABLE TITLE TO THE PROPERTY.[28]

On 7 February 2006, the Court of Appeals denied the appeal of the Republic and affirmed the Decision of the MCTC granting the application for registration of the subject property.

Aggrieved, the Republic filed a motion for the reconsideration of the aforesaid Decision which was likewise denied in a Resolution dated 30 August 2006.

Hence, this Petition.

The Republic now comes before this Court with the sole issue of: *whether or not the respondent has acquired a registrable title*.[29]

The Republic persistently argues that the respondent's Application for Registration of Title should have been denied because the latter failed to comply with the period of possession

[25] *Rollo*, p. 45.

[26] Records, pp. 106-108.

[27] *Id.* at 114-115.

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

[29] *Rollo*, p. 15.

required by law, *i.e.*, Section 14 of Presidential Decree No. 1529.[30] The Republic reveals that the subject property was only declared alienable and disposable on 15 March 1982 per Forestry Administration Office (FAO) No. 4-1650. From 1982 when the property was declared alienable and disposable to 1997, the respondent had only been in adverse possession of the subject property for a period of 15 years. Thus, there was no compliance with Section 14, Presidential Decree No. 1529 because the subject property was not yet alienable and disposable on 12 June 1945, and respondent's possession lacked the required number of years (30 years) for her to acquire the same through prescription. Hence, respondent did not acquire an imperfect title, which may be confirmed through a judicial proceeding.

In her Comment, respondent firmly holds that the MCTC and the Court of Appeals did not commit any error or grave abuse of discretion in rendering their Decisions granting her Application for Registration of Title over the subject property. She avows that she has satisfactorily established that she and her predecessors-in-interest have been in actual, continuous, open, notorious and adverse possession and occupation of an alienable and disposable land under a *bona fide* claim of ownership over the subject property for more than 30 years. To prove the same, she tacked her own possession, commencing on 15 June 1979 up to the time of the filing of her Application for Registration of Title, onto the prior possession of her predecessors-in-interest of 31 years. Adding these periods, respondents and her predecessors-in-interest have been in possession of the land for more than 50 years now in the concept of an owner. Moreover, the realty taxes thereon have been religiously paid, and there is no tax delinquency incurred by her. The subject property has also been devoted to agriculture, particularly, coffee plantation. Similarly, she presented her father and one Armando Ramos as witnesses to prove that she, indeed, was able to satisfy the manner and length of possession required by law so as to grant her Application for Registration of Title over the subject property.

The Petition is meritorious.

[30] Signed into law on 11 June 1978.

Section 14 of the Property Registration Decree speaks of who may apply for registration of land. The said provisions of law refer to an original registration through ordinary registration proceedings.[31] It specifically provides:

> SEC. 14. *Who may apply*. – The following persons may file in the proper Court of First Instance [now Regional Trial Court] an application for registration of title to land, whether personally or through their duly authorized representatives:
>
> (1) Those who by themselves or through their predecessors-in-interest have been in **open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier**. (Emphasis supplied.)

Based on the aforesaid provisions, the **three requisites for the filing of an application for registration of title under the first category are**: (1) that the **property in question is alienable and disposable land of the public domain**; (2) that the **applicants by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation**; and (3) that **such possession is under a *bona fide* claim of ownership since 12 June 1945 or earlier**.[32] In effect, the period of possession — open, continuous, exclusive and notorious — must at least be 30 years computed from 12 June 1945 to the effectivity of Presidential Decree No. 1529 on 11 June 1978.

Section 14(1) of the aforesaid law requires that the **property sought to be registered is already alienable and disposable at the time the application for registration of title is filed**.[33]

In the case at bar, it is beyond question that the subject property was already an alienable and disposable land at the time the Application for Registration of Title over the same

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[31] *Republic v. Court of Appeals*, G.R. No. 144057, 17 January 2005, 448 SCRA 442, 447.

[32] *Id.* at 448.

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

was filed by the respondent. The **Application for Registration of Title over the subject property was filed by the respondent in the year 1997**. The Report,[34] dated 27 July 1998, submitted by the Director of Lands and the Certification,[35] dated 4 May 1998, issued by the CENRO, clearly established that the **subject property was already within the alienable and disposable zone as classified under Project No. 5, L.C. Map No. 3013 as early as 15 March 1982 per Forestry Administration Order No. 4-1650**.[36] Even the parties to this case, particularly the OSG, did not refute the fact that at the time the Application for Registration of Title was filed, the subject property had already been classified as alienable and disposable land.

Both lower courts upheld that the respondent was able to prove that her possession of the subject property was open, continuous, exclusive and notorious for more than 30 years. Here we quote the pronouncement made by the Court of Appeals, thus:

> The trial court committed no error in ruling that [respondent] has a registrable title. It is undisputed that [respondent] came into possession of the subject [property] by means of a [D]eed of [S]ale executed in her favor by Pacencia Leaban in 1979. Prior to the sale, Pacencia Leaban inherited said property from her father, Eusebio Leaban, who possessed the same since 1951. Testimonial evidence showed that Eusebio Leaban devoted the land to agriculture and that shrubs and barbed wire enclosed the subject property. At the time of filing of the application for registration, the crop found therein is coffee.
>
> x x x. Rustico Diloy testified that he worked on the land under the supervision of Eusebio Leaban indicating that there were necessary farm works to be done thereon. The owner of the adjoining land stated that said land is a coffee plantation. There is also showing that the subject land was fenced, signifying a public and adverse possession thereof. Likewise, [respondent] with the aid of Rustico Diloy, caused the survey of the subject [property]. These are apparently acts of ownership. x x x.

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[34] Records, p. 60.

[35] *Id.* at 92-93.

[36] *Id*.

Together with her predecessors-in-interest, [respondent] was in actual and adverse possession of the subject land for more than 30 years, thereby satisfying the period required under P.D. 1529. Coupled with the cultivation or possession is the regular payment of realty taxes on said land since 1948 up to the filing of the application for registration of title thereto.[37]

While this Court agrees with the lower courts that, indeed, respondent's possession of the subject property was open, continuous, exclusive and notorious, however, we hold that **respondent failed to prove that she or her predecessors-in-interest were already in possession of the subject property under a bona fide claim of ownership since 12 June 1945 or earlier**, which is the reckoning period specifically provided in Section 14(1) of Presidential Decree No. 1529.

As can be gleaned from the records, respondent's possession of the subject property started only in the year 1979 when her mother executed a Deed of Absolute Sale over the same in her favor. There was also no showing that her predecessors-in-interest had already been in possession or had already exercised acts of ownership over the subject property since 12 June 1945 or prior thereto, as her predecessors-in-interest declared the subject property for taxation purposes only in the year 1948. What was clearly established by the respondent was possession of the subject property by her predecessors-in-interest beginning 1948, which was short of three years from 12 June 1945. What is more telling is that the subject property became alienable and disposable only on 15 March 1982. Prior to its declaration as alienable land in 1982, any occupation or possession thereof could not be considered in the counting of the 30-year possession requirement.[38] The period of possession by the respondent of the subject property cannot be considered to have started in 1979, when the same was conveyed to her by her mother. Neither can her possession of the subject property be tacked to that of her predecessors-in-interest, even if they had occupied and were in possession of the same since 1948, because **during those**

[37] *Rollo*, pp. 34-35.

[38] *Republic v. De Guzman*, 383 Phil. 479, 483-484 (2000).

periods, the subject property had not yet been classified as alienable and disposable land capable of private appropriation. Possession of the subject property could only start to ripen into ownership on 15 March 1982, when the same became alienable and disposable. A**ny period of possession prior to the date when the subject lot was classified as alienable and disposable is inconsequential** and should be excluded from the computation of the period of possession; **such possession can never ripen into ownership and, unless the land has been classified as alienable and disposable, the rules on the confirmation of imperfect title shall not apply thereto**.[39] T**he adverse possession which may be the basis of a grant of title or confirmation of an imperfect title refers only to alienable or disposable portions of the public domain**. **There can be no imperfect title to be confirmed over lands not yet classified as disposable or alienable**. In the absence of such classification, the land remains unclassified public land until released therefrom and open to disposition.[40] Possession of the land by the respondent under the circumstances, whether spanning decades or centuries, can never ripen into ownership.[41]

From 1982 up to 1997, the year the respondent filed an Application for Registration of Title over the subject property, the respondent was in possession of the same for only 15 years, which was short of another 15 years from the 30-year-period possession requirement. Thus, this Court is constrained to abide by the Latin maxim "*Dura lex sed lex*."[42]

WHEREFORE, premises considered, the instant Petition is hereby *GRANTED*. The Decision and Resolution of the Court of Appeals dated 7 February 2006 and 30 August 2006, respectively affirming the Decision of the MCTC dated 5 May

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[39] *Republic of the Philippines v. Herbieto*, G.R. No. 156117, 26 May 2005, 459 SCRA 183, 201-202.

[40] *Bracewell v. Court of Appeals*, 380 Phil. 156, 163 (2000).

[41] *Republic v. De Guzman*, *supra* note 38 at 483.

[42] *Id.* at 485.

1999, which granted the respondent's Application for Registration of Title over the subject property, are hereby *REVERSED* and *SET ASIDE*. The respondent's Application for Registration of Title over the subject property is hereby *DENIED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 174873. August 26, 2008]

QUASHA ANCHETA PEÑA AND NOLASCO LAW OFFICE FOR ITS OWN BEHALF, AND REPRESENTING THE HEIRS OF RAYMOND TRIVIERE, *petitioners, vs.* **LCN CONSTRUCTION CORP.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; DISTRIBUTION AND PARTITION OF ESTATE; WHEN ORDER FOR DISTRIBUTION OF RESIDUE MADE; RULE.— Section 1, Rule 90 of the Revised Rules of Court provides: Section 1. *When order for distribution of residue made.* – When the debts, funeral charges, and expenses of administration, the allowance to the widow, and inheritance tax, if any, chargeable to the estate in accordance with law, have been paid, the court, on the application of the executor or administrator, or of a person interested in the estate, and after hearing upon notice, shall assign the residue of the estate to the persons entitled

[*] Justice Arturo D. Brion was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 6 August 2008.

to the same, naming them and the proportions, or parts, to which each is entitled, and such persons may demand and recover their respective shares from the executor or administrator, or any other person having the same in his possession. If there is a controversy before the court as to who are the lawful heirs of the deceased person or as to the distributive shares to which each person is entitled under the law, the controversy shall be heard and decided as in ordinary cases. No distribution shall be allowed until the payment of the obligations above mentioned has been made or provided for, unless the distributees, or any of them, give a bond, in a sum to be fixed by the court, conditioned for the payment of said obligations within such time as the court directs.

2. ID.; ID.; ID.; ID.; ID.; RTC ORDER NOT A FINAL ORDER OF DISTRIBUTION; CASE AT BAR.— A perusal of the 12 June 2003 RTC Order would immediately reveal that it was not yet distributing the residue of the estate. The said Order grants the payment of certain amounts from the funds of the estate to the petitioner children and widow of the late Raymond Triviere considering that they have not received their respective shares therefrom for more than a decade. Out of the reported ₱4,738,558.63 value of the estate, the petitioner children and widow were being awarded by the RTC, in its 12 June 2003 Order, their shares in the collective amount of ₱600,000.00. Evidently, the remaining portion of the estate still needs to be settled. The intestate proceedings were not yet concluded, and the RTC still had to hear and rule on the pending claim of LCN against the estate of the late Raymond Triviere and only thereafter can it distribute the residue of the estate, if any, to his heirs.

3. ID.; ID.; ID.; ADVANCE DISTRIBUTION OF THE ESTATE, ALLOWED; QUALIFICATIONS; NOT COMPLIED WITH IN CASE AT BAR.— Section 2, Rule 109 of the Revised Rules of Court expressly recognizes advance distribution of the estate, thus: Section 2. *Advance distribution in special proceedings.* – Notwithstanding a pending controversy or appeal in proceedings to settle the estate of a decedent, **the court may, in its discretion and upon such terms as it may deem proper and just,** permit that such part of the estate as may not be affected by the controversy or appeal be distributed among

the heirs or legatees, **upon compliance with the conditions set forth in Rule 90** of these rules. x x x In sum, although it is within the discretion of the RTC whether or not to permit the advance distribution of the estate, its exercise of such discretion should be qualified by the following: [1] only part of the estate that is not affected by any pending controversy or appeal may be the subject of advance distribution (Section 2, Rule 109); and [2] the distributes must post a bond, fixed by the court, conditioned for the payment of outstanding obligations of the estate (second paragraph of Section 1, Rule 90). There is no showing that the RTC, in awarding to the petitioner children and widow their shares in the estate prior to the settlement of all its obligations, complied with these two requirements or, at the very least, took the same into consideration. Its Order of 12 June 2003 is completely silent on these matters. It justified its grant of the award in a single sentence which stated that petitioner children and widow had not yet received their respective shares from the estate after all these years. Taking into account that the claim of LCN against the estate of the late Raymond Triviere allegedly amounted to ₱6,016,570.65, already in excess of the ₱4,738,558.63 reported total value of the estate, the RTC should have been more prudent in approving the advance distribution of the same.

4. ID.; ID.; ID.; ID.; PARTIAL DISTRIBUTION OF DECEDENT'S ESTATE PENDING FINAL TERMINATION OF THE TESTATE OR INTESTATE PROCEEDINGS, NOT ENCOURAGED; RATIONALE.— [I]n *Dael*, the Court actually cautioned that partial distribution of the decedent's estate pending final termination of the testate or intestate proceeding should as much as possible be discouraged by the courts, and, except in extreme cases, such form of advances of inheritance should not be countenanced. The reason for this rule is that courts should guard with utmost zeal and jealousy the estate of the decedent to the end that the creditors thereof be adequately protected and all the rightful heirs be assured of their shares in the inheritance.

5. ID.; APPEALS; CHANGING OF THEORY ON APPEAL NOT ALLOWED; EXCEPTIONS; CASE AT BAR.— The Court notes with disfavor the sudden change in the theory by petitioner

Quasha Law Office. Consistent with discussions in the preceding paragraphs, Quasha Law Office initially asserted itself as co-administrator of the estate before the courts. The records do not belie this fact. Petitioner Quasha Law Office later on denied it was substituted in the place of Atty. Quasha as administrator of the estate only upon filing a Motion for Reconsideration with the Court of Appeals, and then again before this Court. As a general rule, a party cannot change his theory of the case or his cause of action on appeal. When a party adopts a certain theory in the court below, he will not be permitted to change his theory on appeal, for to permit him to do so would not only be unfair to the other party but it would also be offensive to the basic rules of fair play, justice and due process. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. This rule, however, admits of certain exceptions. In the interest of justice and within the sound discretion of the appellate court, a party may change his legal theory on appeal, only when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory.

6. ID.; SPECIAL PROCEEDINGS; LETTERS OF ADMINISTRATION, WHEN AND TO WHOM GRANTED; MODES FOR REPLACING AN ADMINISTRATOR UPON DEATH OF AN ADMINISTRATOR; RULE.— The court has jurisdiction to appoint an administrator of an estate by granting letters of administration to a person not otherwise disqualified or incompetent to serve as such, following the procedure laid down in Section 6, Rule 78 of the Rules of Court. Corollary thereto, Section 2, Rule 82 of the Rules of Court provides in clear and unequivocal terms the modes for replacing an administrator of an estate upon the death of an administrator, to wit: Section 2. *Court may remove or accept resignation of executor or administrator. Proceedings upon* ***death****, resignation, or removal*. x x x. When an executor or administrator dies, resigns, or is removed the remaining executor or administrator may administer the trust alone, ***unless the court grants letters to someone to act with him***. If there

is no remaining executor or administrator, administration may be granted to any suitable person.

7. LEGAL ETHICS; ATTORNEYS; ATTORNEY'S FEES; PETITIONER ENTITLED TO ATTORNEY'S FEES FOR LEGAL SERVICES RENDERED IN THE SETTLEMENT OF THE ESTATE.— However, while petitioner Quasha Law Office, serving as counsel of the Triviere children from the time of death of Atty. Quasha in 1996, is entitled to attorney's fees and litigation expenses of ₱100,000.00 as prayed for in the Motion for Payment dated 3 September 2002, and as awarded by the RTC in its 12 June 2003 Order, the same may be collected from the shares of the Triviere children, upon final distribution of the estate, in consideration of the fact that the Quasha Law Office, indeed, served as counsel (not anymore as co-administrator), representing and performing legal services ***for the Triviere children*** in the settlement of the estate of their deceased father.

APPEARANCES OF COUNSEL

Quasha Ancheta Peña Nolasco Law Office in its own behalf.
Farcon Gabriel Farcon & Associates for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review under Rule 45 of the Revised Rules of Court with petitioners Quasha Ancheta Peña and Nolasco Law Office (Quasha Law Office) and the Heirs of Raymond Triviere praying for the reversal of the Decision[1] dated 11 May 2006 and Resolution[2] dated 22 September 2006 of the Court of Appeals granting in part the Petition for *Certiorari* filed by respondent LCN Construction Corporation (LCN) in CA-G.R. SP No. 81296.

[1] Penned by Associate Justice Rodrigo V. Cosico with Associate Justices Regalado E. Maambong and Lucenito N. Tagle, concurring; *rollo*, pp. 43-52.

[2] *Id.* at 54-56.

The factual antecedents of the case are as follows:

Raymond Triviere passed away on 14 December 1987. On 13 January 1988, proceedings for the settlement of his intestate estate were instituted by his widow, Amy Consuelo Triviere, before the Regional Trial Court (RTC) of Makati City, Branch 63 of the National Capital Region (NCR), docketed as Special Proceedings Case No. M-1678. Atty. Enrique P. Syquia (Syquia) and Atty. William H. Quasha (Quasha) of the Quasha Law Office, representing the widow and children of the late Raymond Triviere, respectively, were appointed administrators of the estate of the deceased in April 1988. As administrators, Atty. Syquia and Atty. Quasha incurred expenses for the payment of real estate taxes, security services, and the preservation and administration of the estate, as well as litigation expenses.

In February 1995, Atty. Syquia and Atty. Quasha filed before the RTC a Motion for Payment of their litigation expenses. Citing their failure to submit an accounting of the assets and liabilities of the estate under administration, the RTC denied in May 1995 the Motion for Payment of Atty. Syquia and Atty. Quasha.

In 1996, Atty. Quasha also passed away. Atty. Redentor Zapata (Zapata), also of the Quasha Law Office, took over as the counsel of the Triviere children, and continued to help Atty. Syquia in the settlement of the estate.

On 6 September 2002, Atty. Syquia and Atty. Zapata filed another Motion for Payment,[3] for their own behalf and for their respective clients, presenting the following allegations:

1) That the instant Petition was filed on January 13, 1988; and Atty. Enrique P. Syquia was appointed Administrator by the Order of this Honorable Court dated April 12, 1988, and discharged his duties starting April 22, 1988, after properly posting his administrator's bond up to this date, or more than fourteen (14) years later. Previously, there was the co-administrator Atty. William H. Quasha, but he has already passed away.

[3] *Rollo*, pp. 72-76.

(2) That, together with Co-administrator Atty. William H. Quasha, they have performed diligently and conscientiously their duties as Co-administrators, having paid the required Estate tax and settled the various claims against the Estate, totaling approximately twenty (20) claims, and the only remaining claim is the unmeritorious claim of LCN Construction Corp., now pending before this Honorable Court;

(3) That for all their work since April 22, 1988, up to July 1992, or for four (4) years, they were only given the amount of ₱20,000.00 each on November 28, 1988; and another ₱50,00.00 each on October 1991; and the amount of ₱100,000.00 each on July 1992; or a total of ₱170,000.00 to cover their administration fees, counsel fees and expenses;

(4) That through their work, they were able to settle all the testate (sic) claims except the remaining baseless claim of LCN Construction Corp., and were able to dismiss two (2) foreign claims, and were also able to increase the monetary value of the estate from roughly over ₱1Million to the present ₱4,738,558.63 as of August 25, 2002 and maturing on September 27, 2002; and the money has always been with the Philippine National Bank, as per the Order of this Honorable Court;

(5) That since July 1992, when the co-administrators were paid ₱100,000.00 each, nothing has been paid to either Administrator Syquia or his client, the widow Consuelo Triviere; nor to the Quasha Law Offices or their clients, the children of the deceased Raymond Triviere;

(6) That as this Honorable Court will notice, Administrator Syquia has always been present during the hearings held for the many years of this case; and the Quasha Law Offices has always been represented by its counsel, Atty. Redentor C. Zapata; and after all these years, their clients have not been given a part of their share in the estate;

(7) That Administrator Syquia, who is a lawyer, is entitled to additional Administrator's fees since, as provided in Section 7, Rule 85 of the Revised Rules of Court:

> "x x x where the estate is large, and the settlement has been attended with great difficulty, and has required a high degree of capacity on the part of the executor or administrator, a greater sum may be allowed…"

In addition, Atty. Zapata has also been present in all the years of this case. In addition, they have spent for all the costs of litigation especially the transcripts, as out-of-pocket expenses.

(8) That considering all the foregoing, especially the fact that neither the Administrator or his client, the widow; and the Quasha Law Offices or their clients, the children of the deceased, have received any money for more than ten (10) years now, they respectfully move that the amount of ₱1Million be taken from the Estate funds, to be divided as follows:

a) ₱450,000.00 as share of the children of the deceased [Triviere] who are represented by the Quasha Ancheta Peña & Nolasco Law Offices;

b) ₱200,000.00 as attorney's fees and litigation expenses for the Quasha Ancheta Peña & Nolasco Law Offices;

c) ₱150,000.00 as share for the widow of the deceased [Raymond Triviere], Amy Consuelo Triviere; and

d) ₱200,000.00 for the administrator Syquia, who is also the counsel of the widow; and for litigation costs and expenses.

LCN, as the only remaining claimant[4] against the Intestate Estate of the Late Raymond Triviere in Special Proceedings Case No. M-1678, filed its Comment on/Opposition to the afore-quoted Motion on 2 October 2002. LCN countered that the RTC had already resolved the issue of payment of litigation expenses when it denied the first Motion for Payment filed by Atty. Syquia and Atty. Quasha for failure of the administrators to submit an accounting of the assets and expenses of the estate as required by the court. LCN also averred that the administrators and the heirs of the late Raymond Triviere had earlier agreed to fix the former's fees at only 5% of the gross estate, based on

[4] Respondent is a building contractor collecting payment for services rendered to the late Raymond Triviere in the construction of a house together with civil works on change orders and miscellaneous additional works. The claim in the amount of ₱6,016,570.65 allegedly represents the unpaid principal balance of the original contract, change orders, miscellaneous additional works, security, insurance, accrued interest and attorney's fees due and demandable from the Estate.

which, per the computation of LCN, the administrators were even overpaid ₱55,000.00. LCN further asserted that contrary to what was stated in the second Motion for Payment, Section 7, Rule 85 of the Revised Rules of Court was inapplicable,[5] since the administrators failed to establish that the estate was large, or that its settlement was attended with great difficulty, or required a high degree of capacity on the part of the administrators. Finally, LCN argued that its claims are still outstanding and chargeable against the estate of the late Raymond Triviere; thus, no distribution should be allowed until they have been paid; especially considering that as of 25 August 2002, the claim of LCN against the estate of the late Raymond Triviere amounted to ₱6,016,570.65 as against the remaining assets of the estate totaling ₱4,738,558.63, rendering the latter insolvent.

On 12 June 2003, the RTC issued its Order [6] taking note that "the widow and the heirs of the deceased Triviere, after all the years, have not received their respective share (sic) in the Estate x x x."

The RTC declared that there was no more need for accounting of the assets and liabilities of the estate considering that:

> [T]here appears to be no need for an accounting as the estate has no more assets except the money deposited with the Union Bank of the Philippines under Savings Account No. 12097-000656-0 x x x; on the estate taxes, records shows (sic) that the BIR Revenue Region No. 4-B2 Makati had issued a certificate dated April 27, 1988 indicating that the estate taxes has been fully paid.[7]

As to the payment of fees of Atty. Syquia and the Quasha Law Office, the RTC found as follows:

> [B]oth the Co-Administrator and counsel for the deceased (sic) are entitled to the payment for the services they have rendered and accomplished for the estate and the heirs of the deceased as they have over a decade now spent so much time, labor and skill to

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[5] *Rollo*, pp. 77-82.

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

[7] *Id.*

accomplish the task assigned to them; and the last time the administrators obtained their fees was in 1992.[8]

Hence, the RTC granted the second Motion for Payment; however, it reduced the sums to be paid, to wit:

> In view of the foregoing considerations, the instant motion is hereby GRANTED. The sums to be paid to the co-administrator and counsel for the heirs of the deceased Triviere are however reduced.
>
> Accordingly, the co-administrator Atty. Syquia and aforenamed counsel are authorized to pay to be sourced from the Estate of the deceased as follows:
>
> a) ₱450,000.00 as share of the children of the deceased who are represented by the Quasha, Ancheta, Pena, Nolasco Law Offices;
>
> b) ₱100,000.00 as attorney's fees and litigation expenses for said law firm;
>
> c) ₱150,000.00 as share for the widow of the deceased Amy Consuelo Triviere; and
>
> d) ₱100,000.00 for the Co-administrator Atty. Enrique P. Syquia and for litigation costs and expenses.[9]

LCN filed a Motion for Reconsideration[10] of the foregoing Order on 2 July 2003, but it was denied by the RTC on 29 October 2003.[11]

On 13 May 2004, LCN sought recourse from the Court of Appeals by assailing in CA-G.R. SP No. 81296, a Petition for *Certiorari*, the RTC Orders dated 12 June 2003 and 2 July 2003, for having been rendered with grave abuse of discretion.[12] LCN maintained that:

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[8] *Id.*

[9] *Id.* at 89.

[10] *Id.* at 90-94.

[11] *Id.* at 96.

[12] *Id.* at 97-142.

(1) The administrator's claim for attorney's fees, aside from being prohibited under paragraph 3, Section 7 of Rule 85 is, together with administration and litigation expenses, in the nature of a claim against the estate which should be ventilated and resolved pursuant to Section 8 of Rule 86;

(2) The awards violate Section 1, Rule 90 of the Rules of Court, as there still exists its (LCN's) unpaid claim in the sum of ₱6,016,570.65; and

(3) The alleged deliberate failure of the co-administrators to submit an accounting of the assets and liabilities of the estate does not warrant the Court's favorable action on the motion for payment.[13]

On 11 May 2006, the Court of Appeals promulgated a Decision essentially ruling in favor of LCN.

While the Court of Appeals conceded that Atty. Syquia and the Quasha Law Office, as the administrators of the estate of the late Raymond Triviere, were entitled to administrator's fees and litigation expenses, they could not claim the same from the funds of the estate. Referring to Section 7, Rule 85 of the Revised Rules of Court, the appellate court reasoned that the award of expenses and fees in favor of executors and administrators is subject to the qualification that where the executor or administrator is a lawyer, he shall not charge against the estate any professional fees for legal services rendered by him. Instead, the Court of Appeals held that the attorney's fees due Atty. Syquia and the Quasha Law Offices should be borne by their clients, the widow and children of the late Raymond Triviere, respectively.

The appellate court likewise revoked the ₱450,000.00 share and ₱150,000.00 share awarded by the RTC to the children and widow of the late Raymond Triviere, respectively, on the basis that Section 1, Rule 91 of the Revised Rules of Court proscribes the distribution of the residue of the estate until all its obligations have been paid.

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[13] *Id.* at 47.

The appellate court, however, did not agree in the position of LCN that the administrators' claims against the estate should have been presented and resolved in accordance with Section 8 of Rule 86 of the Revised Rules of Court. Claims against the estate that require presentation under Rule 86 refer to "debts or demands of a pecuniary nature which could have been enforced against the decedent during his lifetime and which could have been reduced to simple judgment and among which are those founded on contracts." The Court of Appeals also found the failure of the administrators to render an accounting excusable on the basis of Section 8, Rule 85 of the Revised Rules of Court.[14]

Finding the Petition for *Certiorari* of LCN partly meritorious, the Court of Appeals decreed:

> WHEREFORE, premises considered, the instant petition is hereby PARTLY GRANTED. The assailed Orders of the public respondent are hereby AFFIRMED with MODIFICATION in that –
>
> (1) the ***shares awarded to the heirs*** of the deceased Triviere in the assailed Order of June 12, 2003 are hereby **DELETED**; and
>
> (2) the ***attorney's fees*** awarded in favor of the co-administrators are hereby **DELETED**. However, inasmuch as the assailed order fails to itemize these fees from the litigation fees/ administrator's fees awarded in favor of the co-administrators, public respondent is hereby directed to determine with particularity the fees pertaining to each administrator.[15]

Petitioner filed a Motion for Reconsideration[16] of the 11 May 2006 Decision of the Court of Appeals. The Motion, however,

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[14] Section 8, Rule 85 of the Rules of Court provides –

Sec. 8. *When executor or administrator to render account.* — Every executor or administrator shall render an account of his administration within one (1) year from the time of receiving letters testamentary or of administration, ***unless the court otherwise directs*** because of extensions of time for presenting claims against, or paying the debts of, the estate, or for disposing of the estate; and he shall render such further accounts as the court may require until the estate is wholly settled.

[15] *Rollo,* p. 51.

[16] *Id.* at 156-165.

was denied by the appellate court in a Resolution dated 22 September 2006,[17] explaining that:

> In sum, private respondents did not earlier dispute [herein respondent LCN's] claim in its petition that the law firm and its lawyers served as co-administrators of the estate of the late Triviere. It is thus quite absurd for the said law firm to now dispute in the motion for reconsideration its being a co-administrator of the estate.
>
> [Herein petitioners], through counsel, likewise appear to be adopting in their motion for reconsideration a stance conflicting with their earlier theory submitted to this Court. Notably, the memorandum for [petitioner] heirs states that the claim for attorney's fees is supported by the facts and law. To support such allegation, they contend that Section 7 (3) of Rule 85 of the 1997 Rules of Civil Procedure finds no application to the instant case since "what is being charged are not professional fees for legal services rendered but payment for administration of the Estate which has been under the care and management of the co-administrators for the past fourteen (14) years." Their allegation, therefore, in their motion for reconsideration that Section 7 (3) of Rule 85 is inapplicable to the case of Quasha Law Offices because it is "merely seeking payment for legal services rendered to the estate and for litigation expenses" deserves scant consideration.
>
> xxx xxx xxx
>
> WHEREFORE, premises considered, private respondents' motion for reconsideration is hereby DENIED for lack of merit.[18]

Exhausting all available legal remedies, petitioners filed the present Petition for Review on *Certiorari* based on the following assignment of errors:

> I.
>
> THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE AWARD IN FAVOR OF THE HEIRS OF THE LATE RAYMOND TRIVIERE IS ALREADY A DISTRIBUTION OF THE RESIDUE OF THE ESTATE.

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[17] *Id.* at 54-56.

[18] *Id.* at 55-56.

II.

THE HONORABLE COURT OF APPEALS ERRED IN NULLIFYING THE AWARD OF ATTORNEY'S FEES IN FAVOR OF THE CO-ADMINISTRATORS

I

The Court of Appeals modified the 12 June 2003 Order of the RTC by deleting the awards of ₱450,000.00 and ₱150,000.00 in favor of the children and widow of the late Raymond Triviere, respectively. The appellate court adopted the position of LCN that the claim of LCN was an obligation of the estate which was yet unpaid and, under Section 1, Rule 90 of the Revised Rules of Court, barred the distribution of the residue of the estate.

Petitioners, though, insist that the awards in favor of the petitioner children and widow of the late Raymond Triviere is not a distribution of the residue of the estate, thus, rendering Section 1, Rule 90 of the Revised Rules of Court inapplicable.

Section 1, Rule 90 of the Revised Rules of Court provides:

Section 1. *When order for distribution of residue made*. – When the debts, funeral charges, and expenses of administration, the allowance to the widow, and inheritance tax, if any, chargeable to the estate in accordance with law, have been paid, the court, on the application of the executor or administrator, or of a person interested in the estate, and after hearing upon notice, shall assign the residue of the estate to the persons entitled to the same, naming them and the proportions, or parts, to which each is entitled, and such persons may demand and recover their respective shares from the executor or administrator, or any other person having the same in his possession. If there is a controversy before the court as to who are the lawful heirs of the deceased person or as to the distributive shares to which each person is entitled under the law, the controversy shall be heard and decided as in ordinary cases.

No distribution shall be allowed until the payment of the obligations above mentioned has been made or provided for, unless the distributees, or any of them, give a bond, in a sum to be fixed by the

court, conditioned for the payment of said obligations within such time as the court directs.

According to petitioners, the 12 June 2003 Order of the RTC should not be construed as a final order of distribution. The 12 June 2003 RTC Order granting the second Motion for Payment is a mere interlocutory order that does not end the estate proceedings. Only an order of distribution directing the delivery of the residue of the estate to the proper distributees brings the intestate proceedings to a close and, consequently, puts an end to the administration and relieves the administrator of his duties.

A perusal of the 12 June 2003 RTC Order would immediately reveal that it was not yet distributing the residue of the estate. The said Order grants the payment of certain amounts from the funds of the estate to the petitioner children and widow of the late Raymond Triviere considering that they have not received their respective shares therefrom for more than a decade. Out of the reported ₱4,738,558.63 value of the estate, the petitioner children and widow were being awarded by the RTC, in its 12 June 2003 Order, their shares in the collective amount of ₱600,000.00. Evidently, the remaining portion of the estate still needs to be settled. The intestate proceedings were not yet concluded, and the RTC still had to hear and rule on the pending claim of LCN against the estate of the late Raymond Triviere and only thereafter can it distribute the residue of the estate, if any, to his heirs.

While the awards in favor of petitioner children and widow made in the RTC Order dated 12 June 2003 was not yet a distribution of the residue of the estate, given that there was still a pending claim against the estate, still, they did constitute a partial and advance distribution of the estate. Virtually, the petitioner children and widow were already being awarded shares in the estate, although not all of its obligations had been paid or provided for.

Section 2, Rule 109 of the Revised Rules of Court expressly recognizes advance distribution of the estate, thus:

Section 2. *Advance distribution in special proceedings*. – Notwithstanding a pending controversy or appeal in proceedings to settle the estate of a decedent, **the court may, in its discretion and upon such terms as it may deem proper and just**, permit that such part of the estate as may not be affected by the controversy or appeal be distributed among the heirs or legatees, **upon compliance with the conditions set forth in Rule 90** of these rules. (Emphases supplied.)

The second paragraph of Section 1 of Rule 90 of the Revised Rules of Court allows the distribution of the estate prior to the payment of the obligations mentioned therein, provided that "the distributees, or any of them, gives a bond, in a sum to be fixed by the court, conditioned for the payment of said obligations within such time as the court directs."

In sum, although it is within the discretion of the RTC whether or not to permit the advance distribution of the estate, its exercise of such discretion should be qualified by the following: [1] only part of the estate that is not affected by any pending controversy or appeal may be the subject of advance distribution (Section 2, Rule 109); and [2] the distributees must post a bond, fixed by the court, conditioned for the payment of outstanding obligations of the estate (second paragraph of Section 1, Rule 90). There is no showing that the RTC, in awarding to the petitioner children and widow their shares in the estate prior to the settlement of all its obligations, complied with these two requirements or, at the very least, took the same into consideration. Its Order of 12 June 2003 is completely silent on these matters. It justified its grant of the award in a single sentence which stated that petitioner children and widow had not yet received their respective shares from the estate after all these years. Taking into account that the claim of LCN against the estate of the late Raymond Triviere allegedly amounted to ₱6,016,570.65, already in excess of the ₱4,738,558.63 reported total value of the estate, the RTC should have been more prudent in approving the advance distribution of the same.

Petitioners earlier invoked *Dael v. Intermediate Appellate Court*,[19] where the Court sustained an Order granting partial distribution of an estate.

However, *Dael* is not even on all fours with the case at bar, given that the Court therein found that:

> Where, however, the estate has **sufficient assets** to ensure equitable distribution of the inheritance in accordance with law and the final judgment in the proceedings and it **does not appear there are unpaid obligations,** as contemplated in Rule 90, for which provisions should have been made or a bond required, such partial distribution may be allowed. (Emphasis supplied.)

No similar determination on sufficiency of assets or absence of any outstanding obligations of the estate of the late Raymond Triviere was made by the RTC in this case. In fact, there is a pending claim by LCN against the estate, and the amount thereof exceeds the value of the entire estate.

Furthermore, in *Dael*, the Court actually cautioned that partial distribution of the decedent's estate pending final termination of the testate or intestate proceeding should as much as possible be discouraged by the courts, and, except in extreme cases, such form of advances of inheritance should not be countenanced. The reason for this rule is that courts should guard with utmost zeal and jealousy the estate of the decedent to the end that the creditors thereof be adequately protected and all the rightful heirs be assured of their shares in the inheritance.

Hence, the Court does not find that the Court of Appeals erred in disallowing the advance award of shares by the RTC to petitioner children and the widow of the late Raymond Triviere.

II

On the second assignment of error, petitioner Quasha Law Office contends that it is entitled to the award of attorney's fees and that the third paragraph of Section 7, Rule 85 of the Revised Rules of Court, which reads:

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[19] G.R. No. 68873, 31 March 1989, 171 SCRA 526, 536.

Section 7. *What expenses and fees allowed executor or administrator*. Not to charge for services as attorney. Compensation provided by will controls unless renounced. x x x.

xxx xxx xxx

When the executor or administrator is an **attorney**, he shall **not charge** against the estate any professional fees for legal services rendered by him. (Emphasis supplied.)

is inapplicable to it. The afore-quoted provision is clear and unequivocal and needs no statutory construction. Here, in attempting to exempt itself from the coverage of said rule, the Quasha Law Office presents conflicting arguments to justify its claim for attorney's fees against the estate. At one point, it alleges that the award of attorney's fees was payment for its administration of the estate of the late Raymond Triviere; yet, it would later renounce that it was an administrator.

In the pleadings filed by the Quasha Law Office before the Court of Appeals, it referred to itself as co-administrator of the estate.

In the Comment submitted to the appellate court by Atty. Doronila, the member-lawyer then assigned by the Quasha Law Office to the case, it stated that:

> The 12 June 2003 Order granted the Motion for Payment filed by Co-Administrator and counsel Atty. Enrique P. Syquia and the counsel **Atty. Cirilo E. Doronila and Co-Administrator** for the children of the late Raymond Triviere. x x x.[20] (Emphasis supplied.)

It would again in the same pleading claim to be the "co-administrator and counsel for the heirs of the late Raymond Triviere."[21]

Finally, the Memorandum it submitted to the Court of Appeals on behalf of its clients, the petitioner-children of the late Raymond Triviere, the Quasha Law Office alleged that:

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[20] CA *rollo*, p. 171.

[21] *Id.* at 181.

2. The petition assails the Order of the Honorable Regional Trial Court of Makati, Branch 63 granting the Motion for Payment filed by **Co-Administrators Atty. Enrique P. Syquia and the undersigned counsel** together with the children of the deceased Raymond Triviere, and the Order dated 29 October 2003 denying Petitioner's Motion for Reconsideration of the First Order.

xxx xxx xxx

I. Statement of Antecedent Facts

xxx xxx xxx

4. On 13 May 2004, Atty. Enrique Syquia, co-administrator and counsel for respondent Amy Consuelo Triviere **and the undersigned counsel**, **co-administrator and counsel for the children of the late Raymond Triviere** filed their Comment.[22]

Petitioner Quasha Law Office asserts that it is not within the purview of Section 7, Rule 85 of the Revised Rules of Court since it is not an appointed administrator of the estate.[23] When Atty. Quasha passed away in 1996, Atty. Syquia was left as the sole administrator of the estate of the late Raymond Triviere. The person of Atty. Quasha was distinct from that of petitioner Quasha Law Office; and the appointment of Atty. Quasha as administrator of the estate did not extend to his law office. Neither could petitioner Quasha Law Office be deemed to have substituted Atty. Quasha as administrator upon the latter's death for the same would be in violation of the rules on the appointment and substitution of estate administrators, particularly, Section 2, Rule 82 of the Revised Rules of Court.[24] Hence, when Atty. Quasha died, petitioner Quasha Law Office merely helped in the settlement of the estate as counsel for the petitioner children of the late Raymond Triviere.

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[22] *Id.* at 254.

[23] *Rollo*, p. 19.

[24] Section 2. *Court may remove or accept resignation of executor or administrator; Proceedings upon death, resignation, or removal*. – xxx When an executor or administrator dies, resigns, or is removed the remaining executor or administrator may administer the trust alone, unless the court grants letters to someone to act with him. xxx.

In its Memorandum before this Court, however, petitioner Quasha Law Office argues that "what is being charged are not professional fees for legal services rendered but payment for administration of the Estate which has been under the care and management of the co-administrators for the past fourteen (14) years."[25]

On the other hand, in the Motion for Payment filed with the RTC on 3 September 2002, petitioner Quasha Law Office prayed for ₱200,000.00 as "attorney's fees and litigation expenses." Being lumped together, and absent evidence to the contrary, the ₱200,000.00 for attorney's fees and litigation expenses prayed for by the petitioner Quasha Law Office can be logically and reasonably presumed to be in connection with cases handled by said law office on behalf of the estate. Simply, petitioner Quasha Law Office is seeking attorney's fees as compensation for the legal services it rendered in these cases, as well as reimbursement of the litigation expenses it incurred therein.

The Court notes with disfavor the sudden change in the theory by petitioner Quasha Law Office. Consistent with discussions in the preceding paragraphs, Quasha Law Office initially asserted itself as co-administrator of the estate before the courts. The records do not belie this fact. Petitioner Quasha Law Office later on denied it was substituted in the place of Atty. Quasha as administrator of the estate only upon filing a Motion for Reconsideration with the Court of Appeals, and then again before this Court. As a general rule, a party cannot change his theory of the case or his cause of action on appeal.[26] When a party adopts a certain theory in the court below, he will not be permitted to change his theory on appeal, for to permit him to do so would not only be unfair to the other party but it would also be offensive to the basic rules of fair play, justice and due process.[27]

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[25] Petitioners' Memorandum; *rollo*, p. 228.

[26] *Mon v. Court of Appeals*, G.R. No. 118292, 14 April 2004, 427 SCRA 165, 171; *Lianga Lumber Company v. Lianga Timber Co., Inc.*, 166 Phil. 661, 687 (1977).

[27] *Naval v. Court of Appeals*, G.R. No. 167412, 22 February 2006, 483 SCRA 102, 109; *Dosch v. National Labor Relations Commission*, 208 Phil. 259, 272 (1983); *Capacete v. Baroro*, 453 Phil. 392, 400 (2003).

Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage.[28]

This rule, however, admits of certain exceptions.[29] In the interest of justice and within the sound discretion of the appellate court, a party may change his legal theory on appeal, only when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory.[30]

On the foregoing considerations, this Court finds it necessary to exercise leniency on the rule against changing of theory on appeal, consistent with the rules of fair play and in the interest of justice. Petitioner Quasha Law Office presented conflicting arguments with respect to whether or not it was co-administrator of the estate. Nothing in the records, however, reveals that any one of the lawyers of Quasha Law Office was indeed a substitute administrator for Atty. Quasha upon his death.

The court has jurisdiction to appoint an administrator of an estate by granting letters of administration to a person not otherwise disqualified or incompetent to serve as such, following the procedure laid down in Section 6, Rule 78 of the Rules of Court.

Corollary thereto, Section 2, Rule 82 of the Rules of Court provides in clear and unequivocal terms the modes for replacing an administrator of an estate upon the death of an administrator, to wit:

Section 2. *Court may remove or accept resignation of executor or administrator. Proceedings upon* ***death****, resignation, or removal.* x x x.

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[28] *Sta. Rosa Realty Development Corporation v. Amante,* G.R. No. 112526, 16 March 2005, 453 SCRA 432, 477.

[29] *Capacete v. Baroro, supra* note 27.

[30] *Lianga Lumber Company v. Lianga Timber Co., Inc., supra* note 26.

> When an executor or administrator dies, resigns, or is removed the remaining executor or administrator may administer the trust alone, ***unless the court grants letters to someone to act with him***. If there is no remaining executor or administrator, administration may be granted to any suitable person.

The records of the case are wanting in evidence that Quasha Law Office or any of its lawyers substituted Atty. Quasha as co-administrator of the estate. None of the documents attached pertain to the issuance of letters of administration to petitioner Quasha Law Office or any of its lawyers at any time after the demise of Atty. Quasha in 1996. This Court is thus inclined to give credence to petitioner's contention that while it rendered legal services for the settlement of the estate of Raymond Triviere since the time of Atty. Quasha's death in 1996, it did not serve as co-administrator thereof, granting that it was never even issued letters of administration.

> The attorney's fees, therefore, cannot be covered by the prohibition in the third paragraph of Section 7, Rule 85 of the Revised Rules of Court against an attorney, to charge against the estate professional fees for legal services rendered by them.

However, while petitioner Quasha Law Office, serving as counsel of the Triviere children from the time of death of Atty. Quasha in 1996, is entitled to attorney's fees and litigation expenses of ₱100,000.00 as prayed for in the Motion for Payment dated 3 September 2002, and as awarded by the RTC in its 12 June 2003 Order, the same may be collected from the shares of the Triviere children, upon final distribution of the estate, in consideration of the fact that the Quasha Law Office, indeed, served as counsel (not anymore as co-administrator), representing and performing legal services ***for the Triviere children*** in the settlement of the estate of their deceased father.

Finally, LCN prays that as the contractor of the house (which the decedent caused to be built and is now part of the estate) with a preferred claim thereon, it should already be awarded ₱2,500,000.00, representing one half (½) of the proceeds from the sale of said house. The Court shall not take cognizance of

and rule on the matter considering that, precisely, the merits of the claim of LCN against the estate are still pending the proper determination by the RTC in the intestate proceedings below.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is hereby *PARTLY GRANTED.* The Decision dated 11 May 2006 and Resolution dated 22 September 2006 of the Court of Appeals in CA-G.R. SP No. 81296 are *AFFIRMED*, with the following *MODIFICATIONS*:

1) Petitioner Quasha Law Office is entitled to attorney's fees of ONE HUNDRED THOUSAND PESOS (₱100,000.00), for legal services rendered for the Triviere children in the settlement of the estate of their deceased father, the same to be paid by the Triviere children in the manner herein discussed; and

2) Attorneys Enrique P. Syquia and William H. Quasha are entitled to the payment of their corresponding administrators' fees, to be determined by the RTC handling Special Proceedings Case No. M-1678, Branch 63 of the Makati RTC, the same to be chargeable to the estate of Raymond Trieviere.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 179620. August 26, 2008]

MANUEL G. ALMELOR, *petitioner, vs.* **THE HON. REGIONAL TRIAL COURT OF LAS PIÑAS CITY, BRANCH 254, and LEONIDA T. ALMELOR,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; RULES OF PROCEDURE; MAY BE RELAXED TO SERVE THE DEMANDS OF SUBSTANTIAL JUSTICE AND IN THE COURT'S EXERCISE OF EQUITY JURISDICTION.— [I]n *Buenaflor v. Court of Appeals*, this Court clarified the proper appreciation for technical rules of procedure, in this wise: **Rules of procedures are intended to promote, not to defeat, substantial justice and, therefore, they should not be applied in a very rigid and technical sense. The exception is that while the Rules are liberally construed, the provisions with respect to the rules on the manner and periods for perfecting appeals are strictly applied. As an exception to the exception, these rules have sometimes been relaxed on equitable considerations.** Also, in some cases the Supreme Court has given due course to an appeal perfected out of time where a stringent application of the rules would have denied it, but only when to do so would serve the demands of substantial justice and in the exercise of equity jurisdiction of the Supreme Court.

2. LEGAL ETHICS; ATTORNEYS; LAWYER-CLIENT RELATIONSHIP; NEGLIGENCE OF COUNSEL BINDS THE CLIENT; EXCEPTIONS; CASE AT BAR.— It was the negligence and incompetence of Manuel's counsel that prejudiced his right to appeal. His counsel, Atty. Christine Dugenio, repeatedly availed of inappropriate remedies. After the denial of her notice of appeal, she failed to move for reconsideration or new trial at the first instance. She also erroneously filed a petition for annulment of judgment rather than pursue an ordinary appeal. These manifest errors were

clearly indicative of counsel's incompetence. These gravely worked to the detriment of Manuel's appeal. True it is that the negligence of counsel binds the client. Still, this Court has recognized certain exceptions: (1) where reckless or gross negligence of counsel deprives the client of due process of law; (2) when its application will result in outright deprivation of the client's liberty and property; or (3) where the interest of justice so require. The negligence of Manuel's counsel falls under the exceptions. Ultimately, the reckless or gross negligence of petitioner's former counsel led to the loss of his right to appeal. He should not be made to suffer for his counsel's grave mistakes. Higher interests of justice and equity demand that he be allowed to ventilate his case in a higher court.

3. CIVIL LAW; MARRIAGE; ANNULMENT OF MARRIAGE; CONCEALMENT OF HOMOSEXUALITY IS THE PROPER GROUND TO ANNUL A MARRIAGE, NOT HOMOSEXUALITY *PER SE*.— Even assuming, *ex gratia argumenti*, that Manuel is a homosexual, the lower court cannot appreciate it as a ground to annul his marriage with Leonida. The law is clear – a marriage may be annulled when the consent of either party was obtained by fraud, such as concealment of homosexuality. Nowhere in the said decision was it proven by preponderance of evidence that Manuel was a homosexual at the onset of his marriage and that he deliberately hid such fact to his wife. It is the concealment of homosexuality, and not homosexuality *per se*, that vitiates the consent of the innocent party. Such concealment presupposes bad faith and intent to defraud the other party in giving consent to the marriage. Consent is an essential requisite of a valid marriage. To be valid, it must be freely given by both parties. An allegation of vitiated consent must be proven by preponderance of evidence. The Family Code has enumerated an exclusive list of circumstances constituting fraud. Homosexuality *per se* is not among those cited, but its concealment. To reiterate, homosexuality *per se* is only a ground for legal separation. It is its concealment that serves as a valid ground to annul a marriage. Concealment in this case is not simply a blanket denial, but one that is constitutive of fraud. It is this fundamental element that respondent failed to prove.

4. ID.; ID.; IN A VALID MARRIAGE, THE ADMINISTRATION AND ENJOYMENT OF THE COMMUNITY PROPERTY BELONG TO THE HUSBAND AND WIFE JOINTLY; DISSOLUTION AND FORFEITURE OF PETITIONER'S SHARE IN THE PROPERTY REGIME IS UNWARRANTED IN CASE AT BAR.— A similar provision, Article 124 prescribes joint administration and enjoyment in a regime of conjugal partnership. In a valid marriage, both spouses exercise administration and enjoyment of the property regime, jointly. In the case under review, the RTC decreed a dissolution of the community property of Manuel and Leonida. In the same breath, the trial court forfeited Manuel's share in favor of the children. Considering that the marriage is upheld valid and subsisting, the dissolution and forfeiture of Manuel's share in the property regime is unwarranted. They remain the joint administrators of the community property.

APPEARANCES OF COUNSEL

Christine Q. Dugenio for petitioner.
Cayton Peñalosa Manzano & Morante for private respondent.

D E C I S I O N

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

MARRIAGE, in its totality, involves the spouses' right to the community of their whole lives. It likewise involves a true intertwining of personalities.[1]

This is a petition for review on *certiorari* of the Decision[2] of the Court of Appeals (CA) denying the petition for annulment of judgment and affirming *in toto* the decision of the Regional Trial Court (RTC), Las Piñas, Branch 254. The CA dismissed outright the Rule 47 petition for being the wrong remedy.

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[1] See Separate Opinion of Justice Romero in *Republic v. Court of Appeals*, G.R. No. 108763, February 13, 1997, 268 SCRA 198.

[2] *Rollo*, pp. 22-42. Dated July 31, 2007. Penned by Associate Justice Jose L. Sabio, with Associate Justices Regalado E. Maambong and Arturo G. Tayag, concurring.

The Facts

Petitioner Manuel G. Almelor (Manuel) and respondent Leonida Trinidad (Leonida) were married on January 29, 1989 at the Manila Cathedral.[3] Their union bore three children: (1) Maria Paulina Corinne, born on October 20, 1989; (2) Napoleon Manuel, born on August 9, 1991; and (3) Manuel Homer, born on July 4, 1994.[4] Manuel and Leonida are both medical practitioners, an anesthesiologist and a pediatrician, respectively.[5]

After eleven (11) years of marriage, Leonida filed a petition with the RTC in Las Piñas City to annul their marriage on the ground that Manuel was psychologically incapacitated to perform his marital obligations. The case, docketed as LP-00-0132 was raffled off to Branch 254.

During the trial, Leonida testified that she first met Manuel in 1981 at the San Lazaro Hospital where they worked as medical student clerks. At that time, she regarded Manuel as a very thoughtful person who got along well with other people. They soon became sweethearts. Three years after, they got married.[6]

Leonida averred that Manuel's kind and gentle demeanor did not last long. In the public eye, Manuel was the picture of a perfect husband and father. This was not the case in his private life. At home, Leonida described Manuel as a harsh disciplinarian, unreasonably meticulous, easily angered. Manuel's unreasonable way of imposing discipline on their children was the cause of their frequent fights as a couple.[7] Leonida complained that this was in stark contrast to the alleged lavish affection Manuel has for his mother. Manuel's deep attachment to his mother and his dependence on her decision-making were incomprehensible to Leonida.[8]

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[3] *Id.* at 46.

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.* at 26.

Further adding to her woes was his concealment to her of his homosexuality. Her suspicions were first aroused when she noticed Manuel's peculiar closeness to his male companions. For instance, she caught him in an indiscreet telephone conversation manifesting his affection for a male caller.[9] She also found several pornographic homosexual materials in his possession.[10] Her worse fears were confirmed when she saw Manuel kissed another man on the lips. The man was a certain Dr. Nogales.[11] When she confronted Manuel, he denied everything. At this point, Leonida took her children and left their conjugal abode. Since then, Manuel stopped giving support to their children.[12]

Dr. Valentina del Fonso Garcia, a clinical psychologist, was presented to prove Leonida's claim. Dr. del Fonso Garcia testified that she conducted evaluative interviews and a battery of psychiatric tests on Leonida. She also had a one-time interview with Manuel and face-to-face interviews with Ma. Paulina Corrinne (the eldest child).[13] She concluded that Manuel is psychologically incapacitated.[14] Such incapacity is marked by antecedence; it existed even before the marriage and appeared to be incurable.

Manuel, for his part, admitted that he and Leonida had some petty arguments here and there. He, however, maintained that

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[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.* at 47.

[14] *Id.* x x x defendant x x x suffer(s) from Narcissistic Personality Disorder of lack of empathy or unresponsiveness to the needs and feelings of his spouse and children, sense of entitlements or expectations of automatic compliance, manipulative and deceit stance, grandiose sense of self-importance, the strong need to seek approval and recognition and to prove his self-worth with Anti-social Features of irritability, verbal and physical aggression and lack of genuine remorse. Rigidly pervasive and egosyntonic in nature and hence no effective psychiatric therapeutic modality could satisfactorily remedy his unremitting psychology, defendant's psychological incapacity has its antecedence as early as before his marriage. x x x

their marital relationship was generally harmonious. The petition for annulment filed by Leonida came as a surprise to him.

Manuel countered that the true cause of Leonida's hostility against him was their professional rivalry. It began when he refused to heed the memorandum[15] released by Christ the King Hospital. The memorandum ordered him to desist from converting his own lying-in clinic to a primary or secondary hospital.[16] Leonida's family owns Christ the King Hospital which is situated in the same subdivision as Manuel's clinic and residence.[17] In other words, he and her family have competing or rival hospitals in the same vicinity.

Manuel belied her allegation that he was a cruel father to their children. He denied maltreating them. At most, he only imposed the necessary discipline on the children.

He also defended his show of affection for his mother. He said there was nothing wrong for him to return the love and affection of the person who reared and looked after him and his siblings. This is especially apt now that his mother is in her twilight years.[18] Manuel pointed out that Leonida found fault in this otherwise healthy relationship because of her very jealous and possessive nature.[19]

This same overly jealous behavior of Leonida drove Manuel to avoid the company of female friends. He wanted to avoid any further misunderstanding with his wife. But, Leonida instead conjured up stories about his sexual preference. She also fabricated tales about pornographic materials found in his possession to cast doubt on his masculinity.[20]

To corroborate his version, he presented his brother, Jesus G. Almelor. Jesus narrated that he usually stayed at Manuel's

[15] *Id.* at 48. Dated October 27, 1998.

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

house during his weekly trips to Manila from Iriga City. He was a witness to the generally harmonious relationship between his brother Manuel and sister-in-law, Leonida. True, they had some quarrels typical of a husband and wife relationship. But there was nothing similar to what Leonida described in her testimony.[21]

Jesus further testified that he was with his brother on the day Leonida allegedly saw Manuel kissed another man. He denied that such an incident occurred. On that particular date,[22] he and Manuel went straight home from a trip to Bicol. There was no other person with them at that time, except their driver.[23]

Manuel expressed his intention to refute Dr. del Fonso Garcia's findings by presenting his own expert witness. However, no psychiatrist was presented.

RTC Disposition

By decision dated November 25, 2005, the RTC granted the petition for annulment, with the following disposition:

WHEREFORE, premised on the foregoing, judgment is hereby rendered:

1. Declaring the marriage contracted by herein parties on 29 January 1989 and all its effects under the law **null and void from the beginning;**
2. Dissolving the regime of community property between the same parties with forfeiture of defendant's share thereon in favor of the same parties' children whose legal custody is awarded to plaintiff with visitorial right afforded to defendant;
3. Ordering the defendant to give monthly financial support to all the children; and
4. Pursuant to the provisions of A.M. No. 02-11-10-SC:
    a. Directing the Branch Clerk of this Court to enter this Judgment upon its finality in the Book of Entry of

[21] *Id*.

[22] *Id*. at 47. Dated November 1, 2002.

[23] *Id*.

Judgment and to issue an Entry of Judgment in accordance thereto; and

b. Directing the Local Civil Registrars of Las Piñas City and Manila City to cause the registration of the said Entry of Judgment in their respective Books of Marriages.

Upon compliance, a decree of nullity of marriage shall be issued.

SO ORDERED.[24] (Emphasis supplied)

The trial court nullified the marriage, not on the ground of Article 36, but Article 45 of the Family Code. It ratiocinated:

x x x a careful evaluation and in-depth analysis of the surrounding circumstances of the allegations in the complaint and of the evidence presented in support thereof (*sic*) reveals that in this case (*sic*) there is more than meets the eyes (*sic*).

Both legally and biologically, homosexuality x x x is, indeed, generally incompatible with hetero sexual marriage. This is reason enough that in this jurisdiction (*sic*) the law recognizes marriage as a special contract exclusively only between a man and a woman x x x and thus when homosexuality has trespassed into marriage, the same law provides ample remedies to correct the situation [Article 45(3) in relation to Article 46(4) or Article 55, par. 6, Family Code]. This is of course in recognition of the biological fact that no matter how a man cheats himself that he is not a homosexual and forces himself to live a normal heterosexual life, there will surely come a time when his true sexual preference as a homosexual shall prevail in haunting him and thus jeopardizing the solidity, honor, and welfare of his own family.[25]

Manuel filed a notice of appeal which was, however, denied due course. Undaunted, he filed a petition for annulment of judgment with the CA.[26]

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

[25] *Id.* at 49.

[26] *Id.* at 22. Docketed as CA-G.R. SP No. 93817. Penned by Associate Justice Jose L. Sabio, with Associate Justices Regalado E. Maambong and Arturo G. Tayag, concurring.

Manuel contended that the assailed decision was issued in excess of the lower court's jurisdiction; that it had no jurisdiction to dissolve the absolute community of property and forfeit his conjugal share in favor of his children.

CA Disposition

On July 31, 2007, the CA denied the petition, disposing as follows:

> WHEREFORE, the present Petition for Annulment of Judgment is hereby DENIED. The Court AFFIRMS ***in toto*** the Decision (dated November 25, 2005) of the Regional Trial Court (Branch 254), in Las Piñas City, in Civil Case No. LP-00-0132. No costs.[27]

The CA stated that petitioner pursued the wrong remedy by filing the extraordinary remedy of petition for annulment of judgment. Said the appellate court:

> It is obvious that the petitioner is questioning the propriety of the decision rendered by the lower Court. But the remedy assuming there was a mistake is not a Petition for Annulment of Judgment but an ordinary appeal. An error of judgment may be reversed or corrected only by appeal.
>
> What petitioner is ascribing is an error of judgment, not of jurisdiction, which is properly the subject of an ordinary appeal.
>
> In short, petitioner admits the jurisdiction of the lower court but he claims excess in the exercise thereof. "*Excess*" assuming there was is not covered by Rule 47 of the 1997 Rules of Civil Procedure. The Rule refers the lack of jurisdiction and not the exercise thereof.[28]

Issues

Petitioner Manuel takes the present recourse via Rule 45, assigning to the CA the following errors:

I

THE HONORABLE COURT OF APPEALS ERRED IN NOT TREATING THE PETITION FOR ANNULMENT OF JUDGMENT

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[27] *Id.* at 41.

[28] *Id.* at 36-37.

AS A PETITION FOR REVIEW IN VIEW OF THE IMPORTANCE OF THE ISSUES INVOLVED AND IN THE INTEREST OF JUSTICE;

II

THE HONORABLE COURT OF APPEALS ERRED IN UPHOLDING THE DECISION OF THE TRIAL COURT AS REGARDS THE ORDER DECLARING THE MARRIAGE AS NULL AND VOID ON THE GROUND OF PETITIONER'S PSYCHOLOGICAL INCAPACITY;

III

THE HONORABLE COURT OF APPEALS ERRED IN UPHOLDING THE DECISION OF THE TRIAL COURT AS REGARDS THE ORDER TO FORFEIT THE SHARE OF PETITIONER IN HIS SHARE OF THE CONJUGAL ASSETS.[29]

Our Ruling

I. The stringent rules of procedures may be relaxed to serve the demands of substantial justice and in the Court's exercise of equity jurisdiction.

Generally, an appeal taken either to the Supreme Court or the CA by the wrong or inappropriate mode shall be dismissed.[30] This is to prevent the party from benefiting from one's neglect and mistakes. **However, like most rules, it carries certain exceptions**. After all, the ultimate purpose of all rules of procedures is to achieve substantial justice as expeditiously as possible.[31]

Annulment of judgment under Rule 47 is a last remedy. It can not be resorted to if the ordinary remedies are available or no longer available through no fault of petitioner.[32] However,

[29] *Id*. at 10.

[30] Supreme Court Circular No. 2-90 (1994).

[31] *Gabionza v. Court of Appeals*, G.R. No. 112547, July 18, 1994, 234 SCRA 192.

[32] Rules of Civil Procedure (1997), Rule 47, Sec. 1 provides:

Section 1. *Coverage*. – This Rule shall govern the annulment by the Court of appeals of judgments or final orders and resolutions in civil actions of

in *Buenaflor v. Court of Appeals*,[33] this Court clarified the proper appreciation for technical rules of procedure, in this wise:

> **Rules of procedures are intended to promote, not to defeat, substantial justice and, therefore, they should not be applied in a very rigid and technical sense. The exception is that while the Rules are liberally construed, the provisions with respect to the rules on the manner and periods for perfecting appeals are strictly applied. As an exception to the exception, these rules have sometimes been relaxed on equitable considerations.** Also, in some cases the Supreme Court has given due course to an appeal perfected out of time where a stringent application of the rules would have denied it, but only when to do so would serve the demands of substantial justice and in the exercise of equity jurisdiction of the Supreme Court.[34] (Emphasis and underscoring supplied)

For reasons of justice and equity, this Court has allowed exceptions to the stringent rules governing appeals.[35] It has, in the past, refused to sacrifice justice for technicality.[36]

After discovering the palpable error of his petition, Manuel seeks the indulgence of this Court to consider his petition before the CA instead as a petition for *certiorari* under Rule 65.

Regional Trial Courts for which ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of petitioner.

[33] G.R. No. 142021, November 29, 2000, 346 SCRA 563.

[34] *Buenaflor v. Court of Appeals*, *id.* at 568.

[35] *Siguenza v. Court of Appeals*, G.R. No. L-44050, July 16, 1985, 137 SCRA 570.

[36] *Gerales v. Court of Appeals*, G.R. No. 85909, February 9, 1993, 218 SCRA 638; *Teodoro v. Caragüe*, G.R. No. 96004, February 21, 1992, 206 SCRA 429; *Cabutin v. Amacio*, G.R. No. 55228, February 28, 1989, 170 SCRA 750; *American Express International, Inc. v. Intermediate Appellate Court*, G.R. No. 70766, November 9, 1988, 167 SCRA 209; *Fonseca v. Court of Appeals*, G.R. No. L-36035, August 30, 1988, 165 SCRA 40; *Calasiao Farmers Cooperative Marketing Association, Inc. v. Court of Appeals*, G.R. No. 50633, August 17, 1981, 106 SCRA 630; *A-One Feeds, Inc. v. Court of Appeals*, G.R. No. L-35560, October 30, 1980, 100 SCRA 590; *Gregorio v. Court of Appeals*, G.R. No. L-43511, July 28, 1976, 72 SCRA 120; *Alonso v. Villamor*, 16 Phil. 315 (1910).

A perusal of the said petition reveals that Manuel imputed grave abuse of discretion to the lower court for annulling his marriage on account of his alleged homosexuality. This is not the first time that this Court is faced with a similar situation. In *Nerves v. Civil Service Commission*,[37] petitioner Delia R. Nerves elevated to the CA a Civil Service Commission (CSC) decision suspending her for six (6) months. The CSC ruled Nerves, a public school teacher, is deemed to have already served her six-month suspension during the pendency of the case. Nevertheless, she is ordered reinstated without back wages. On appeal, Nerves stated in her petition, *inter alia*:

> 1. This is a petition for *certiorari* filed pursuant to Article IX-A, Section 7 of the Constitution of the Philippines and under Rule 65 of the Rules of Court.
>
> 2. But per Supreme Court Revised Administrative Circular No. 1-95 (Revised Circular No. 1-91) petitioner is filing the instant petition with this Honorable Court instead of the Supreme Court.[38] (Underscoring supplied)

The CA dismissed Nerves' petition for *certiorari* for being the wrong remedy or the inappropriate mode of appeal.[39] The CA opined that "under the Supreme Court Revised Administrative Circular No. 1-95 x x x appeals from judgments or final orders or resolutions of CSC is by a petition for review."[40]

This Court granted Nerves petition and held that she had substantially complied with the Administrative Circular. The Court stated:

> That it was erroneously labeled as a petition for *certiorari* under Rule 65 of the Rules of Court is only a minor procedural lapse, not fatal to the appeal. x x x
>
> More importantly, the appeal on its face appears to be impressed with merit. Hence, the Court of Appeals should have overlooked

[37] G.R. No. 123561, July 31, 1997, 276 SCRA 610.

[38] *Nerves v. Civil Service Commission*, *id.* at 613.

[39] *Id.* at 613-614.

[40] *Id.* at 614.

the insubstantial defects of the petition x x x in order to do justice to the parties concerned. There is, indeed, nothing sacrosanct about procedural rules, which should be liberally construed in order to promote their object and assist the parties in obtaining just, speedy, and inexpensive determination of every action or proceeding. As it has been said, where the rigid application of the rules would frustrate substantial justice, or bar the vindication of a legitimate grievance, the courts are justified in exempting a particular case from the operation of the rules.[41] (Underscoring supplied)

Similarly, in the more recent case of *Tan v. Dumarpa*,[42] petitioner Joy G. Tan availed of a wrong remedy by filing a petition for review on *certiorari* instead of a motion for new trial or an ordinary appeal. In the interest of justice, this Court considered the petition, *pro hac vice*, as a petition for *certiorari* under Rule 65.

This Court found that based on Tan's allegations, the trial court *prima facie* committed grave abuse of discretion in rendering a judgment by default. If uncorrected, it will cause petitioner great injustice. The Court elucidated in this wise:

Indeed, where as here, there is a strong showing that grave miscarriage of justice would result from the strict application of the Rules, we will not hesitate to relax the same in the interest of substantial justice.[43] (Underscoring supplied)

Measured by the foregoing yardstick, justice will be better served by giving due course to the present petition and treating petitioner's CA petition as one for *certiorari* under Rule 65, considering that what is at stake is the validity or non-validity of a marriage.

In *Salazar v. Court of Appeals*,[44] citing *Labad v. University of Southeastern Philippines*, this Court reiterated:

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[41] *Id*. at 615

[42] G.R. No. 138777, September 22, 2004, 438 SCRA 659.

[43] *Tan v. Dumarpa*, *id.* at 665.

[44] G.R. 142920, February 6, 2002, 376 SCRA 459.

> x x x The dismissal of appeals on purely technical grounds is frowned upon. While the right to appeal is a statutory, not a natural right, nonetheless it is an essential part of our judicial system and courts should proceed with caution so as not to deprive a party of the right to appeal, but rather, ensure that every party-litigant has the amplest opportunity for the proper and just disposition of his cause, free from the constraints of technicalities.[45]

Indeed, it is far better and more prudent for a court to excuse a technical lapse and afford the parties a review of the case on the merits to attain the ends of justice.[46]

Furthermore, it was the negligence and incompetence of Manuel's counsel that prejudiced his right to appeal. His counsel, Atty. Christine Dugenio, repeatedly availed of inappropriate remedies. After the denial of her notice of appeal, she failed to move for reconsideration or new trial at the first instance. She also erroneously filed a petition for annulment of judgment rather than pursue an ordinary appeal.

These manifest errors were clearly indicative of counsel's incompetence. These gravely worked to the detriment of Manuel's appeal. True it is that the negligence of counsel binds the client. Still, this Court has recognized certain exceptions: (1) where reckless or gross negligence of counsel deprives the client of due process of law; (2) when its application will result in outright deprivation of the client's liberty and property; or (3) where the interest of justice so require.[47]

The negligence of Manuel's counsel falls under the exceptions. Ultimately, the reckless or gross negligence of petitioner's former counsel led to the loss of his right to appeal. He should not be made to suffer for his counsel's grave mistakes. Higher interests of justice and equity demand that he be allowed to ventilate his case in a higher court.

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[45] *Salazar v. Court of Appeals*, *id.* at 471.

[46] *Sarraga, Sr. v. Banco Filipino Savings and Mortgage Bank*, G.R. No. 143783, December 9, 2002, 393 SCRA 566.

[47] *Id.* at 574.

In *Apex Mining, Inc. v. Court of Appeals*,[48] this Court explained thus:

> It is settled that the negligence of counsel binds the client. This is based on the rule that any act performed by a counsel within the scope of his general or implied authority is regarded as an act of his client. However, where counsel is guilty of gross ignorance, negligence and dereliction of duty, which resulted in the client's being held liable for damages in a damage suit, the client is deprived of his day in court and the judgment may be set aside on such ground. In the instant case, higher interests of justice and equity demand that petitioners be allowed to present evidence on their defense. Petitioners may not be made to suffer for the lawyer's mistakes. **This Court will always be disposed to grant relief to parties aggrieved by perfidy, fraud, reckless inattention and downright incompetence of lawyers, which has the consequence of depriving their clients, of their day in court**.[49] (Emphasis supplied)

Clearly, this Court has the power to except a particular case from the operation of the rule whenever the demands of justice require it. With more conviction should it wield such power in a case involving the sacrosanct institution of marriage. This Court is guided with the thrust of giving a party the fullest opportunity to establish the merits of one's action.[50]

The client was likewise spared from counsel's negligence in *Government Service Insurance System v. Bengson Commercial Buildings, Inc.*[51] and *Ancheta v. Guersey-Dalaygon*.[52] Said the Court in *Bengson*:

> But if under the circumstances of the case, the rule deserts its proper office as an aid to justice and becomes a great hindrance and chief enemy, its rigors must be relaxed to admit exceptions thereto and to prevent a miscarriage of justice. In other words, the court

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[48] G.R. No. 133750, November 29, 1999, 319 SCRA 456.

[49] *Apex Mining, Inc. v. Court of Appeals*, *id.* at 465.

[50] *Aguilar v. Court of Appeals*, G.R. No. 114282, November 28, 1995, 250 SCRA 371.

[51] G.R. No. 137448, January 31, 2002, 375 SCRA 431.

[52] G.R. No. 139868, June 8, 2006, 490 SCRA 140.

has the power to except a particular case from the operation of the rule whenever the purposes of justice require it.[53]

II. Concealment of homosexuality is the proper ground to annul a marriage, not homosexuality per se.

Manuel is a desperate man determined to salvage what remains of his marriage. Persistent in his quest, he fought back all the heavy accusations of incapacity, cruelty, and doubted masculinity thrown at him.

The trial court declared that Leonida's petition for nullity had "no basis at all because the supporting grounds relied upon **can not legally make a case under Article 36 of the Family Code**." It went further by citing *Republic v. Molina*:[54]

> Indeed, mere allegations of conflicting personalities, irreconcilable differences, incessant quarrels and/or beatings, unpredictable mood swings, infidelities, vices, abandonment, and difficulty, neglect, or failure in the performance of some marital obligations do not suffice to establish psychological incapacity.[55]

If so, the lower court should have dismissed outright the petition for not meeting the guidelines set in *Molina*. What Leonida attempted to demonstrate were Manuel's homosexual tendencies by citing overt acts generally predominant among homosexual individuals.[56] She wanted to prove that the perceived homosexuality rendered Manuel incapable of fulfilling the essential marital obligations.

But instead of dismissing the petition, the trial court **nullified** the marriage between Manuel and Leonida on the ground of vitiated consent by virtue of fraud. In support of its conclusion, the lower court reasoned out:

> As insinuated by the State (p. 75, TSN, 15 December 2003), when there is smoke surely there is fire. Although vehemently denied by

[53] *Government Service Insurance System v. Bengson Commercial Buildings, Inc.*, *supra* note 51, at 445.

[54] *Supra* note 1.

[55] *Rollo*, p. 49.

[56] *Id.*

defendant, there is preponderant evidence enough to establish with certainty that defendant is really a homosexual. This is the fact that can be **deduced** from the totality of the marriage life scenario of herein parties.

Before his marriage, defendant knew very well that people around him even including his own close friends **doubted** his true sexual preference (TSN, pp. 35-36, 13 December 2000; pp. 73-75, 15 December 2003). After receiving many forewarnings, plaintiff told defendant about the rumor she heard but defendant did not do anything to prove to the whole world once and for all the truth of all his denials. Defendant threatened to sue those people but nothing happened after that. There may have been more important matters to attend to than to waste time and effort filing cases against and be effected by these people and so, putting more premiums on defendant's denials, plaintiff just the same married him. Reasons upon reasons may be advanced to either exculpate or nail to the cross defendant for his act of initially concealing his homosexuality to plaintiff, but in the end, only one thing is certain – even during his marriage with plaintiff, the smoke of doubt about his real preference continued and even got thicker, reason why obviously defendant failed to establish a happy and solid family; and in so failing, plaintiff and their children became his innocent and unwilling victims.

Yes, there is nothing untoward of a man if, like herein defendant, he is meticulous over even small details in the house (*sic*) like wrongly folded bed sheets, *etc*. or if a man is more authoritative in knowing what clothes or jewelry shall fit his wife (pp. 77-81, TSN, 15 December 2003); but these admissions of defendant taken in the light of evidence presented apparently showing that he had extra fondness of his male friends (*sic*) to the extent that twice on separate occasions (pp. 4-7, TSN, 14 February 2001) he was allegedly seen by plaintiff kissing another man lips-to-lips plus the homosexual magazines and tapes likewise allegedly discovered underneath his bed (Exhibits "L" and "M"), the doubt as to his real sex identity becomes stronger. The accusation of plaintiff versus thereof of defendant may be the name of the game in this case; but the simple reason of professional rivalry advanced by the defendant is certainly not enough to justify and obscure the question why plaintiff should accuse him of such a very untoward infidelity at the expense and humiliation of their children and family as a whole.[57]

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

Evidently, no sufficient proof was presented to substantiate the allegations that Manuel is a homosexual and that he concealed this to Leonida at the time of their marriage. The lower court considered the public perception of Manuel's sexual preference without the corroboration of witnesses. Also, it took cognizance of Manuel's peculiarities and interpreted it against his sexuality.

Even assuming, *ex gratia argumenti*, that Manuel is a homosexual, the lower court cannot appreciate it as a ground to annul his marriage with Leonida. The law is clear – a marriage may be annulled when the consent of either party was obtained by fraud,[58] such as concealment of homosexuality.[59] Nowhere in the said decision was it proven by preponderance of evidence that Manuel was a homosexual at the onset of his marriage and that he deliberately hid such fact to his wife.[60] It is the concealment of homosexuality, and not homosexuality *per se*, that vitiates the consent of the innocent party. Such concealment presupposes bad faith and intent to defraud the other party in giving consent to the marriage.

Consent is an essential requisite of a valid marriage. To be valid, it must be freely given by both parties. An allegation of vitiated consent must be proven by preponderance of evidence. The Family Code has enumerated an exclusive list of circumstances[61] constituting fraud. Homosexuality *per se* is not among those cited, but its concealment.

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[58] Family Code, Art. 45(3).

[59] *Id.*, Art. 46(4).

[60] *Rollo*, pp. 49-51.

[61] Article 46. Any of the following circumstances shall constitute fraud referred to in Number 3 of the preceding Article:

1) Non-disclosure of previous conviction by final judgment of the other party of a crime involving moral turpitude;

2) Concealment by the wife of the fact that at the time of the marriage, she was pregnant by a man other than her husband;

3) Concealment of sexually transmissible disease, regardless of its nature, existing at the time of the marriage; or

4) Concealment of drug addiction, habitual alcoholism, or homosexuality or lesbianism existing at the time of the marriage.

This distinction becomes more apparent when we go over the deliberations[62] of the Committees on the Civil Code and Family Law, to wit:

> Justice Caguioa remarked that this ground should be eliminated in the provision on the grounds for legal separation. Dean Gupit, however, pointed out that in Article 46, they are talking only of "concealment," while in the article on legal separation, there is actuality. Judge Diy added that in legal separation, the ground existed after the marriage, while in Article 46, the ground existed at the time of the marriage. Justice Reyes suggested that, for clarity, they add the phrase "existing at the time of the marriage" at the end of subparagraph (4). The Committee approved the suggestion.[63]

To reiterate, homosexuality *per se* is only a ground for legal separation. It is its concealment that serves as a valid ground to annul a marriage.[64] Concealment in this case is not simply a blanket denial, but one that is constitutive of fraud. It is this fundamental element that respondent failed to prove.

In the United States, homosexuality has been considered as a basis for divorce. It indicates that questions of sexual identity strike so deeply at one of the basic elements of marriage, which is the exclusive sexual bond between the spouses.[65] In *Crutcher v. Crutcher*,[66] the Court held:

> Unnatural practices of the kind charged here are an infamous indignity to the wife, and which would make the marriage relation so revolting to her that it would become impossible for her to discharge the duties of a wife, and would defeat the whole purpose of the relation. In the natural course of things, they would cause mental suffering to the extent of affecting her health.[67]

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[62] Minutes of the 154th Meeting of the Civil Code and Family Law Committees held on September 6, 1986, 9:00 a.m. at the Conference Room, First Floor, Bacobo Hall, U.P. Law Complex, Diliman, Quezon City.

[63] *Id.* at 12.

[64] *Id.*

[65] 78 ALR 2d 807.

[66] 38 So. 337 (1905).

[67] *Crutcher v. Crutcher*, *id.* at 337.

However, although there may be similar sentiments here in the Philippines, the legal overtones are significantly different. Divorce is not recognized in the country. Homosexuality and its alleged incompatibility to a healthy heterosexual life are not sanctioned as grounds to sever the marriage bond in our jurisdiction. At most, it is only a ground to separate from bed and board.

What was proven in the hearings *a quo* was a relatively blissful marital union for more than eleven (11) years, which produced three (3) children. The burden of proof to show the nullity of the marriage rests on Leonida. Sadly, she failed to discharge this onus.

The same failure to prove fraud which purportedly resulted to a vitiated marital consent was found in *Villanueva v. Court of Appeals*.[68] In *Villanueva*, instead of proving vitiation of consent, appellant resorted to baseless portrayals of his wife as a perpetrator of fraudulent schemes. Said the Court:

> Factual findings of the Court of Appeals, especially if they coincide with those of the trial court, as in the instant case, are generally binding on this Court. We affirm the findings of the Court of Appeals that petitioner freely and voluntarily married private respondent and that no threats or intimidation, duress or violence compelled him to do so, thus –
>
> Appellant anchored his prayer for the annulment of his marriage on the ground that he did not freely consent to be married to the appellee. He cited several incidents that created on his mind a reasonable and well-grounded fear of an imminent and grave danger to his life and safety. x x x
>
> The Court is not convinced that appellant's apprehension of danger to his person is so overwhelming as to deprive him of the will to enter voluntarily to a contract of marriage. It is not disputed that at the time he was allegedly being harassed, appellant worked as a security guard in a bank. Given the rudiments of self-defense, or, at the very least, the proper way to keep himself out of harm's way. x x x

[68] G.R. No. 132955, October 27, 2006, 505 SCRA 565.

Appellant also invoked fraud to annul his marriage, as he was made to believe by appellee that the latter was pregnant with his child when they were married. Appellant's excuse that he could not have impregnated the appellee because he did not have an erection during their tryst is flimsy at best, and an outright lie at worst. The complaint is bereft of any reference to his inability to copulate with the appellee. x x x

xxx xxx xxx

x x x The failure to cohabit becomes relevant only if it arises as a result of the perpetration of any of the grounds for annulling the marriage, such as lack of parental consent, insanity, fraud, intimidation, or undue influence x x x. Since the appellant failed to justify his failure to cohabit with the appellee on any of these grounds, the validity of his marriage must be upheld.[69]

Verily, the lower court committed grave abuse of discretion, not only by solely taking into account petitioner's homosexuality per se and not its concealment, but by declaring the marriage void from its existence.

This Court is mindful of the constitutional policy to protect and strengthen the family as the basic autonomous social institution and marriage as the foundation of the family.[70] The State and the public have vital interest in the maintenance and preservation of these social institutions against desecration by fabricated evidence.[71] Thus, any doubt should be resolved in favor of the validity of marriage.

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[69] *Villanueva v. Court of Appeals, id.* at 569-570.

[70] Philippine Constitution (1987), Art. II, Sec. 12 provides:

Sec. 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. x x x

Art. XV, Secs. 1-2 provides:

Sec. 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.

Sec. 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.

[71] *Tolentino v. Villanueva*, G.R. No. L-23264, March 15, 1974, 56 SCRA 1.

III. In a valid marriage, the husband and wife jointly administer and enjoy their community or conjugal property.

Article 96 of the Family Code, on regimes of absolute community property, provides:

> Art. 96. The administration and enjoyment of the community property shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for a proper remedy, which must be availed of within five years from the date of the contract implementing such decision.
>
> In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the common properties, the other spouse may assume sole powers of administration. These powers do not include the powers of disposition or encumbrance without the authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.

A similar provision, Article 124[72] prescribes joint administration and enjoyment in a regime of conjugal partnership. In a valid marriage, both spouses exercise administration and enjoyment of the property regime, jointly.

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[72] Art. 124. The administration and enjoyment of the conjugal partnership property shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void. However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.

In the case under review, the RTC decreed a dissolution of the community property of Manuel and Leonida. In the same breath, the trial court forfeited Manuel's share in favor of the children. Considering that the marriage is upheld valid and subsisting, the dissolution and forfeiture of Manuel's share in the property regime is unwarranted. They remain the joint administrators of the community property.

WHEREFORE, the petition is *GRANTED*. The appealed Decision is *REVERSED* and *SET ASIDE* and the petition in the trial court to annul the marriage is *DISMISSED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 150896. August 28, 2008]

PUREFOODS CORPORATION, *petitioner, vs.* **NAGKAKAISANG SAMAHANG MANGGAGAWA NG PUREFOODS RANK-AND-FILE, ST. THOMAS FREE WORKERS UNION, PUREFOODS GRANDPARENT FARM WORKERS UNION and PUREFOODS UNIFIED LABOR ORGANIZATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; WHEN THE PETITIONER IS A CORPORATION, IT SHALL BE ACCOMPANIED BY A SWORN CERTIFICATE OF NON-FORUM SHOPPING TO BE EXECUTED BY A NATURAL PERSON AUTHORIZED

BY THE CORPORATION'S BOARD OF DIRECTORS; FAILURE TO ATTACH TO THE CERTIFICATION ANY PROOF OF THE SIGNATORY'S AUTHORITY IS A SUFFICIENT GROUND FOR DISMISSAL OF THE PETITION; CASE AT BAR.— Section 1, Rule 65 of the Rules of Court explicitly mandates that the petition for *certiorari* shall be accompanied by a sworn certification of non-forum shopping. When the petitioner is a corporation, inasmuch as corporate powers are exercised by the board, the certification shall be executed by a natural person authorized by the corporation's board of directors. Absent any authority from the board, no person, not even the corporate officers, can bind the corporation. Only individuals who are vested with authority by a valid board resolution may sign the certificate of non-forum shopping in behalf of the corporation, and proof of such authority must be attached to the petition. Failure to attach to the certification any proof of the signatory's authority is a sufficient ground for the dismissal of the petition. In the instant case, the senior vice-president of the petitioner corporation signed the certificate of non-forum shopping. No proof of his authority to sign the said certificate was, however, attached to the petition. Thus, applying settled jurisprudence, we find that the CA committed no error when it dismissed the petition.

2. ID.; LIBERAL APPLICATION OF THE RULES, NOT WARRANTED IN CASE AT BAR.— The Court cannot even be liberal in the application of the rules because liberality is warranted only in instances when there is substantial compliance with the technical requirements in pleading and practice, and when there is sufficient explanation that the non-compliance is for a justifiable cause, such that the outright dismissal of the case will defeat the administration of justice. Here, the petitioner corporation, in its motion for reconsideration before the appellate court and in its petition before us, did not present a reasonable explanation for its non-compliance with the rules. Further, it cannot be said that petitioner substantially complied therewith, because it did not attach to its motion for reconsideration any proof of the authority of its signatory. It stands to reason, therefore, that this Court now refuses to condone petitioner's procedural transgression. We must reiterate that the rules of procedure are mandatory, except only when, for the most persuasive of reasons, they may be relaxed to relieve a litigant of an injustice not commensurate to the

degree of his thoughtlessness in not complying therewith. While technical rules of procedure are not designed to frustrate the ends of justice, they are provided to effect the proper and orderly disposition of cases and effectively prevent the clogging of court dockets.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; UNFAIR LABOR PRACTICE; SUDDEN CLOSURE OF BUSINESS AND TERMINATION OF EMPLOYMENT OF STFWU UNION MEMBERS WERE MADE IN BAD FAITH; LABOR ORGANIZATION'S RIGHT TO COLLECTIVE BARGAINING CIRCUMVENTED AND MEMBER'S RIGHT TO SECURITY OF TENURE VIOLATED.— It is crystal clear that the closure of the Sto. Tomas farm was made in bad faith. Badges of bad faith are evident from the following acts of the petitioner: it unjustifiably refused to recognize the STFWU's and the other unions' affiliation with PULO; it concluded a new CBA with another union in another farm during the agreed indefinite suspension of the collective bargaining negotiations; it surreptitiously transferred and continued its business in a less hostile environment; and it suddenly terminated the STFWU members, but retained and brought the non-members to the Malvar farm. Petitioner presented no evidence to support the contention that it was incurring losses or that the subject farm's lease agreement was pre-terminated. Ineluctably, the closure of the Sto. Tomas farm circumvented the labor organization's right to collective bargaining and violated the members' right to security of tenure.

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; GRAVE ABUSE OF DISCRETION ON THE PART OF THE NATIONAL LABOR RELATIONS COMMISSION, NOT PROVEN IN CASE AT BAR.— The Court reiterates that the petition for *certiorari* under Rule 65 of the Rules of Court filed with the CA will prosper only if there is clear showing of grave abuse of discretion or an act without or in excess of jurisdiction on the part of the NLRC. It was incumbent, then, for petitioner to prove before the appellate court that the labor commission capriciously and whimsically exercised its judgment tantamount to lack of jurisdiction, or that it exercised its power in an arbitrary or despotic manner by reason of passion or personal hostility, and that its abuse of discretion is so patent and gross as to

amount to an evasion of a positive duty enjoined or to act at all in contemplation of law. Here, as aforesaid, no such proof was adduced by petitioner. We, thus, declare that the NLRC ruling is not characterized by grave abuse of discretion. Accordingly, the same is also affirmed.

5. CIVIL LAW; DAMAGES; AWARD OF MORAL AND EXEMPLARY DAMAGES, PROPER IN CASE AT BAR; BASIS.— We deem as proper the award of moral and exemplary damages. We hold that the sudden termination of the STFWU members is tainted with ULP because it was done to interfere with, restrain or coerce employees in the exercise of their right to self-organization. Thus, the petitioner company is liable for the payment of the aforesaid damages. Notable, though, is that this award, while stated in the body of the NLRC decision, was omitted in the dispositive portion of the said ruling. To prevent any further confusion in the implementation of the said decision, we correct the dispositive portion of the ruling to include the payment of ₱500,000.00 as moral and exemplary damages to the illegally dismissed STFWU members.

6. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; REINSTATEMENT, NOT FEASIBLE; AWARD OF SEPARATION PAY, PROPER.— As to the order of reinstatement, the Court modifies the same in that if it is no longer feasible considering the length of time that the employees have been out of petitioner's employ, the company is ordered to pay the illegally dismissed STFWU members separation pay equivalent to one (1) month pay, or one-half (½) month pay for every year of service, whichever is higher.

7. ID.; ID.; ID.; RELEASES AND QUITCLAIMS; INVALID AND INEFFECTIVE AND WILL NOT BAR WORKERS FROM CLAIMING THE FULL MEASURE OF THEIR BENEFITS.— The releases and quitclaims, as well as the affidavits of desistance, signed by the concerned employees, who were then necessitous men at the time of execution of the documents, are declared invalid and ineffective. They will not bar the workers from claiming the full measure of benefits flowing from their legal rights.

APPEARANCES OF COUNSEL

Kapunan Migallos Perez & Luna for petitioner.
Jose C. Espinas for respondents.

D E C I S I O N

NACHURA, *J.*:

The petitioner, Purefoods Corporation, in this Rule 45 petition seeks the reversal of the appellate court's dismissal of its *certiorari* petition, and our consequent review of the labor commission's finding that it committed unfair labor practice and illegally dismissed the concerned union members.

Three labor organizations and a federation are respondents in this case—*Nagkakaisang Samahang Manggagawa Ng Purefoods Rank-And-File* (NAGSAMA-Purefoods), the exclusive bargaining agent of the rank-and-file workers of Purefoods' meat division throughout Luzon; St. Thomas Free Workers Union (STFWU), of those in the farm in Sto. Tomas, Batangas; and Purefoods Grandparent Farm Workers Union (PGFWU), of those in the poultry farm in Sta. Rosa, Laguna. These organizations were affiliates of the respondent federation, Purefoods Unified Labor Organization (PULO).[1]

On February 8, 1995, NAGSAMA-Purefoods manifested to petitioner corporation its desire to re-negotiate the collective bargaining agreement (CBA) then due to expire on the 28th of the said month. Together with its demands and proposal, the organization submitted to the company its January 28, 1995 General Membership Resolution approving and supporting the union's affiliation with PULO, adopting the draft CBA proposals of the federation, and authorizing a negotiating panel which included among others a PULO representative. While Purefoods formally acknowledged receipt of the union's proposals, it refused to recognize PULO and its participation, even as a mere observer, in the negotiation. Consequently, notwithstanding the PULO

[1] *Rollo*, pp. 130-131.

representative's non-involvement, the negotiation of the terms of the CBA still resulted in a deadlock. A notice of strike was then filed by NAGSAMA-Purefoods on May 15, 1995. In the subsequent conciliation conference, the deadlock issues were settled except the matter of the company's recognition of the union's affiliation with PULO.[2]

In the meantime, STFWU and PGFWU also submitted their respective proposals for CBA renewal, and their general membership resolutions which, among others, affirmed the two organizations' affiliation with PULO. Consistent with its stance, Purefoods refused to negotiate with the unions should a PULO representative be in the panel. The parties then agreed to postpone the negotiations indefinitely.[3]

On July 24, 1995, however, the petitioner company concluded a new CBA with another union in its farm in Malvar, Batangas. Five days thereafter, or on July 29, 1995, at around 8:00 in the evening, four company employees facilitated the transfer of around 23,000 chickens from the poultry farm in Sto. Tomas, Batangas (where STFWU was the exclusive bargaining agent) to that in Malvar. The following day, the regular rank-and-file workers in the Sto. Tomas farm were refused entry in the company premises; and on July 31, 1995, 22 STFWU members were terminated from employment. The farm manager, supervisors and electrical workers of the Sto. Tomas farm, who were members of another union, were nevertheless retained by the company in its employ.[4]

Aggrieved by these developments, the four respondent labor organizations jointly instituted a complaint for unfair labor practice (ULP), illegal lockout/dismissal and damages, docketed as NLRC Case No. NLRC-NCR-00-07-05159-95, with the Labor Arbitration Branch of the National Labor Relations Commission (NLRC).[5]

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[2] *Id.* at 116-117.

[3] *Id.* at 117.

[4] *Id.* at 117-118.

[5] *Id.* at 70-80.

In the proceedings before the Labor Arbiter (LA), Purefoods interposed, among others, the defenses that PULO was not a legitimate labor organization or federation for it did not have the required minimum number of member unions; that the closure of the Sto. Tomas farm was not arbitrary but was the result of the financial non-viability of the operations therein, or the consequence of the landowner's pre-termination of the lease agreement; that the other complainants had no cause of action considering that it was only the Sto. Tomas farm which was closed; that the termination of the employees complied with the 30-day notice requirement and that the said employees were paid 30-day advance salary in addition to separation pay; and that the concerned union, STFWU, lost its status as bargaining representative when the Sto. Tomas farm was closed.[6]

On August 17, 1999, the LA rendered a Decision[7] dismissing the complaint, and declaring that the company neither committed ULP nor illegally dismissed the employees.

On appeal, the NLRC reversed the ruling of the LA, ordered the payment of ₱500,000.00 as moral and exemplary damages and the reinstatement with full backwages of the STFWU members. In its March 16, 2001 Decision (CA No. 022059-00), the labor commission ruled that the petitioner company's refusal to recognize the labor organizations' affiliation with PULO was unjustified considering that the latter had been granted the status of a federation by the Bureau of Labor Relations; and that this refusal constituted undue interference in, and restraint on the exercise of the employees' right to self-organization and free collective bargaining. The NLRC said that the real motive of the company in the sudden closure of the Sto. Tomas farm and the mass dismissal of the STFWU members was union busting,

[6] *Id.* at 107-110.

[7] *Id.* at 114-127. The dispositive portion of the Labor Arbiter's decision reads:

CONFORMABLY WITH THE FOREGOING, judgment is hereby rendered declaring that the respondents did not commit unfair labor practice against complainants and that there was no illegal dismissal committed.

SO ORDERED.

as only the union members were locked out, and the company subsequently resumed operations of the closed farm under a new contract with the landowner. Because the requisites of a valid lockout were absent, the NLRC concluded that the company committed ULP. The dispositive portion of the NLRC decision reads:

> WHEREFORE, respondent Purefoods Corporation is hereby directed to reinstate effective October 1, 2000 employees-members of the STFWU-PULO who were illegally locked out on July 30, 1995 and to pay them their full backwages.
>
> SO ORDERED.

Its motion for reconsideration having been denied,[8] the petitioner corporation filed a Rule 65 petition before the Court of Appeals (CA) docketed as CA-G.R. SP No. 66871.

In the assailed October 25, 2001 Resolution,[9] the appellate court dismissed outright the company's petition for *certiorari* on the ground that the verification and certification of non-forum shopping was defective since no proof of authority to act for and on behalf of the corporation was submitted by the corporation's senior vice-president who signed the same; thus, the petition could not be deemed filed for and on behalf of the real party-in-interest. Then, the CA, in its November 22, 2001 Resolution,[10] denied petitioner's motion for reconsideration of the dismissal order.

Dissatisfied, petitioner instituted before us the instant petition for review on *certiorari* under Rule 45.

The petition is denied.

Section 1, Rule 65 of the Rules of Court explicitly mandates that the petition for *certiorari* shall be accompanied by a sworn

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[8] *Id.* at 149.

[9] Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Eubulo G. Verzola and Eliezer R. De Los Santos, concurring; *id.* at 176-177.

[10] *Id.* at 187-188.

certification of non-forum shopping.[11] When the petitioner is a corporation, inasmuch as corporate powers are exercised by the board, the certification shall be executed by a natural person authorized by the corporation's board of directors.[12] Absent any authority from the board, no person, not even the corporate officers, can bind the corporation.[13] Only individuals who are vested with authority by a valid board resolution may sign the certificate of non-forum shopping in behalf of the corporation, and proof of such authority must be attached to the petition.[14] Failure to attach to the certification any proof of the signatory's authority is a sufficient ground for the dismissal of the petition.[15]

In the instant case, the senior vice-president of the petitioner corporation signed the certificate of non-forum shopping. No

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[11] Rule 65, Section 1 of the Rules of Court reads:

Section 1. *Petition for certiorari*.—When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and *a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46*. (Italics supplied.)

[12] *Fuentebella v. Castro*, G.R. No. 150865, June 30, 2006, 494 SCRA 183, 190-191; *Philippine Airlines, Inc. v. Flight Attendants and Stewards Association of the Philippines*, G.R. No. 143088, January 24, 2006, 479 SCRA 605, 608; *Expertravel & Tours, Inc. v. Court of Appeals*, G.R. No. 152392, May 26, 2005, 459 SCRA 147, 157; *Eslaban, Jr. v. Vda. de Onorio*, 412 Phil. 667 (2001).

[13] *San Pablo Manufacturing Corporation v. Commissioner of Internal Revenue*, G.R. No. 147749, June 22, 2006, 492 SCRA 192, 197.

[14] *Philippine Airlines, Inc. v. Flight Attendants and Stewards Association of the Philippines*, *supra* note 12.

[15] *Shipside Incorporated v. Court of Appeals*, 404 Phil. 981, 995 (2001).

proof of his authority to sign the said certificate was, however, attached to the petition. Thus, applying settled jurisprudence, we find that the CA committed no error when it dismissed the petition.

The Court cannot even be liberal in the application of the rules because liberality is warranted only in instances when there is substantial compliance with the technical requirements in pleading and practice, and when there is sufficient explanation that the non-compliance is for a justifiable cause, such that the outright dismissal of the case will defeat the administration of justice.[16] Here, the petitioner corporation, in its motion for reconsideration before the appellate court and in its petition before us, did not present a reasonable explanation for its non-compliance with the rules. Further, it cannot be said that petitioner substantially complied therewith, because it did not attach to its motion for reconsideration any proof of the authority of its signatory. It stands to reason, therefore, that this Court now refuses to condone petitioner's procedural transgression.

We must reiterate that the rules of procedure are mandatory, except only when, for the most persuasive of reasons, they may be relaxed to relieve a litigant of an injustice not commensurate to the degree of his thoughtlessness in not complying therewith.[17] While technical rules of procedure are not designed to frustrate the ends of justice, they are provided to effect the proper and orderly disposition of cases and effectively prevent the clogging of court dockets.[18]

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[16] *United Paragon Mining Corporation v. Court of Appeals*, G.R. No. 150959, August 4, 2006, 497 SCRA 638, 647-648; *Philippine Valve Manufacturing Company v. National Labor Relations Commission*, G.R. No. 152304, November 12, 2004, 442 SCRA 383, 387. *Cf. Estrebillo v. Department of Agrarian Reform*, G.R. No. 159674, June 30, 2006, 494 SCRA 218; *LDP Marketing, Inc. v. Monter*, G.R. No. 159653, January 25, 2006, 480 SCRA 137; *China Banking Corporation v. Mondragon International Philippines, Inc.*, G.R. No. 164798, November 17, 2005, 475 SCRA 332; *Vicar International Construction, Inc. v. FEB Leasing and Finance Corporation*, G.R. No. 157195, April 22, 2005, 456 SCRA 588, in which the Court relaxed in these cases the application of procedural rules in the interest of justice.

[17] *Spouses Ortiz v. Court of Appeals*, 360 Phil. 95, 101 (1998).

[18] *Santos v. Court of Appeals*, 413 Phil. 41, 53-54 (2001).

Be that as it may, this Court has examined the records if only to dispel any doubt on the propriety of the dismissal of the case, and we found no abuse of discretion, much more a grave one, on the part of the labor commission in reversing the ruling of the LA.

It is crystal clear that the closure of the Sto. Tomas farm was made in bad faith. Badges of bad faith are evident from the following acts of the petitioner: it unjustifiably refused to recognize the STFWU's and the other unions' affiliation with PULO; it concluded a new CBA with another union in another farm during the agreed indefinite suspension of the collective bargaining negotiations; it surreptitiously transferred and continued its business in a less hostile environment; and it suddenly terminated the STFWU members, but retained and brought the non-members to the Malvar farm. Petitioner presented no evidence to support the contention that it was incurring losses or that the subject farm's lease agreement was pre-terminated. Ineluctably, the closure of the Sto. Tomas farm circumvented the labor organization's right to collective bargaining and violated the members' right to security of tenure.[19]

The Court reiterates that the petition for *certiorari* under Rule 65 of the Rules of Court filed with the CA will prosper only if there is clear showing of grave abuse of discretion or an act without or in excess of jurisdiction on the part of the NLRC.[20] It was incumbent, then, for petitioner to prove before the appellate court that the labor commission capriciously and whimsically exercised its judgment tantamount to lack of jurisdiction, or that it exercised its power in an arbitrary or despotic manner by reason of passion or personal hostility, and that its abuse of discretion is so patent and gross as to amount to an evasion of a positive duty enjoined or to act at all in contemplation of

[19] See *St. John Colleges, Inc. v. St. John Academy Faculty and Employees Union*, G.R. No. 167892, October 27, 2006, 505 SCRA 764, in which the Court found the company to have acted in bad faith when it suddenly closed its high school department during collective bargaining.

[20] *Palomado v. National Labor Relations Commission*, G.R. No. 96520, June 28, 1996, 257 SCRA 680, 689.

law.[21] Here, as aforesaid, no such proof was adduced by petitioner. We, thus, declare that the NLRC ruling is not characterized by grave abuse of discretion. Accordingly, the same is also affirmed.

However, this Court makes the following observations and modifications:

We deem as proper the award of moral and exemplary damages. We hold that the sudden termination of the STFWU members is tainted with ULP because it was done to interfere with, restrain or coerce employees in the exercise of their right to self-organization. Thus, the petitioner company is liable for the payment of the aforesaid damages.[22] Notable, though, is that this award, while stated in the body of the NLRC decision, was omitted in the dispositive portion of the said ruling. To prevent any further confusion in the implementation of the said decision, we correct the dispositive portion of the ruling to include the payment of ₱500,000.00 as moral and exemplary damages to the illegally dismissed STFWU members.

As to the order of reinstatement, the Court modifies the same in that if it is no longer feasible considering the length of time that the employees have been out of petitioner's employ,[23] the company is ordered to pay the illegally dismissed STFWU members separation pay equivalent to one (1) month pay, or one-half (½) month pay for every year of service, whichever is higher.[24]

The releases and quitclaims, as well as the affidavits of desistance,[25] signed by the concerned employees, who were then necessitous men at the time of execution of the documents,

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[21] *Machica v. Roosevelt Services Center, Inc.*, G.R. No. 168664, May 4, 2006, 489 SCRA 534, 547.

[22] *Quadra v. Court of Appeals*, G.R. No. 147593, July 31, 2006, 497 SCRA 221, 228.

[23] *Jardine Davies, Inc. v. National Labor Relations Commission*, 370 Phil. 310, 322 (1999).

[24] *Philippine Carpet Employees Association (PHILCEA) v. Sto. Tomas*, G.R. No. 168719, February 22, 2006, 483 SCRA 128, 152.

[25] *Rollo*, pp. 68-69, 212-213.

are declared invalid and ineffective. They will not bar the workers from claiming the full measure of benefits flowing from their legal rights.[26]

WHEREFORE, premises considered, the petition for review on *certiorari* is *DENIED*. The October 25, 2001 and the November 22, 2001 Resolutions of the Court of Appeals in CA-G.R. SP No. 66871 are *AFFIRMED*. The March 16, 2001 Decision of the National Labor Relations Commission in NLRC-NCR-00-07-05159-95 (CA No. 022059-00) is *AFFIRMED* with the *MODIFICATION* that petitioner company is ordered to: (1) reinstate the illegally dismissed STFWU members and pay them full backwages from the time of illegal termination up to actual reinstatement; (2) if reinstatement is no longer feasible, pay the illegally dismissed STFWU members their separation pay equivalent to one month pay, or one-half month pay for every year of service, whichever is higher; and (3) pay moral and exemplary damages in the aggregate amount of ₱500,000.00 to the said illegally dismissed STFWU members.

SO ORDERED.

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

[26] *Mindoro Lumber and Hardware v. Bacay*, G.R. No. 158753, June 8, 2005, 459 SCRA 714, 722-733; *Peftok Integrated Services, Inc. v. National Labor Relations Commission*, 355 Phil. 247, 253 (1998).

SECOND DIVISION

[G.R. No. 152325. August 28, 2008]

MONICCA B. EGOY, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION, THE BUSINESS STAR CORPORATION, and GABRIEL MAÑALAC,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; *CERTIORARI*; NO GRAVE ABUSE OF DISCRETION BY APPELLATE COURT WHEN IT DECIDED THAT PETITIONER WAS NOT ILLEGALLY DISMISSED BASED ON GROUNDS NOT STATED IN THE NOTICE OF TERMINATION; INCIDENTS CITED BEYOND GROUNDS STATED IN THE NOTICE OF TERMINATION WERE INCIDENTS RELATED TO THE BREACH OF TRUST MENTIONED IN THE SAID NOTICE.— Under these circumstances, we cannot fault the appellate court for its ruling. Courts only respond to the facts presented and the issues framed by the parties and consider these in light of our procedural and substantive laws. It is a matter of record that the petitioner never raised in her petition for *certiorari* before the CA any objection relating to the consideration of incidents other than her absence on AWOL, intent to falsify and breach of trust. She did not object to the discussion of these other incidents and, on the contrary, met them squarely. It is likewise a matter of record, as already adverted to above, that *the appellate court directly ruled on the NSC bidding issue because it was an issue that the petitioner raised*. If it cited incidents beyond the grounds stated in the Notice of Termination, it appears to us that these were incidents related to the breach of trust mentioned in the notice of termination; they have been cited, not as grounds for termination *per se*, but as related circumstances that support the termination of the petitioner's employment for breach of trust.

2. CIVIL LAW; ESTOPPEL; PRESENT IN CASE AT BAR.— Thus, at this point – *most especially after the petitioner's*

submission before the appellate court of the very issues she now says should not have been considered – she cannot now turn around and fault the court for acting on her submitted issues. She is now barred from taking this contrary position under the principle of *estoppel*. In layman's terms, this simply means that she has violated a *basic rule of fairness* by urging the appellate court to rule on an issue and then assailing the court for acting on that issue when the court's action did not go her way.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUSTIFIED IN CASE AT BAR.— To be sure, even under the strict terms of the grounds cited in the Notice of Termination – ***i.e.*, abandonment of post with the intention of falsifying information when applying for leave of absence, prolonged absence without official leave and breach of trust** – we hold that the termination of the petitioner's employment is justified because her actions *meant more than being away from work without prior leave*. Her absence, under the surrounding circumstances of the case, gave the employer grounds to cite her for *breach of trust*. Inherent in this consideration are the nature of her job, how she incurred her absence, the significance of her absence, and the injury she caused to the company – matters that were all touched upon in the assailed CA decision. In our own consideration of the merits of the cited grounds for termination, we find no error sufficiently weighty and substantive to call for the reversal of the appellate court's decision. By her own acts, tested against common sense standards that should apply to a professional like the petitioner, she provided the respondent employer sufficient reasons to terminate her employment.

APPEARANCES OF COUNSEL

Roque & Butuyan Law Offices for petitioner.

Balgos & Perez for private respondents.

D E C I S I O N

BRION, *J.*:

The petitioner Monicca B. Egoy (*petitioner*) comes to this Court *via* the present petition[1] to assail the decision of the Court of Appeals (*CA*) promulgated on March 30, 2001.[2] The CA decision affirmed the decision[3] of the National Labor Relations Commission (*NLRC*) promulgated on September 30, 1998, and its resolution[4] issued on February 21, 2002 denying the petitioner's motion for reconsideration. The NLRC ruling in turn reversed the decision[5] dated April 8, 1997 of the Labor Arbiter awarding the petitioner separation pay (in lieu of reinstatement), backwages, and attorney's fees.

THE ANTECEDENT FACTS

The petitioner worked for the respondent Business Star Corporation (*respondent*) who owns and operates a daily business newspaper. On May 4, 1994, the paper was running a story on the bidding of the National Steel Corporation (*NSC*) and the respondent's managing editor, Lazaro Medina Jr., instructed the petitioner to cover the bidding and to report on the results for the next day's issue of the respondent's paper. The petitioner failed to send the required report, either by phone or fax, and the managing editor had to close the front page of the paper at past 7:00 p.m. of May 4, 1994 without any story on the NSC bidding.

On May 10, 1994, the respondent's news editor, Marie Carol Lucas, through a memorandum,[6] directed the petitioner to explain:

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[1] Petition for Review on *Certiorari*, under Rule 45 of the Revised Rules of Court.

[2] Penned by Associate Justice Oswaldo D. Agcaoili (retired) and concurred in by Associate Justice Cancio C. Garcia (retired member of this Court) and Associate Justice Elvi John S. Asuncion; *rollo*, pp. 32-39.

[3] *Id.*, pp. 93-105.

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

[5] *Id.*, pp. 47-58.

[6] *Id.*, p. 42.

(1) her failure to submit a news story on the results of the NSC bidding; and (2) her absence without official leave (AWOL) from May 5 to May 9.

The petitioner submitted the required explanation (dated May 11, 1994) on May 15, 1994.[7] She disagreed with the "false accusation" that she abandoned her post and stated that she was at the Metro Club in Makati to cover the NSC bidding at 1:00 p.m. of May 4, 1994; she called up the office before 3:00 p.m. to advise the desk to wait for the results of the bidding, and every hour thereafter to keep her office informed of the developments; she made her last call at 6:30 p.m.; she went to the office at past 7:00 p.m., tired and hungry, to have her story edited by Mr. Medina, but Mr. Medina was no longer in the office when she arrived at 8:00 p.m.; thus, she did not abandon her job; it was Mr. Medina who abandoned her story as the paper closed as early as 7:30 p.m.

On her three-day absence, the petitioner explained that she "actually planned to file a sick leave, meaning I will not report for office the next day and ask my brother to call up the desk," but the news leaked out that she would be spending the weekend with her family in Hongkong, so she was forced to junk her previous plan.

In a memorandum dated June 15, 1994, the respondent, through Vice President for Administration Miguel G. Belmonte, terminated the petitioner's services for being on AWOL from May 5 to 9, 1994 and for breach of trust by reason of her intention "to mislead the office into believing you were sick when in fact you were to be vacationing in Hongkong."[8] The petitioner responded to her dismissal by filing a complaint for illegal dismissal with prayer for reinstatement, backwages and attorney's fees.[9]

At the arbitration proceedings, the petitioner submitted the explanation she made relating to *her failure to submit a news*

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

[8] *Id.*, p. 46.

[9] NLRC Case No. 06-04802-94.

story on the NSC bidding, the accusation that she had been AWOL, and her abandonment of post.

The respondent, for its part, cited the petitioner's AWOL on May 5 to 9 to justify its action. It also faulted the petitioner for its newspaper's failure to report on the results of the NSC May 4, 1994 bidding. It claimed that nothing was heard of from petitioner on that day regarding the NSC bidding – no call to the editorial desk, no advise to the office on her whereabouts –compelling the managing editor to close the front page at past 7:00 p.m. Company investigation revealed that the petitioner went to the office on May 4, 1994 at past 8:00 p.m., not to submit her news item on the NSC bidding, but to get her loan from the accounting department for her trip to Hongkong on the following day. She did not report for work on May 5, 1994 and the following days as she went on a vacation trip to Hongkong.

The respondent also charged the petitioner with defiance of a lawful order and grave disrespect and discourtesy to her superior, Carol Lucas, who had asked her to explain in writing within 24 hours her failure to submit a news story on the NSC bidding.[10] While the petitioner did submit a report, it came only after 4 days and was submitted to Mr. Gabriel Mañalac, the respondent's publisher and editor-in-chief, instead of to Carol Lucas. The respondent also called attention to the petitioner's "faulty news stories" that resulted in disclaimers from affected parties. A second incident of AWOL was also charged, this time for June 12, 13 and 15, 1994. Based on what the company viewed as a series of unprofessional conduct and on account of the NSC bidding incident, Mañalac asked the petitioner to resign. Her retort was a refusal.

In a decision dated August, 1997, the Labor Arbiter found that the petitioner was illegally dismissed, but ruled out reinstatement because of the parties' strained relationship.[11] He awarded the petitioner separation pay, backwages and attorney's fees. The Labor Arbiter held that the respondent erred in dismissing

[10] *Supra*, at note 6, p. 2.

[11] *Rollo*, at pp. 47-58.

the petitioner on the grounds indicated in the termination/dismissal memo.[12] The Arbiter relied on the petitioner's submission that she could not have been AWOL from May 5 to 9, 1994 since May 7 to 9, 1994 were non-working days (May 7 was a Saturday and May 8 a Sunday, while May 9 was a holiday – barangay election day). The Labor Arbiter particularly noted her argument asking how she could have intended to falsify any information or mislead respondent on the reason for her absence when she did not file a leave of absence for May 5 and 6.

The respondent appealed[13] to the NLRC whose decision,[14] promulgated on September 30, 1998, reversed the Labor Arbiter's ruling. The NLRC ruled that the Labor Arbiter erred when he limited "his evaluation of the reasonableness of complainant's dismissal to a consideration only of the grounds stated in the notice of dismissal." It pointed out that the show-cause letter to the petitioner clearly asked her to explain why no disciplinary action should be taken against her for her failure to submit a news story on the NSC bidding.[15] In both her written explanation to the company and in the pleadings before the Labor Arbiter, she explained her failure to submit the news story and her absence. To the NLRC, "the complainant's failure to submit the news story in question, compounded by her AWOL (absence without official leave) in the succeeding days and underhanded attempt to shift the blame to Medina x x x constitute a valid ground for loss of confidence, which justified her dismissal."[16]

The petitioner sought relief from the Court of Appeals through a petition for *certiorari*. In the decision promulgated on March 30, 2001 – now the subject of the present petition for review — the CA dismissed the petition with the following finding: [17]

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[12] *Supra,* at note 8, p. 3.

[13] *Rollo,* pp. 59-77.

[14] *Id.*, pp. 93-105.

[15] *Id.*, p. 601.

[16] *Id.*, p. 103.

[17] *Supra* note 2, p. 1.

Petitioner was rightfully dismissed because of her unprofessional conduct and breach of trust. She failed to meet a deadline. She went to Hongkong without as much informing the central desk about it. She failed to submit her explanation within the time specified. She was on AWOL. And she showed acts of insubordination and disrespect to her superiors. Taken together, the concurrence of events have snowballed into her employer's loss of confidence in her which is a ground for dismissal. Verily, petitioner's dismissal was fully justified. *Certiorari* does not lie."

The petitioner moved for the reconsideration of the decision, but the CA denied her motion in a resolution promulgated on February 21, 2002.[18]

THE PETITION

The petition cites the following errors:[19]

1. The Court of Appeals gravely erred in deciding that petitioner was not illegally dismissed based on grounds not stated in the notice of termination.

2. On the assumption that the Court of Appeals can go beyond the grounds stated in the notice of termination, the Court's appreciation and conclusion that the petitioner was not illegally dismissed is based on a misapprehension of facts.

3. The Court of Appeals gravely erred in giving weight to the factual findings of the NLRC when it is the Labor Arbiter who conducted the trial and had the opportunity to personally examine the evidence and the witnesses.

The petitioner then went on to state the reasons why the assailed decision should be reversed and set aside. She filed a Reply[20] (to the respondent's Comment) and a Memorandum.[21]

The petitioner posits that the present case highlights a basic and novel question of law — *whether a court, in analyzing*

[18] *Rollo*, p. 41.

[19] *Supra*, at note 1, p. 1.

[20] *Rollo*, at pp. 145-159.

[21] *Id.*, at pp. 187-212.

and deciding an illegal dismissal case, is limited to the ground or grounds stated in the notice of termination. She contends that the court should so limit itself. The petitioner further submits that the respondent failed to comply with the conditions laid down under Book V, Rule XXIII, Section 2, Pars. (a), (b) and (c) of the Labor Code's Implementing Rules and Regulations because only a written notice of termination of employment effective immediately was given to her. She adds that even if the observance of due process is not the issue in this case, the respondent's notice is nevertheless vital in determining the ground or grounds relied upon in terminating her employment. In this regard, she calls attention to the "plain wording" of the notice served on her which plainly cites her failure to report for duty on May 5-9, 1994 without official leave as the reason for her dismissal, not the breach of trust that the respondent cites.[22] She contends that even the Labor Arbiter concluded that "no amount of hair-splitting about complainant's assigned news story on the NSC bidding will change the fact that she was dismissed from her job effective June 15, 1994 on the ground/s indicated in the notice of termination x x x."[23]

The petitioner faults both the NLRC and the Court of Appeals for accepting the non-submission of the news story and the alleged "underhanded" attempt of the petitioner to shift the blame to Medina as additional grounds for the termination of her employment; she notes that the Court of Appeals went farther by citing her failure to meet the deadline as basis for the respondents' loss of confidence; her trip to Hongkong without notifying the central desk; her failure to submit explanation within the specified time; her AWOL; her acts of insubordination and her disrespect to her superiors; and even the respondent's unwarranted claims that she was responsible for news stories that were not entirely accurate and that resulted in disclaimers.

Even assuming that the CA can validly go beyond the grounds stated in the notice of termination, the petitioner further maintains that the court misappreciated the undisputed facts of the case,

[22] *Supra*, at note 8, page 3.

[23] *Supra*, at note 11, p. 4.

leading to its erroneous conclusions. She likewise belies the other factual findings of the CA – largely the same factual issues passed upon at the Labor Arbiter and NLRC levels. Finally, the petitioner assails the undue weight given by the CA to the factual findings of the NLRC. She contends that considering the conflicting evidence presented during the hearings, the Labor Arbiter was in a better position than the NLRC and the Court of Appeals to determine which evidence should be considered in resolving the case; in the absence of any showing of abuse, the Labor Arbiter's appreciation of the evidence should be respected.

THE CASE FOR RESPONDENT BUSINESS STAR

The respondent, in a Memorandum[24] dated January 27, 2003, submits that the CA committed no error: (1) in ruling that petitioner was not illegally dismissed; (2) in the appreciation of the facts of the case; and (3) in giving weight to the factual findings of the NLRC. It maintains that it terminated the employment of petitioner for her unprofessionalism, willful violation of company rules and regulations, grave disrespect and discourtesy to her immediate superiors equivalent to a breach of trust which constitutes a just cause for dismissal under Article 282 of the Labor Code.

As the petitioner did, the respondent largely dwelt on the appreciation of the facts of the case, starting from the petitioner's failure to submit her report on the NSC bidding, her subsequent AWOL and insubordination.

The respondent questions the petitioner's objection based on the two-notice rule under Book V, Rule XIV, Sec. 2 of the Implementing Rules and Regulations of the Labor Code,[25] arguing that the petition cannot raise this issue for the first time on appeal; in any case, it posits that the petitioner was fully given her day in court and her right to due process was never suppressed nor denied.

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[24] *Rollo*, at pp. 167-184.

[25] Should be Book VI, Rule I, Section 1, The Labor Code of the Philippines and its Amended Implementing Rules and Regulations.

On the factual findings of the CA, the respondent submits that the appellate court correctly appreciated the facts of the case for they were based on the pleadings, documents and evidence submitted to the Labor Arbiter and the NLRC. It further contends that neither did the CA commit an error when it gave weight to the finding of the NLRC over those of the Labor Arbiter.

THE COURT'S RULING

The petitioner presents to this Court what she defines as a basic and novel question of law which, to her, constitutes the main issue in this case – whether a court, in analyzing and deciding a dismissal case, is limited to the ground or grounds stated in the notice of termination given to the employee.[26] She contends that the Court of Appeals should have limited itself to the ground or grounds stated in the notice; the CA's error in this regard is an abuse of discretion correctible by *certiorari*. **In the context of the present petition, the direct question that the petitioner poses is: Does the NLRC's and the CA's consideration of the NSC bidding and other related incidents not specifically mentioned in the notice of termination taint their decisions with illegality for their use of irrelevant considerations?**

Separately from the above issue, the petitioner submits that the appellate court erred in its appreciation of the facts of the case and in giving weight to the findings of the NLRC. This question – essentially one of fact – is outside the purview of a Rule 45 petition.[27] Nevertheless, we shall look at the factual issues but only to the extent of considering the submission that the CA went beyond the termination notice in upholding the petitioner's dismissal.

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[26] Petition, *rollo*, p. 15.

[27] RULES OF COURT, Rule 45, Sec. 1.

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 see no merit in the petition as our discussions below will show.

Our examination of the developments in the parties' relationship shows that it began to sour when the petitioner failed to file her report on the NSC bidding on May 4, 1994. As a result, the respondent changed its managing editor and at the same time asked the petitioner to explain why she failed to submit her report. The order to explain also asked her about her unauthorized absence on the days subsequent to the NSC bidding. The petitioner did submit her explanation, though her compliance came late. There were questions raised, too, on the manner she submitted her explanation. Ultimately, the respondent decided to terminate the petitioner's employment, citing her absence without leave and characterizing this as a breach of trust.

Before the Labor Arbiter, the **NSC bidding incident** was a live issue that the petitioner fully discussed in her Position Paper together with her absence from May 5 to 9, 1994 and its surrounding circumstances. For its part, the respondent likewise fully discussed its version of what happened in the NSC bidding incident, the circumstances of the petitioner's absence, and the other developments that subsequently arose.

Despite the parties' full discussion of what had transpired between them, the Labor Arbiter read the notice of termination in its narrowest sense and thus said: *"Be that as it may, no amount of hairsplitting about complainant's assigned news story on the bidding will change the fact that she was dismissed from her job effective June 5, 1994 on the ground/s indicated on the Notice of Termination, as cited above."* Ruling on the cited absences, the Labor Arbiter reasoned out:

> As correctly pointed out by complainant, she was not on AWOL from May 5-9, 1994 inasmuch as May 7-9, 1994 were non-working days, May 7 and 8 being Saturday and Sunday and May 9, being a Holiday, Barangay election. It follows that she is wrongly accused of a prolonged absence. Also, complainant correctly argued that since she did not file a leave of absence for May 5 to 8, 1994 how then could she have intended to falsify any information or mislead the respondent corporation as to the reason for her being absent.

In contrast with the Labor Arbiter, the NLRC fully considered the parties' submissions about their relationship and, in effect, took a wide view of what the Notice of Termination covered, particularly the respondent's statement about the petitioner's "breach of trust." The NLRC fully reflected this view when it said:

> The Labor Arbiter should not have limited its evaluation of the reasonableness of the complainant's dismissal to a consideration only of the grounds stated in the notice of dismissal, **that is, breach of trust consisting of being absent without leave and intending the respondent into believing that she was sick when in fact she was vacationing in Hongkong. The show-cause letter that the complainant received earlier discloses that she was also asked to explain why no disciplinary action should be taken against her for her failure to submit a news story on the NSC bidding. Moreover, in her written explanation and in the pleadings she submitted to the labor arbiter, the complainant sought to justify both her failure to submit her news story and her absences.** There is therefore no valid reason why a determination of the reasonableness of her dismissal should be limited only to the grounds stated in the notice of dismissal.

In seeking relief from the CA against the NLRC, the petitioner interestingly led off with a narration of the developments in her relationship with the respondent **starting from the NSC bidding incident**.[28] This recital led to her Grounds of the Petition which she defined to be:

> 5.00.1 Public respondent NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled that private respondents have sufficient basis in dismissing petitioner from the service;
>
> 5.00.2. Public respondent NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled that the inconsistency in petitioner's statements made her claim for illegal dismissal doubtful.[29]

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[28] *Rollo*, pp. 108 to 111.

[29] *Ibid.*, pp. 111-112.

It was on the basis of these defined issues and their full supporting discussion in the petition that the appellate court ruled on the petitioner's case. The CA significantly stated in considering the submitted issues:

> In her memorandum, petitioner states that "**the principal issue to be resolved is whether or not petitioner's failure to submit a news story on the NSC bidding is justified or not.**" She avers that the non-submission of her story before the imposed deadline was not her fault but Medina's. She unabashedly remarks that she should be commended "for defying all odds simply to have her story published on the next day's edition of the Business Star."

With this lead as take off point, the CA went on to discuss the NSC bidding incident, concluding that "there is no showing that petitioner had indeed submitted the news story on the NSC bidding." The decision further stated — repeating what it had earlier stated and, to some degree, echoing the expansive reading the NLRC gave of "breach of trust" as ground for dismissal – that:

> As earlier observed, **petitioner confined her arguments primarily on the matter of the absence or lateness of her news story on the NSC bidding. But it should be underscored that her dismissal was not due to a single event but due to a series or confluence of circumstances which vividly demonstrated her failure to cope with the demands of her job as a reporter**. As well explained by respondents, hers was not confined to an isolated act of non-observance of certain norms in her field of work. It was the totality of events like her unprofessionalism for not submitting a news story that was a front page item, going to travel without previous notice to her employer, bypassing her immediate bosses and insubordination, and going AWOL which created problems on news gathering over her beat.

Under these circumstances, we cannot fault the appellate court for its ruling. Courts only respond to the facts presented and the issues framed by the parties and consider these in light of our procedural and substantive laws. It is a matter of record that the petitioner never raised in her petition for *certiorari* before the CA any objection relating to the consideration of incidents other than her absence on AWOL, intent to falsify

and breach of trust. She did not object to the discussion of these other incidents and, on the contrary, met them squarely. It is likewise a matter of record, as already adverted to above, that *the appellate court directly ruled on the NSC bidding issue because it was an issue that the petitioner raised.* If it cited incidents beyond the grounds stated in the Notice of Termination, it appears to us that these were incidents related to the breach of trust mentioned in the notice of termination; they have been cited, not as grounds for termination *per se*, but as related circumstances that support the termination of the petitioner's employment for breach of trust.

We note in this regard that at the earliest instance,[30] the respondent had given the petitioner the fullest opportunity to explain as our rules on due process require.[31] The incidents mentioned by the NLRC and the CA were not unknown to the petitioner as she seeks to imply in her discussion of the purpose of a notice of termination.[32] Thus, while the petitioner correctly stated that –"*The said notice is the written proof of what was in the mind of the private respondents when they terminated the petitioner. It is a document free of afterthoughts to justify the illegal termination of petitioner"* – her conclusions in applying this general principle, however, are far from correct in the circumstances of the present case. The petitioner had never been in the dark on what were in the employer's mind as these matters had been known to her and had been the subject of internal communications between her and the respondent employer. Furthermore, these matters – particularly the NSC bidding incident – were considered at every stage in the adjudication of the present dispute. Thus, at this point – *most especially after the petitioner's submission before the appellate court of the very issues she now says should not have been considered* – she cannot now turn around and fault the court for acting on her submitted issues. She is now barred from taking this contrary

[30] *Supra*, at note 6, p. 2.

[31] *Supra*, at note 7, p. 2.

[32] Petition, at pp. 8-9; *rollo*, at pp. 16-17.

position under the principle of *estoppel*.[33] In layman's terms, this simply means that she has violated a *basic rule of fairness* by urging the appellate court to rule on an issue and then assailing the court for acting on that issue when the court's action did not go her way.

To be sure, even under the strict terms of the grounds cited in the Notice of Termination – ***i.e.*, abandonment of post with the intention of falsifying information when applying for leave of absence, prolonged absence without official leave** [34] **and breach of trust** – we hold that the termination of the petitioner's employment is justified because her actions *meant more than being away from work without prior leave*. Her absence, under the surrounding circumstances of the case, gave the employer grounds to cite her for *breach of trust*. Inherent in this consideration are the nature of her job, how she incurred her absence, the significance of her absence, and the injury she caused to the company – matters that were all touched upon in the assailed CA decision.

In our own consideration of the merits of the cited grounds for termination, we find no error sufficiently weighty and substantive to call for the reversal of the appellate court's decision. By her own acts, tested against common sense standards that should apply to a professional like the petitioner, she provided the respondent employer sufficient reasons to terminate her employment.

First, the petitioner exhibited a negative work attitude with respect to her trip to Hongkong. When asked to explain her absence without official leave from May 5 to 9, 1994, she categorically stated that *she actually planned to file a sick leave for it but changed her mind when her trip to Hongkong leaked out*. The damaging implication of this statement might not have occurred to petitioner but it cast a bad light on her character as

[33] Article 1431 of the Civil Code provides that "through estoppel, an admission or representation is rendered conclusive upon the person seeking it, and cannot be denied or disproved as against the person relying thereon." See: *Quiambao v. Court of Appeals*, G.R. No. 128305, March 28, 2005, 454 SCRA 17.

[34] *Supra*, at note 8, p. 3.

a person and as a staff member of an organization like the respondent Business Star. It showed her as a person who would not hesitate to bend the truth to achieve her objective. The petitioner tried to extricate herself from what she had said with the argument that she could not have misled the company because she did not in fact file a leave of absence. Apparently, she again did not realize the implication of this argument; whether or not she filed a leave of absence was beside the point and immaterial; what was material, and a fact she cannot now erase, was her admission of her intent to falsify. For a reporter whose duty is to write the news – a task where adherence to the truth is of paramount importance – this insight into her work ethic is indeed disturbing.

Second, she left without notice to and without leave of her employer nor of any one in a responsible position who could make the necessary adjustments in her work assignments, especially the coverage of a running story like the NSC bidding. Under the circumstances surrounding the incident, the petitioner did really abandon an assignment. This omission cannot be mitigated by any claim that the absence was not prolonged and was only for only two days as she argued before the Labor Arbiter[35] and as she annotated in her copy of the memorandum of Ms. Lucas dated May 11, 1994.[36]

Third, the petitioner's absence without official leave and her role in the NSC bidding fiasco betray another unfavorable aspect of her character. This was her tendency to bypass authority and to disrespect her superior as shown by her failure to inform Mr. Medina of her trip to Hongkong.[37] Her omission can very well be a basis for breach of trust drawn from the fact of her absence.

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[35] Labor Arbiter's Decision, *rollo*, at pp. 47-58, 56.

[36] *Supra*, at note 7, p. 2.

[37] Shown also by her act of by-passing Ms. Lucas who had asked her to explain her absence and her failure to file her NSC bidding report – a matter also ventilated in the submissions at the tribunals below but which we leave out because it is not directly cited in the notice of termination.

Thus, based on these considerations, the petitioner's AWOL and her intent to falsify her excuse for her Hongkong trip – *i.e.*, the grounds stated in the respondent company's notice of termination – constitute ample reasons for the respondent company to lose its trust on the petitioner as an employee tasked with the responsibility of reporting on significant developing events.

WHEREFORE, premises considered, we *DENY* the petition for lack of merit. Costs against the petitioner.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 152643. August 28, 2008]

CONCEPCION CUENCO *VDA. DE* MANGUERRA and THE HON. RAMON C. CODILLA, JR., Presiding Judge of the Regional Trial Court of Cebu City, Branch 19, *petitioners, vs.* **RAUL RISOS, SUSANA YONGCO, LEAH ABARQUEZ and ATTY. GAMALIEL D.B. BONJE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; GROUNDS; FAILURE TO IMPLEAD AN INDISPENSABLE PARTY IS NOT A GROUND FOR DISMISSAL OF AN ACTION; REFUSAL TO IMPLEAD AN INDISPENSABLE PARTY DESPITE THE ORDER OF THE COURT IS A PROPER GROUND FOR FAILURE TO COMPLY WITH ORDER.— Failure to implead an indispensable party is not a ground for the dismissal of an action.

In such a case, the remedy is to implead the non-party claimed to be indispensable. Parties may be added by order of the court, on motion of the party or on its own initiative at any stage of the action and/or such times as are just. If the petitioner/plaintiff refuses to implead an indispensable party despite the order of the court, the latter may dismiss the complaint/petition for the petitioner's/plaintiff's failure to comply.

2. ID.; EVIDENCE; TESTIMONIES OF WITNESSES SHALL BE GIVEN IN THE PRESENCE OF THE JUDGE; RATIONALE.— It is basic that all witnesses shall give their testimonies at the trial of the case in the presence of the judge. This is especially true in criminal cases in order that the accused may be afforded the opportunity to cross-examine the witnesses pursuant to his constitutional right to confront the witnesses face to face. It also gives the parties and their counsel the chance to propound such questions as they deem material and necessary to support their position or to test the credibility of said witnesses. Lastly, this rule enables the judge to observe the witnesses' demeanor.

3. ID.; ID.; ID.; EXCEPTIONS.— As exceptions, Rules 23 to 28 of the Rules of Court provide for the different modes of discovery that may be resorted to by a party to an action. These rules are adopted either to perpetuate the testimonies of witnesses or as modes of discovery. In criminal proceedings, Sections 12, 13 and 15, Rule 119 of the Revised Rules of Criminal Procedure, which took effect on December 1, 2000, allow the conditional examination of both the defense and prosecution witnesses.

4. ID.; ID.; ID.; ID.; CONDITIONAL EXAMINATION OF A WITNESS; GROUNDS; APPLICABILITY IN CASE AT BAR.— In the case at bench, in issue is the examination of a prosecution witness, who, according to the petitioners, was too sick to travel and appear before the trial court. Section 15 of Rule 119 thus comes into play, and it provides: Section 15. *Examination of witness for the prosecution*. – When it satisfactorily appears that a witness for the prosecution is too sick or infirm to appear at the trial as directed by the court, or has to leave the Philippines with no definite date of returning, he may forthwith be conditionally examined before the court where the case is pending. Such examination, in the presence of the accused, or in his absence after reasonable notice to

attend the examination has been served on him, shall be conducted in the same manner as an examination at the trial. Failure or refusal of the accused to attend the examination after notice shall be considered a waiver. The statement taken may be admitted in behalf of or against the accused. x x x The very reason offered by the petitioners to exempt Concepcion from the coverage of Rule 119 is at once the ground which places her squarely within the coverage of the same provision. Rule 119 specifically states that a witness may be conditionally examined: 1) if the witness is too sick or infirm to appear at the trial; or 2) if the witness has to leave the Philippines with no definite date of returning. Thus, when Concepcion moved that her deposition be taken, had she not been too sick at that time, her motion would have been denied. Instead of conditionally examining her outside the trial court, she would have been compelled to appear before the court for examination during the trial proper. Undoubtedly, the procedure set forth in Rule 119 applies to the case at bar. It is thus required that the conditional examination be made *before the court where the case is pending*. It is also necessary that the accused be notified, so that he can attend the examination, subject to his right to waive the same after reasonable notice. As to the manner of examination, the Rules mandate that it be conducted in the same manner as an examination during trial, that is, through question and answer.

5. ID.; ID.; ID.; ID.; ID.; RULE 23 OF THE RULES OF COURT NOT APPLICABLE IN CASE AT BAR.— The appellate court considered the taking of deposition before the Clerk of Court of Makati City erroneous and contrary to the clear mandate of the *Rules* that the same be made before the court where the case is pending. Accordingly, said the CA, the RTC order was issued with grave abuse of discretion. We agree with the CA and quote with approval its ratiocination in this wise: Unlike an examination of a defense witness which, pursuant to Section 5, Rule 119 of the previous Rules, and now Section 13, Rule 119 of the present Revised Rules of Criminal Procedure, may be taken before any "judge, or, if not practicable, a member of the Bar in good standing so designated by the judge in the order, or, if the order be made by a court of superior jurisdiction, before an inferior court to be designated therein," the examination of a witness for the prosecution under Section 15 of the Revised Rules of Criminal Procedure (December 1, 2000)

> may be done only "before the court where the case is pending." Rule 119 categorically states that the conditional examination of a prosecution witness shall be made before the court where the case is pending. Contrary to petitioners' contention, there is nothing in the rule which may remotely be interpreted to mean that such requirement applies only to cases where the witness is within the jurisdiction of said court and not when he is kilometers away, as in the present case. Therefore, the court may not introduce exceptions or conditions. Neither may it engraft into the law (or the Rules) qualifications not contemplated. When the words are clear and categorical, there is no room for interpretation. There is only room for application. x x x Considering that Rule 119 adequately and squarely covers the situation in the instant case, we find no cogent reason to apply Rule 23 suppletorily or otherwise.

APPEARANCES OF COUNSEL

Roldan & Associates and *Manuel S. Paradela* for petitioners.
E.F. Rosello & Associates Law Office for respondents.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Court of Appeals (CA) Decision[1] dated August 15, 2001 and its Resolution[2] dated March 12, 2002. The CA decision set aside the Regional Trial Court (RTC) Orders dated August 25, 2000[3] granting Concepcion Cuenco *Vda. de* Manguerra's (Concepcion's) motion to take deposition, and dated November 3, 2000[4] denying the motion for

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[1] Penned by Associate Justice Godardo A. Jacinto, with Associate Justices Bernardo P. Abesamis and Eliezer R. de los Santos, concurring; *rollo*, pp. 24-30.

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

[3] Penned by Judge Ramon G. Codilla, Jr., *rollo*, p. 44.

[4] *Id.* at 46.

reconsideration of respondents Raul G. Risos, Susana Yongco, Leah Abarquez, and Atty. Gamaliel D.B. Bonje.

The facts of the case, as culled from the records, follow:

On November 4, 1999, respondents were charged with *Estafa Through Falsification of Public Document* before the RTC of Cebu City, Branch 19, through a criminal information dated October 27, 1999, which was subsequently amended on November 18, 1999. The case, docketed as Criminal Case No. CBU-52248,[5] arose from the falsification of a deed of real estate mortgage allegedly committed by respondents where they made it appear that Concepcion, the owner of the mortgaged property known as the Gorordo property, affixed her signature to the document. Hence, the criminal case.[6]

Earlier, on September 10, 1999, Concepcion, who was a resident of Cebu City, while on vacation in Manila, was unexpectedly confined at the Makati Medical Center due to upper gastro-intestinal bleeding; and was advised to stay in Manila for further treatment.[7]

On November 24, 1999, respondents filed a Motion for Suspension of the Proceedings in Criminal Case No. CBU-52248 on the ground of prejudicial question. They argued that Civil Case No. CEB-20359, which was an action for declaration of nullity of the mortgage, should first be resolved.[8] On May 11, 2000, the RTC granted the aforesaid motion. Concepcion's motion for reconsideration was denied on June 5, 2000.[9]

This prompted Concepcion to institute a special civil action for *certiorari* before the CA seeking the nullification of the May 11 and June 5 RTC orders. The case was docketed as

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[5] *Id.* at 302.

[6] *Id.* at 433-435.

[7] *Id.* at 40.

[8] *Id.* at 303.

[9] *Id.*

CA-G.R. SP No. 60266 and remains pending before the appellate court to date.[10]

On August 16, 2000, the counsel of Concepcion filed a motion to take the latter's deposition.[11] He explained the need to perpetuate Concepcion's testimony due to her weak physical condition and old age, which limited her freedom of mobility.

On August 25, 2000, the RTC granted the motion and directed that Concepcion's deposition be taken before the Clerk of Court of Makati City.[12] The respondents' motion for reconsideration was denied by the trial court on November 3, 2000. The court ratiocinated that procedural technicalities should be brushed aside because of the urgency of the situation, since Concepcion was already of advanced age.[13] After several motions for change of venue of the deposition-taking, Concepcion's deposition was finally taken on March 9, 2001 at her residence.[14]

Aggrieved, respondents assailed the August 25 and November 3 RTC orders in a special civil action for *certiorari* before the CA in CA-G.R. SP No. 62551.[15]

On August 15, 2001, the CA rendered a Decision[16] favorable to the respondents, the dispositive portion of which reads:

> WHEREFORE, the petition is GRANTED and the August 25, 2000 and November 3, 2000 orders of the court *a quo* are hereby SET ASIDE, and any deposition that may have been taken on the authority of such void orders is similarly declared void.
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> SO ORDERED.[17]

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[10] *Id.* at 303-304.

[11] *Id.* at 41-43.

[12] *Id.* at 44.

[13] *Id.* at 46.

[14] *Id.* at 306.

[15] *Id.* at 54-67.

[16] *Supra* note 1.

[17] *Rollo*, p. 29.

At the outset, the CA observed that there was a defect in the respondents' petition by not impleading the People of the Philippines, an indispensable party. This notwithstanding, the appellate court resolved the matter on its merit, declaring that the examination of prosecution witnesses, as in the present case, is governed by Section 15, Rule 119 of the Revised Rules of Criminal Procedure and not Rule 23 of the Rules of Court. The latter provision, said the appellate court, only applies to civil cases. Pursuant to the specific provision of Section 15, Rule 119, Concepcion's deposition should have been taken before the judge or the court where the case is pending, which is the RTC of Cebu, and not before the Clerk of Court of Makati City; and thus, in issuing the assailed order, the RTC clearly committed grave abuse of discretion.[18]

In its Resolution dated March 12, 2002 denying petitioner's motion for reconsideration, the CA added that the rationale of the *Rules* in requiring the taking of deposition before the same court is the constitutional right of the accused to meet the witnesses face to face. The appellate court likewise concluded that Rule 23 could not be applied suppletorily because the situation was adequately addressed by a specific provision of the rules of criminal procedure.[19]

Hence, the instant petition raising the following issues:

I.

WHETHER OR NOT RULE 23 OF THE 1997 RULES OF CIVIL PROCEDURE APPLIES TO THE DEPOSITION OF PETITIONER.

II.

WHETHER OR NOT FAILURE TO IMPLEAD THE "PEOPLE OF THE PHILIPPINES" IN A PETITION FOR *CERTIORARI* ARISING FROM A CRIMINAL CASE *A QUO* CONSTITUTES A WAIVABLE DEFECT IN THE PETITION FOR *CERTIORARI*.[20]

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[18] *Id.* at 27-29.

[19] *Id.* at 34-35.

[20] *Id.* at 307-308.

It is undisputed that in their petition for *certiorari* before the CA, respondents failed to implead the People of the Philippines as a party thereto. Because of this, the petition was obviously defective. As provided in Section 5, Rule 110 of the Revised Rules of Criminal Procedure, all criminal actions are prosecuted under the direction and control of the public prosecutor. Therefore, it behooved the petitioners (respondents herein) to implead the People of the Philippines as respondent in the CA case to enable the Solicitor General to comment on the petition.[21]

However, this Court has repeatedly declared that the failure to implead an indispensable party is not a ground for the dismissal of an action. In such a case, the remedy is to implead the non-party claimed to be indispensable. Parties may be added by order of the court, on motion of the party or on its own initiative at any stage of the action and/or such times as are just. If the petitioner/plaintiff refuses to implead an indispensable party despite the order of the court, the latter may dismiss the complaint/petition for the petitioner's/plaintiff's failure to comply.[22]

In this case, the CA disregarded the procedural flaw by allowing the petition to proceed, in the interest of substantial justice. Also noteworthy is that, notwithstanding the non-joinder of the People of the Philippines as party-respondent, it managed, through the Office of the Solicitor General, to file its Comment on the petition for *certiorari*. Thus, the People was given the opportunity to refute the respondents' arguments.

Instructive is the Court's pronouncement in *Commissioner Domingo v. Scheer*[23] in this wise:

> There is nothing sacred about processes or pleadings, their forms or contents. Their sole purpose is to facilitate the application of justice to the rival claims of contending parties. They were created,

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[21] *Madarang v. Court of Appeals*, G.R. No. 143044, July 14, 2005, 463 SCRA 318, 326.

[22] *Superlines Transportation Company, Inc. v. Philippine National Construction Company*, G.R. No. 169596, March 28, 2007, 519 SCRA 432, 447; *Commissioner Domingo v. Scheer*, 466 Phil. 235, 265 (2004).

[23] 466 Phil. 235 (2004).

not to hinder and delay, but to facilitate and promote, the administration of justice. They do not constitute the thing itself, which courts are always striving to secure to litigants. They are designed as the means best adapted to obtain that thing. In other words, they are a means to an end. When they lose the character of the one and become the other, the administration of justice is at fault and courts are correspondingly remiss in the performance of their obvious duty.[24]

Accordingly, the CA cannot be faulted for deciding the case on the merits despite the procedural defect.

On the more important issue of whether Rule 23 of the Rules of Court applies to the instant case, we rule in the negative.

It is basic that all witnesses shall give their testimonies at the trial of the case in the presence of the judge.[25] This is especially true in criminal cases in order that the accused may be afforded the opportunity to cross-examine the witnesses pursuant to his constitutional right to confront the witnesses face to face.[26] It also gives the parties and their counsel the chance to propound such questions as they deem material and necessary to support their position or to test the credibility of said witnesses.[27] Lastly, this rule enables the judge to observe the witnesses' demeanor.[28]

This rule, however, is not absolute. As exceptions, Rules 23 to 28 of the Rules of Court provide for the different modes of

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[24] *Commissioner Domingo v. Scheer*, 466 Phil. 235, 266-267 (2004), citing *Alonso v. Villamor*, 16 Phil. 315 (1910).

[25] MANUEL R. PAMARAN, *REVISED RULES OF CRIMINAL PROCEDURE*, 2007 Edition, p. 510.

[26] Section 14(2), Article III of the Constitution provides:

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. x x x.

[27] MANUEL R. PAMARAN, *REVISED RULES OF CRIMINAL PROCEDURE*, 2007 Edition, p. 510.

[28] *Id*.

discovery that may be resorted to by a party to an action. These rules are adopted either to perpetuate the testimonies of witnesses or as modes of discovery. In criminal proceedings, Sections 12,[29] 13[30] and 15,[31] Rule 119 of the Revised Rules of Criminal Procedure, which took effect on December 1, 2000, allow the conditional examination of both the defense and prosecution witnesses.

In the case at bench, in issue is the examination of a prosecution witness, who, according to the petitioners, was too sick to travel

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[29] SEC. 12 *Application for examination of witness for accused before trial.* – When the accused has been held to answer for an offense, he may, upon motion with notice to the other parties, have witnesses conditionally examined in his behalf. The motion shall state: (a) the name and residence of the witness; (b) the substance of his testimony; and (c) that the witness is sick or infirm as to afford reasonable ground for believing that he will not be able to attend the trial, or resides more than one hundred (100) kilometers from the place of trial and has no means to attend the same, or that other similar circumstances exist that would make him unavailable or prevent him from attending the trial. The motion shall be supported by an affidavit of the accused and such other evidence as the court may require.

[30] SEC. 13. *Examination of defense witness: how made.* – If the court is satisfied that the examination of a witness for the accused is necessary, an order shall be made directing that the witness be examined at a specific date, time and place and that a copy of the order be served on the prosecutor at least three (3) days before the scheduled examination. The examination shall be taken before a judge, or, if not practicable, a member of the Bar in good standing so designated by the judge in the order, or if the order be made by a court of superior jurisdiction, before an inferior court to be designated therein. The examination shall proceed notwithstanding the absence of the prosecutor provided he was duly notified of the hearing. A written record of the testimony shall be taken.

[31] SEC. 15. *Examination of witness for the prosecution.* – When it satisfactorily appears that a witness for the prosecution is too sick or infirm to appear at the trial as directed by the court, or has to leave the Philippines with no definite date of returning, he may forthwith be conditionally examined before the court where the case is pending. Such examination, in the presence of the accused, or in his absence after reasonable notice to attend the examination has been served on him, shall be conducted in the same manner as an examination at the trial. Failure or refusal of the accused to attend the examination after notice shall be considered a waiver. The statement taken may be admitted in behalf of or against the accused.

and appear before the trial court. Section 15 of Rule 119 thus comes into play, and it provides:

> Section 15. *Examination of witness for the prosecution*. – When it satisfactorily appears that a witness for the prosecution is too sick or infirm to appear at the trial as directed by the court, or has to leave the Philippines with no definite date of returning, he may forthwith be conditionally examined before the court where the case is pending. Such examination, in the presence of the accused, or in his absence after reasonable notice to attend the examination has been served on him, shall be conducted in the same manner as an examination at the trial. Failure or refusal of the accused to attend the examination after notice shall be considered a waiver. The statement taken may be admitted in behalf of or against the accused.

Petitioners contend that Concepcion's advanced age and health condition exempt her from the application of Section 15, Rule 119 of the Rules of Criminal Procedure, and thus, calls for the application of Rule 23 of the Rules of Civil Procedure.

The contention does not persuade.

The very reason offered by the petitioners to exempt Concepcion from the coverage of Rule 119 is at once the ground which places her squarely within the coverage of the same provision. Rule 119 specifically states that a witness may be conditionally examined: 1) if the witness is too sick or infirm to appear at the trial; or 2) if the witness has to leave the Philippines with no definite date of returning. Thus, when Concepcion moved that her deposition be taken, had she not been too sick at that time, her motion would have been denied. Instead of conditionally examining her outside the trial court, she would have been compelled to appear before the court for examination during the trial proper.

Undoubtedly, the procedure set forth in Rule 119 applies to the case at bar. It is thus required that the conditional examination be made *before the court where the case is pending*. It is also necessary that the accused be notified, so that he can attend the examination, subject to his right to waive the same after reasonable notice. As to the manner of examination, the Rules

mandate that it be conducted in the same manner as an examination during trial, that is, through question and answer.

At this point, a query may thus be posed: in granting Concepcion's motion and in actually taking her deposition, were the above rules complied with? The CA answered in the negative. The appellate court considered the taking of deposition before the Clerk of Court of Makati City erroneous and contrary to the clear mandate of the *Rules* that the same be made before the court where the case is pending. Accordingly, said the CA, the RTC order was issued with grave abuse of discretion.

We agree with the CA and quote with approval its ratiocination in this wise:

> Unlike an examination of a defense witness which, pursuant to Section 5, Rule 119 of the previous Rules, and now Section 13, Rule 119 of the present Revised Rules of Criminal Procedure, may be taken before any "judge, or, if not practicable, a member of the Bar in good standing so designated by the judge in the order, or, if the order be made by a court of superior jurisdiction, before an inferior court to be designated therein," the examination of a witness for the prosecution under Section 15 of the Revised Rules of Criminal Procedure (December 1, 2000) may be done only "before the court where the case is pending."[32]

Rule 119 categorically states that the conditional examination of a prosecution witness shall be made before the court where the case is pending. Contrary to petitioners' contention, there is nothing in the rule which may remotely be interpreted to mean that such requirement applies only to cases where the witness is within the jurisdiction of said court and not when he is kilometers away, as in the present case. Therefore, the court may not introduce exceptions or conditions. Neither may it engraft into the law (or the Rules) qualifications not contemplated.[33]

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[32] *Rollo*, p. 29.

[33] *Manlangit v. Sandiganbayan*, G.R. No. 158014, August 28, 2007, 531 SCRA 420, 428.

When the words are clear and categorical, there is no room for interpretation. There is only room for application.[34]

Petitioners further insist that Rule 23 applies to the instant case, because the rules on civil procedure apply suppletorily to criminal cases.

It is true that Section 3, Rule 1 of the Rules of Court provides that the rules of civil procedure apply to all actions, civil or criminal, and special proceedings. In effect, it says that the rules of civil procedure have suppletory application to criminal cases. However, it is likewise true that the criminal proceedings are primarily governed by the Revised Rules of Criminal Procedure. Considering that Rule 119 adequately and squarely covers the situation in the instant case, we find no cogent reason to apply Rule 23 suppletorily or otherwise.

To reiterate, the conditional examination of a prosecution witness for the purpose of taking his deposition should be made before the court, or at least before the judge, where the case is pending. Such is the clear mandate of Section 15, Rule 119 of the *Rules*. We find no necessity to depart from, or to relax, this rule. As correctly held by the CA, if the deposition is made elsewhere, the accused may not be able to attend, as when he is under detention. More importantly, this requirement ensures that the judge would be able to observe the witness' deportment to enable him to properly assess his credibility. This is especially true when the witness' testimony is crucial to the prosecution's case.

While we recognize the prosecution's right to preserve its witness' testimony to prove its case, we cannot disregard rules which are designed mainly for the protection of the accused's constitutional rights. The giving of testimony during trial is the general rule. The conditional examination of a witness outside of the trial is only an exception, and as such, calls for a strict construction of the rules.

WHEREFORE, the petition is hereby *DENIED*. The Court of Appeals Decision and Resolution dated August 25, 2000 and

[34] *Alvarez v. PICOP Resources, Inc.*, G.R. Nos. 162243, 164516 and 171875, November 29, 2006, 508 SCRA 498, 543-544.

March 12, 2002, respectively, in CA-G.R. SP No. 62551, are *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 153263. August 28, 2008]

EMMA VER-REYES, *petitioner, vs.* **HONORABLE COURT OF APPEALS, THE LAND REGISTRATION AUTHORITY, THE REGISTER OF DEEDS OF CAVITE, and IRENE MONTEMAYOR,** *respondents.*

SYLLABUS

CIVIL LAW; LAND TITLES AND DEEDS; NOTICE OF *LIS PENDENS*; WHILE THE NOTICE OF *LIS PENDENS* WOULD CREATE A RIGHT OR LIEN OVER THE PROPERTY, THE REGISTERED OWNERS OF REAL PROPERTY SHOULD BE INFORMED OF THE CLAIM OVER THE SAME PROPERTY BY IMPLEADING THEM IN THE PENDING RECONVEYANCE SUIT BEFORE THE APPLICATION FOR ANNOTATION OF *LIS PENDENS* BE FAVORABLY ACTED UPON; CASE AT BAR.— Indeed, petitioner's belated act of applying for a notice of *lis pendens*, if allowed by the Office of the Register of Deeds of Cavite, would infringe on the right to due process of Engracia's heirs, who were never parties to the reconveyance suit between petitioner and respondent now pending appeal before the CA. While the notice of *lis pendens* would not create a right or lien over the property, it will definitely be an inconvenience or a burden, however slight, on the title of Engracia's heirs,

especially when dealing with the same property in the concept of owners. Justice and fair play require that Engracia's heirs be rightfully informed of petitioner's claim over the same property by impleading them in the pending suit before the application for annotation of *lis pendens* be favorably acted upon.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for petitioner.

Public Attorney's Office for private respondent.

D E C I S I O N

NACHURA, *J.*:

For resolution is a petition for review on *certiorari* under Rule 45 of the Rules of Court of the Decision[1] dated January 18, 2002 and the Resolution[2] dated April 25, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 63820.

Petitioner Emma Ver-Reyes claims to have acquired a 41,837-square-meter lot (Lot No. 6961 Psd-20246, Imus Estate, G.L.S.O. Record No. 8843) located in Dasmariñas, Cavite and covered by Transfer Certificate of Title (TCT) No. 58459 in the name of the spouses Marciano and Virginia Cuevas by virtue of a Deed of Absolute Sale[3] dated October 8, 1976 executed by the latter in her favor. While she religiously paid the real estate taxes on the property, petitioner failed to register her title over the same.

Later, it appeared that the Cuevas spouses executed another Deed of Absolute Sale[4] on November 10, 1992 over the same property in favor of respondent Irene Montemayor. This time,

[1] Penned by Associate Justice Eliezer R. De Los Santos, with Associate Justices Buenaventura J. Guerrero and Rodrigo V. Cosico, concurring; *rollo*, pp. 35-40.

[2] *Id.* at 42.

[3] *Id.* at 43-44.

[4] *Id.* at 45.

the sale was registered, eventually leading to the cancellation of TCT No. 58459 and the issuance of TCT No. 369793 in the name of respondent.

When this came to her knowledge, petitioner filed on February 18, 1994 a petition for reconveyance, docketed as Civil Case No. 878-94, with the Regional Trial Court (RTC), Branch 21 of the Province of Cavite against respondent, accusing her of forgery and fraudulently causing the issuance of a new certificate of title in her name.

After trial, the RTC, Branch 21, Cavite, rendered its Decision[5] dated October 7, 1996 dismissing the complaint for reconveyance and finding respondent as the true and lawful owner of the property described in TCT 369793.

Petitioner appealed the RTC Decision to the CA on July 11, 1997. Pending appeal, or in August 1998, petitioner learned of the cancellation of respondent's TCT over the property in favor of a certain Engracia Isip (Engracia), after which a mortgage was constituted thereon by Engracia's heirs.

Acting on this information, petitioner conducted an investigation, and her inquiry revealed the following:

1. Respondent Irene Montemayor executed on January 15, 1998 a Waiver and Quitclaim,[6] recognizing the genuineness of TCT No. 769357 in the name of Engracia Isip which had been transferred to her heirs (Apolonia I. R. Alcaraz, Eliza I. Reyes-Gloria, Victor Isip Reyes and Epitacio Isip Reyes) covered by TCT No. T-784707, declaring that all documents relative to the issuance of subsequent TCTs, including TCT No. 369793 in her name were simulated and fictitious, and renouncing all her claims to the property in favor of Engracia and her heirs, executors, administrators, and assigns.

2. The Register of Deeds of Cavite, notwithstanding being impleaded as a party to the pending appeal before the CA, cancelled TCT No. T-369793[7] in the name of respondent by

[5] *Id.* at 132-135.

[6] *Id.* at 46.

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

virtue of the Waiver and Quitclaim. It also caused the annotation of the Waiver and Quitclaim on both TCT Nos. T-369793 and T-784707[8] in the name of Engracia's heirs.

3. The technical descriptions under TCT Nos. T-769357[9] and T-784707 showed that the property described therein is the same property subject of the pending appeal before the CA.

4. The basis of Engracia's title under TCT No. 769357 is Bureau of Lands Sales Contract/Certificate No. V-139[10] dated January 9, 1954 and Department of Agriculture and Natural Resources/ Bureau of Lands Deed of Conveyance No. V-9039[11] dated March 30, 1965. It appeared that TCT No. 769357 was issued or entered only on October 24, 1997.

5. The subject parcel of land was originally part of Original Certificate of Title No. 1002 (RT-17577)[12] under the name of the Republic of the Philippines.

6. By virtue of the above Certificate No. V-139 and Deed of Conveyance No. V-9039, both in favor of Engracia, TCT No. 13105[13] dated April 23, 1965 was issued in her name.

7. There were a series of conveyances made and several titles were issued thereon – TCT No. 13105 was cancelled and TCT No. 13113[14] dated April 26, 1965 was issued to Rosalinda Puspos; TCT No. 13113 was cancelled and TCT No. T-45574[15] dated July 20, 1970 was issued in favor of Belen R. Carungcong (pursuant to a Deed of Absolute Sale dated July 21, 1970 executed by Rosalinda Puspos); TCT No. T-45574 was cancelled and TCT No. T-57845[16] dated February 28, 1972 was issued

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

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

[10] *Id.* at 53-55.

[11] *Id.* at 56.

[12] *Id.* at 57.

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

[14] *Id.* at 60-61.

[15] *Id.* at 62-63.

[16] *Id.* at 64-65.

in the name of Aurelia de la Cruz; and TCT No. T-57845 was cancelled and TCT No. T-58459[17] dated April 3, 1972 was issued in the name of the spouses Marciano and Virginia M. Cuevas by virtue of a Deed of Absolute Sale dated March 27, 1972 executed by Aurelia de la Cruz.

8. Notwithstanding the foregoing transfers of title, TCT No. T-769357 dated October 24, 1997 was issued in the name of Engracia Isip based on the same Certificate No. V-139 and Conveyance No. V-9039.

9. TCT No. T-784707 in the name of Engracia's heirs was issued by virtue of a Deed of Extra-Judicial Settlement of the Estate of Deceased Engracia Isip[18] dated September 24, 1997. Engracia Isip died way back on January 12, 1981.

10. TCT No. T-784707 dated December 15, 1997 in the name of Engracia's heirs had been mortgaged to a certain Potentiano Ponce for ₱6,500,000.00 on January 13, 1998. The mortgage was annotated on the TCT on January 14, 1998.

On October 20, 1998, petitioner filed an Urgent Manifestation[19] before the CA to advise it of the above information she had discovered. On November 6, 1998, she served a Notice of *Lis Pendens*[20] affecting the property under TCT No. T-784707 in the name of Engracia's heirs upon the Register of Deeds of Cavite.

In a letter dated November 17, 1998, the Register of Deeds of Cavite through Deputy Registrar of Deeds Perfecto G. Dumay-as denied the annotation of petitioner's Notice of *Lis Pendens* on the following grounds –

1. The cancelled title of IRENE VILLAMAYOR [sic] (TCT No. T-369993) does not bear an inscription as to the pendency of Civil Case No. 878-94 involving the said property;

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[17] *Id.* at 66-67.

[18] *Id.* at 68-69.

[19] *Id.* at 75-78.

[20] *Id.* at 71-73.

2. Further, the title of the Heirs of Engracia Isip (TCT No. T-784707) did not originate from the cancelled title of Irene Montemayor (TCT No. T-369793);

3. That the Waiver/Quitclaim was done in recognition of a better and stronger title and to avoid unnecessary, time consumming [sic] and costly legal conprontation [sic] between the parties;

4. That the title of the Isips (TCT No. T-784707) is a derivative title from TCT No. T-769357 (Engracia Isip) which originated from a Deed of Conveyance duly issued by the Land Management Bureau, an immediate transfer from OCT No. 1002 (Republic of the Philippines);

5. That the late Engracia Isip nor her heirs were not a party to the ongoing court litigation between *Emma Ver Reyes, et al. vs. Irene Montemayor, et al*., hence, the said notice of Lis Pendens does not meet the necessary requirement of its registrability.[21]

Petitioner elevated the matter to the Land Registration Authority (LRA) via Consulta No. 3039 dated December 7, 1998.[22] In its Resolution dated August 21, 2000, the LRA denied the registration of the Notice of *Lis Pendens*, sustaining the ground that "the late ENGRACIA ISIP nor her heirs were not impleaded as parties to the pending suit or proceedings."

Petitioner moved to reconsider the Resolution dated August 21, 2000. In an Order[23] dated January 8, 2001, the LRA denied the motion for lack of merit.

In a petition for review under Rule 43 of the Rules of Court, petitioner questioned before the CA the Resolution dated August 21, 2000 and the Order dated January 8, 2001 of the LRA.

In the Decision[24] promulgated on January 18, 2002, the CA denied the petition on the ground that the stance taken by the LRA was the most logical under the circumstances; and while

[21] *Id.* at 81.

[22] *Id.* at 82-90.

[23] *Id.* at 112.

[24] *Supra* note 1.

the remedy of a notice of *lis pendens* is for the protection of third parties, it should not prejudice the right of the party in whose favor the property is titled without him being impleaded in the pending case.

Petitioner filed her motion for reconsideration of the CA Decision but said motion was denied, for lack of merit, in the Resolution[25] dated April 25, 2002. The CA held –

> This Court is of the opinion and so holds that if it is desired to have a Notice of *Lis Pendens* annotated, it must appear that the present registered owners are impleaded in the pending case. We do not argue with the petitioner's contention that ***"it is not necessary for the applicant to prove his ownership or interest over the property sought to be effected by lis pendens"*** (citing *Villanueva vs. Court of Appeals*, 281 SCRA 298). But what We are saying is that the notice of *Lis Pendens* should not prejudice the right of the party in whose favor the property is duly titled without giving them their day in court.

Thus, this petition, raising the sole issue of whether the Register of Deeds was justified, under the attendant circumstances, in denying the annotation of the Notice of *Lis Pendens* on TCT No. T-784707.

Petitioner maintains that it is required neither under Section 14[26] of Rule 13 of the Rules of Court nor under

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[25] *Supra* note 2.

[26] Sec. 14. **Notice of *Lis Pendens.*** — In an action affecting the title or the right of possession of real property, the plaintiff and the defendant, when affirmative relief is claimed in his answer, may record in the office of the registry of deeds of the province in which the property is situated a notice of the pendency of the action. Said notice shall contain the names of the parties and the object of the action or defense, and a description of the property in that province affected thereby. Only from the time of filing of such notice for record shall a purchaser, or encumbrancer of the property affected thereby, be deemed to have constructive notice of the pendency of the action, and only of its pendency against the parties designated by their real names.

The notice of *lis pendens* hereinabove mentioned may be cancelled only upon order of the court, after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be recorded.

Section 76[27] of Presidential Decree No. 1529 (Property Registration Decree) that a registered owner of real property should first be impleaded in the pending case for a notice of l*is pendens* to be annotated in a TCT. She posits that these provisions do not state the grounds to justify the refusal by the Register of Deeds and/or the LRA to effect the said annotation. Petitioner also cites *Voluntad v. Spouses Dizon*[28] wherein the annotation of a notice of *lis pendens* was allowed on the TCT of Carmen and Maria Voluntad despite the registered owners not being parties to the pending case.

Petitioner further claims that the duty to record the notice of *lis pendens* filed by a party to a pending case is ministerial on the part of the Register of Deeds of the province where the property is located as long as the requisites for the recording thereof – the names of the parties, the object of the action or defense, and a description of the property in that province affected thereby – are indicated in the notice.

Citing our rulings that a notation of *lis pendens* does not create a right or a lien upon the subject property,[29] and that the applying party is not required to prove his right or interest over the property on which the notice is sought to be annotated,[30] petitioner argues that the annotation of the notice of *lis pendens* under the circumstances would only serve as a warning to third

[27] Sec. 76. *Notice of lis pendens.* — No action to recover possession of real estate, or to quiet title thereto, or to remove clouds upon the title thereof, or for partition, or other proceedings of any kind in court directly affecting the title to land or the use or occupation thereof or the buildings thereon, and no judgment, and no proceeding to vacate or reverse any judgment, shall have any effect upon registered land as against persons other than the parties thereto, unless a memorandum or notice stating the institution of such action or proceeding and the court wherein the same is pending, as well as the date of the institution thereof, together with a reference to the number of the certificate of title, and an adequate description of the land affected and the registered owner thereof, shall have been filed and registered.

[28] 372 Phil. 82 (1999).

[29] *Viewmaster Construction Corporation v. Maulit,* 383 Phil. 729, 742 (2000).

[30] *Villanueva v. Court of Appeals*, 346 Phil. 289, 306 (1997).

parties that the real property is subject to a pending litigation such that persons dealing with it would do so at their own risk, and it would not, in any way, prejudice the rights of Engracia's heirs who are named as owners of the subject real estate.

While we do not contradict petitioner as to the nature, purpose, and effects of a notice of *lis pendens* as held in the jurisprudence cited in her petition and memorandum, we do not agree that these cases are squarely applicable in this case to favor her cause.

It should be remembered that the Office of the Register of Deeds of Cavite, as affirmed by both the LRA and the CA, denied the annotation of the notice of *lis pendens* not only on the ground that Engracia's heirs, the persons named in TCT No. T-784707, were not impleaded in the case between petitioner and respondent pending appeal before the CA. It also relied on other attendant circumstances, namely: (1) the cancelled title of respondent did not bear an inscription on the pendency of Civil Case No. 878-94 then before the RTC, Branch 21, Cavite involving the said property; (2) the title of Engracia's heirs over the property did not originate nor was it transferred from the title of respondent; (3) respondent, by virtue of her Waiver and Quitclaim, renounced all her claims over the property by stating that her title, including those of her supposed predecessors-in-interest, was fictitious and simulated; and (4) TCT No. T-784707 in the name of Engracia's heirs was derived by succession from TCT No. T-769357 in the name of Engracia Isip, which, in turn, was derived from a conveyance in her favor by the Republic of the Philippines under OCT No. 1002.

It is for these other reasons that our ruling in *Voluntad* cannot apply to the present controversy. In *Voluntad*, the annotation of the notice of *lis pendens* was allowed on the TCT of Carmen and Maria Voluntad even if they were not parties to the pending litigation because they were the predecessors-in-interest of the Voluntads who applied for the annotation (applicant Voluntads) and that the real property subject thereof was still in the names of Carmen and Maria despite already having passed on to their heirs (applicant Voluntads).

In contrast, herein petitioner's claim to the property is not derived from the titles of Engracia and her heirs. While the property described in TCT No. T-784707 in the name of Engracia's heirs refers to the same property described in TCT No. 58459 in the name of Marciano and Virginia Cuevas from whom petitioner claimed to have derived her title, it is apparent that the title of Engracia's heirs over the property is totally alien to the controversy between petitioner and respondent. Had petitioner been truly prudent as she now poses to be, she should have caused the annotation of the Notice of *Lis Pendens* on TCT No. 58459 in the name of respondent way back when she filed the petition for reconveyance (Civil Case No. 878-94), as this would have resulted in the carrying over of the notice onto TCT Nos. T-769357 (Engracia Isip) and T-784707 (Engracia's heirs) after respondent waived her claim over the property in Isips' favor.

Indeed, petitioner's belated act of applying for a notice of *lis pendens*, if allowed by the Office of the Register of Deeds of Cavite, would infringe on the right to due process of Engracia's heirs, who were never parties to the reconveyance suit between petitioner and respondent now pending appeal before the CA.[31] While the notice of *lis pendens* would not create a right or lien over the property, it will definitely be an inconvenience or a burden, however slight, on the title of Engracia's heirs, especially when dealing with the same property in the concept of owners. Justice and fair play require that Engracia's heirs be rightfully informed of petitioner's claim over the same property by impleading them in the pending suit before the application for annotation of *lis pendens* be favorably acted upon.

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

SO ORDERED.

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

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[31] *Felix Gochan & Sons Realty Corporation v. Cañada,* G.R. No. L-49686, August 31, 1988, 165 SCRA 207, 216.

THIRD DIVISION

[G.R. No. 162332. August 28, 2008]

HERBERT SOLAS, *petitioner, vs.* **POWER & TELEPHONE SUPPLY PHILS., INC., DERWIN OTWELL,[*] PELAGIO BATTUNG, JR.[*] AND FRANKLIN QUIACHON,[*]** *respondents.*[**]

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; NATIONAL LABOR RELATIONS COMMISSION; DECISION OF THE NLRC MAY BE ASSAILED BY THE ADVERSE PARTY BY FILING A PETITION FOR *CERTIORARI* UNDER RULE 65 BEFORE THE COURT OF APPEALS.— However, at the outset, respondents must be disabused of their belief that since no appeal may be taken from the NLRC Decision, then the same can no longer be altered. In *Panuncillo v. CAP Philippines, Inc.*, the Court explained that: x x x while under the sixth paragraph of Article 223 of the Labor Code, the decision of the NLRC becomes final and executory *after the lapse of ten calendar days from receipt thereof by the parties*, **the adverse party is not precluded from assailing it via Petition for *Certiorari* under Rule 65 before the Court of Appeals and then to this Court via a Petition for Review under Rule 45.** x x x Rule 65 gives the adverse party, petitioner in this case, 60 days from the date of receipt of the order denying petitioner's motion for reconsideration within which to file a petition for *certiorari* with the CA. Thus, petitioner took the proper procedural steps to question the NLRC Decision before the CA.

2. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF ADMINISTRATIVE AGENCIES AND QUASI-JUDICIAL

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[*] Respondents Derwin Otwell, Pelagio Battung, Jr. and Franklin Quiachon were included as respondents in their capacity as President, Vice President/ General Manager, and Sales Manager, respectively, of Power & Telephone Supply Phils., Inc.

[**] The Court of Appeals, having been included as a co-respondent, is deleted from the title pursuant to Section 4, Rule 45 of the Rules of Court.

BODIES ARE GENERALLY ACCORDED NOT ONLY RESPECT BUT FINALITY WHEN AFFIRMED BY THE COURT OF APPEALS.— [O]ur oft-repeated ruling, reiterated in *Reyes v. National Labor Relations Commission*, must be emphasized, to wit: x x x findings of facts of quasi-judicial bodies like the NLRC, and affirmed by the Court of Appeals in due course, are conclusive on this Court, which is not a trier of facts. x x x Findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but finality when affirmed by the Court of Appeals. Such findings deserve full respect and, without justifiable reason, ought not to be altered, modified or reversed.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL, ELUCIDATED.— In *Duldulao v. Court of Appeals*, the Court held that: There is constructive dismissal if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it would foreclose any choice by him except to forego his continued employment. It exists where there is cessation of work because "continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay."

4. ID.; ID.; ID.; ID.; ACTS OF HARASSMENT, NOT A CASE OF.— In this case, petitioner's allegations that respondents committed acts of harassment, *i.e.*, the withholding of his salary for the month of February and directing him to return the company car, cellphone and office keys, have been rebutted and sufficiently explained by private respondent company in its Position Paper. Respondents were able to show that its acts were not intended to harass or discriminate against petitioner. There was valid reason for respondents' withholding of petitioner's salary for the month of February 2000. Petitioner does not deny that he is indebted to his employer in the amount of around ₱95,000.00. Respondents explained that petitioner's salary for the period of February 1-15, 2000 was applied as partial payment for his debt and for withholding taxes on his income; while for the period of February 15-28, 2000, petitioner was already on absence without leave, hence, was not entitled

to any pay. With regard to the company car, respondents explained that the company car was actually issued to Franklin D. Quiachon although petitioner and another employee, Nelson Gatbunton, may borrow the car for company operations with the consent of Quiachon as stated in an office memorandum dated March 10, 1999. Since Nelson Gatbunton had to attend to official business in Clark, said employee was then given use of the company car. The taking of the office key from petitioner was also justified, as respondents stated that the company's office consisted only of one big room without separate or individual offices, so it was only the main door that required a key. The key to the office door could be borrowed by any employee from a co-employee in possession thereof in case of overtime or weekend work, but not a single employee had the exclusive use of the key to the office. Thus, when another employee, Myrna Dumlao, had to work overtime, she borrowed the key from petitioner on February 4, 2000. Thereafter, on February 18, 2000, respondents moved to another unit in the same condominium building housing its office, so it was already useless to return the key to the door of the former office to petitioner. As to the cellphone, respondents maintain that said phone remained the property of the company, and it became company policy for its employees to pay for personal calls. When petitioner's debts and advances accumulated, and he showed no intention of paying for them despite receipt of bonuses, the company had to take measures to regulate the use of the company cellphones.

5. REMEDIAL LAW; EVIDENCE; TESTIMONIAL EVIDENCE; ADMISSIONS; ADMISSION BY SILENCE; RULE.— Notably, petitioner never refuted respondents' explanations for withholding his salary and the reasons why he was required to return the company car, key and cellphone. This constitutes admission by silence under Section 32, Rule 130 of the Rules of Court, to wit: Sec. 32. Admission by silence. — An act or declaration made in the presence and within the hearing or observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, and when proper and possible for him to do so, may be given in evidence against him.

6. ID.; ID.; CLAIM FOR PAYMENT OF COMMISSIONS, NOT SUFFICIENTLY ESTABLISHED IN CASE AT BAR.— Lastly,

as to petitioner's claim for commissions, the NLRC and the CA were correct in not sustaining the award thereof by the LA. It must be borne in mind that there is no law which requires employers to pay commissions; thus, it is incumbent upon petitioner to prove that there is indeed an agreement between him and his employer for payment of the same. The only evidence presented by petitioner to prove that he is entitled to sales commissions are the employment certificate, stating that he is an employee of respondents receiving ₱21,600.00 per month as salary, exclusive of bonuses and sales commissions, and the undisputed fact that private respondent company gave him and its other employees the amount of ₱85,418.00 sometime in 1998. However, the CA was correct in ruling that the employment certificate was insufficient to prove that petitioner was indeed entitled to his claim for sales commissions, as said document does not give the details as to the conditions for payment of the same or the agreed percentage, if any. As to the amount of ₱85,418.00, respondents assert that said amount is actually a one-time bonus, not a commission. Thus, even assuming *arguendo* that petitioner is entitled to sales commissions, his evidence is inadequate to establish the amount to which he is entitled. x x x the NLRC and the CA found that the computations for commissions were determined and prepared unilaterally by petitioner. Thus, it was correctly ruled that said computation, with its uncertain origin and authenticity, is self-serving and cannot prove petitioner's claim for commissions in the amount of ₱892,780.37.

APPEARANCES OF COUNSEL

King Cabangon & De Guzman Law Offices for petitioner.
Jorge Roito NN. Hirang, Jr. for respondents.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

This resolves the petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking the reversal of the Decision

of the Court of Appeals (CA) dated September 12, 2003[1] dismissing the petition for *certiorari* filed by Herbert Solas (petitioner).

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

On 16 August 1997, Herbert Solas entered into a contract of employment with Power and Telephone /Supply Philippines, Inc., to be the Assistant Sales Manager of the company with a monthly salary of ₱21,600.00, excluding bonuses and commission.

On 06 November 1998, private respondent company granted petitioner Herbert Solas and Franklin D. Quiachon an amount of ₱85,418.00 each, corresponding to their sales commission from the month of January to June of 1998. From that time up to the present, no other sales commission was ever again given to them.

Thus, on 04 February 2000, petitioner requested for the release of his alleged commission which had already accumulated since July of 1998. However, in an inter-office memorandum, said request was denied, and instead, petitioner was even mandated to settle his outstanding obligation with the company.

On 07 February 2000, petitioner likewise received another memorandum requiring him to return the issued cellular phone, car and key to his office, which he allegedly all complied. Petitioner averred that these were all forms of harassment including the non-payment of his salary for the month of February 2000, and onwards. Hence, on 15 February 2000, he instituted a case for illegal constructive dismissal, recovery of 10% sales commission on gross sales, and attorney's fees.

In response, private respondents maintained that there was no agreement, written or oral, which talked of the grant of 10% commission on gross sales to sales agent, nor was there a CBA on the matter. There was even no CBA to speak of, since the company had no union, with its employees numbering only to less than 10, all being fixed-salaried employees. The company gave bonuses when there was an income, but these were purely on the liberality of the company, subject to the availability of funds and profits. Besides,

[1] Penned by Associate Justice Buenaventura J. Guerrero, with Associate Justices Andres B. Reyes, Jr. and Regalado E. Maambong, concurring; *rollo*, p. 20.

petitioner has actually no client of his own from whom he could close sales, thus the claim for commission was utterly baseless.

Private respondents maintained also that the claim of petitioner that he was constructively dismissed, was without basis. Beginning 02 February 2000, petitioner's attendance was already irregular. On 11 February 2000, he was on absence without leave. He was sick and had a growing lump on his left shoulder. It was this absence without leave which prompted private respondents to write several memoranda to petitioner, one advising him to return to work immediately, as his continued absence was inimical to the company; the other, directing him to explain his continued unauthorized absences within 24 hours from receipt of the memo.

Private respondents asserted further that neither the order directing petitioner to return the company car, the issued cellular phone and keys, nor the deductions made on his salary, could constitute as basis for his alleged constructive dismissal, all allegations being baseless and without merit. Thus, private respondents prayed for an order directing petitioner to pay the latter's debt with the company, and an award amounting to ₱100,000.00 as attorney's fees, as well as the dismissal of petitioner from employment.

The parties submitted their position papers. On 31 August 2000, the Labor Arbiter rendered a decision finding for the petitioner Herbert Solas, the dispositive portion of which states:

"WHEREFORE, premises considered, respondents are hereby ordered to pay the complainant the amount of ₱892,780.37 as sales commission, and clearly computed appearing as Annex "K-K1" and "K-3" of complainant's position paper. Complainant is also entitled to six (6) months backwages and separation pay of one month for every year of service and 10% attorney's fees, as computed below by the Research and Information Unit of the Commission:

xxx xxx xxx

SO ORDERED.[2]

Respondents appealed to the National Labor Relations Commission (NLRC), which reversed and set aside the decision of the Labor Arbiter (LA). The NLRC ruled that there was no constructive dismissal in this case, because petitioner never

[2] *Rollo*, pp. 20-22.

resigned but merely filed an indefinite sick leave, even admitting during the preliminary hearings that he was still an employee of respondents, and his principal claim was for payment of his sales commission. Furthermore, the NLRC saw no badge of constructive dismissal in respondents' action of applying petitioner's salary for the month of February 2000 as payment for his debts to the company amounting to ₱95,000.00. It was also held that petitioner failed to establish that there was an agreement between him and respondent employer for a 10% sales commission, and that he failed to establish the origin and authenticity of the specific amount of the commission being claimed by him.

Petitioner filed a motion for reconsideration of the NLRC Decision, but the same was denied *per* Resolution dated September 24, 2002.

From such adverse judgment, petitioner elevated his case to the CA *via* a petition for *certiorari*. On September 12, 2003, the CA promulgated the assailed Decision affirming the NLRC ruling, stating thus:

> An examination of the resolution of the public respondent shows no patent and gross error amounting to grave abuse of discretion. **In reversing the labor arbiter, public respondent NLRC rightly held that petitioner Herbert Solas did not really quit from his employment, nor did he involuntarily resign from his office. What he did was merely to file an indefinite sick leave**. As aptly observed by public respondent, if indeed petitioner resigned from his post, he should have filed a resignation letter, not an indefinite sick leave. **His contention that the non-payment of his salary for the month of February 2000 and onwards bolsters even more his claim of constructive dismissal, is without merit**. Petitioner has outstanding loans with private respondent. Thus, **it is more logical to conclude that the reason why he did not receive his salary for the month of February 2000, was due to the off-setting made by the company of his cash advances amounting to about ₱95,000.00.**
>
> Anent the issue of 10% commission, We find no sufficient basis to grant the claim of petitioner, having no satisfactory evidence to prove his entitlement thereto. What the petitioner did in this case

was merely to present a certificate of employment which merely confirms the fact that he is an employee of the company and is receiving the amount provided therein as his salary, exclusive of any bonuses and commission, and nothing more. Consequently, we cannot grant petitioner's claim of commission on the basis of the certificate of employment alone. Assuming, *arguendo*, that the certificate on its face speaks of petitioner's entitlement to commission, then, the same, however, does not provide for its percentage. **The records attest that petitioner has not presented sufficient evidence to bolster his claim that he is entitled to a 10% commission.** His self-serving allegations are not sufficient to justify the claim.[3] (Emphasis supplied)

In its Decision promulgated on September 12, 2003, the CA dismissed the petition for lack of merit.[4] Petitioner's motion for reconsideration of the foregoing decision was denied *per* Resolution dated February 12, 2004.

Petitioner then filed the present petition for review on *certiorari*, alleging that:

I. THE PUBLIC RESPONDENT COURT OF APPEALS PATENTLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT AFFIRMED THE DECISION OF THE NLRC FINDING THAT THERE WAS NO ILLEGAL DISMISSAL.

II. THE PUBLIC RESPONDENT COURT OF APPEALS SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT AFFIRMED THE DECISION OF THE NLRC DELETING THE VARIOUS MONEY CLAIM AWARDED IN FAVOR OF THE PETITIONER.[5]

Respondents counter by stressing that the NLRC Decision has become final and executory, and insists that the NLRC and the CA committed no error in ruling that petitioner was not constructively dismissed.[6]

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[3] *Rollo*, p. 26.

[4] *Id.* at 27.

[5] *Rollo*, p. 10.

[6] *Id.* at 155-162.

The Court finds the petition unmeritorious.

However, at the outset, respondents must be disabused of their belief that since no appeal may be taken from the NLRC Decision, then the same can no longer be altered. In *Panuncillo v. CAP Philippines, Inc.*,[7] the Court explained that:

> x x x while under the sixth paragraph of Article 223 of the Labor Code, the decision of the NLRC becomes final and executory *after the lapse of ten calendar days from receipt thereof by the parties,* **the adverse party is not precluded from assailing it via Petition for *Certiorari* under Rule 65 before the Court of Appeals and then to this Court via a Petition for Review under Rule 45.** x x x[8] (Emphasis supplied)

Rule 65 gives the adverse party, petitioner in this case, 60 days from the date of receipt of the order denying petitioner's motion for reconsideration within which to file a petition for *certiorari* with the CA. Thus, petitioner took the proper procedural steps to question the NLRC Decision before the CA.

As to the merits of the petition, our oft-repeated ruling, reiterated in *Reyes v. National Labor Relations Commission*,[9] must be emphasized, to wit:

> x x x findings of facts of quasi-judicial bodies like the NLRC, and affirmed by the Court of Appeals in due course, are conclusive on this Court, which is not a trier of facts.
>
> xxx xxx xxx
>
> x x x Findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but finality when affirmed by the Court of Appeals. Such findings deserve full respect and, without justifiable reason, ought not to be altered, modified or reversed.[10]

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[7] G.R. No. 161305, February 9, 2007, 515 SCRA 323.

[8] *Id.* at 345.

[9] G.R. No. 160233, August 8, 2007, 529 SCRA 487.

[10] *Id.* at 494, 499.

The CA affirmed the finding of the NLRC that petitioner's salary for February 2000 was applied as payment for his cash advances from the company amounting to about ₱95,000.00. The CA likewise upheld the NLRC's finding that the evidence on record was insufficient to establish either that there was an agreement between petitioner and respondents or that it was company policy to give commissions to employees.

Considering that the NLRC reversed the findings of the LA, it behooves the Court to re-examine the records and resolve the conflicting rulings between the LA, on the one hand, and those of the NLRC and the CA, on the other.[11]

The Court's examination of the records reveals that such factual findings of the NLRC, as affirmed by the CA, are supported by substantial evidence; hence, there is no cogent reason for this Court to modify or reverse the same.

In *Duldulao v. Court of Appeals*,[12] the Court held that:

> There is constructive dismissal if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it would foreclose any choice by him except to forego his continued employment. It exists where there is cessation of work because "continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay."[13]

In this case, petitioner's allegations that respondents committed acts of harassment, *i.e.*, the withholding of his salary for the month of February and directing him to return the company car, cellphone and office keys, have been rebutted and sufficiently explained by private respondent company in its Position Paper.[14] Respondents were able to show that its acts were not intended to harass or discriminate against petitioner.

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[11] *Cabalen Management Co., Inc. v. Quiambao*, G.R. No. 169494, March 14, 2007, 518 SCRA 342, 348-349.

[12] G.R. No. 164893, March 1, 2007, 517 SCRA 191.

[13] *Id.* at 199.

[14] *Rollo*, pp. 72-100.

There was valid reason for respondents' withholding of petitioner's salary for the month of February 2000. Petitioner does not deny that he is indebted to his employer in the amount of around ₱95,000.00. Respondents explained that petitioner's salary for the period of February 1-15, 2000 was applied as partial payment for his debt and for withholding taxes on his income; while for the period of February 15-28, 2000, petitioner was already on absence without leave, hence, was not entitled to any pay.[15]

With regard to the company car, respondents explained that the company car was actually issued to Franklin D. Quiachon although petitioner and another employee, Nelson Gatbunton, may borrow the car for company operations with the consent of Quiachon as stated in an office memorandum dated March 10, 1999. Since Nelson Gatbunton had to attend to official business in Clark, said employee was then given use of the company car.[16]

The taking of the office key from petitioner was also justified, as respondents stated that the company's office consisted only of one big room without separate or individual offices, so it was only the main door that required a key. The key to the office door could be borrowed by any employee from a co-employee in possession thereof in case of overtime or weekend work, but not a single employee had the exclusive use of the key to the office. Thus, when another employee, Myrna Dumlao, had to work overtime, she borrowed the key from petitioner on February 4, 2000. Thereafter, on February 18, 2000, respondents moved to another unit in the same condominium building housing its office, so it was already useless to return the key to the door of the former office to petitioner.[17]

As to the cellphone, respondents maintain that said phone remained the property of the company, and it became company policy for its employees to pay for personal calls. When

[15] *Id.* at 97-99.

[16] *Rollo*, pp. 93-94.

[17] *Id.* at 94-96.

petitioner's debts and advances accumulated, and he showed no intention of paying for them despite receipt of bonuses, the company had to take measures to regulate the use of the company cellphones.[18]

Notably, petitioner never refuted respondents' explanations for withholding his salary and the reasons why he was required to return the company car, key and cellphone. This constitutes admission by silence under Section 32, Rule 130 of the Rules of Court, to wit:

> Sec. 32. Admission by silence. — An act or declaration made in the presence and within the hearing or observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, and when proper and possible for him to do so, may be given in evidence against him.

Verily, the only conclusion that may be reached is that respondents' explanations are truthful and, based thereon, the NLRC and the CA committed no grave abuse of discretion in ruling that there was no constructive dismissal in this case.

Lastly, as to petitioner's claim for commissions, the NLRC and the CA were correct in not sustaining the award thereof by the LA. It must be borne in mind that there is no law which requires employers to pay commissions;[19] thus, it is incumbent upon petitioner to prove that that there is indeed an agreement between him and his employer for payment of the same.

The only evidence presented by petitioner to prove that he is entitled to sales commissions are the employment certificate, stating that he is an employee of respondents receiving ₱21,600.00 per month as salary, exclusive of bonuses and sales commissions, and the undisputed fact that private respondent company gave him and its other employees the amount of ₱85,418.00 sometime in 1998. However, the CA was correct in ruling that the employment certificate was insufficient to prove that petitioner

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[18] *Id.* at 96.

[19] *Lagatie v. National Labor Relations Commission*, G.R. No. 121004, January 28, 1998, 285 SCRA 251, 261.

was indeed entitled to his claim for sales commissions, as said document does not give the details as to the conditions for payment of the same or the agreed percentage, if any. As to the amount of ₱85,418.00, respondents assert that said amount is actually a one-time bonus, not a commission. Thus, even assuming *arguendo* that petitioner is entitled to sales commissions, his evidence is inadequate to establish the amount to which he is entitled. In *Ropali Trading Corporation v. National Labor Relations Commission*,[20] the employee presented a Memorandum from his employer stating that he would be receiving a 20% overriding commission, including sales commission and interest income on all sales he had successfully obtained. Yet, the Court still struck down petitioner's claim for unpaid commissions, stating that the employee should present evidence, such as credible documents, to prove his claim. Vague and doubtful sales documents, the origins of which have not been proven, are considered insufficient to establish a claim for payment of commissions.

Here, the NLRC and the CA found that the computations for commissions were determined and prepared unilaterally by petitioner. Thus, it was correctly ruled that said computation, with its uncertain origin and authenticity, is self-serving and cannot prove petitioner's claim for commissions in the amount of ₱892,780.37.

In sum, the Court sees no justification whatsoever to deviate from the ruling of the NLRC and the CA.

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

SO ORDERED.

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

[20] G.R. No. 122409, September 25, 1998, 296 SCRA 309, 315.

THIRD DIVISION

[G.R. No. 167281. August 28, 2008]

MARY M. BAUSA and the LEGAL HEIRS OF THE LATE HONESTO K. BAUSA namely, RODOLFO M. BAUSA, WILHELMINA B. DACANAY, AND HONESTO K. BAUSA, JR., *petitioners, vs.* **HEIRS OF JUAN DINO, namely, ADELINA DINO AYO and DOMINGO DINO, BLANDINO DINO, HONESTO DINO and all persons claiming under them,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; SUPREME COURT; METHOD OF ASSAILING DECISION OF THE COURT OF APPEALS.—** The proper recourse of an aggrieved party to assail the decision of the Court of Appeals is to file a petition for review on *certiorari* under Rule 45 of the Rules of Court. However, if the error subject of the recourse is one of jurisdiction, or the act complained of was granted by a court with grave abuse of discretion amounting to lack or excess of jurisdiction, the proper remedy is a petition for *certiorari* under Rule 65 of the said Rules. These few significant exceptions are: when public welfare and the advancement of public policy dictates, or when the broader interests of justice so require, or when the writs issued are null, or when the questioned order amounts to an oppressive exercise of judicial authority.

2. **CIVIL LAW; LAND REGISTRATION; ADVERSE POSSESSION BY RESPONDENTS OF LAND REGISTERED IN THE NAMES OF PETITIONERS; CANNOT RESULT IN FORFEITURE OF OWNERSHIP BY PETITIONERS.—** Section 47 of P.D. No. 1529 provides that "no title to registered land in derogation of the title of the registered owner shall be acquired by prescription or adverse possession." Since petitioners are the registered owners of the lot in question, the adverse possession by the respondents cannot result in the forfeiture of their ownership.

3. REMEDIAL LAW; CIVIL PROCEDURE; ACTION FOR REVIVAL OF JUDGMENT, EXPLAINED.— An action for revival of judgment is governed by Article 1144 (3) of the Civil Code and Section 6, Rule 39 of the Rules of Court. Pursuant to Section 6 of Rule 39, once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right by mere motion within five years from date of entry of the judgment. If the prevailing party fails to have the decision enforced by a motion after the lapse of five years from the date of its entry, the said judgment is reduced to a right of action which must be enforced by the institution of a complaint in a regular court within 10 years from the time the judgment became final.

4. ID.; ID.; ID.; BETTER RULE THAT COURTS, UNDER THE PRINCIPLE OF EQUITY, WILL NOT BE GUIDED OR BOUND STRICTLY BY THE STATUTE OF LIMITATIONS OR THE DOCTRINE OF LACHES WHEN TO DO SO, MANIFEST WRONG OR INJUSTICE WOULD RESULT.— It is a better rule that courts, under the principle of equity, will not be guided or bound strictly by the statute of limitations or the doctrine of laches when to do so, manifest wrong or injustice would result. It would be more in keeping with justice and equity to allow the revival of the judgment rendered by Branch 52 of the Regional Trial Court of Sorsogon in Civil Case No. 639. To rule otherwise would result in an absurd situation where the rightful owner of a property would be ousted by a usurper on mere technicalities. Indeed, it would be an idle ceremony to insist on the filing of another action that would only unduly prolong respondents' unlawful retention of the premises which they had, through all devious means, unjustly withheld from petitioners all these years.

APPEARANCES OF COUNSEL

Bausa Ampil Suarez Paredes & Bausa Law Offices for petitioners.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This Petition for *Certiorari* assails the December 22, 2003 Decision[1] of the Court of Appeals in CA-G.R. CV No. 67994 holding that the independent action for revival of judgment filed by petitioners was time-barred, thereby reversing and setting aside the May 17, 2000 Decision[2] of the Regional Trial Court of Sorsogon, Sorsogon, Branch 51, in Civil Case No. 6433; and its January 11, 2005 Resolution[3] denying the motion for reconsideration.

On June 5, 1978, petitioners filed a complaint for recovery of possession of a 1.2 hectare parcel of land located in Caricaran, Bacon, Sorsogon, covered by Transfer Certificate of Title No. 182 registered in the name of petitioner Mary Manion Bausa. The case was docketed as Civil Case No. 639 and raffled to Branch 52 of the Regional Trial Court of Sorsogon, Sorsogon.

On October 2, 1985, the trial court rendered a Decision[4] declaring petitioners as owners of the subject property, thus:

> WHEREFORE, judgment is hereby rendered: 1) declaring the plaintiffs owners of the property in question (Lot No. 1346-A described in Exhibit "F-2" and entitled to its fruits and peaceful possession; (2) requiring defendant to return the property in question to plaintiff and not to disturb plaintiffs' possession of the same; (3) requiring defendants to pay plaintiffs the sum of One Hundred Fifty (₱150.00) Pesos per month from the filing of the case on June 5, 1978 to the time the property shall have been returned and delivered to plaintiffs as rental and for whatever fruits gathered; and (4) for defendant to pay the sum of Three Thousand (₱3,000.00) Pesos to plaintiff as attorney's fee and to pay the cost.

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[1] *Rollo*, pp. 47-55; penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Arsenio J. Magpale.

[2] *Id.* at 89-93; penned by Judge Jose L. Madrid.

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

[4] *Id.* at 60-68; penned by Judge Felix B. Mintu.

SO ORDERED.[5]

Juan Dino, respondents' predecessor-in-interest, appealed but it was dismissed by the Court of Appeals in a Resolution which became final and executory on January 28, 1987 as shown in the Entry of Judgment.[6]

On November 19, 1987, petitioners' Motion for Execution[7] was granted by the trial court for which the corresponding Writ of Execution was issued. However, it was not served to defendant Juan Dino.

Meanwhile, respondents filed a Petition for *Certiorari* with this Court docketed as G.R. No. 78229 assailing the decision of the Court of Appeals, however, the case was dismissed in a Resolution dated May 20, 1987. The Resolution became final and executory on November 26, 1987 as shown in the Entry of Judgment.[8]

Considering that the writ of execution was not served to Juan Dino, petitioners filed a motion for the issuance of an *alias* writ of execution,[9] which was granted. Thereafter, a Delivery of Possession [10] was executed by Deputy Sheriff Edito Buban, a copy of which was received by private respondents but they refused to sign it and they remained in the said property.

Hence, petitioners filed a Petition for Demolition[11] which the court granted. The Writ of Demolition[12] dated April 10, 1990 was issued but it was not implemented due to respondents' resistance as shown in the Sheriff's Return[13] dated May 16, 1990.

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[5] *Id.* at 68.

[6] *Id.* at 69.

[7] *Id.* at 71-72.

[8] *Id.* at 74.

[9] *Id.* at 75-76.

[10] *Id.* at 78.

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

[12] *Id.* at 82.

[13] *Id.* at 83.

Unable to execute the October 2, 1985 Decision of Branch 52, Regional Trial Court of Sorsogon, petitioners filed a Complaint for Execution of Decision on January 30, 1998 docketed as Civil Case No. 98-6433 and raffled to Branch 51 of the Regional Trial Court of Sorsogon. Juan Dino died, hence the complaint was filed against his heirs, herein private respondents who filed an Opposition contending that the action was barred by prescription.

On May 17, 2000, the Regional Trial Court of Sorsogon, Branch 51, rendered its Decision[14] holding that the action to revive the October 2, 1985 Decision was timely filed. The dispositive portion of said decision reads:

> WHEREFORE, judgment is hereby rendered:
>
> 1) Reviving the judgment in the case of *Juan Dino versus Court of Appeals, et al*., G.R. No. 78229;
>
> 2) Ordering the defendants and their privies to vacate the premises in question and to remove their houses; and
>
> 3) Ordering defendants to pay plaintiffs the amount of money stated in the original, final and executory judgment, and to pay the costs of the suit.
>
> SO ORDERED.[15]

Respondents appealed to the Court of Appeals, docketed as CA-G.R. CV No. 67994, which reversed the Decision of the trial court and ruled that the action was not timely filed.

Petitioners filed a motion for reconsideration but it was denied in a Resolution dated January 11, 2005, a copy of which was received by petitioners on January 19, 2005.

Hence, they filed the instant Petition for *Certiorari*[16] raising the following issues:

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[14] *Id.* at 89-93; penned by Judge Jose L. Madrid.

[15] *Id.* at 93.

[16] *Id.* at 125.

PRINCIPAL ISSUE

WHETHER OR NOT PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED ITS DECISION DATED DECEMBER 22, 2003 (ANNEX A) AND THE RESOLUTION DATED JANUARY 11, 2005 (ANNEX B) DENYING PETITIONERS OF THEIR RIGHT TO EXECUTE OR ENFORCE THE DECISION ISSUED IN THEIR FAVOR FOR THE RECOVERY OF THEIR REGISTERED PROPERTY;

I. LEGAL ISSUES

i.

WHETHER OR NOT THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN DISREGARDING THE FILING OF MOTIONS FOR EXECUTION AND DEMOLITION, AND THE SERVICE OF WRITS ENFORCING THE SAME AS ACTS THAT EFFECTIVELY SUSPENDED THE RUNNING OF THE TEN-YEAR PRESCRIPTIVE PERIOD FOR EXECUTION BY INDEPENDENT ACTION;

ii.

WHETHER OR NOT THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN ALLOWING PRESCRIPTION ON EXECUTION BY INDEPENDENT ACTION TO RUN AGAINST THE PETITIONERS SEEKING TO RECOVER POSSESSION OF LAND REGISTERED UNDER THE TORRENS SYSTEM;

II. FACTUAL ISSUES

i.

WHETHER OR NOT THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN RULING THAT THE FILING OF PETITIONERS' VERIFIED COMPLAINT FOR EXECUTION IS ALREADY BARRED BY PRESCRIPTION.

ii.

WHETHER OR NOT THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN RULING THAT THE WRIT OF EXECUTION SERVED AGAINST PRIVATE

RESPONDENTS WAS NOT SPECIFIC AS TO WHICH AREA IS CLAIMED BY PETITIONERS.

In their Comment, respondents alleged that a petition for *certiorari* is erroneous because the same lies only when there is no plain, speedy and adequate remedy in the ordinary course of law; that petitioners' remedy is to file a petition for review on *certiorari* under Rule 45 of the Rules of Court, the availability of which forecloses the use of *certiorari*; and that having been filed beyond the 15-day period prescribed by Rule 45, the assailed judgment of the Court of Appeals has become final.

The proper recourse of an aggrieved party to assail the decision of the Court of Appeals is to file a petition for review on *certiorari* under Rule 45 of the Rules of Court. However, if the error subject of the recourse is one of jurisdiction, or the act complained of was granted by a court with grave abuse of discretion amounting to lack or excess of jurisdiction, the proper remedy is a petition for *certiorari* under Rule 65 of the said Rules.[17] These few significant exceptions are: when public welfare and the advancement of public policy dictates, or when the broader interests of justice so require, or when the writs issued are null, or when the questioned order amounts to an oppressive exercise of judicial authority.[18]

In the instant case, the Court gives due course to the petition for *certiorari* in the broader interest of justice and in view of the substantive issues raised. The Court of Appeals gravely abused its discretion in ruling that petitioners can no longer enforce the judgment of the trial court. Petitioners, in whose names the title of the subject property was registered, were stripped of their rights of ownership contrary to the provisions of Section 47 of P.D. No. 1529. The Court of Appeals erred in appreciating the tax declarations presented by respondents as evidence of ownership *vis-à-vis* the transfer certificate of title

[17] *Delgado v. Court of Appeals*, G.R. No. 137881, December 21, 2004, 447 SCRA 402, 411.

[18] *Ruiz, Jr. v. Court of Appeals*, G.R. No. 101566, March 26, 1993, 220 SCRA 490, 501.

of the petitioners. Moreover, the issue of ownership over the subject property had long been adjudicated in favor of petitioners, which judgment has become final and executory. Thus, the Court of Appeals exceeded its authority in ruling on the issue of ownership. The only issue submitted for its resolution is whether petitioners' independent action to revive the October 2, 1985 Decision of the trial court was timely filed. Likewise, the appellate court was without authority to rule that the trial court erred in ordering respondents to vacate the premises on the ground that the writ of execution was not specific as to which area is claimed.

Section 47 of P.D. No. 1529 provides that "no title to registered land in derogation of the title of the registered owner shall be acquired by prescription or adverse possession." Since petitioners are the registered owners of the lot in question, the adverse possession by the respondents cannot result to the forfeiture of their ownership. The trial court's declaration that petitioners are the owners of the subject property only affirms petitioners' ownership which requires no specific and positive act of execution which a sheriff may perform for enforcement unlike the other aspects of the decision ordering the defendants to vacate the premises and to pay rentals.[19] In recognition of such ownership, it would be more in keeping with justice and equity to allow the revival of the subject judgment.

An action for revival of judgment is governed by Article 1144 (3) of the Civil Code and Section 6, Rule 39 of the Rules of Court. Pursuant to Section 6 of Rule 39, once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right by mere motion within five years from date of entry of the judgment. If the prevailing party fails to have the decision enforced by a motion after the lapse of five years from the date of its entry, the said judgment is reduced to a right of action which must be enforced by the institution of a complaint in a regular court within 10 years from the time the judgment became final.[20]

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[19] *Caiña v. Court of Appeals*, G.R. No. 114393, December 15, 1994, 239 SCRA 252, 265.

[20] New Civil Code provides:

In the instant case, petitioners are seeking to revive the judgment rendered on October 2, 1985 by Branch 52 of the Regional Trial Court of Sorsogon in Civil Case No. 639 declaring them as rightful owners of the property, and ordering respondents to vacate the premises, and to pay rents and other damages. The judgment became final and executory on January 28, 1987 as shown in the Entry of Judgment.[21] Thus, petitioners have five years therefrom to execute said judgment by mere motion and, should they fail to do so, have ten years from said date to revive the judgment by an independent action, which they filed on January 30, 1998.

The purpose of the law in prescribing time limitations for enforcing judgments by action is to prevent obligors from sleeping on their rights.[22] In the instant case, far from sleeping on their rights, petitioners pursued every available remedy to recover the subject property but failed due to the machinations of respondents. After the decision declaring them as rightful owners of the property became final and executory on January 28, 1987, petitioners filed on May 8, 1987 a motion for execution which was granted. However, the same was not served on

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

(1) Upon a written contract;

(2) Upon an obligation created by law;

(3) Upon a judgment.

xxx xxx xxx

Art. 1152. The period for prescription of actions to demand the fulfillment of obligations declared by a judgment commences from the time the judgment became final.

[21] Though Juan Dino filed a Petition for *Certiorari* before the Supreme Court, which was subsequently dismissed, the same did not prevent the CA decision dismissing the case from becoming final and executory. A petition for *certiorari* is an original action and does not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding. See *Tomas Claudio Memorial College, Inc. v. Court of Appeals*, G.R. No. 152568, February 16, 2004, 423 SCRA 122.

[22] See *Macias v. Lim*, G.R. No. 139284, June 4, 2004, 431 SCRA 20, 38.

defendant Juan Dino. Consequently, petitioners applied for the issuance of an *alias* writ of execution. Thereafter, the sheriff executed a Delivery of Possession. However, respondents refused to sign the same and remained in the premises. Thus, petitioners applied for a writ of demolition. Although the same was granted, it was not implemented due to respondents' resistance. Thus, petitioners filed an action to revive the judgment of the trial court declaring them as owners of the property. Despite diligent efforts and the final and executory nature of the Decision, petitioners have yet to regain possession of what is legally their own. These circumstances clearly demonstrate that the failure to execute the judgment was due to respondents' refusal to follow the several writs ordering them to vacate the premises. It would be unfair for the Court to allow respondents to profit from their defiance of valid court orders.

It is a better rule that courts, under the principle of equity, will not be guided or bound strictly by the statute of limitations or the doctrine of laches when to do so, manifest wrong or injustice would result.[23] It would be more in keeping with justice and equity to allow the revival of the judgment rendered by Branch 52 of the Regional Trial Court of Sorsogon in Civil Case No. 639. To rule otherwise would result in an absurd situation where the rightful owner of a property would be ousted by a usurper on mere technicalities. Indeed, it would be an idle ceremony to insist on the filing of another action that would only unduly prolong respondents' unlawful retention of the premises which they had, through all devious means, unjustly withheld from petitioners all these years.[24]

The Court also notes that petitioners claim of ownership and right to recovery of possession was by virtue of a title registered in their names. The ruling of the trial court regarding the identity of the land in question and its inclusion in the said title was duly proven in the proceedings before it and said decision has attained finality. Thus, it was improper for the Court of Appeals to appreciate the tax declarations presented by respondents as

[23] *Spouses Santiago v. Court of Appeals*, 343 Phil. 612, 627 (1997).

[24] *David v. Ejercito*, G.R. No. L-41334, June 18, 1976, 71 SCRA 484.

evidence of ownership. It should be stressed that the issue of who has better rights of possession and ownership over the properties has long been adjudicated by the courts and has attained finality. The Court of Appeals likewise erred in reversing the order to vacate the premises on the ground that the writ of execution was not specific as to which area is claimed as the identity of the property under litigation was resolved in the earlier proceedings between the parties. Besides, the sufficiency of the writ should have been raised in the proceedings in Civil Case No. 639 before Branch 52; it is not an issue in the complaint for execution which is an independent action the cause of action of which is the judgment sought to be revived.[25]

WHEREFORE, the petition is *GRANTED*. The Decision of the Court of Appeals dated December 22, 2003 in CA-G.R. CV No. 67994 and its Resolution dated January 11, 2005 are *ANNULLED and SET ASIDE*. The Decision of the Regional Trial Court, Sorsogon, Sorsogon, Branch 51 dated May 17, 2000 allowing the revival of the final and executory judgment in "*Juan Dino vs. Court of Appeals*" (G.R. No. 78229), and ordering the defendants therein and their privies to vacate the premises and remove their houses, and to pay the money judgment plus costs, is *REINSTATED and AFFIRMED*.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and *Reyes, JJ.*, concur.

[25] See *Caiña v. Court of Appeals*, *supra* note 19.

THIRD DIVISION

[G.R. No. 173526. August 28, 2008]

BENJAMIN BITANGA, *petitioner, vs.* **PYRAMID CONSTRUCTION ENGINEERING CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SUMMARY JUDGMENT; REQUISITES.— For a summary judgment to be proper, the movant must establish two requisites: (a) there must be no genuine issue as to any material fact, except for the amount of damages; and (b) the party presenting the motion for summary judgment must be entitled to a judgment as a matter of law. Where, on the basis of the pleadings of a moving party, including documents appended thereto, no genuine issue as to a material fact exists, the burden to produce a genuine issue shifts to the opposing party. If the opposing party fails, the moving party is entitled to a summary judgment.

2. ID.; ID.; ID.; ID.; GENUINE ISSUE.— A genuine issue is an issue of fact which requires the presentation of evidence as distinguished from an issue which is a sham, fictitious, contrived or false claim. To forestall summary judgment, it is essential for the non-moving party to confirm the existence of genuine issues, as to which he has substantial, plausible and fairly arguable defense, *i.e.,* issues of fact calling for the presentation of evidence upon which reasonable findings of fact could return a verdict for the non-moving party, although a mere scintilla of evidence in support of the party opposing summary judgment will be insufficient to preclude entry thereof.

3. ID.; ID.; PERSONAL SERVICE OF PAPERS.— Section 6, Rule 13 of the Rules of Court states: SEC. 6. *Personal service*. – Service of the papers may be made by delivering personally a copy to the party or his counsel, **or by leaving it in his office with his clerk or with a person having charge thereof.** If no person is found in his office, or his office is not known, or he has no office, then by leaving the copy, between the hours of eight in the morning and six in the evening, at the party's

or counsel's residence, if known, with a person of sufficient age and discretion then residing therein. Moreover, under Section 6, Rule 13 of the Rules of Court, there is sufficiency of service when the papers, or in this case, when the demand letter is personally delivered to the party or his counsel, **or by leaving it in his office with his clerk or with a person having charge thereof, such as what was done in this case.**

4. CIVIL LAW; SPECIAL CONTRACTS; GUARANTEE; EXCUSSION.— Under a contract of guarantee, the guarantor binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so. The guarantor who pays for a debtor, in turn, must be indemnified by the latter. However, the guarantor cannot be compelled to pay the creditor unless the latter has exhausted all the property of the debtor and resorted to all the legal remedies against the debtor. This is what is otherwise known as the benefit of excussion.

5. ID.; ID.; ID.; ID.; CONDITION FOR INVOCATION OF THE DEFENSE OF EXCUSSION.— The afore-quoted provision imposes a condition for the invocation of the defense of excussion. Article 2060 of the Civil Code clearly requires that in order for the guarantor to make use of the benefit of excussion, he must set it up against the creditor upon the latter's demand for payment and point out to the creditor available property of the debtor within the Philippines sufficient to cover the amount of the debt.

6. ID.; ID.; ID.; ID.; WHEN EXCUSSION SHALL NOT TAKE PLACE; CASE AT BAR.— Worthy of note as well is the Sheriff's return stating that the only property of Macrogen Realty which he found was its deposit of ₱20,242.23 with the Planters Bank. Article 2059(5) of the Civil Code thus finds application and precludes petitioner from interposing the defense of excussion. We quote: Art. 2059. This excussion shall not take place: x x x (5) If it may be presumed that an execution on the property of the principal debtor would not result in the satisfaction of the obligation. As the Court of Appeals correctly ruled: We find untenable the claim that the [herein petitioner] Benjamin Bitanga cannot be compelled to pay Pyramid because the Macrogen Realty has allegedly sufficient assets. Reason: The said [petitioner] had not genuinely

controverted the return made by Sheriff Joseph F. Bisnar, who affirmed that, after exerting diligent efforts, he was not able to locate any property belonging to the Macrogen Realty, except for a bank deposit with the Planter's Bank at Buendia, in the amount of ₱20,242.23. It is axiomatic that the liability of the guarantor arises when the insolvency or inability of the debtor to pay the amount of debt is proven by the return of the writ of execution that had not been unsatisfied.

APPEARANCES OF COUNSEL

Mario C.V. Jalandoni for petitioner.
Voltaire Francisco B. Banzon for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Assailed in this Petition for Review under Rule 45[1] of the Revised Rules of Court are: (1) the Decision[2] dated 11 April 2006 of the Court of Appeals in CA-G.R. CV No. 78007 which affirmed with modification the partial Decision[3] dated 29 November 2002 of the Regional Trial Court (RTC), Branch 96, of Quezon City, in Civil Case No. Q-01-45041, granting the motion for summary judgment filed by respondent Pyramid Construction and Engineering Corporation and declaring petitioner Benjamin Bitanga and his wife, Marilyn Bitanga (Marilyn), solidarily liable to pay ₱6,000,000.00 to respondent; and (2) the Resolution[4] dated 5 July 2006 of the appellate court in the same case denying petitioner's Motion for Reconsideration.

The generative facts are:

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[1] Appeal by *Certiorari* to the Supreme Court.

[2] Penned by Associate Justice Renato C. Dacudao with Associate Justices Mario L. Guariña III and Fernanda Lampas-Peralta, concurring. *Rollo*, pp. 37-52.

[3] Penned by Judge Lucas P. Bersamin (now a Justice of the Court of Appeals).

[4] *Rollo*, pp. 61-64.

On 6 September 2001, respondent filed with the RTC a Complaint for specific performance and damages with application for the issuance of a writ of preliminary attachment against the petitioner and Marilyn. The Complaint was docketed as Civil Case No. Q-01-45041.

Respondent alleged in its Complaint that on 26 March 1997, it entered into an agreement with Macrogen Realty, of which petitioner is the President, to construct for the latter the Shoppers Gold Building, located at Dr. A. Santos Avenue corner Palayag Road, Sucat, Parañaque City. Respondent commenced civil, structural, and architectural works on the construction project by May 1997. However, Macrogen Realty failed to settle respondent's progress billings. Petitioner, through his representatives and agents, assured respondent that the outstanding account of Macrogen Realty would be paid, and requested respondent to continue working on the construction project. Relying on the assurances made by petitioner, who was no less than the President of Macrogen Realty, respondent continued the construction project.

In August 1998, respondent suspended work on the construction project since the conditions that it imposed for the continuation thereof, including payment of unsettled accounts, had not been complied with by Macrogen Realty. On 1 September 1999, respondent instituted with the Construction Industry Arbitration Commission (CIAC) a case for arbitration against Macrogen Realty seeking payment by the latter of its unpaid billings and project costs. Petitioner, through counsel, then conveyed to respondent his purported willingness to amicably settle the arbitration case. On 17 April 2000, before the arbitration case could be set for trial, respondent and Macrogen Realty entered into a Compromise Agreement,[5] with petitioner acting as signatory for and in behalf of Macrogen Realty. Under the Compromise Agreement, Macrogen Realty agreed to pay respondent the total amount of ₱6,000,000.00 in six equal monthly installments, with each installment to be delivered on the 15th day of the month, beginning 15 June 2000. Macrogen Realty

[5] *Id.* at 93.

also agreed that if it would default in the payment of two successive monthly installments, immediate execution could issue against it for the unpaid balance, without need of judgment or decree from any court or tribunal. Petitioner guaranteed the obligations of Macrogen Realty under the Compromise Agreement by executing a Contract of Guaranty[6] in favor of respondent,

[6] GUARANTY

This Guaranty made and executed this 17th day of April 2000 at Makati City, Philippines, by and between:

Benajamin M. Bitanga, of legal age, Filipino, married, with **office address located at 314 Sen. Gil Puyat Avenue, Makati City** (hereafter referred to as the "Guarantor")

— in favor of –

PYRAMID CONSTRUCTION ENGINEERING CORPORATION, a corporation organized and existing under the laws of the Republic of the Philippines, with office address located at Pyramid Building, 124 Kaingin Road, Balintawak, Quezon City, represented herein by its duly authorized representative, Mr. Engracio Ang, Jr. (hereafter referred to as "PYRAMID").

W I T N E S S E T H: That –

WHEREAS, on 17 April 2000, Pyramid and Macrogen Realty Corporation (hereafter referred to as the "Debtor") executed a Compromise Agreement (hereafter referred to as "Agreement"), acknowledged before Jose Vicente B. Salazar Notary Public for Makati City, as Doc. No. 118, Page 25, Book No. 2, Series of 2000;

WHEREAS, in said Agreement, Macrogen, in order to put an end to CIAC Case No. 36-99, agreed to pay and Pyramid has agreed to accept the total amount of SIX MILLION PESOS (₱6,000,000.00), payable in six monthly installments, on the 15th day of each month, beginning in June 15, 2000;

WHEREAS, the Guarantor agrees to execute and deliver to Pyramid an irrevocable and unconditional guaranty for the due and punctual payment of the principal amount of Six Million Pesos (₱6,000,000.00) due and payable by the Debtor to Pyramid under the Agreement.

NOW, THEREFORE, for and in consideration of the foregoing and for other good and valuable consideration, receipt of which is hereby acknowledged by the Guarantor, the latter agrees as follows:

SECTION 1. SCOPE OF GUARANTY

1.1. The Guarantor hereby absolutely, unconditionally and irrevocably guarantees to Pyramid the full and complete payment by Debtor of the principal amount of Six Million pesos (₱6,000,000.00).

1.2. The Guarantor irrevocably and unconditionally agrees that this Guaranty shall be a continuing guaranty and as such shall remain in full force and effect

by virtue of which he irrevocably and unconditionally guaranteed the full and complete payment of the principal amount of liability of Macrogen Realty in the sum of ₱6,000,000.00. Upon joint motion of respondent and Macrogen Realty, the CIAC approved the Compromise Agreement on 25 April 2000.[7]

However, contrary to petitioner's assurances, Macrogen Realty failed and refused to pay all the monthly installments agreed upon in the Compromise Agreement. Hence, on 7 September 2000, respondent moved for the issuance of a writ of execution[8] against Macrogen Realty, which CIAC granted.

On 29 November 2000, the sheriff[9] filed a return stating that he was unable to locate any property of Macrogen Realty, except its bank deposit of ₱20,242.33, with the Planters Bank, Buendia Branch.

Respondent then made, on 3 January 2001, a written demand[10] on petitioner, as guarantor of Macrogen Realty, to pay the ₱6,000,000.00, or to point out available properties of the Macrogen Realty within the Philippines sufficient to cover the obligation guaranteed. It also made verbal demands on petitioner. Yet, respondent's demands were left unheeded.

Thus, according to respondent, petitioner's obligation as guarantor was already due and demandable. As to Marilyn's liability, respondent contended that Macrogen Realty was owned and controlled by petitioner and Marilyn and/or by corporations owned and controlled by them. Macrogen Realty is 99% owned by the Asian Appraisal Holdings, Inc. (AAHI), which in turn is 99% owned by Marilyn. Since the completion of the construction project would have redounded to the benefit of both petitioner

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and be binding on the Guarantor until all sums payable by the Debtor under and pursuant to the Agreement shall have been fully paid by the Debtor. (*Rollo*, pp. 136-137.)

[7] *Rollo*, p. 101.

[8] *Id.* at 104.

[9] *Id.* at 106.

[10] *Id.* at 202.

and Marilyn and/or their corporations; and considering, moreover, Marilyn's enormous interest in AAHI, the corporation which controls Macrogen Realty, Marilyn cannot be unaware of the obligations incurred by Macrogen Realty and/or petitioner in the course of the business operations of the said corporation.

Respondent prayed in its Complaint that the RTC, after hearing, render a judgment ordering petitioner and Marilyn to comply with their obligation under the Contract of Guaranty by paying respondent the amount of ₱6,000,000.00 (less the bank deposit of Macrogen Realty with Planter's Bank in the amount of ₱20,242.23) and ₱400,000.00 for attorneys fees and expenses of litigation. Respondent also sought the issuance of a writ of preliminary attachment as security for the satisfaction of any judgment that may be recovered in the case in its favor.

Marilyn filed a Motion to Dismiss,[11] asserting that respondent had no cause of action against her, since she did not co-sign the Contract of Guaranty with her husband; nor was she a party to the Compromise Agreement between respondent and Macrogen Realty. She had no part at all in the execution of the said contracts. Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of another corporation is not by itself a sufficient ground for disregarding the separate personality of the latter corporation. Respondent misread Section 4, Rule 3 of the Revised Rules of Court.

The RTC denied Marilyn's Motion to Dismiss for lack of merit, and in its Order dated 24 January 2002 decreed that:

> The Motion To Dismiss Complaint Against Defendant Marilyn Andal Bitanga filed on November 12, 2001 is denied for lack of merit considering that Sec. 4, Rule 3, of the Rules of Court (1997) specifically provides, as follows:
>
> "SEC. 4. Spouses as parties. – Husband and wife shall sue or be sued jointly, except as provided by law."

and that this case does not come within the exception.[12]

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[11] *Id.* at 120.

[12] *Rollo*, p. 124.

Petitioner filed with the RTC on 12 November 2001, his Answer[13] to respondent's Complaint averring therein that he never made representations to respondent that Macrogen Realty would faithfully comply with its obligations under the Compromise Agreement. He did not offer to guarantee the obligations of Macrogen Realty to entice respondent to enter into the Compromise Agreement but that, on the contrary, it was respondent that required Macrogen Realty to offer some form of security for its obligations before agreeing to the compromise. Petitioner further alleged that his wife Marilyn was not aware of the obligations that he assumed under both the Compromise Agreement and the Contract of Guaranty as he did not inform her about said contracts, nor did he secure her consent thereto at the time of their execution.

As a special and affirmative defense, petitioner argued that the benefit of excussion was still available to him as a guarantor since he had set it up prior to any judgment against him. According to petitioner, respondent failed to exhaust all legal remedies to collect from Macrogen Realty the amount due under the Compromise Agreement, considering that Macrogen Realty still had uncollected credits which were more than enough to pay for the same. Given these premise, petitioner could not be held liable as guarantor. Consequently, petitioner presented his counterclaim for damages.

At the pre-trial held on 5 September 2002, the parties submitted the following issues for the resolution of the RTC:

(1) whether the defendants were liable under the contract of guarantee dated April 17, 2000 entered into between Benjamin Bitanga and the plaintiff;

(2) whether defendant wife Marilyn Bitanga is liable in this action;

(3) whether the defendants are entitled to the benefit of excussion, the plaintiff on the one hand claiming that it gave due notice to the guarantor, Benjamin Bitanga, and the defendants contending that no proper notice was received by Benjamin Bitanga;

[13] *Id.* at 113.

(4) if damages are due, which party is liable; and

(5) whether the benefit of excussion can still be invoked by the defendant guarantor even after the notice has been allegedly sent by the plaintiff although proper receipt is denied.[14]

On 20 September 2002, prior to the trial proper, respondent filed a Motion for Summary Judgment.[15] Respondent alleged therein that it was entitled to a summary judgment on account of petitioner's admission during the pre-trial of the genuineness and due execution of the Contract of Guaranty. The contention of petitioner and Marilyn that they were entitled to the benefit of excussion was not a genuine issue. Respondent had already exhausted all legal remedies to collect from Macrogen Realty, but its efforts proved unsuccessful. Given that the inability of Macrogen Realty as debtor to pay the amount of its debt was already proven by the return of the writ of execution to CIAC unsatisfied, the liability of petitioner as guarantor already arose.[16] In any event, petitioner and Marilyn were deemed to have forfeited their right to avail themselves of the benefit of excussion because they failed to comply with Article 2060[17] of the Civil Code when petitioner ignored respondent's demand letter dated 3 January 2001 for payment of the amount he guaranteed.[18] The duty to collect the supposed receivables of Macrogen Realty from its creditors could not be imposed on respondent, since petitioner and Marilyn never informed respondent about such uncollected credits even after receipt of the demand letter for payment. The allegation of petitioner and Marilyn that they could not respond to respondent's demand letter since they did

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[14] *Id.* at 125-126.

[15] *Id.* at 127.

[16] *Machetti v. Hospicio de San Jose*, 43 Phil. 297, 301 (1922).

[17] Article 2060. In order that the guarantor may make use of the benefit of excussion, he must set it up against the creditor upon the latter's demand for payment from him, and point out to the creditor available property of the debtor within Philippine territory, sufficient to cover the amount of the debt.

[18] *Luzon Steel Corporation v. Sia*, 138 Phil. 62, 68 (1969).

not receive the same was unsubstantiated and insufficient to raise a genuine issue of fact which could defeat respondent's Motion for Summary Judgment. The claim that Marilyn never participated in the transactions that culminated in petitioner's execution of the Contract of Guaranty was nothing more than a sham.

In opposing respondent's foregoing Motion for Summary Judgment, petitioner and Marilyn countered that there were genuinely disputed facts that would require trial on the merits. They appended thereto an affidavit executed by petitioner, in which he declared that his spouse Marilyn could not be held personally liable under the Contract of Guaranty or the Compromise Agreement, nor should her share in the conjugal partnership be made answerable for the guaranty petitioner assumed, because his undertaking of the guaranty did not in any way redound to the benefit of their family. As guarantor, petitioner was entitled to the benefit of excussion, and he did not waive his right thereto. He never received the respondent's demand letter dated 3 January 2001, as Ms. Dette Ramos, the person who received it, was not an employee of Macrogen Realty nor was she authorized to receive the letter on his behalf. As a guarantor, petitioner could resort to the benefit of excussion at any time before judgment was rendered against him.[19] Petitioner reiterated that Macrogen Realty had uncollected credits which were more than sufficient to satisfy the claim of respondent.

On 29 November 2002, the RTC rendered a partial Decision, the dispositive portion of which provides:

> WHEREFORE, summary judgment is rendered ordering defendants SPOUSES BENJAMIN BITANGA and MARILYN ANDAL BITANGA to pay the [herein respondent], jointly and severally, the amount of ₱6,000,000.00, less ₱20,242.23 (representing the amount garnished bank deposit of MACROGEN in the Planters Bank, Buendia Branch); and the costs of suit.
>
> Within 10 days from receipt of this partial decision, the [respondent] shall inform the Court whether it shall still pursue the

[19] Article 2062 of the Civil Code.

rest of the claims against the defendants. Otherwise, such claims shall be considered waived.[20]

Petitioner and Marilyn filed a Motion for Reconsideration of the afore-quoted Decision, which the RTC denied in an Order dated 26 January 2003.[21]

In time, petitioner and Marilyn filed an appeal with the Court of Appeals, docketed as CA-G.R. CV 78007. In its Decision dated 11 April 2006, the appellate court held:

> UPON THE VIEW WE TAKE OF THIS CASE, THUS, the judgment appealed from must be, as it hereby is, MODIFIED to the effect that defendant-appellant Marilyn Bitanga is adjudged not liable, whether solidarily or otherwise, with her husband the defendant-appellant Benjamin Bitanga, under the compromise agreement or the contract of guaranty. No costs in this instance.[22]

In holding that Marilyn Bitanga was not liable, the Court of Appeals cited *Ramos v. Court of Appeals*,[23] in which it was declared that a contract cannot be enforced against one who is not a party to it. The Court of Appeals stated further that the substantial ownership of shares in Macrogen Realty by Marilyn Bitanga was not enough basis to hold her liable.

The Court of Appeals, in its Resolution dated 5 July 2006, denied petitioner's Motion for Reconsideration[24] of its earlier Decision.

Petitioner is now before us *via* the present Petition with the following assignment of errors:

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[20] The RTC was referring to the respondent's prayer for attorney's feesand expenses of litigation in its Complaint. The records, however, do not show that respondent acted pursuant to this directive of the RTC. *Rollo*, p. 374.

[21] *Rollo*, p. 376.

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

[23] G.R. No. 132196, 9 December 2005, 477 SCRA 85.

[24] *Rollo*, pp. 63-64.

I

THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE VALIDITY OF THE PARTIAL SUMMARY JUDGMENT BY THE REGIONAL TRIAL COURT OF QUEZON CITY, BRANCH 96, DESPITE THE CLEAR EXISTENCE OF DISPUTED GENUINE AND MATERIAL FACTS OF THE CASE THAT SHOULD HAVE REQUIRED A TRIAL ON THE MERITS.

II

THE COURT OF APPEALS GRAVELY ERRED IN NOT UPHOLDING THE RIGHT OF PETITIONER BENJAMIN M. BITANGA AS A MERE GUARANTOR TO THE BENEFIT OF EXCUSSION UNDER ARTICLES 2058, 2059, 2060, 2061, AND 2062 OF THE CIVIL CODE OF THE PHILIPPINES.[25]

As in the two courts below, it is petitioner's position that summary judgment is improper in Civil Case No. Q-01-45041 because there are genuine issues of fact which have to be threshed out during trial, to wit:

(A) Whether or not there was proper service of notice to petitioner considering the said letter of demand was allegedly received by one *Dette Ramos* at Macrogen office and not by him at his residence.

(B) Whether or not petitioner is entitled to the benefit of **excussion**?[26]

We are not persuaded by petitioner's arguments.

Rule 35 of the Revised Rules of Civil Procedure provides:

Section 1. *Summary judgment for claimant.* – A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof.

For a summary judgment to be proper, the movant must establish two requisites: (a) there must be no genuine issue as

[25] *Id.* at 443.

[26] *Id.* at 445-446.

to any material fact, except for the amount of damages; and (b) the party presenting the motion for summary judgment must be entitled to a judgment as a matter of law. Where, on the basis of the pleadings of a moving party, including documents appended thereto, no genuine issue as to a material fact exists, the burden to produce a genuine issue shifts to the opposing party. If the opposing party fails, the moving party is entitled to a summary judgment.[27]

In a summary judgment, the crucial question is: are the issues raised by the opposing party not genuine so as to justify a summary judgment?[28]

First off, we rule that the issue regarding the propriety of the service of a copy of the demand letter on the petitioner in his office is a sham issue. It is not a bar to the issuance of a summary judgment in respondent's favor.

A genuine issue is an issue of fact which requires the presentation of evidence as distinguished from an issue which is a sham, fictitious, contrived or false claim. To forestall summary judgment, it is essential for the non-moving party to confirm the existence of genuine issues, as to which he has substantial, plausible and fairly arguable defense, *i.e.*,[29] issues of fact calling for the presentation of evidence upon which reasonable findings of fact could return a verdict for the non-moving party, although a mere scintilla of evidence in support of the party opposing summary judgment will be insufficient to preclude entry thereof.

Significantly, petitioner does not deny the receipt of the demand letter from the respondent. He merely raises a howl on the impropriety of service thereof, stating that "the address to which the said letter was sent was not his residence but the office of Macrogen Realty, thus it cannot be considered as the correct

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[27] *Equitable PCI Bank v. Ong*, G.R. No. 156207, 15 September 2006, 502 SCRA 127, 129.

[28] *Wood Technology Corporation v. Equitable Banking Corporation*, G.R. No. 155394, 17 February 2005, 451 SCRA 725, 733.

[29] *Agbada v. Inter-Urban Developers, Inc.*, 438 Phil. 168, 190-191 (2002).

manner of conveying a letter of demand upon him in his personal capacity."[30]

Section 6, Rule 13 of the Rules of Court states:

> SEC. 6. *Personal service*. – Service of the papers may be made by delivering personally a copy to the party or his counsel, **or by leaving it in his office with his clerk or with a person having charge thereof.** If no person is found in his office, or his office is not known, or he has no office, then by leaving the copy, between the hours of eight in the morning and six in the evening, at the party's or counsel's residence, if known, with a person of sufficient age and discretion then residing therein.

The affidavit of Mr. Robert O. Pagdilao, messenger of respondent's counsel states in part:

> 2. On 4 January 2001, Atty. Jose Vicente B. Salazar, then one of the Associates of the ACCRA Law Offices, instructed me to deliver to the office of Mr. Benjamin Bitanga a letter dated 3 January 2001, pertaining to Construction Industry Arbitration Commission (hereafter, "CIAC") Case No. 99-56, entitled "*Pyramid Construction Engineering Corporation vs. Macrogen Realty Corporation*."
>
> 3. As instructed, I immediately proceeded to the office of Mr. Bitanga located at the 12th Floor, Planters Development Bank Building, **314 Senator Gil Puyat Avenue, Makati City**. I delivered the said letter to Ms. Dette Ramos, a person of sufficient age and discretion, who introduced herself as one of the employees of Mr. Bitanga and/or of the latter's companies.[31] (Emphasis supplied.)

We emphasize that when petitioner signed the Contract of Guaranty and assumed obligation as guarantor, his address in the said contract was the same address where the demand letter was served.[32] He does not deny that the said place of service, which is the office of Macrogen, was also the address that he used when he signed as guarantor in the Contract of Guaranty.

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[30] Records, p. 402.

[31] *Rollo*, p. 201.

[32] *Id.* at 98.

Nor does he deny that this is his office address; instead, he merely insists that the person who received the letter and signed the receiving copy is not an employee of his company. Petitioner could have easily substantiated his allegation by a submission of an affidavit of the personnel manager of his office that no such person is indeed employed by petitioner in his office, but that evidence was not submitted.[33] All things are presumed to have been done correctly and with due formality until the contrary is proved. This *juris tantum* presumption stands even against the most well-reasoned allegation pointing to some possible irregularity or anomaly.[34] It is petitioner's burden to overcome the presumption by sufficient evidence, and so far we have not seen anything in the record to support petitioner's charges of anomaly beyond his bare allegation. Petitioner cannot now be heard to complain that there was an irregular service of the demand letter, as it does not escape our attention that petitioner himself indicated "**314 Sen. Gil Puyat Avenue, Makati City**" as his office address in the Contract of Guaranty.

Moreover, under Section 6, Rule 13 of the Rules of Court, there is sufficiency of service when the papers, or in this case, when the demand letter is personally delivered to the party or his counsel, **or by leaving it in his office with his clerk or with a person having charge thereof**, such as what was done in this case.

We have consistently expostulated that in summary judgments, the trial court can determine a genuine issue on the basis of the pleadings, admissions, documents, affidavits or counter affidavits submitted by the parties. When the facts as pleaded appear uncontested or undisputed, then there is no real or genuine issue or question as to any fact, and summary judgment is called for.[35]

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[33] *Omnia praesemuntur rite et solemniter esse acta donee probetur in contrarium.*

[34] *Gold Line Transit, Inc. v. Ramos*, 415 Phil. 492, 502-503 (2001).

[35] *Rivera v. Solidbank*, G.R. No. 163269, 19 April 2006, 487 SCRA 512, 535.

The Court of Appeals was correct in holding that:

> Here, the issue of non-receipt of the letter of demand is a sham or pretended issue, not a genuine and substantial issue. Indeed, against the positive assertion of Mr. Roberto O. Pagdilao (the private courier) in his affidavit that he delivered the subject letter to a certain Ms. Dette Ramos who introduced herself as one of the employees of [herein petitioner] Mr. Benjamin Bitanga and/or of the latter's companies, said [petitioner] merely offered a bare denial. But bare denials, unsubstantiated by facts, which would be admissible in evidence at a hearing, are not sufficient to raise a genuine issue of fact sufficient to defeat a motion for summary judgment.[36]

We further affirm the findings of both the RTC and the Court of Appeals that, given the settled facts of this case, petitioner cannot avail himself of the benefit of excussion.

Under a contract of guarantee, the guarantor binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so. The guarantor who pays for a debtor, in turn, must be indemnified by the latter. However, the guarantor cannot be compelled to pay the creditor unless the latter has exhausted all the property of the debtor and resorted to all the legal remedies against the debtor. This is what is otherwise known as the benefit of excussion.[37]

Article 2060 of the Civil Code reads:

> Art. 2060. In order that the guarantor may make use of the benefit of excussion, he must set it up against the creditor upon the latter's demand for payment from him, and point out to the creditor available property of the debtor within Philippine territory, sufficient to cover the amount of the debt.[38]

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[36] *Rollo,* pp. 47-48.

[37] *JN Development Corporation v. Philippine Export and Foreign Loan Guarantee Corporation*, G.R. No. 151060, 31 August 2005, 468 SCRA 554, 564.

[38] Other relevant provisions of the Civil Code reads:

> Art. 2058. The guarantor cannot be compelled to pay the creditor unless the latter has exhausted all the property of the debtor, and has resorted to all the legal remedies against the debtor.

The afore-quoted provision imposes a condition for the invocation of the defense of excussion. Article 2060 of the Civil Code clearly requires that in order for the guarantor to make use of the benefit of excussion, he must set it up against the creditor upon the latter's demand for payment and point out to the creditor available property of the debtor within the Philippines sufficient to cover the amount of the debt.[39]

It must be stressed that despite having been served a demand letter at his office, petitioner still failed to point out to the respondent properties of Macrogen Realty sufficient to cover its debt as required under Article 2060 of the Civil Code. Such failure on petitioner's part forecloses his right to set up the defense of excussion.

Worthy of note as well is the Sheriff's return stating that the only property of Macrogen Realty which he found was its deposit of ₱20,242.23 with the Planters Bank.

Article 2059(5) of the Civil Code thus finds application and precludes petitioner from interposing the defense of excussion. We quote:

> Art. 2059. This excussion shall not take place:
>
> xxx xxx xxx
>
> (5) If it may be presumed that an execution on the property of the principal debtor would not result in the satisfaction of the obligation.

Art. 2061. The guarantor having fulfilled all the conditions required in the preceding article, the creditor who is negligent in exhausting the property pointed out shall suffer the loss, to the extent of said property, for the insolvency of the debtor resulting from such negligence.

Art. 2062. In every action by the creditor, which must be against the principal debtor alone, except in the cases mentioned in article 2059, the former shall ask the court to notify the guarantor of the action. The guarantor may appear so that he may, if he so desire, set up such defenses as are granted him by law. The benefit of excussion mentioned in article 2058 shall always be unimpaired, even if judgment should be rendered against the principal debtor and the guarantor in case of appearance by the latter.

[39] *JN Development Corporation v. Philippine Export and Foreign Loan Guarantee Corporation*, *supra* note 37.

As the Court of Appeals correctly ruled:

> We find untenable the claim that the [herein petitioner] Benjamin Bitanga cannot be compelled to pay Pyramid because the Macrogen Realty has allegedly sufficient assets. Reason: The said [petitioner] had not genuinely controverted the return made by Sheriff Joseph F. Bisnar, who affirmed that, after exerting diligent efforts, he was not able to locate any property belonging to the Macrogen Realty, except for a bank deposit with the Planter's Bank at Buendia, in the amount of ₱20,242.23. It is axiomatic that the liability of the guarantor arises when the insolvency or inability of the debtor to pay the amount of debt is proven by the return of the writ of execution that had not been unsatisfied.[40]

IN ALL, we fail to point out any impropriety in the rendition of a summary judgment in favor of the respondent.

WHEREFORE, premises considered, the instant petition is *DENIED* for lack of merit. The Decision of the Court of Appeals dated 11 April 2006 and its Resolution dated 5 July 2006 are *AFFIRMED*. Costs against petitioner.

SO ORDERED.

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

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[40] *Rollo,* p. 48.

THIRD DIVISION

[G.R. Nos. 173654-765. August 28, 2008]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **TERESITA PUIG and ROMEO PORRAS,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; QUALIFIED THEFT; HOW COMMITTED.— Qualified Theft, as defined and punished under Article 310 of the Revised Penal Code, is committed as follows, *viz*: ART. 310. *Qualified Theft*. – The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, ***or with grave abuse of confidence***, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.

2. ID.; ID.; ELEMENTS.— To fall under the crime of Qualified Theft, the following elements must concur: 1. Taking of personal property; 2. That the said property belongs to another; 3. That the said taking be done with intent to gain; 4. That it be done without the owner's consent; 5. That it be accomplished without the use of violence or intimidation against persons, nor of force upon things; *6. That it be done with grave abuse of confidence.*

3. CIVIL LAW; LOAN; RELATIONSHIP BETWEEN BANKS AND DEPOSITORS IS THAT OF CREDITOR AND DEBTOR.— Banks, on the other hand, where monies are deposited, are considered the owners thereof. This is very clear not only from the express provisions of the law, but from established jurisprudence. The relationship between banks and depositors has been held to be that of creditor and debtor. Articles 1953 and 1980 of the New Civil Code, as appropriately pointed out by petitioner, provide as follows: Article 1953. A person who receives a loan of money or any other fungible thing acquires the ownership thereof, and is bound to pay to the creditor an

equal amount of the same kind and quality. Article 1980. Fixed, savings, and current deposits of money in banks and similar institutions shall be governed by the provisions concerning loan.

4. CRIMINAL LAW; QUALIFIED THEFT; COURT HAS CONSISTENTLY CONSIDERED THE ALLEGATIONS IN THE INFORMATION THAT EMPLOYEES ACTED WITH GRAVE ABUSE OF CONFIDENCE, TO THE DAMAGE AND PREJUDICE OF THE BANK, AS SUFFICIENT TO MAKE OUT A CASE OF QUALIFIED THEFT.— It is beyond doubt that tellers, Cashiers, Bookkeepers and other employees of a Bank who come into possession of the monies deposited therein enjoy the confidence reposed in them by their employer. In a long line of cases involving Qualified Theft, this Court has firmly established the nature of possession by the Bank of the money deposits therein, and the duties being performed by its employees who have custody of the money or have come into possession of it. The Court has consistently considered the allegations in the Information that such employees acted with grave abuse of confidence, to the damage and prejudice of the Bank, without particularly referring to it as owner of the money deposits, as sufficient to make out a case of Qualified Theft.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; STATE AS PARTY-IN-INTEREST.— On the theory of the defense that the DOJ is the principal party who may file the instant petition, the ruling in *Mobilia Products, Inc. v. Hajime Umezawa* is instructive. The Court thus enunciated: In a criminal case in which the offended party is the State, the interest of the private complainant or the offended party is limited to the civil liability arising therefrom. Hence, if a criminal case is dismissed by the trial court or if there is an acquittal, a reconsideration of the order of dismissal or acquittal may be undertaken, whenever legally feasible, insofar as the criminal aspect thereof is concerned and may be made only by the public prosecutor; or in the case of an appeal, by the State only, through the OSG. x x x.

6. ID.; CIVIL PROCEDURE; APPEALS; RULE 45; ONLY ERRORS OF LAW MAY BE RAISED.— On the alleged wrong mode of appeal by petitioner, suffice it to state that the rule is well-settled that in appeals by *certiorari* under Rule 45 of

the Rules of Court, only errors of law may be raised, and herein petitioner certainly raised a question of law.

7. ID.; CRIMINAL PROCEDURE; WARRANT OF ARREST; PROBABLE CAUSE FOR ITS ISSUANCE.— Pursuant to Section 6, Rule 112 of the Rules of Court, the judge shall issue a warrant of arrest only upon a finding of probable cause after personally evaluating the resolution of the prosecutor and its supporting evidence. ***Soliven v. Makasiar***, as reiterated in ***Allado v. Driokno,*** explained that probable cause for the issuance of a warrant of arrest is the existence of such facts and circumstances that would lead a reasonably discreet and prudent person to believe that an offense has been committed by the person sought to be arrested. The records reasonably indicate that the respondents may have, indeed, committed the offense charged.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

The Law firm of Lauron Delos Reyes & Partners and *Jose Gelacio Lira* for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review under Rule 45 of the Revised Rules of Court with petitioner People of the Philippines, represented by the Office of the Solicitor General, praying for the reversal of the Orders dated 30 January 2006 and 9 June 2006 of the Regional Trial Court (RTC) of the 6th Judicial Region, Branch 68, Dumangas, Iloilo, dismissing the 112 cases of Qualified Theft filed against respondents Teresita Puig and Romeo Porras, and denying petitioner's Motion for Reconsideration, in Criminal Cases No. 05-3054 to 05-3165.

The following are the factual antecedents:

On 7 November 2005, the Iloilo Provincial Prosecutor's Office filed before Branch 68 of the RTC in Dumangas, Iloilo, 112

cases of Qualified Theft against respondents Teresita Puig (Puig) and Romeo Porras (Porras) who were the Cashier and Bookkeeper, respectively, of private complainant Rural Bank of Pototan, Inc. The cases were docketed as Criminal Cases No. 05-3054 to 05-3165.

The allegations in the Informations[1] filed before the RTC were uniform and *pro-forma*, except for the amounts, date and time of commission, to wit:

INFORMATION

That on or about the 1st day of August, 2002, in the Municipality of Pototan, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, above-named [respondents], conspiring, confederating, and helping one another, ***with grave abuse of confidence,*** being the ***Cashier*** and ***Bookkeeper*** of the Rural Bank of Pototan, Inc., Pototan, Iloilo, without the knowledge and/or consent of the management of the Bank and with intent of gain, did then and there willfully, unlawfully and feloniously take, steal and carry away the sum of FIFTEEN THOUSAND PESOS (₱15,000.00), Philippine Currency, to the damage and prejudice of the said bank in the aforesaid amount.

After perusing the Informations in these cases, the trial court did not find the existence of probable cause that would have necessitated the issuance of a warrant of arrest based on the following grounds:

(1) the element of **'taking without the consent of the owners'** was missing on the ground that it is the depositors-clients, and not the Bank, which filed the complaint in these cases, who are the owners of the money allegedly taken by respondents and hence, are the real parties-in-interest; and

(2) the Informations are bereft of the phrase alleging "**dependence, guardianship or vigilance between the respondents and the offended party that would have created a high degree of confidence between them which the respondents could have abused**."

[1] Records, pp. 1, 170-391.

It added that allowing the 112 cases for Qualified Theft filed against the respondents to push through would be violative of the right of the respondents under Section 14(2), Article III of the 1987 Constitution which states that in all criminal prosecutions, the accused shall enjoy the right to be informed of the nature and cause of the accusation against him. Following Section 6, Rule 112 of the Revised Rules of Criminal Procedure, the RTC dismissed the cases on 30 January 2006 and refused to issue a warrant of arrest against Puig and Porras.

A Motion for Reconsideration[2] was filed on 17 April 2006, by the petitioner.

On 9 June 2006, an Order[3] denying petitioner's Motion for Reconsideration was issued by the RTC, finding as follows:

> Accordingly, the prosecution's Motion for Reconsideration should be, as it hereby, DENIED. The Order dated January 30, 2006 STANDS in all respects.

Petitioner went directly to this Court *via* Petition for Review on *Certiorari* under Rule 45, raising the sole legal issue of:

> WHETHER OR NOT THE 112 INFORMATIONS FOR QUALIFIED THEFT SUFFICIENTLY ALLEGE THE ELEMENT OF TAKING WITHOUT THE CONSENT OF THE OWNER, AND THE QUALIFYING CIRCUMSTANCE OF GRAVE ABUSE OF CONFIDENCE.

Petitioner prays that judgment be rendered annulling and setting aside the Orders dated 30 January 2006 and 9 June 2006 issued by the trial court, and that it be directed to proceed with Criminal Cases No. 05-3054 to 05-3165.

Petitioner explains that under Article 1980 of the New Civil Code, "fixed, savings, and current deposits of money in banks and similar institutions shall be governed by the provisions concerning simple loans." Corollary thereto, Article 1953 of the same Code provides that "a person who receives a loan of

[2] Records, pp. 490-495.

[3] *Id.* at 469-470.

money or any other fungible thing acquires the ownership thereof, and is bound to pay to the creditor an equal amount of the same kind and quality." Thus, it posits that the depositors who place their money with the bank are considered creditors of the bank. The bank acquires ownership of the money deposited by its clients, making the money taken by respondents as belonging to the bank.

Petitioner also insists that the Informations sufficiently allege all the elements of the crime of qualified theft, citing that a perusal of the Informations will show that they specifically allege that the respondents were the Cashier and Bookkeeper of the Rural Bank of Pototan, Inc., respectively, and that they took various amounts of money with grave abuse of confidence, and without the knowledge and consent of the bank, to the damage and prejudice of the bank.

Parenthetically, respondents raise procedural issues. They challenge the petition on the ground that a Petition for Review on *Certiorari via* Rule 45 is the wrong mode of appeal because a finding of probable cause for the issuance of a warrant of arrest presupposes evaluation of facts and circumstances, which is not proper under said Rule.

Respondents further claim that the Department of Justice (DOJ), through the Secretary of Justice, is the principal party to file a Petition for Review on *Certiorari,* considering that the incident was indorsed by the DOJ.

We find merit in the petition.

The dismissal by the RTC of the criminal cases was allegedly due to insufficiency of the Informations and, therefore, because of this defect, there is no basis for the existence of probable cause which will justify the issuance of the warrant of arrest. Petitioner assails the dismissal contending that the Informations for Qualified Theft sufficiently state facts which constitute (a) the qualifying circumstance of *grave abuse of confidence;* and (b) the element of *taking, with intent to gain and without the consent of the owner,* which is the Bank.

In determining the existence of probable cause to issue a warrant of arrest, the RTC judge found the allegations in the Information inadequate. He ruled that the Information failed to state facts constituting the qualifying circumstance of *grave abuse of confidence* and the element of *taking without the consent of the owner,* since the owner of the money is not the Bank, but the depositors therein. He also cites *People v. Koc Song,*[4] in which this Court held:

> There must be allegation in the information and proof of a relation, by reason of dependence, guardianship or vigilance, between the respondents and the offended party that has created a high degree of confidence between them, which the respondents abused.

At this point, it needs stressing that the RTC Judge based his conclusion that there was no probable cause simply on the insufficiency of the allegations in the Informations concerning the facts constitutive of the elements of the offense charged. This, therefore, makes the issue of sufficiency of the allegations in the Informations the focal point of discussion.

Qualified Theft, as defined and punished under Article 310 of the Revised Penal Code, is committed as follows, *viz*:

> ART. 310. *Qualified Theft*. – The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, ***or with grave abuse of confidence***, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance. (Emphasis supplied.)

Theft, as defined in Article 308 of the Revised Penal Code, requires the physical taking of another's property without violence or intimidation against persons or force upon things. The elements of the crime under this Article are:

1. Intent to gain;

[4] 63 Phil. 369, 371 (1936).

2. Unlawful taking;

3. Personal property belonging to another;

4. Absence of violence or intimidation against persons or force upon things.

To fall under the crime of Qualified Theft, the following elements must concur:

1. Taking of personal property;

2. That the said property belongs to another;

3. That the said taking be done with intent to gain;

4. That it be done without the owner's consent;

5. That it be accomplished without the use of violence or intimidation against persons, nor of force upon things;

6. *That it be done with grave abuse of confidence.*

On the sufficiency of the Information, Section 6, Rule 110 of the Rules of Court requires, *inter alia*, that the information must state the acts or omissions complained of as constitutive of the offense.

On the manner of how the Information should be worded, Section 9, Rule 110 of the Rules of Court, is enlightening:

> Section 9. *Cause of the accusation*. The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

It is evident that the Information need not use the exact language of the statute in alleging the acts or omissions complained of as constituting the offense. The test is whether it enables a person of common understanding to know the charge against him, and the court to render judgment properly.[5]

[5] *People v. Lab-eo*, 424 Phil. 482, 495 (2002).

The portion of the Information relevant to this discussion reads:

> [A]bove-named [respondents], conspiring, confederating, and helping one another, ***with grave abuse of confidence, being the Cashier and Bookkeeper*** of the Rural Bank of Pototan, Inc., Pototan, Iloilo, without the knowledge and/or consent of the management of the Bank x x x.

It is beyond doubt that tellers, Cashiers, Bookkeepers and other employees of a Bank who come into possession of the monies deposited therein enjoy the confidence reposed in them by their employer. Banks, on the other hand, where monies are deposited, are considered the owners thereof. This is very clear not only from the express provisions of the law, but from established jurisprudence. The relationship between banks and depositors has been held to be that of creditor and debtor. Articles 1953 and 1980 of the New Civil Code, as appropriately pointed out by petitioner, provide as follows:

> Article 1953. A person who receives a loan of money or any other fungible thing acquires the ownership thereof, and is bound to pay to the creditor an equal amount of the same kind and quality.
>
> Article 1980. Fixed, savings, and current deposits of money in banks and similar institutions shall be governed by the provisions concerning loan.

In a long line of cases involving Qualified Theft, this Court has firmly established the nature of possession by the Bank of the money deposits therein, and the duties being performed by its employees who have custody of the money or have come into possession of it. The Court has consistently considered the allegations in the Information that such employees acted with grave abuse of confidence, to the damage and prejudice of the Bank, without particularly referring to it as owner of the money deposits, as sufficient to make out a case of Qualified Theft. For a graphic illustration, we cite ***Roque v. People,***[6] where the accused teller was convicted for Qualified Theft based on this Information:

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[6] G.R. No. 138954, 25 November 2004, 444 SCRA 98, 100-101.

That on or about the 16th day of November, 1989, in the municipality of Floridablanca, province of Pampanga, Philippines and within the jurisdiction of his Honorable Court, the above-named accused ASUNCION GALANG ROQUE, being then employed as ***teller*** of the Basa Air Base Savings and Loan Association Inc. (BABSLA) with office address at Basa Air Base, Floridablanca, Pampanga, and as such was authorized and reposed with the responsibility to receive and collect capital contributions from its member/contributors of said corporation, and having collected and received in her capacity as teller of the BABSLA the sum of TEN THOUSAND PESOS (₱10,000.00), said accused, with intent of gain, ***with grave abuse of confidence and without the knowledge and consent of said corporation***, did then and there willfully, unlawfully and feloniously take, steal and carry away the amount of ₱10,000.00, Philippine currency, by making it appear that a certain depositor by the name of Antonio Salazar withdrew from his Savings Account No. 1359, when in truth and in fact said Antonio Salazar did not withdr[a]w the said amount of ₱10,000.00 to the damage and prejudice of BABSLA in the total amount of ₱10,000.00, Philippine currency.

In convicting the therein appellant, the Court held that:

[S]ince the teller occupies a position of confidence, and the bank places money in the teller's possession due to the confidence reposed on the teller, the felony of qualified theft would be committed.[7]

Also in ***People v. Sison***,[8] the Branch Operations Officer was convicted of the crime of Qualified Theft based on the Information as herein cited:

That in or about and during the period compressed between January 24, 1992 and February 13, 1992, both dates inclusive, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully and feloniously, with intent of gain and without the knowledge and consent of the owner thereof, take, steal and carry away the following, to wit:

Cash money amounting to ₱6,000,000.00 in different denominations belonging to the PHILIPPINE COMMERCIAL

[7] *Id.* at 119.

[8] 379 Phil. 363, 366-367 (2000).

INTERNATIONAL BANK (PCIBank for brevity), Luneta Branch, Manila represented by its Branch Manager, HELEN U. FARGAS, to the damage and prejudice of the said owner in the aforesaid amount of ₱6,000,000.00, Philippine Currency.

That in the commission of the said offense, herein accused acted with grave abuse of confidence and unfaithfulness, he being the ***Branch Operation Officer*** of the said complainant and as such he had free access to the place where the said amount of money was kept.

The judgment of conviction elaborated thus:

The crime perpetuated by appellant against his employer, the Philippine Commercial and Industrial Bank (PCIB), is Qualified Theft. Appellant could not have committed the crime had he not been holding the position of Luneta Branch Operation Officer which gave him not only sole access to the bank vault xxx. The management of the PCIB reposed its trust and confidence in the appellant as its Luneta Branch Operation Officer, and it was this trust and confidence which he exploited to enrich himself to the damage and prejudice of PCIB x x x.[9]

From another end, ***People v. Locson,***[10] in addition to ***People v. Sison***, described the nature of possession by the Bank. The money in this case was in the possession of the defendant as receiving teller of the bank, and the possession of the defendant was the possession of the Bank. The Court held therein that when the defendant, with grave abuse of confidence, removed the money and appropriated it to his own use without the consent of the Bank, there was taking as contemplated in the crime of Qualified Theft.[11]

Conspicuously, in all of the foregoing cases, where the Informations merely alleged the positions of the respondents; that the crime was committed with grave abuse of confidence, with intent to gain and without the knowledge and consent of the Bank, without necessarily stating the phrase being assiduously insisted upon by respondents, ***"of a relation by reason of***

[9] *Id.* at 385.

[10] 57 Phil. 325 (1932).

[11] *Id.*

dependence, guardianship or vigilance, between the respondents and the offended party that has created a high degree of confidence between them, which respondents abused,"[12] and without employing the word "owner" in lieu of the "Bank" were considered to have satisfied the test of sufficiency of allegations.

As regards the respondents who were employed as Cashier and Bookkeeper of the Bank in this case, there is even no reason to quibble on the allegation in the Informations that they acted with grave abuse of confidence. In fact, the Information which alleged grave abuse of confidence by accused herein is even more precise, as this is exactly the requirement of the law in qualifying the crime of Theft.

In summary, the Bank acquires ownership of the money deposited by its clients; and the employees of the Bank, who are entrusted with the possession of money of the Bank due to the confidence reposed in them, occupy positions of confidence. The Informations, therefore, sufficiently allege all the essential elements constituting the crime of Qualified Theft.

On the theory of the defense that the DOJ is the principal party who may file the instant petition, the ruling in *Mobilia Products, Inc. v. Hajime Umezawa*[13] is instructive. The Court thus enunciated:

> In a criminal case in which the offended party is the State, the interest of the private complainant or the offended party is limited to the civil liability arising therefrom. Hence, if a criminal case is dismissed by the trial court or if there is an acquittal, a reconsideration of the order of dismissal or acquittal may be undertaken, whenever legally feasible, insofar as the criminal aspect thereof is concerned and may be made only by the public prosecutor; or in the case of an appeal, by the State only, through the OSG. x x x.

On the alleged wrong mode of appeal by petitioner, suffice it to state that the rule is well-settled that in appeals by *certiorari* under Rule 45 of the Rules of Court, only errors of law may be

[12] *Rollo*, p. 158.

[13] G.R. No. 149357, 4 March 2005, 452 SCRA 736, 757.

raised,[14] and herein petitioner certainly raised a question of law.

As an aside, even if we go beyond the allegations of the Informations in these cases, a closer look at the records of the preliminary investigation conducted will show that, indeed, probable cause exists for the indictment of herein respondents. Pursuant to Section 6, Rule 112 of the Rules of Court, the judge shall issue a warrant of arrest only upon a finding of probable cause after personally evaluating the resolution of the prosecutor and its supporting evidence. ***Soliven v. Makasiar***,[15] as reiterated in ***Allado v. Driokno,***[16] explained that probable cause for the issuance of a warrant of arrest is the existence of such facts and circumstances that would lead a reasonably discreet and prudent person to believe that an offense has been committed by the person sought to be arrested.[17] The records reasonably indicate that the respondents may have, indeed, committed the offense charged.

Before closing, let it be stated that while it is truly imperative upon the fiscal or the judge, as the case may be, to relieve the respondents from the pain of going through a trial once it is ascertained that no probable cause exists to form a sufficient belief as to the guilt of the respondents, conversely, it is also equally imperative upon the judge to proceed with the case upon a showing that there is a *prima facie* case against the respondents.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is hereby *GRANTED*. The Orders dated 30 January 2006 and 9 June 2006 of the RTC dismissing Criminal Cases No. 05-3054 to 05-3165 are *REVERSED* and *SET ASIDE*. Let the corresponding Warrants of Arrest issue against herein respondents TERESITA PUIG and ROMEO PORRAS. The

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[14] *Reas v. Bonife*, G.R. Nos. 54348-49, 17 October 1990, 190 SCRA 493, 501.

[15] G.R. No. 82585, 14 November 1988, 167 SCRA 394.

[16] G.R. No. 113630, 5 May 1994, 32 SCRA 192, 201.

[17] *Id*.

RTC Judge of Branch 68, in Dumangas, Iloilo, is directed to proceed with the trial of Criminal Cases No. 05-3054 to 05-3165, inclusive, with reasonable dispatch. No pronouncement as to costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 173824. August 28, 2008]

PETER TARAPEN *y* CHONGOY, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WELL-SETTLED THAT THE MERE RELATIONSHIP OF A WITNESS TO THE VICTIM DOES NOT IMPAIR THE WITNESS' CREDIBILITY.— Petitioner brands Molly and Silmana Linglingen as biased witnesses, thus, unreliable, because they were town mates and co-vendors of the victim. The fact that these two witnesses were the victim's town mates and co-vendors did not necessarily make them biased witnesses. It is well-settled that the mere relationship of a witness to the victim does not impair the witness' credibility. On the contrary, a witness' relationship to a victim of a crime would even make his or her testimony more credible, as it would be unnatural for a relative, or a friend as in this case,

[*] Justice Teresita J. Leonardo-De Castro was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 16 January 2008.

who is interested in vindicating the crime, to accuse somebody other than the real culprit. A witness is said to be biased when his relation to the cause or to the parties is such that he has an incentive to exaggerate or give false color to his statements, or to suppress or to pervert the truth, or to state what is false. To warrant rejection of the testimony of a relative or friend, it must be clearly shown that, independently of the relationship, the testimony was inherently improbable or defective, or that improper or evil motives had moved the witness to incriminate the accused falsely.

2. ID.; ID.; PRESUMPTIONS; SUPPRESSION OF EVIDENCE; INSTANCES WHEN PRESUMPTION IS NOT APPLICABLE.— We do not find any suppression of evidence by the prosecution. The defense failed to specify which evidence was suppressed. It simply made a general statement that the prosecution witnesses allegedly did not tell the truth and thus deliberately suppressed material evidence favorable to the petitioner. The adverse presumption of suppression of evidence is not applicable when (1) the suppression is not willful; (2) the evidence suppressed or withheld is merely corroborative or cumulative; (3) the evidence is at the disposal of both parties; and (4) the suppression is an exercise of a privilege. In the case at bar, the prosecution witnesses who allegedly suppressed material evidence were presented in court and were cross-examined by the defense counsel. How then can the defense claim there was suppression? The defense counsel was able to question these witnesses, but failed to elicit the answer he wanted or needed to hear for the exoneration of his client.

3. ID.; ID.; TESTIMONY OF WITNESSES; CASE LAW IS UNEQUIVOCAL IN SAYING THAT THE TESTIMONY OF A WITNESS PREVAILS OVER AN AFFIDAVIT.— It is settled that certain discrepancies between declarations made in an affidavit and those made on the witness stand seldom could discredit the declarant. Sworn statements, being taken *ex parte*, are almost always incomplete and often inaccurate for various reasons, sometimes from partial suggestion or for want of suggestion and inquiries. They are generally inferior to the testimony of the witness given in open court. Our case law is unequivocal in saying that the testimony of a witness prevails over an affidavit. In short, affidavits are generally subordinated in importance to open-court declarations; or, more

bluntly stated, whenever there is inconsistency between an affidavit and the testimony of a witness in court, the testimony commands greater weight. The Court has consistently ruled that the alleged inconsistencies between the testimony of a witness in open court and his sworn statement before the investigators are not fatal defects that would justify the reversal of a judgment of conviction. In this case, when Mrs. Costales was confronted with this contradiction, she explained that she never told the police that the petitioner and the victim had a fistfight. What she said was they had a quarrel; that is, they faced each other and exchanged words.

4. ID.; ID.; PHYSICAL EVIDENCE; MEDICAL CERTIFICATE; GOVERNMENT PHYSICIANS; BY ACTUAL PRACTICE, ONLY GOVERNMENT PHYSICIANS, BY VIRTUE OF THEIR OATHS AS CIVIL SERVICE OFFICIALS, ARE COMPETENT TO EXAMINE PERSONS AND ISSUE MEDICAL CERTIFICATES WHICH WILL BE USED BY THE GOVERNMENT.— This Court believes in the findings made by Dr. Cala as contained in the medico-legal certificate he issued showing that the victim suffered injuries on the right side of his head, consistent with the declarations of prosecution witnesses that the victim was, from behind, struck with a shovel twice on the right side of the head. We give more weight to this medical certificate, because the same was issued by a government doctor. By actual practice, only government physicians, by virtue of their oaths as civil service officials, are competent to examine persons and issue medical certificates which will be used by the government. As such, the medical certificate carries the presumption of regularity in the performance of his functions and duties. Moreover, under Section 44, Rule 130, Revised Rules of Court, entries in official records made in the performance of official duty are *prima facie* evidence of the facts therein stated. Dr. Cala's findings that the victim sustained injuries on the right side of his head are, therefore, conclusive in the absence of evidence proving the contrary, as in this case. We cannot consider the contents of the medical certificate issued by Dr. Mensalvas sufficient to controvert the findings of Dr. Cala. As held by this Court, an unverified medical certificate not issued by a government physician is unreliable.

5. ID.; ID.; TESTIMONY OF WITNESSES; WELL-SETTLED IS THE RULE THAT THE TESTIMONY OF A WITNESS MAY BE BELIEVED IN PART AND DISBELIEVED IN ANOTHER.— Well-settled is the rule that the testimony of a witness may be believed in part and disbelieved in another, depending on the corroborative evidence or the probabilities and improbabilities of the case. Where a part of the testimony of a witness runs counter to the medical evidence submitted, it is within the sound discretion of the court to determine which portions of the testimony to reject as false and which to consider worthy of belief.

6. ID.; ID.; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S ASSESSMENT THEREOF GENERALLY DESERVES GREAT WEIGHT AND IS EVEN CONCLUSIVE AND BINDING.— We find the testimonies of the prosecution eyewitnesses more credible and convincing than those of the defense eyewitnesses. When it comes to credibility, the trial court's assessment deserves great weight and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly.

7. ID.; APPEALS; FINDINGS OF FACT OF TRIAL COURT IF AFFIRMED BY COURT OF APPEALS, GENERALLY CONCLUSIVE AND BINDING UPON THE COURT.— The Court of Appeals further affirmed the findings of the RTC. In this regard, it is settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court. We find no compelling reason to deviate from their findings.

8. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; REQUISITES.— Article 11, paragraph (1) of the Revised Penal Code, provides for the elements and/or requisites in order that a plea of self-defense may be validly considered in absolving a person from criminal liability, *viz*: ART. 11. *Justifying circumstances*. – The following do not incur any criminal liability: 1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur; First. Unlawful aggression; Second. Reasonable necessity of

the means employed to prevent or repel it; Third. Lack of sufficient provocation on the part of the person defending himself.

9. ID.; ID.; ID.; UNLAWFUL AGGRESSION; CONDITION *SINE QUA NON* FOR THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE, WHETHER COMPLETE OR INCOMPLETE.— Unlawful aggression is a condition *sine qua non* for the justifying circumstance of self-defense, whether complete or incomplete. Unlawful aggression presupposes an actual, sudden, and unexpected attack, or imminent danger thereof, and not merely a threatening or intimidating attitude. There must be actual physical force or a threat to inflict physical injury. In case of a threat, it must be offensive and positively strong so as to display a real, not imagined, intent to cause injury.

10. REMEDIAL LAW; EVIDENCE; BURDEN OF EVIDENCE; PLEA OF SELF-DEFENSE; TEXTBOOK DOCTRINE THAT BURDEN OF EVIDENCE SHIFTS TO THE ACCUSED TO SHOW THAT THE KILLING WAS JUSTIFIED.— Having admitted that he killed James, the burden of evidence that one acted in self-defense shifted to petitioner. Like an alibi, self-defense is inherently weak, for it is easy to fabricate. It is textbook doctrine that when self-defense is invoked, the burden of evidence shifts to the accused to show that the killing was justified, and that he incurred no criminal liability therefor. He must rely on the strength of his own evidence and not on the weakness of the prosecution's evidence, for, even if the latter were weak, it could not be disbelieved after his open admission of responsibility for the killing. Hence, he must prove the essential requisites of self-defense as aforementioned.

11. CRIMINAL LAW; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; CASE AT BAR.— We agree with the Court of Appeals when it appreciated in favor of the petitioner the mitigating circumstance of voluntary surrender. It was established that a few hours after the incident, petitioner submitted himself to his supervisors, who, in turn, surrendered him to the police authorities.

12. ID.; HOMICIDE; ONE MITIGATING CIRCUMSTANCE; NO AGGRAVATING CIRCUMSTANCE; PENALTY.— The penalty for homicide under Article 249 of the Revised Penal Code is *reclusion temporal*. However, considering that there

is one mitigating circumstance and no aggravating circumstance in the commission of the crime, the imposable penalty, following Article 64(2) of the Revised Penal Code, is *reclusion temporal* in its minimum period or within the range of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. Applying the Indeterminate Sentence Law, the maximum penalty to be imposed shall be taken from the minimum period of *reclusion temporal*, while the minimum shall be taken from within the range of the penalty next lower in degree, which is *prision mayor* or from six (6) years and one (1) day to twelve (12) years.

13. CIVIL LAW; DAMAGES; DEATH; CIVIL LIABILITY OF ACCUSED.— When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.

14. ID.; ID.; ID.; ID.; CIVIL INDEMNITY; MANDATORY AND GRANTED TO HEIRS OF THE VICTIM WITHOUT NEED OF PROOF OTHER THAN COMMISSION OF THE CRIME.— Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime. Under prevailing jurisprudence, the award of ₱50,000.00 to the heirs of the victim as civil indemnity is in order.

15. ID.; ID.; ACTUAL DAMAGES; BEST EVIDENCE OBTAINABLE, SUCH AS RECEIPTS, NEEDED TO JUSTIFY AWARD.— As to actual damages, the heirs of the victim are entitled thereto, because said damages amounting to ₱51,549.25 were duly proved by receipts. It is necessary for a party seeking actual damages to produce competent proof or the best evidence obtainable, such as receipts, to justify an award therefor.

16. ID.; ID.; TEMPERATE DAMAGES; CAN NOT BE AWARDED WHERE ACTUAL DAMAGES ARE AWARDED.— The award of ₱25,000.00 as temperate damages in homicide or murder cases is proper when no evidence of burial and funeral expenses is presented in the trial court. Under Article 2224 of the Civil Code, temperate damages may be recovered, as it cannot be denied that the heirs of the victim

suffered pecuniary loss, although the exact amount was not proved. In the case on hand, temperate damages cannot be awarded, because evidence of expenses for burial and funeral has been presented for which actual damages have been awarded.

17. ID.; ID.; MORAL DAMAGES; MANDATORY; NO PROOF OTHER THAN DEATH OF VICTIM.— Moral damages must also be awarded because these are mandatory in cases of murder and homicide, without need of allegation and proof other than the death of the victim. The award of ₱50,000.00 as moral damages is in order.

18. ID.; ID.; EXEMPLARY DAMAGES; CAN NOT BE AWARDED WHERE NO AGGRAVATING CIRCUMSTANCE ACCOMPANIED COMMISSION OF THE CRIME.— As regards exemplary damages, Article 2230 of the Civil Code allows the award thereof as part of the civil liability when the crime was committed with one or more aggravating circumstances. There being no aggravating circumstance that accompanied the commission of the crime, exemplary damages cannot be awarded.

APPEARANCES OF COUNSEL

Molintas & Partners Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Assailed before Us is the Decision[1] of the Court of Appeals in CA-G.R. CR No. 26636, dated 31 January 2006, which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of Baguio City, Branch 3, convicting petitioner Peter Chongoy Tarapen of the crime of Homicide.

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[1] Penned by Associate Justice Rosalinda Asuncion-Vicente with Associate Justices Edgardo P. Cruz and Sesinando E. Villon, concurring; CA *rollo*, pp. 131-145.

[2] Records, pp. 347-358.

On 9 June 2000, petitioner was charged before the RTC of Baguio City with Frustrated Homicide for attacking and assaulting James Lacbao Pangoden.[3] The day after, the victim died from the injuries he sustained. As a consequence, an amended information was filed on 13 June 2000 charging petitioner with Homicide allegedly committed as follows:

> That on or about the 8th day of June, 2000, in the City of Baguio, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, with intent to kill, did then and there willfully, unlawfully and feloniously attack, and assault JAMES LACBAO PANGODEN, by hitting his head twice with a steel shovel, thereby inflicting upon the latter: Cardio-respiratory arrest secondary to cranio-cerebral injury, which directly caused his death.[4]

The case was raffled to Branch 3. When arraigned on 15 June 2000, petitioner, with the assistance of counsel *de oficio*, pleaded not guilty to the crime charged.[5]

On 10 October 2000, the pre-trial conference of the case was terminated with the trial court issuing its pre-trial order.[6]

The prosecution presented the following witnesses, namely: (1) Patricia S. Pangoden[7]; (2) Molly J. Linglingen[8]; (3) Silmana Linglingen[9]; (4) Virginia Costales[10]; (5) Dr. Lindo Mensalvas[11]; (6) Dr. Rizal Leo Cala[12]; and (7) Senior Police Officer (SPO)2 Juanito Meneses II.[13]

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[3] *Id.* at 1.

[4] *Id.* at 15.

[5] *Id.* at 51.

[6] *Id.* at 63-64.

[7] TSN, 12 February 2001.

[8] TSN, 7 May 2001.

[9] TSN, 8 May 2001.

[10] *Id.*

[11] TSN, 21 May 2001.

[12] TSN, 28 May 2001.

[13] *Id.*

The collective testimonies of the witnesses revealed:

At around 7:00 to 7:30 in the morning of 8 June 2000, a dump truck driven by Jimmy Pugoy arrived at Zandueta St., Baguio City, to collect garbage. He was accompanied by petitioner and Edmond Ferrer. The garbage truck came from lower Zandueta St. and proceeded to upper Zandueta St. Upon reaching the Hilltop Market, the truck turned around. During this time, vendors, including the victim James Pangoden, Molly J. Linglingen, Silmana Linglingen and Virginia Costales were peddling their wares along said street. Petitioner alighted from the truck and signaled to the driver to move slowly. Despite guiding the truck, said vehicle ran over the eggplants being sold by Virginia Costales. Petitioner picked up the vegetables and threw them towards the place where James was. This angered James because the flowers he was selling were soiled. An exchange of words ensued between petitioner and James.[14] Petitioner went to the back of the dump truck and got a shovel. He then moved in front of the truck where James was. While James was facing downwards, petitioner, coming from behind and holding the shovel with two hands, struck James on the head with the same, causing him to fall to the ground in a squatting position. As soon as James raised his head, petitioner hit the former's head again with the shovel. [15] Petitioner then ran away. James was brought to the Baguio General Hospital & Medical Center (BGHMC) in a taxi.

The wife of James, Patricia Pangoden, arrived at the BGHMC and saw her husband in the Emergency Room. Dr. Rizal Leo Cala refused to operate on her husband, saying that it was already hopeless. She then requested for the transfer of her husband to the Saint Louis University (SLU) Hospital. The request was approved, and her husband was transferred to SLU Hospital at 1:30 p.m. James was operated on, and Patricia was told that her husband had no more chance to live. She was advised to bring home James; otherwise, they would just be spending so much. Patricia brought her husband to his hometown in

[14] TSN, 8 May 2001, pp. 35-37.

[15] TSN, 7 May 2001, pp. 11-16; 8 May 2001, pp. 5-7, 12-13, 38.

Namatugan, Sudipen, La Union, where he expired on 10 June 2000.[16]

Patricia S. Pangoden testified on the events that happened to her husband from the time he was bought to the hospital until the time he died. She also testified on the expenses she incurred as a result of the incident.[17]

Molly J. Linglingen and Silmana Linglingen, mother and daughter, and co-vendors of James at Zandueta St., testified that they saw petitioner get a shovel from the rear of the garbage truck, approach James from behind, and hit him with it twice on the head.

Virginia Costales recounted the events prior to her seeing James already slumped on the ground. She narrated that when the garbage truck was going down Zandueta St., petitioner got off from the truck and guided it. The truck ran over the eggplants she was selling. Petitioner picked them up and threw them to where James was. James, she said, got angry because the flowers he was selling were soiled. Petitioner and James exchanged words. While the two were exchanging words, she transferred her sack of eggplants to a nearby place. It was then that she heard people shouting. When she turned around, she saw James already slumped on the ground oozing with blood.

Dr. Lindo Mensalvas and Dr. Rizal Leo Cala, physicians at the SLU Hospital and BGHMC, respectively, attended to the victim. They respectively issued a medico-legal certificate containing the injuries sustained by the victim.[18]

SPO2 Juanito Meneses II, assigned at Police Community Precinct 1, Baguio City, was the investigator to whom the case of petitioner was turned over. At around 10:00 a.m. of 8 June

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[16] TSN, 12 February 2001, pp.5-9; Exh. B; records, p. 230.

[17] *Id.* at 9-17.

[18] Exh. C – Certificate issued by Dr. Mensalvas (SLU Hospital – Private Hospital); records, p. 231.

Exh. D – Certificate issued by Dr. Cala (BGHMC – Government Hospital); records, p. 232.

2000, the Division Chief of the General Services Office of Baguio City turned the petitioner over to him. SPO2 Meneses disclosed that petitioner admitted to having inflicted injuries on the victim. The police officer disclosed that he did not notice any injury on Peter's body or face. He added that Peter did not request any medical treatment that morning. He brought Peter to the BGHMC for possible identification, but the victim was still unconscious. Upon going back to the police station, he took the statement of the victim's wife. He likewise identified the steel shovel[19] allegedly used in killing the victim.

The prosecution formally offered Exhibits "A" to "H", inclusive, with sub-markings which the trial court admitted.[20]

For the defense, the following took the witness stand: (1) Jimmy Pugoy,[21] (2) petitioner Peter Tarapen,[22] (3) Edmond Ferrer,[23] and (4) Dr. Maryjane Tipayno.[24]

The version of the defense as culled from these witnesses is as follows:

Jimmy Pugoy, petitioner Peter Tarapen and Edmond Ferrer are garbage collectors employed by the General Services Office of the City of Baguio. At around 3:00 a.m. of 8 June 2000, they started collecting garbage. At around 7:00 a.m., they arrived at Zandueta St. Half of said street was almost occupied by vendors who were selling various goods. In order to collect garbage piled on said street, the truck driven by Jimmy Pugoy had to go up the street then go down. While going down the street, Pugoy kept on honking the truck's horn, causing the vendors selling near the garbage pile to move away, but some of their goods were left behind. Ferrer alighted and started filling up the garbage basket with the use of a shovel. Peter saw

[19] Exh. "A".

[20] Records, pp. 226-229, 242.

[21] TSN, 12 February 2002.

[22] TSN, 18 February 2002.

[23] TSN, 26 February 2002.

[24] TSN, 12 March 2002.

a sack of eggplants pinned under the truck being removed by its owner. Peter helped the old woman carry the sack to the side of the road when, all of a sudden, James punched him hard on the right ear, causing him to fall and roll down the street. Peter ended up sitting on the ground. As he was getting up with his hands raised, James punched him again. Peter protested, saying he did not do anything wrong. James answered: "You people from the government are show-off[s]." Peter, still dizzy while getting up and still with hands raised, was kicked by James on the left side of the body. Peter fell on the road and rolled anew.[25] Feeling very dizzy, Peter tried to pick up something to throw at James to stop him, because he (Peter) thought James would kill him. At this moment, Edmond was coming to the aid of Peter, who was in front of the truck. Edmond carried with him the shovel he used to collect garbage. Edmond tried to help Peter stand. He put down the shovel on the ground. While in a sitting position, Peter was able to get hold of the shovel and swing it, hitting James who was approaching him and about to strike with a clenched fist. With the help of the shovel, Peter stood up and tried to leave. When James followed Peter, the latter hit him again with the shovel. Peter saw James boarding a taxi. After feeling a little better, Peter walked to his office and reported the matter to his supervisor.

Peter, accompanied by his supervisor, voluntarily surrendered to the police authorities. Per his request, he was brought to the hospital where he met James's wife who hit him on the back. To avoid trouble, he was brought to the City Jail. Upon posting bail, he went to the hospital for treatment.

Jimmy Pugoy testified on what he allegedly saw that fateful morning. He recounted that while he was maneuvering the garbage truck he was driving at Zandueta St., he saw petitioner Peter Tarapen go down the truck and help an old woman, who was in front of the truck, carry a sack of eggplants. At that moment, a person (James) went near Peter and suddenly punched him on the face, causing him to fall and roll down the street. When Peter stood up with his hands raised, James punched

[25] TSN, 12 February 2002, pp. 4-8,

him again on the face, making the latter fall and roll again. Peter stood up a second time with his hands up. This time, he said, James delivered a flying kick, which hit Peter on the stomach. Peter fell and rolled once more. After this, Jimmy no longer saw what happened, because the people had gathered, and he parked the truck. After parking the vehicle, what he saw was a man lying on the ground. He went back to the office and gave a report.

Edmond Ferrer narrated that at around 7:00 a.m. of 8 July 2000, he was with Jimmy Pugoy and Peter Tarapen at Zandueta St. collecting garbage. He was with Peter hanging at the back of the truck. When the vehicle stopped, Peter alighted and went in front of the vehicle. Jimmy also went down, taking with him the shovel and the garbage basket. While Peter was settling some things in front, he placed the garbage inside the basket. After filling up the basket and before he could load it into the truck, he heard people shouting in front of the vehicle. As there was a commotion, he proceeded to the front of the vehicle carrying the shovel he was using. He saw Peter sitting on the ground shaking his head. He went near Peter, put down the shovel and tried to help him stand up. A person approached and was about to hit Peter, when the latter got hold of the shovel, swung it and hit this person. The person remained standing. Peter was able to stand and was turning around to leave, but the person whom he hit with the shovel was about to follow him in order to punch him. Peter hit this person one more time, causing the latter to fall down. Seeing Peter leave, he also left.

Petitioner testified that at the time the incident subject of this case happened, he was in Zandueta St. to collect garbage. He was riding the garbage truck driven by Jimmy Pugoy. Since the driver was continuously blowing the horn of the vehicle, he went down the truck and saw a sack of eggplants under the vehicle. The owner of the sack of eggplants approached him and asked him to help her. He helped the old woman remove the sack under the truck and carry it to the side of the road. After that, he said someone (James) punched him at the right side of the head, which caused him to fall and sit on the road.

As he was getting up with his hands raised, James said, "*Nalastog kayo nga taga-gobierno*," and then punched him for the second time. He was a little dizzy and was again getting up when he was kicked on the left side of his body. Feeling very dizzy, he tried to pick up something to throw at James. While sitting, he got hold of a shovel which he swung, hitting James. Peter said he got up to run away, but James followed him. It was then that Peter hit him again with the shovel. He went to their office and he was accompanied by his supervisor in surrendering to the police. He added that he asked the policemen to bring him to the hospital, because his ear was aching. It was on 16 July 2000 that he was able to have a medical examination of his ears.

Dr. Maryjane Tipayno, physician at the BGHMC, testified that she performed an audio logic test on petitioner on 16 June 2000. She found out that petitioner had mild hearing loss on the left ear and severe hearing loss on the right ear.[26] She said that the hearing condition of petitioner could not have been self-inflicted. She explained that the hearing loss in both ears could have started years before. She added that it was Dr. Vinluan who interviewed the petitioner, and that it was petitioner who told him that the hearing loss in his right ear was due to a blunt trauma.

After formally offering Exhibits "1" and "2" and with the admission thereof by the trial court, the defense rested its case.[27]

As rebuttal witnesses, the prosecution presented Molly Linglingen, who said that petitioner was standing up when he hit James twice on the head with a shovel. He explained that James was standing with his back turned, when Peter came from behind and hit him.[28]

On 20 June 2002, the trial court convicted petitioner of Homicide in a decision the dispositive portion of which reads:

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[26] Exhs. "A" and "B"; records, pp. 312-313.

[27] Records, pp. 311 and 321.

[28] TSN, 23 April 2002.

WHEREFORE, the Court finds accused Peter Tarapen GUILTY beyond reasonable doubt for the crime of Homicide and he is hereby sentenced to suffer the penalty of imprisonment at the National Penitentiary, Muntinlupa City from Fourteen (14) Years as Minimum to Twenty (20) Years as Maximum. Peter Tarapen shall also indemnify private complainant Patricia Pangoden the following amounts: One Hundred Ninety Five Thousand Eighty Pesos and 05/100 (₱195,080.05), representing the expenses for hospitalization, funeral and burial; Moral Damages to Patricia Pangoden in the amount of Three Hundred Thousand Pesos (₱300,000.00) and Death Indemnity of Fifty Thousand Pesos (₱50,000.00), and Loss of Earning Capacity in the amount of Three Million One Hundred Thirty Five Thousand Seven Hundred Twenty Pesos (₱3,680,800.05), plus costs of suit against the accused.[29]

The trial court gave credence to the testimonies of the prosecution witnesses Molly J. Linglingen, Silmana Linglingen and Virginia Costales as against the testimonies of defense witnesses Jimmy Pugoy, petitioner Peter Tarapen and Edmond Ferrer. The trial court found the prosecution's version of the incident credible. The trial court said Virginia Costales saw the first part of the incident, which was the heated argument between petitioner and the victim involving the victim's soiled goods, while Molly J. Linglingen and Silmana Linglingen witnessed the second part of the incident when petitioner went to the back portion of the garbage truck and got a shovel with which he hit the victim from the back, twice on the head, resulting in his death. Having had the opportunity to observe them, it was convinced that they were telling the truth *vis-à-vis* the defense witnesses who were lying, as can be seen from their hesitant answers and evasive looks when they testified for the petitioner who was a co-employee.

The trial court likewise did not appreciate self-defense in favor of petitioner, who struck the unarmed victim from the back, twice on the head.

[29] Records, p. 358.

On 8 July 2002, petitioner filed a Motion for Reconsideration[30] which the trial court denied on 16 July 2002.[31] On 23 July 2002, petitioner filed a Notice of Appeal.[32] In an Order[33] dated 29 July 2002, the trial court, finding the notice of appeal to have been seasonably filed, forwarded the records of the case to the Court of Appeals.

On 31 January 2006, the Court of Appeals rendered a decision, affirming with modification the decision of the trial court convicting petitioner Peter Chongoy Tarapen of the crime of Homicide, the decretal portion reading:

> WHEREFORE, in view of all the foregoing, the decision dated June 20, 2002 of Branch 3 of the Regional trial Court of Baguio City in Criminal Case No. 17792-R finding accused-appellant Peter Tarapen *y* Chongoy guilty beyond reasonable doubt of the crime of homicide is ***AFFIRMED*** with modification. Accused-appellant is sentenced to suffer the penalty of eight (8) years of *prision mayor*, AS MINIMUM, to fourteen (14) years of *reclusion temporal*, AS MAXIMUM, and **ordered** to pay the heirs of the victim James Lacbao Pangoden the following amounts: ₱51,549.25 in actual damages, ₱50,000.00 as moral damages, ₱50,000.00 as civil indemnity and the sum of ₱1,960,200.00 representing lost earnings.[34]

On 8 March 2006, petitioner filed a Motion for Reconsideration,[35] on which the Office of the Solicitor General (OSG) filed its Comment.[36] On 6 July 2006, the Court of Appeals denied said motion.[37]

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[30] *Id.* at 362-366.

[31] *Id.* at 372.

[32] *Id.* at 373.

[33] *Id.* at 374.

[34] CA *rollo*, pp. 144-145.

[35] *Id.* at 146-150.

[36] *Id.* at 153-154.

[37] *Id.* at 158-159.

On 31 August 2006, petitioner, *via* registered mail, filed a petition for review with this Court, seeking the reversal of the decision of the Court of Appeals.[38]

In our Resolution[39] dated 2 October 2006, respondent People of the Philippines, through the OSG, was required to file its Comment on the petition. After three motions for extension to file comment on the petition, which were granted by this Court, the OSG filed its Comment on 5 February 2007.[40] On 12 March 2007, petitioner was required to file a Reply to the Comment, which he did on 11 December 2007.[41]

On 18 February 2008, the Court resolved to give due course to the petition for review on *certiorari* and required the parties to submit their respective memoranda within thirty (30) days from notice. Petitioner and respondent filed their respective memoranda on 2 May 2008 and 10 April 2008.[42]

Petitioner assails his conviction, arguing that both trial courts:

I. Erred in giving credence to the prosecution witnesses, despite the grave inconsistencies in their testimonies and not considering the testimonies of the witnesses for the defense showing manifest bias against the accused.

II. Erred in not acquitting the accused when the defense had sufficiently proved the existence of facts proving that indeed the accused was defending himself from James Pangoden.

III. Erred in not acquitting the accused based on reasonable doubt.[43]

On the first assigned error, petitioner contends that the testimonies of Molly and Silmana Linglingen that there was no prior quarrel or exchange of words between petitioner and James before the former hit the latter with a shovel, are contrary to

[38] *Rollo*, pp. 9-31.

[39] *Id.* at 67.

[40] *Id.* at 78-94.

[41] *Id.* at 98-108.

[42] *Id.* at 111-128, 129-153.

[43] *Id.* at 14.

human experience, because petitioner could not have taken the life of James, whom he did not personally know, for no reason at all.

This contention is untenable.

A review of the testimonies of both Molly and Silmana Linglingen shows they never said that petitioner and the victim did not have any prior quarrel or exchange of words before Peter hit James with the shovel. What they said was that they never witnessed any quarrel or exchange of words between Peter and James. They, however, declared in unison that they saw petitioner get a shovel from the back of the garbage truck and, coming from behind, twice struck James on the head with it. Both Molly and Silmana Linglingen never witnessed the events prior to Peter's act of getting the shovel. This void was substantially filled up by the testimony of Virginia Costales, who actually witnessed the altercation between the petitioner and the victim. Through the testimony of Mrs. Costales, it became clear why petitioner got the shovel, which he used in striking James twice on the head. By combining the testimonies of the three ladies, a picture of the incident has been wholly painted. The rage that Peter had in him was brought about by his squabble with James. The defense cannot, therefore, claim that Peter took the life of James for no reason at all.

Petitioner brands Molly and Silmana Linglingen as biased witnesses, thus, unreliable, because they were town mates and co-vendors of the victim. The fact that these two witnesses were the victim's town mates and co-vendors did not necessarily make them biased witnesses. It is well-settled that the mere relationship of a witness to the victim does not impair the witness' credibility. On the contrary, a witness' relationship to a victim of a crime would even make his or her testimony more credible, as it would be unnatural for a relative, or a friend as in this case, who is interested in vindicating the crime, to accuse somebody other than the real culprit.[44] A witness is said to be biased when his relation to the cause or to the parties is such that he has an incentive to exaggerate or give false color to his

[44] *People v. Romero*, 459 Phil. 484, 499 (2003).

statements, or to suppress or to pervert the truth, or to state what is false.[45] To warrant rejection of the testimony of a relative or friend, it must be clearly shown that, independently of the relationship, the testimony was inherently improbable or defective, or that improper or evil motives had moved the witness to incriminate the accused falsely.[46]

The friendship of Molly and Silmana Linglingen with the victim, per se, did not impair their credibility. We, like both lower courts, are convinced that they were telling the truth. Moreover, the defense failed to show any evidence that prosecution witnesses Molly and Silmana Linglingen had improper or evil motives to testify falsely against petitioner. This being the case, their testimonies are entitled to full faith and credit.

The defense accuses the prosecution witnesses of deliberately suppressing material evidence favorable to the petitioner. It thus argues that it may be safely presumed that such evidence, having been willfully suppressed, would be adverse if produced.

We do not find any suppression of evidence by the prosecution. The defense failed to specify which evidence was suppressed. It simply made a general statement that the prosecution witnesses allegedly did not tell the truth and thus deliberately suppressed material evidence favorable to the petitioner. The adverse presumption of suppression of evidence is not applicable when (1) the suppression is not willful; (2) the evidence suppressed or withheld is merely corroborative or cumulative; (3) the evidence is at the disposal of both parties; and (4) the suppression is an exercise of a privilege.[47] In the case at bar, the prosecution witnesses who allegedly suppressed material evidence were presented in court and were cross-examined by the defense counsel. How then can the defense claim there was suppression? The defense counsel was able to question these witnesses, but failed to elicit the answer he wanted or needed to hear for the exoneration of his client.

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[45] *People v. Ulgasan*, 390 Phil. 763, 778 (2000).

[46] *People v. Daen, Jr.*, 314 Phil. 280, 291 (1995).

[47] *People v. De Jesus*, G.R. No. 93852, 24 January 1992, 205 SCRA 383, 391.

The defense attacks the credibility of Virginia Costales by pointing out that her testimony in court, that she did not see petitioner and the victim engage in a fistfight, contradicts her declaration in her sworn statement that that two engaged in a fistfight.

Such inconsistency will not discredit her. It is settled that certain discrepancies between declarations made in an affidavit and those made on the witness stand seldom could discredit the declarant. Sworn statements, being taken *ex parte*, are almost always incomplete and often inaccurate for various reasons, sometimes from partial suggestion or for want of suggestion and inquiries. They are generally inferior to the testimony of the witness given in open court. Our case law is unequivocal in saying that the testimony of a witness prevails over an affidavit. In short, affidavits are generally subordinated in importance to open-court declarations; or, more bluntly stated, whenever there is inconsistency between an affidavit and the testimony of a witness in court, the testimony commands greater weight.[48] The Court has consistently ruled that the alleged inconsistencies between the testimony of a witness in open court and his sworn statement before the investigators are not fatal defects that would justify the reversal of a judgment of conviction.[49] In this case, when Mrs. Costales was confronted with this contradiction, she explained that she never told the police that the petitioner and the victim had a fistfight. What she said was they had a quarrel; that is, they faced each other and exchanged words.

The defense tries to destroy the version of Molly and Silmana Linglingen that the victim was hit from behind by arguing that same is not corroborated by medical findings. Molly and Silmana Linglingen's claim that James was hit on the right side of the head was, according to the defense, negated by the findings of Dr. Mensalvas that James suffered injuries on the "*left frontoparietal and left frontotemporo parietal"* areas of his head. The findings of Dr. Mensalvas mean that James was facing

[48] *People v. Ortiz*, 413 Phil. 592, 611 (2001).

[49] *People v. Sorila, Jr.*, G.R. No. 178540, 27 June 2008.

Peter when hit by the shovel contrary to the prosecution's claim that James was hit by Peter from behind.

We do not agree.

The defense relies too much on the findings made by Dr. Lindo Mensalvas and completely omits the findings made by Dr. Rizal Leo Cala. It must not be forgotten that the victim was brought to two hospitals where the attending doctors issued separate medico-legal certificates. The medico-legal certificate[50] issued by Dr. Cala of the BGHMC was marked Exh. "D". The one issued by Dr. Mensalvas was marked Exh. "C".

On the witness stand, Dr. Cala read his findings as follows:

> "Skull Fracture" meaning there is a break in the skull bone, "Linear" which is a straight line fracture, "parietal" area on the right side of the head, then we have "Epidural hematoma" it is a blood clot at the right side of the head.[51]

When cross-examined, he explained his findings as follows:

q Both injuries you found were on the front parietal area?

a Yes, Sir.

q Will you please demonstrate to us?

a (Witness demonstrating by pointing to the right side of his head.)

q Doctor, while you were demonstrating, the linear fracture, is it perpendicular to the head?

a I am sorry but it was injury to the right side of the head, Sir.

q Only part of the right ear?

a Yes, sir.

q If I am facing you, it is on your?

a Right, Sir.

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[50] Exh. "D"; Records, p. 232.

[51] TSN 28 May 2001, p. 9.

q Right side on your part. Did you find any injury on the left side?

a No, Sir.[52]

From the medico-legal certificate issued by Dr. Cala and with his testimony in court, it is clear that the victim suffered injuries on the right side of his head. Thus, the claim of Molly and Silmana Linglingen that the victim was struck from behind on the right side of his head is consistent with the findings of Dr. Cala.

Dr. Mensalvas, on the other hand, testified that the victim sustained four injuries, three of which were on the left side of the head and one on the right side. The medical certificate he issued states that the victim was confined for the following injuries:

1. ACCI; CEREBRAL CONTUSSION
2. EPIDURAL HEMATOMA, LEFT FRONTOPARIETAL AREA
3. SUTURED SCALP LACERATION, RIGHT TEMPOROPARIETAL AREA
4. SCALP CONTUSSION, LEFT FRONTOTEMPORO PARIETAL AREA WITH UNDERLYING LINEAR FRACTURE OF THE SKULL EXTENDING FROM THE LEFT FRONTAL TO THE LEFT TEMPORAL BONE.[53]

The question now is: which medical findings should this Court believe?

This Court believes in the findings made by Dr. Cala as contained in the medico-legal certificate he issued showing that the victim suffered injuries on the right side of his head, consistent with the declarations of prosecution witnesses that the victim was, from behind, struck with a shovel twice on the right side of the head. We give more weight to this medical certificate, because the same was issued by a government doctor. By actual

[52] *Id.* at 13.

[53] Exh. "C"; Records, p. 231.

practice, only government physicians, by virtue of their oaths as civil service officials, are competent to examine persons and issue medical certificates which will be used by the government.[54] As such, the medical certificate carries the presumption of regularity in the performance of his functions and duties. Moreover, under Section 44, Rule 130,[55] Revised Rules of Court, entries in official records made in the performance of official duty are *prima facie* evidence of the facts therein stated. Dr. Cala's findings that the victim sustained injuries on the right side of his head are, therefore, conclusive in the absence of evidence proving the contrary, as in this case. We cannot consider the contents of the medical certificate issued by Dr. Mensalvas sufficient to controvert the findings of Dr. Cala. As held by this Court, an unverified medical certificate not issued by a government physician is unreliable.[56]

Even assuming arguendo that we give more weight to the medical certificate issued by Dr. Mensalvas, this does not mean that the testimonies of Molly and Silmana Linglingen shall be disbelieved. It is noted that Dr. Mensalvas testified that the victim sustained a wound on the right side of his head, possibly caused by a steel shovel.[57] Such a finding is consistent with the claim of Molly and Silmana Linglingen that the victim was hit on the right side of the head. Though there can be inconsistencies of the testimonies of the witnesses with Dr. Mensalvas's other findings (*i.e.*, injuries on the left portion of the head) this does not mean that we should totally doubt and discard the other portions of their testimonies.

Well-settled is the rule that the testimony of a witness may be believed in part and disbelieved in another, depending on

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[54] *People v. Court of Appeals*, G.R. No. 144332, 10 June 2004, 431 SCRA 610, 621.

[55] SEC. 44. *Entries in official records*. – Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated.

[56] *People v. Court of Appeals*, *supra* note 54.

[57] TSN, 22 May 2001, p. 11.

the corroborative evidence or the probabilities and improbabilities of the case. Where a part of the testimony of a witness runs counter to the medical evidence submitted, it is within the sound discretion of the court to determine which portions of the testimony to reject as false and which to consider worthy of belief.[58]

From the two medical certificates issued, what cannot be doubted is the fact that the victim sustained head injuries, whether on the left or the right, which caused his demise.

We find the testimonies of the prosecution eyewitnesses more credible and convincing than those of the defense eyewitnesses. When it comes to credibility, the trial court's assessment deserves great weight and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly.[59]

The Court of Appeals further affirmed the findings of the RTC. In this regard, it is settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court. We find no compelling reason to deviate from their findings.

Petitioner claims that the trial court judge was not able to observe the demeanor of the prosecution witnesses, because they were looking at the court interpreter when they were testifying. We find this untenable. The trial court judge was emphatic in saying that he had the chance to see the face of the witness while she testified.[60]

On the second and third assigned errors, petitioner admits killing James but invokes self-defense. He claims that the victim

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[58] *People v. Cantuba*, 428 Phil. 817, 828 (2002).

[59] *People v. Escultor*, G.R. Nos. 149366-67, 27 May 2004, 429 SCRA 651, 661.

[60] TSN, 8 May 2001, p. 31.

was the unlawful aggressor and that he (petitioner) did not provoke the victim.

Article 11, paragraph (1) of the Revised Penal Code, provides for the elements and/or requisites in order that a plea of self-defense may be validly considered in absolving a person from criminal liability, *viz*:

> ART. 11. *Justifying circumstances*. – The following do not incur any criminal liability:
>
> 1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur;
>
> First. Unlawful aggression;
>
> Second. Reasonable necessity of the means employed to prevent or repel it;
>
> Third. Lack of sufficient provocation on the part of the person defending himself.

Having admitted that he killed James, the burden of evidence that one acted in self-defense shifted to petitioner. Like an alibi, self-defense is inherently weak, for it is easy to fabricate.[61] It is textbook doctrine that when self-defense is invoked, the burden of evidence shifts to the accused to show that the killing was justified, and that he incurred no criminal liability therefor. He must rely on the strength of his own evidence and not on the weakness of the prosecution's evidence, for, even if the latter were weak, it could not be disbelieved after his open admission of responsibility for the killing. Hence, he must prove the essential requisites of self-defense as aforementioned.[62]

Unlawful aggression is a condition *sine qua non* for the justifying circumstance of self-defense, whether complete or incomplete.[63] Unlawful aggression presupposes an actual, sudden,

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[61] *People v. Beltran, Jr.*, G.R. No. 168051, 27 September 2006, 503 SCRA 715, 735.

[62] *Sanchez v. People*, G.R. No. 161007, 6 December 2006, 510 SCRA 365, 369.

[63] *Toledo v. People*, G.R. No. 158057, 24 September 2004, 439 SCRA 94, 109.

and unexpected attack, or imminent danger thereof, and not merely a threatening or intimidating attitude.[64] There must be actual physical force or a threat to inflict physical injury. In case of a threat, it must be offensive and positively strong so as to display a real, not imagined, intent to cause injury.[65]

We agree with the Court of Appeals that petitioner failed to clearly and convincingly prove self-defense, whether complete or incomplete.

We confirm the observation of the trial court. A circumspect scrutiny of accused-appellant's version of what happened likewise leaves this Court unconvinced that he killed the victim James Pangoden in self-defense.

First, accused-appellant's claim that the victim James Pangoden, suddenly and without provocation, boxed him on his right ear is simply unbelievable. By his own account, he (accused-appellant) was at that moment helping a road vendor carry her sack of eggplants away from the path of the truck. If this is true, then his testimony that James Pangoden attacked and boxed him for no reason at all loses credibility. Testimonies to be believed must not only come from the mouth of credible witnesses but should by themselves be credible, reasonable, and in accord with human experience.

Second, it is likewise inconceivable how accused-appellant could have hit the victim James Pangoden twice in the head while he (accused-appellant) was allegedly in a sitting position and holding the shovel by the middle part of its shaft. Interestingly also, while accused-appellant and his witness testified that he was in a "sitting" position when he hit James Pangoden with the shovel, accused-appellant portrayed a different account when asked during cross-examination to demonstrate how he hit the victim, *viz*:

Q: Now, how did you hit Pangoden with the shovel, demonstrate it to the Court. All right you can step down from the witness stand (Witness demonstrating.)

For the record, witness was in a *kneeling* position when he got the shovel.

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[64] *People v. Cario*, 351 Phil. 644, 659 (1998).

[65] *Martinez v. Court of Appeals*, G.R. No. 168827, 13 April 2007, 521 SCRA 176, 195.

A: I was down on the ground, and I was groping (sic) to somebody and I was able to get hold of the shovel, that was the time I swang (*sic*) it towards him.

Q: You have not demonstrated how you hit Pangoden with the shovel?

For the record, witness is in a *kneeling* position when he allegedly picked up the shovel holding it in the middle part. With his two hands and swang (*sic*) it upwards towards his left.

For the record, accused held the shovel on the middle part of the shaft, your Honor, not on the handle.

Third, it simply goes against the grain of human experience for the victim James Pangoden to persist in his attack against accused-appellant after getting hit in the head with a steel shovel, considering that he is unarmed and had nothing to match accused-appellant's weapon on hand. That James Pangoden still had the resolution and power for a second assault on accused-appellant, *after getting hit with a steel shovel in the head*, flouts ordinary human capacity and nature. In contrast, accused-appellant would claim that he "fell down" and "felt dizzy" after getting boxed on the right side of his head by James Pangoden with his bare fist.

Fourth, accused-appellant himself admitted walking away from the crime scene immediately after the incident. As we see it, this actuation on his part is contrary to his assertion of self-defense. Flight strongly indicates a guilty mind and betrays the existence of a guilty conscience, for a righteous individual will not cower in fear and unabashedly admit the killing at the earliest possible opportunity if he were morally justified in doing so.

Finally, the nature and number of the fatal injuries inflicted upon James Pangoden negate accused-appellant's claim of self-defense. Said victim suffered cerebral contusion, epidural hematoma, scalp laceration and skull fracture, which directly caused his death. If accused-appellant hit the victim just to defend himself, it certainly defies reason why he had to aim for the head and do it twice. Indeed, the nature, number and location of the wounds sustained by the victim belie the assertion of self-defense since the gravity of said wounds is indicative of a determined effort to kill and not just to defend.

xxx xxx xxx

But even assuming *arguendo* that accused-appellant was able to establish the element of unlawful aggression, still, this Court will rule out self-defense.

It is undisputed that James Pangoden was unarmed while accused-appellant was armed with a steel shovel. There was no reasonable necessity for accused-appellant to use a steel shovel to repel the attack of an unarmed man. Moreover, the eyewitnesses' account of how accused-appellant uncaringly threw the soiled eggplants towards the direction of James Pangoden's goods would negate the absence of sufficient provocation on the part of accused-appellant. Thus, the second and third requisites for self-defense to be successfully invoked, namely, reasonable necessity of the means employed to repel the attack and lack of sufficient provocation on the part of the accused, are not present in this case.[66]

We now go to the imposition of the penalty. We agree with the Court of Appeals when it appreciated in favor of the petitioner the mitigating circumstance of voluntary surrender. It was established that a few hours after the incident, petitioner submitted himself to his supervisors, who, in turn, surrendered him to the police authorities.

Petitioner is guilty of Homicide for having killed James Pangoden. The penalty for homicide under Article 249 of the Revised Penal Code is *reclusion temporal*. However, considering that there is one mitigating circumstance and no aggravating circumstance in the commission of the crime, the imposable penalty, following Article 64(2) of the Revised Penal Code, is *reclusion temporal* in its minimum period or within the range of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. Applying the Indeterminate Sentence Law, the maximum penalty to be imposed shall be taken from the minimum period of *reclusion temporal*, while the minimum shall be taken from within the range of the penalty next lower in degree, which is *prision mayor* or from six (6) years and one (1) day to twelve (12) years.

The Court of Appeals sentenced petitioner to suffer the penalty of eight (8) years of *prision mayor*, as minimum, to fourteen

[66] *Rollo*, pp. 53-56.

(14) years of *reclusion temporal*, as maximum. We find this to be in order.

With respect to award of damages, the trial court awarded to the heirs of the victim the following amounts: ₱195,080.05 as actual damages; ₱300,000.00 as moral damages; ₱50,000.00 as death indemnity; and ₱3,135,720.00 for loss of earning capacity.

The Court of Appeals, except for the award of death indemnity, reduced the awards given by the trial court as follows: ₱51,549.25 as actual damages; ₱50,000.00 as moral damages and ₱1,960,200.00 for lost income.

When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.[67]

Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime.[68] Under prevailing jurisprudence,[69] the award of ₱50,000.00 to the heirs of the victim as civil indemnity is in order.[70]

As to actual damages, the heirs of the victim are entitled thereto, because said damages amounting to ₱51,549.25 were duly proved by receipts. It is necessary for a party seeking actual damages to produce competent proof or the best evidence obtainable, such as receipts, to justify an award therefor.[71]

Moral damages must also be awarded because these are mandatory in cases of murder and homicide, without need of

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[67] *People v. Beltran, Jr.*, *supra* note 61.

[68] *People v. Tubongbanua*, G.R. No. 171271, 31 August 2006, 500 SCRA 727, 742.

[69] *People v. Buban*, G.R. No. 170471, 11 May 2007, 523 SCRA 118, 134.

[70] *People v. Pascual*, G.R. No. 173309, 23 January 2007, 512 SCRA 385, 400.

[71] *People v. Jamiro*, 344 Phil. 700, 721-722 (1997).

allegation and proof other than the death of the victim.[72] The award of ₱50,000.00 as moral damages is in order.

The award of ₱25,000.00 as temperate damages in homicide or murder cases is proper when no evidence of burial and funeral expenses is presented in the trial court.[73] Under Article 2224 of the Civil Code, temperate damages may be recovered, as it cannot be denied that the heirs of the victim suffered pecuniary loss, although the exact amount was not proved.[74] In the case on hand, temperate damages cannot be awarded, because evidence of expenses for burial and funeral has been presented for which actual damages have been awarded.

As regards exemplary damages, Article 2230 of the Civil Code allows the award thereof as part of the civil liability when the crime was committed with one or more aggravating circumstances.[75] There being no aggravating circumstance that accompanied the commission of the crime, exemplary damages cannot be awarded.

The computation of the Court of Appeals with respect to lost earning capacity is correct. At the time of his death, the victim was 31 years old. His gross annual income was ₱120,000.00 because he was earning ₱10,000.00 monthly. Living expenses are estimated at 50% of the gross annual income. Loss of earning capacity is computed by applying the following formula:[76]

Net Earning Capacity	=	life expectancy [2/3(80-age at death)]	x	[Gross Annual Income (GAI) – living expenses (50% of GAI)]
	=	[2/3(80-31)]	x	[(GAI) – (50% of GAI)]

[72] *People v. Bajar*, 460 Phil. 683, 700 (2003).

[73] *People v. Eling*, G.R. No. 178546, 30 April 2008.

[74] *People v. Surongon*, G.R. No. 173478, 12 July 2007, 527 SCRA 577, 588.

[75] *People v. Eling, supra* 73.

[76] *People v. Nabong*, G.R. No. 172324, 3 April 2007, 520 SCRA 437, 456-457.

	= 2 (49) / 3	x	[₱120,000 – ₱60,000]
	= [98/3]	x	[₱60,000]
	= [32.67]	x	[₱60,000]
Net Earning Capacity of the victim	= ₱1,960,200.00		

WHEREFORE, all the foregoing considered, the decision of the Court of Appeals in CA-G.R. CR No. 26636, dated 31 January 2006, is *AFFIRMED in toto*. Costs against the petitioner.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 176942. August 28, 2008]

NICORP MANAGEMENT AND DEVELOPMENT CORPORATION, *petitioner, vs.* **LEONIDA DE LEON,** *respondent.*

[G.R. No. 177125. August 28, 2008]

SALVADOR R. LIM, *petitioner, vs.* **LEONIDA DE LEON,** *respondent.*

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[*] Justice Antonio T. Carpio was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 30 October 2007.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM LAW; TENANCY; ESSENTIAL ELEMENTS WHICH MUST CONCUR.— There is a tenancy relationship if the following essential elements concur: 1) the parties are the landowner and the tenant or agricultural lessee; 2) the subject matter of the relationship is an agricultural land; 3) there is consent between the parties to the relationship; 4) the purpose of the relationship is to bring about agricultural production; 5) there is personal cultivation on the part of the tenant or agricultural lessee; and 6) the harvest is shared between landowner and tenant or agricultural lessee. All the foregoing requisites must be proved by substantial evidence and the absence of one will not make an alleged tenant a *de jure* tenant. Unless a person has established his status as a *de jure* tenant, he is not entitled to security of tenure or covered by the Land Reform Program of the Government under existing tenancy laws.

2. ID.; ID.; ID.; ORDER OF SUCCESSION TO THE LEASEHOLD RIGHTS OF A DECEASED OR INCAPACITATED AGRICULTURAL TENANT.— Significantly, respondent was not mentioned at all in Susana's letter, but only her son, Rolando. However, even if we construe the term "*kasama*" as pertaining to Rolando as a tenant of the De Leon sisters, respondent will not necessarily be conferred the same status as tenant upon her son's death. A direct ascendant or parent is not among those listed in Section 9 of Republic Act No. 3844 which specifically enumerates the order of succession to the leasehold rights of a deceased or incapacitated agricultural tenant, to wit: In case of death or permanent incapacity of the agricultural lessee to work his landholding, the leasehold shall continue between the agricultural lessor and the person who can cultivate the landholding personally, chosen by agricultural lessor within one month from such death or permanent incapacity, from among the following: a) the surviving spouse; b) the eldest direct descendant by consanguinity; or (c) the next eldest descendant or descendants in the order of their age. x x x *Provided, further* that in the event that the agricultural lessor fails to exercise his choice within the period herein provided, the priority shall be in accordance with the order herein established.

3. ID.; ID.; ID.; ID.; AGRICULTURAL LEASEHOLD RELATION EXTINGUISHED IN THE ABSENCE OF PERSONS QUALIFIED TO SUCCEED DECEASED TENANT.— Even assuming that respondent's son Rolando was a tenant of the De Leon sisters, his death extinguished any leasehold on the subject land. Section 8 of R.A. 3844 specifically provides for the extinction of an agricultural leasehold relation, in the absence of persons enumerated under Section 9 of the law who are qualified to succeed the deceased tenant.

4. ID.; ID.; ID.; INTENT IS PRINCIPAL FACTOR IN DETERMINING WHETHER A TENANCY RELATIONSHIP EXISTS.— That respondent was allowed to cultivate the property without opposition, does not mean that the De Leon sisters impliedly recognized the existence of a leasehold relation with respondent. Occupancy and continued possession of the land will not *ipso facto* make one a *de jure* tenant. The principal factor in determining whether a tenancy relationship exists is intent. Tenancy is not a purely factual relationship dependent on what the alleged tenant does upon the land but is, moreso, a legal relationship. Thus, the intent of the parties, the understanding when the farmer is installed, and their written agreements, provided these are complied with and are not contrary to law, are more important.

5. ID.; ID.; CONVERSION; SECTION 65 APPLIES ONLY TO LANDS COVERED BY CARP; CASE AT BAR.— Finally, the sale of the subject land to petitioners did not violate Sections 65 and 73 (c) of R.A. No. 6657. There was no illegal conversion of the land because Sec. 65 applies only to lands which were covered by the CARP, *i.e.* those lands beyond the five-hectare retention limit allowed to landowners under the law, which were distributed to farmers-beneficiaries. In the instant case, it was not shown that the subject land was covered by the CARP. Neither was it shown that the sale was made to circumvent the application of R.A. 6657 or aimed at dispossessing tenants of the land that they till.

APPEARANCES OF COUNSEL

Ligon Solis Corpus Mejia Law Firm for Nicorp Management & Dev't. Corp.
Byron S. Anastacio for L. De Leon.
Montano Flamiano & Associates Law Offices for S.R. Lim.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

These consolidated petitions assail the November 8, 2006 Decision[1] of the Court of Appeals in CA-G.R. SP No. 92316, finding respondent Leonida de Leon as a bonafide tenant of the subject property, thereby reversing and setting aside the Decision of the Department of Agrarian Reform Adjudication Board (DARAB) in DARAB Case No. 13502[2] which affirmed the Decision[3] of the Regional Adjudicator in DARAB Case No. 0402-031-03. Also assailed is the March 1, 2007 Resolution[4] denying the motions for reconsideration.

On August 26, 2004, respondent filed a complaint before the Office of the Provincial Agrarian Reform Adjudicator (PARAD) of Region IV- Province of Cavite, praying that petitioners Salvador R. Lim and/or NICORP Management and Development Corporation (NICORP) be ordered to respect her tenancy rights over a parcel of land located in Barangay Mambog III, Bacoor, Cavite, registered under TCT No. T-72669 in the name of Leoncia De Leon and Susana De Leon Loppacher (De Leon sisters), who were likewise impleaded as parties-defendants in the suit.

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[1] *Rollo* in G.R. No. 177125, pp. 42-49; penned by Associate Justice Santiago Javier Ranada and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Jose C. Mendoza.

[2] *Id.* at 34-41.

[3] *Id.* at 21-31.

[4] *Id.* at 61-62; penned by Associate Justice Conrado M. Vasquez, Jr. and concurred in by Associate Justices Jose C. Mendoza and Rosalinda Asuncion-Vicente.

Respondent alleged that she was the actual tiller and cultivator of the land since time immemorial with full knowledge and consent of the owners, who were her sisters-in-law; that sometime in 2004, petitioners circulated rumors that they have purchased the property from the De Leon sisters; that petitioners ignored respondent's requests to show proof of their alleged ownership; that on August 12, 2004, petitioners entered the land and uprooted and destroyed the rice planted on the land and graded portions of the land with the use of heavy equipment; that the incident was reported to the Municipal Agrarian Reform Office (MARO) which issued a Cease and Desist Order [5] but to no avail.

Respondent thus prayed that petitioners be ordered to respect her tenancy rights over the land; restore the land to its original condition and not to convert the same to non-agricultural use; that any act of disposition of the land to any other person be declared null and void because as a tenant, she allegedly had a right of pre-emption or redemption over the land; and for actual damages and attorney's fees.[6]

Petitioner Lim denied that respondent was a tenant of the subject property under the Comprehensive Agrarian Reform Program (CARP). He alleged that respondent is a septuagenarian who is no longer physically capable of tilling the land; that the MARO issued a certification[7] that the land had no registered tenant; that respondent could not be regarded as a landless tiller under the CARP because she owns and resides in the property adjacent to the subject land which she acquired through inheritance; that an Affidavit of Non-Tenancy[8] was executed by the De Leon sisters when they sold the property to him.

Moreover, Lim claimed that respondent and her family surreptitiously entered the subject land and planted a few crops to pass themselves off as cultivators thereof; that respondent tried to negotiate with petitioner Lim for the sale of the land to

[5] CA *rollo*, p. 156.

[6] *Id.* at 33-37.

[7] *Id.* at 54.

[8] *Id.* at 57.

her, as the latter was interested in entering into a joint venture with another residential developer, which shows that respondent has sufficient resources and cannot be a beneficiary under the CARP; that the land is no longer classified as agricultural and could not thus be covered by the CARP. Per certification issued by the Office of the Municipal Planning and Development Coordinator of Bacoor, Cavite, the land is classified as residential pursuant to a Comprehensive Land Use Plan approved by the Sangguniang Panlalawigan.[9]

For its part, petitioner NICORP asserted that it was not a proper party to the suit because it has not actually acquired ownership of the property as it is still negotiating with the owners. However, it joined in petitioner Lim's assertion that respondent is not a qualified tenant; and that the subject land could not be covered by the CARP since it is below the minimum retention area of five hectares allowed under the program.[10] Eventually, NICORP purchased the subject property from Lim on October 19, 2004.[11]

The De Leon sisters did not file a separate answer to respondent's complaint.

Meanwhile, Provincial Adjudicator Teodoro A. Cidro, to whom the case was assigned, died. Thus, the case was referred to the Office of the Regional Agrarian Reform Adjudicator (RARAD) for resolution.

In compliance with the directive of the RARAD, respondent submitted as evidence an Extra-Judicial Settlement of Estate [12] dated February 20, 1989 to prove that, as a result of her relationship with her sisters-in-law, she was made a tenant of the land; a tax declaration[13] showing that the land was classified

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[9] *Id.* at 47-50.

[10] *Id.* at 59.

[11] *Rollo* in G.R. No. 176942, pp. 27-28.

[12] CA *rollo*, p. 128.

[13] *Id.* at 132.

as irrigated riceland; several affidavits[14] executed by farmers of adjacent lands stating that respondent and her family were tenants-farmers on the subject land; and several documents and receipts[15] to prove the agricultural activities of respondent and her family.

Respondent likewise submitted a handwritten letter[16] of Susana De Leon addressed to respondent's daughter Dolores, showing that the former purportedly acknowledged respondent's son, Rolando, as the legitimate tenant-lessee on the land. However, Rolando died on September 1, 2003 as evidenced by his death certificate.[17]

On December 6, 2004, the RARAD rendered a Decision dismissing the complaint for failure of respondent to prove by substantial evidence all the requisites of an agricultural tenancy relationship.[18] There was no evidence to show that the De Leon sisters constituted respondent as tenant-lessee on the land; neither was it proved that there was sharing of harvests with the landowner.

The DARAB affirmed the decision of the RARAD.[19]

On appeal, the Court of Appeals reversed and set aside the findings of the RARAD/DARAB stating that there was sufficient evidence to prove the elements of an agricultural tenancy relationship; that the letter of Susana De Leon to Dolores clearly acknowledged respondent's son, Rolando, as a tenant, as well as respondent's share in the proceeds of the sale of the land; and that the sharing of produce was established by the affidavits of neighboring farmers that were not controverted by petitioners.

The appellate court further held that the reclassification of the land by the Sangguniang Panlalawigan as residential cannot

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[14] *Id.* at 133-135.

[15] *Id.* at 137-143.

[16] *Id.* at 146-147.

[17] *Id.* at 145.

[18] *Rollo* in G.R. No. 177125, pp. 27-31.

[19] *Id.* at 34-41.

be given weight because it is only the Department of Agrarian Reform (DAR) that can reclassify or convert an agricultural land to other uses or classifications; and that the sale of the land by the De Leon sisters to petitioner Lim is void because it violated Section 70 of Republic Act (R.A.) No. 6657[20] or the Comprehensive Agrarian Reform Law (CARL).

Petitioners filed a motion for reconsideration but it was denied.[21] Hence, petitioners Lim and NICORP separately filed petitions under Rule 45 of the Rules of Court, which were consolidated per resolution of the Court dated June 4, 2007.[22]

Petitioners allege that respondent failed to prove by substantial evidence all the elements of a tenancy relationship; hence the Court of Appeals erred in finding that respondent has tenancy rights over the subject land.

The petitions are meritorious.

There is a tenancy relationship if the following essential elements concur: 1) the parties are the landowner and the tenant or agricultural lessee; 2) the subject matter of the relationship is an agricultural land; 3) there is consent between the parties to the relationship; 4) the purpose of the relationship is to bring about agricultural production; 5) there is personal cultivation on the part of the tenant or agricultural lessee; and 6) the harvest is shared between landowner and tenant or agricultural lessee.[23] All the foregoing requisites must be proved by substantial evidence and the absence of one will not make an alleged tenant a *de jure* tenant.[24] Unless a person has established his status as a *de jure* tenant, he is not entitled to security of tenure or covered

[20] *Id.* at 46-48.

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

[22] *Id.* at 63.

[23] *Dalwampo v. Quinocol Farm Workers and Settlers' Association*, G.R. No. 160614, April 25, 2006, 488 SCRA 208, 221.

[24] *Suarez v. Saul*, G.R. No. 166664, October 20, 2005, 473 SCRA 628, 634.

by the Land Reform Program of the Government under existing tenancy laws.[25]

In the instant case, there is no substantial evidence to support the appellate court's conclusion that respondent is a *bona fide* tenant on the subject property. Respondent failed to prove the third and sixth elements cited above. It was not shown that the De Leon sisters consented to a tenancy relationship with respondent who was their sister-in-law; or that the De Leon sisters received any share in the harvests of the land from respondent or that the latter delivered a proportionate share of the harvest to the landowners pursuant to a tenancy relationship.

The letter of Susana De Leon to Dolores, which allegedly proved consent of the De Leon sisters to the tenancy arrangement, partially reads:

Nuong ako ay nandiyan, hindi nagkaayos ang bukid kasi ang iyong Kuya Roly ay ayaw na si Noli ang ahente. Pero bago ako umalis ay nagkasundo kami ni Buddy Lim (Salvador) na aayusin niya at itutuloy ang bilihan at siya ang bahala sa Kuya Roly mo.

Kaya nagkatapos kami at ang kasama ng Kuya mo ngayon ay si Buddy Lim. Ang pera na para sa kasama ay na kay Buddy Lim. Ang kaparte ng Nanay Onching (Leoncia) mo ay nasa akin ang karamihan at ako na ang mag-aasikaso.

The Court cannot agree with the appellate court's conclusion that from the tenor of the letter, it is clear that Susana acknowledged respondent's deceased son as "*kasama*" or tenant, and recognized as well respondent's share in the proceeds of the sale, thus proving the existence of an implied leasehold relations between the De Leon sisters and respondent.[26] The word "*kasama*" could be taken in varying contexts and not necessarily in relation to an agricultural leasehold agreement. It is also unclear whether the term "*kasama*" referred to respondent's deceased son, Rolando, or some other person. In the first sentence of the second paragraph, the word "*kasama*"

[25] *Ambayec v. Court of Appeals*, G.R. No. 162780, June 21, 2005, 460 SCRA 537, 543.

[26] *Rollo* in G.R. No. 177125, p. 47.

referred to petitioner Lim while the second sentence of the same paragraph, did not refer by name to Rolando as "*kasama*."

Likewise, "Nanay Onching," as mentioned in the letter, referred to Leoncia, one of the De Leon sisters, on whose behalf Susana kept part of the proceeds of the sale, and not herein respondent as understood by the Court of Appeals, who had no right to such share. It is Leoncia who co-owned the property with Susana and who is therefore entitled to a part of the sale proceeds.

Significantly, respondent was not mentioned at all in Susana's letter, but only her son, Rolando. However, even if we construe the term "*kasama*" as pertaining to Rolando as a tenant of the De Leon sisters, respondent will not necessarily be conferred the same status as tenant upon her son's death. A direct ascendant or parent is not among those listed in Section 9 of Republic Act No. 3844 which specifically enumerates the order of succession to the leasehold rights of a deceased or incapacitated agricultural tenant, to wit:

> In case of death or permanent incapacity of the agricultural lessee to work his landholding, the leasehold shall continue between the agricultural lessor and the person who can cultivate the landholding personally, chosen by agricultural lessor within one month from such death or permanent incapacity, from among the following: a) the surviving spouse; b) the eldest direct descendant by consanguinity; or (c) the next eldest descendant or descendants in the order of their age. x x x *Provided, further* that in the event that the agricultural lessor fails to exercise his choice within the period herein provided, the priority shall be in accordance with the order herein established.

There is no evidence that the De Leon sisters consented to constitute respondent as their tenant on the subject land. As correctly found by the RARAD/DARAB, even the Extra-Judicial Settlement of Estate that respondent offered in evidence to prove the alleged consent does not contain any statement from which such consent can be inferred.[27] Absent any other evidence to prove that the De Leon sisters consented to the tenurial arrangement, respondent's cultivation of the land was by mere tolerance of her sisters-in-law.

[27] *Rollo* in G.R. No. 176942, p. 36.

The appellate court found that the element of sharing in the produce of the land was established by the affidavits of neighboring farmers attesting to the fact that respondent cultivated the land since time immemorial.[28] However, perusal of the said affidavits reveals that there is nothing therein that would indicate a sharing of produce between the De Leon sisters and respondent. The affidavits did not mention at all that the De Leon sisters received a portion of the harvests or that respondent delivered the same to her sisters-in-law. The affidavits failed to disclose the circumstances or details of the alleged harvest sharing; it merely stated that the affiants have known respondent to be the cultivator of the land since time immemorial. It cannot therefore be deemed as evidence of harvest sharing.

The other pieces of evidence submitted by respondent likewise do not prove the alleged tenancy relationship. The summary report of the Philippine Crop Insurance Corporation, the official receipts issued by the National Food Authority and the certificate of membership in Bacoor Agricultural Multi-Purpose Cooperative,[29] only prove that respondent and her family engaged in agricultural activities but not necessarily her alleged status as tenant of the De Leon sisters. Besides, these documents are not even in the name of respondent but were issued in favor of her daughter Dolores.

That respondent was allowed to cultivate the property without opposition, does not mean that the De Leon sisters impliedly recognized the existence of a leasehold relation with respondent. Occupancy and continued possession of the land will not *ipso facto* make one a *de jure* tenant.[30] The principal factor in determining whether a tenancy relationship exists is intent. Tenancy is not a purely factual relationship dependent on what the alleged tenant does upon the land but is, moreso, a legal relationship.[31] Thus, the intent of the parties, the understanding

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[28] CA *rollo*, pp. 133-136.

[29] *Id.* at 137-142.

[30] *Ambayec v. Court of Appeals*, *supra* note 25 at 545.

[31] *Sialana v. Avila*, G.R. No. 143598, July 20, 2006, 495 SCRA 501, 507-508.

when the farmer is installed, and their written agreements, provided these are complied with and are not contrary to law, are more important.[32]

Finally, the sale of the subject land to petitioners did not violate Sections 65[33] and 73[34] (c) of R.A. No. 6657. There was no illegal conversion of the land because Sec. 65 applies only to lands which were covered by the CARP, *i.e*. those lands beyond the five-hectare retention limit allowed to landowners under the law, which were distributed to farmers-beneficiaries. In the instant case, it was not shown that the subject land was covered by the CARP. Neither was it shown that the sale was made to circumvent the application of R.A. 6657 or aimed at dispossessing tenants of the land that they till.

The sale of the land to petitioners likewise did not violate R.A. No. 3844 or the Agricultural Tenancy Act. Considering that respondent has failed to establish her status as *de jure* tenant, she has no right of pre-emption or redemption under Sections 11[35]

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[32] *Heirs of Nicolas Jugalbot v. Court of Appeals*, G.R. No. 170346, March 12, 2007, 518 SCRA 202, 210.

[33] SECTION 65. *Conversion of Lands*.— After the lapse of five (5) years from its award, when the land ceases to be economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have greater economic value for residential, commercial or industrial purposes, the DAR, upon application of the beneficiary or the landowner, with due notice to the effected parties, and subject to existing laws, may authorize the reclassification or conversion of the land and its disposition: *Provided*, That the beneficiary shall have fully paid his obligation.

[34] SECTION 73. *Prohibited Acts and Omissions*. – The following are prohibited:

xxx xxx xxx

(c) The conversion by any landowner of his agricultural land into any non-agricultural use with intent to avoid the application of this Act to his landholdings and to dispossess his tenant farmers of the land tilled by them.

[35] SEC. 11. *Lessee's Right of Pre-emption*. – In case the agricultural lessor decides to sell the landholding, the agricultural lessee shall have the preferential right to buy the same under reasonable terms and conditions: *Provided* That the entire landholding offered for sale must be pre-empted by the Land Authority if the landowner so desires unless the majority of the lessees object to such acquisition: x x x.

and 12[36] of the said law. Even assuming that respondent's son Rolando was a tenant of the De Leon sisters, his death extinguished any leasehold on the subject land. Section 8[37] of R.A. 3844 specifically provides for the extinction of an agricultural leasehold relation, in the absence of persons enumerated under Section 9 of the law who are qualified to succeed the deceased tenant.

WHEREFORE, the petitions are *GRANTED*. The Decision of the Court of Appeals in CA-G.R. SP No. 92316 and the Resolution denying the motions for reconsideration are *REVERSED* and *SET ASIDE*. The Decision of the Department of Agrarian Reform Adjudication Board in DARAB Case No. 13502, which affirmed *in toto* the Decision of the Regional Adjudicator in DARAB Case No. 0402-031-03, dismissing the complaint of respondent Leonida De Leon for lack of merit, is *REINSTATED* and *AFFIRMED*.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and *Reyes, JJ.*, concur.

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[36] SEC. 12. *Lessee's Right of Redemption*. – In case the landholding is sold to a third person without the knowledge of the agricultural lessee, the latter shall have the right to redeem the same at a reasonable price and consideration: *Provided*, That the entire landholding sold must be redeemed: x x x.

[37] SEC. 8. *Extinguishment of Agricultural Leasehold Relations*. – The agricultural leasehold relation established under this Code shall be extinguished by:

xxx xxx xxx

(3) Absence of the persons under Section nine to succeed to the lessee, in the event of death or permanent incapacity of the lessee.

THIRD DIVISION

[G.R. No. 181493. August 28, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RICARDO NOTARION *y* ZANORIA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; CREDIBILITY; WELL-SETTLED PRINCIPLES.— In resolving issues pertaining to the credibility of the witnesses, this Court is guided by the following well-settled principles: (1) the reviewing court will not disturb the findings of the lower court, unless there is a showing that it overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that may affect the result of the case; (2) the findings of the trial court on the credibility of witnesses are entitled to great respect and even finality, as it had the opportunity to examine their demeanor when they testified on the witness stand; and (3) a witness who testifies in a clear, positive and convincing manner is a credible witness.

2. ID.; ID.; POSITIVE TESTIMONY; HAS GREATER EVIDENTIARY WEIGHT THAN BARE DENIALS.— It is settled that as between bare denials and positive testimony on affirmative matters, the latter is accorded greater evidentiary weight.

3. ID.; ID.; CIRCUMSTANTIAL EVIDENCE; CONSTRUED.— Direct evidence of the commission of a crime is not the only matrix from which a trial court may draw its conclusion and finding of guilt. The rules of evidence allow a trial court to rely on circumstantial evidence to support its conclusion of guilt. Circumstantial evidence is that evidence which proves a fact or series of facts from which the facts in issue may be established by inference. Section 4, Rule 133 of the Rules of Court provides that circumstantial evidence is sufficient for conviction if: (1) there is more than one circumstance; (2) the inference is based on proven facts; and (3) the combination of all circumstances produces a conviction beyond reasonable doubt of the guilt of the accused.

4. REMEDIAL LAW; EVIDENCE; PROOF BEYOND REASONABLE DOUBT; CONSTRUED.— It is doctrinal that the requirement of proof beyond reasonable doubt in criminal law does not mean such a degree of proof as to exclude the possibility of error and produce absolute certainty. Only moral certainty is required or that degree of proof which produces a conviction in an unprejudiced mind. This was sufficiently established in the case at bar.

5. CRIMINAL LAW; SPECIAL COMPLEX CRIME OF RAPE WITH HOMICIDE; PENALTY; MODIFIED BY SECTION 2 OF REPUBLIC ACT NO. 9346.— The penalty for the special complex crime of rape with homicide is death under Article 266-B of the Revised Penal Code. However, in view of the effectivity of Republic Act No. 9346 prohibiting the imposition of the death penalty, the penalty to be meted out to appellant shall be *reclusion perpetua* in accordance with Section 2 thereof, which reads: SECTION 2. In lieu of the death penalty, the following shall be imposed: a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

6. ID.; ID.; ID.; APPELLANT INELIGIBLE FOR PAROLE.— Notwithstanding the reduction of the penalty imposed on appellant, he is not eligible for parole following Section 3 of said law, which provides: SECTION 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.

7. ID.; ID.; CIVIL LIABILITY; CIVIL INDEMNITY AND MORAL DAMAGES, AWARDED IN CASE AT BAR.— With regard to damages, the heirs of AAA are entitled to civil indemnity amounting to ₱100,000.00 in keeping with current jurisprudence authorizing the mandatory award of ₱50,000.00 in case of death, and ₱50,000.00 upon the finding of the fact of rape. The award of moral damages amounting to ₱75,000.00 is also just and reasonable in cases of rape with homicide. The Court of Appeals, therefore, acted accordingly in awarding civil indemnity

amounting to ₱100,000.00 and moral damages amounting to ₱75,000.00 in favor of AAA's heirs.

8. ID.; ID.; ID.; TEMPERATE DAMAGES, AWARDED.— As to actual damages, we have held that if the amount of the actual damages cannot be determined because no receipts were presented to prove the same, but it was shown that the heirs are entitled thereto, temperate damages amounting to ₱25,000.00 may be awarded. In the instant case, no receipt or competent proof was presented to show the amount of actual damages incurred by AAA's heirs. Nonetheless, it is reasonable to expect that AAA's heirs incurred expenses for her coffin, burial, and food during the wake. Hence, the Court of Appeals properly awarded temperate damages amounting to ₱25,000.00 in lieu of actual damages.

9. ID.; ID.; ID.; EXEMPLARY DAMAGES; NOT AWARDED IN CASE AT BAR.— With respect to exemplary damages, Article 2230 of the New Civil Code allows the award thereof as part of the civil liability when the crime was committed with one or more aggravating circumstances. The aggravating circumstance must be expressly and specifically alleged in the information; otherwise, it cannot be considered by the trial court in its judgment, even if such circumstance was subsequently proved during the trial. In the case at bar, no aggravating circumstance was alleged in the information. Thus, the RTC and the Court of Appeals erred in awarding exemplary damages.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

CHICO-NAZARIO, *J.*:

For review is the Decision of the Court of Appeals in CA-G.R. CR HC No. 02103, dated 24 August 2007,[1] affirming with modifications the Decision of the Masbate Regional Trial

[1] Penned by Associate Justice Rodrigo V. Cosico with Associate Justices Hakim S. Abdulwahid and Arturo G. Tayag, concurring; *rollo*, pp. 2-10.

Court (RTC), Branch 49, in Criminal Case No. 1511,[2] finding accused-appellant Ricardo Notarion *y* Zanoria guilty of the special complex crime of rape with homicide and sentencing him to suffer the penalty of death.

The facts gathered from the records are as follows:

On 28 November 2001, an Information[3] was filed with the RTC charging appellant with the special complex crime of rape with homicide. The accusatory portion of the information reads:

> That on or about the 25th day of July, 2001, in the afternoon thereof, at XXX, Barangay XXX, Municipality of XXX, Province of XXX, Philippines and within the jurisdiction of this Honorable Court, the above-named accused by means of violence and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with one AAA[4] against the latter's will and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and stab said AAA with the use of a hunting knife, hitting the latter on the different parts of her body which caused her death.[5]

When arraigned on 7 March 2002, appellant, assisted by his counsel *de oficio*, pleaded "Not guilty" to the charge.[6] Trial on the merits thereafter followed.

The prosecution presented as witnesses Dionilo Cabague (Cabague), BBB (AAA's husband), and Dr. George Galindez (Dr. Galindez). Their testimonies are summarized as follows:

Cabague, neighbor of appellant, testified that on 25 July 2001, at about 4:30 p.m., he and his wife arrived at their house

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[2] Penned by Judge Manuel L. Sese; CA *rollo*, pp. 12-25.

[3] Records, p. 1.

[4] 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 the real names of her immediate family members, is withheld and fictitious initials instead are used to represent her, both to protect her privacy. See *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419, 421-426.

[5] Records, p. 1.

[6] *Id.* at 30.

in Barangay XXX, Municipality of XXX, Province of XXX. He noticed that the *buri* leaves which served as the door's lock was untied. Thereupon, he heard a noise coming from inside the house. He pushed the door and saw appellant and AAA. Appellant was then putting on his shorts, while AAA was sprawled and motionless on the floor near appellant. Appellant approached and pointed a knife at him. Appellant warned him not to tell anyone of what he saw or he would kill him, his wife and his relatives. Frightened, Cabague and his wife immediately left their house and proceeded to his brother's house where they spent the whole night.[7]

In the morning of the following day, he and his wife returned to their house and learned that AAA was already dead, and that the latter's cadaver was found 10 meters away therefrom.[8]

BBB, husband of AAA, recounted that in the early morning of 25 July 2001, he went out fishing. Upon arriving home at about 4:00 p.m., he noticed that AAA was not around. He went out of the house to look for AAA. At around 8:00 p.m. of the same day, he met appellant who asked him where he came from. He replied that he was looking for AAA. Appellant became nervous, dropped his torch and hurriedly left. Later that evening, he and some relatives and neighbors found AAA's lifeless body several meters away from Cabague's house.[9]

Dr. Galindez, Municipal Health Officer of Placer, Masbate, declared that he conducted a post-mortem examination on AAA's corpse. His findings are as follows[10]:

POSTMORTEM EXAMINATION FINDINGS:

1. (+) Hematoma frontal area.
2. (+) lacerated wound 2 cm. x 0.5 cm left upper eyelid.
3. (+) lacerated wound 3 cm. x 1 cm right upper eyelid.

[7] TSN, 13 November 2003, pp. 3-10.

[8] *Id.* at 10-13.

[9] TSN, 17 June 2004, pp. 3-8.

[10] TSN, 11 September 2003, pp. 2-5.

4. (+) Hematoma periorbital area.
5. (+) Hematoma right cheek.
6. (+) lacerated wound 2 cm. x 0.5 cm left upper lip.
7. (+) lacerated wound 1 cm. x 0.5 cm right upper lip.
8. (+) avulsed teeth 2 upper central incisor.
9. (+) avulsed tooth 1 left lateral incisor.
10. (+) avulsed tooth 1 left canine.
11. (+) confluent hematoma surrounding the neck and shoulder.
12. (+) confluent hematoma chest.
13. (+) hematoma left wrist.
14. (+) hematoma hypogastric area with abdominal distention.
15. (+) 2nd degree burns both labia majora.
16. (+) 2nd degree burns circular left thigh.
17. (+) 2nd degree burns circular right thigh.
18. (+) multiple nail marks both buttocks lateral area.
19. (+) multiple abrasion right elbow.

SPECULUM EXAMINATION DONE:

- (+) cystocele.
- Collected 1 ml. whitish fluid in the vaginal canal.

SPERM ANALYSIS AT CATAINGAN DISTRICT HOSPITAL:

(+) spermatozoa

CONCLUSION:

1. Asphyxia 2o strangulation
2. Rape[11]

Dr. Galindez stated that the *confluent hematoma* (wound No. 11) around AAA's neck and shoulder indicated suffocation. He said that AAA died of asphyxia secondary to strangulation.[12]

[11] Records, p. 26.

[12] TSN, 11 September 2003, p. 5.

He also concluded that AAA was raped as shown by the following observations: (1) enlargement of AAA's cervical area; (2) second-degree burns in AAA's *labia majora* (wound no. 15); (3) second-degree burns in AAA's left and right thighs (wound nos. 16 and 17); (4) multiple nail marks in AAA's buttocks (wound no. 18); and (5) the presence of human spermatozoa in AAA's vagina.[13]

The prosecution also proffered documentary evidence to bolster the testimonies of its witnesses, to wit: (a) affidavit of Cabague (Exhibit A);[14] (2) affidavit of BBB (Exhibit B);[15] and (3) post-mortem examination report signed and issued by Dr. Galindez (Exhibit C).[16]

For its part, the defense presented the testimonies of appellant and Maricar Notarion (Maricar). Appellant denied the foregoing accusation and pointed to a certain Solomon Monsanto (Monsanto) as the real perpetrator.

Appellant testified that on 25 July 2001, at about 4:30 p.m., he was at his farm tending his carabao. Later, he saw Monsanto standing beside the lifeless body of AAA which was lying on the ground. Monsanto approached him, poked a gun at him, and threatened to kill him and his family if he would report what he saw. Subsequently, appellant was arrested and charged with raping and killing AAA.[17]

Maricar, daughter of appellant, narrated that on 25 July 2001, at about 4:30 in the afternoon, she and appellant went to their farm to fetch their carabao. Thereafter, she and appellant saw Monsanto hack and shoot AAA. Monsanto approached appellant and poked a gun at the latter. Monsanto warned appellant not

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[13] *Id.* at 6-7.

[14] Records, p. 13.

[15] *Id.* at 14.

[16] *Id.* at 26.

[17] TSN, 12 August 2004, pp. 2-6.

to tell anyone of the incident or he and his family would be killed. She and appellant then hurriedly went home.[18]

After trial, the RTC rendered a Decision on 23 January 2006 convicting appellant of the special complex crime of rape with homicide. Appellant was sentenced to death. He was also ordered to pay the heirs of AAA the amounts of ₱100,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱5,000.00 as exemplary damages. The dispositive portion of the Decision reads:

> WHEREFORE, beyond reasonable doubt, the Court finds the accused, RICARDO NOTARION, guilty of the special complex crime of Rape with Homicide falling under Article 335 of the Revised Penal Code as amended by RA 4111 and RA 7659 and accordingly sentences him to suffer the SUPREME PENALTY OF DEATH.
>
> Accused is ordered to pay the amount of ONE HUNDRED THOUSAND (₱100,000.00) PESOS as civil indemnity; FIFTY THOUSAND (₱50,000.00) pesos as moral damages and exemplary damages of FIVE THOUSAND (₱5,000.00) PESOS to the heirs of the victim.[19]

Appellant appealed to the Court of Appeals. On 24 August 2007, the appellate court promulgated its Decision affirming with modifications the RTC Decision. It held that the death penalty imposed by the RTC on appellant should be reduced to *reclusion perpetua* pursuant to Section 2(a) of Republic Act No. 9346 with appellant not eligible for parole under the said law. It also ruled that although the heirs of AAA were not entitled to actual damages because they did not present proof thereof, such as receipts for funeral and burial expenses, they were, nonetheless, entitled to temperate damages in the amount of ₱25,000.00, since it was reasonable to expect that the heirs of AAA incurred funeral and burial expenses. Further, it increased the amount of moral damages to ₱75,000.00 and exemplary damages to ₱25,000.00.[20] Thus:

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[18] TSN, 13 January 2005, pp. 2-5.

[19] CA *rollo*, p. 24.

[20] *Rollo*, p. 9.

WHEREFORE, in view of the foregoing, the assailed Decision dated January 23, 2006 of the Regional Trial Court of Cataingan, Masbate, Branch 49 finding the accused-appellant guilty beyond reasonable doubt of the crime of Rape with Homicide is hereby AFFIRMED with MODIFICATION in that (a) the death penalty imposed by the trial court is reduced to *reclusion perpetua* and (b) the judgment on the civil liability is modified by ordering the accused-appellant to pay the amounts of ₱100,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱25,000.00 as exemplary damages and ₱25,000.00 as temperate damages to the heirs of the victim.[21]

Appellant filed a Notice of Appeal on 11 September 2007.[22]

Before us, appellant assigned the following errors:

I.

THE COURT *A QUO* GRAVELY ERRED IN NOT GIVING WEIGHT AND CREDENCE TO THE EVIDENCE ADDUCED BY THE ACCUSED-APPELLANT.

II.

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE SPECIAL COMPLEX CRIME OF RAPE WITH HOMICIDE DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[23]

Apropos the first issue, appellant maintains that his testimony pointing to Monsanto as the one who raped and killed AAA is more credible than the testimony of Cabague.[24]

In resolving issues pertaining to the credibility of the witnesses, this Court is guided by the following well-settled principles: (1) the reviewing court will not disturb the findings of the lower court, unless there is a showing that it overlooked, misunderstood or misapplied some fact or circumstance of weight and substance

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[21] *Id*.

[22] CA *rollo*, pp. 105-106.

[23] *Id*. at 38.

[24] *Id*. at 46.

that may affect the result of the case; (2) the findings of the trial court on the credibility of witnesses are entitled to great respect and even finality, as it had the opportunity to examine their demeanor when they testified on the witness stand; and (3) a witness who testifies in a clear, positive and convincing manner is a credible witness.[25]

We have gone over the testimony of Cabague and found no cogent reason to overturn the RTC's ruling finding Cabague's testimony credible. Cabague testified in a clear and truthful manner that he saw appellant and AAA inside his house on the day and time of the incident. Appellant then was putting on his shorts while AAA was slumped motionless on the floor near appellant. Appellant approached him and pointed a knife at him. Appellant warned him not to tell anyone of what he saw or he would kill him, his wife and his relatives. Terrified, Cabague and his wife immediately left their house and proceeded to his brother's house where they spent the whole night.[26]

BBB and Dr. Galindez corroborated the testimony of Cabague on its relevant points.

Further, the above-mentioned testimonies are consistent with the documentary evidence submitted by the prosecution. The RTC and the Court of Appeals found the testimonies of Cabague, BBB and Dr. Galindez to be consistent and honest. Both courts did not find any ill motive on the part of the prosecution witnesses.

In stark contrast, the testimony of appellant and Maricar composed of denial and alibi were confusing, contradictory and unreliable. Appellant did not mention in his testimony that he was with Maricar when he allegedly saw Monsanto kill AAA.[27] Maricar, nevertheless, testified that she was with appellant when the alleged incident transpired.[28] Further, appellant and Maricar

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[25] *People v. Galido*, G.R. Nos. 148689-92, 30 March 2004, 426 SCRA 502, 513.

[26] TSN, 13 November 2003, pp. 3-10.

[27] TSN, 13 January 2005, pp. 6-7.

[28] *Id.* at 3.

testified that they saw Monsanto kill AAA.[29] Subsequently, however, appellant and Maricar declared that they did not see Monsanto kill AAA.[30]

It is settled that as between bare denials and positive testimony on affirmative matters, the latter is accorded greater evidentiary weight.[31]

Appellant, nonetheless, argues that the evidence presented by the prosecution were merely circumstantial and, thus, insufficient to prove his guilt of the special complex crime of rape with homicide.[32] Also, the fact that Monsanto was relieved by the prosecution from this case as an accused casts doubt on the identity of the real perpetrator.[33]

Direct evidence of the commission of a crime is not the only matrix from which a trial court may draw its conclusion and finding of guilt. The rules of evidence allow a trial court to rely on circumstantial evidence to support its conclusion of guilt. Circumstantial evidence is that evidence which proves a fact or series of facts from which the facts in issue may be established by inference.[34]

In rape with homicide, the evidence against the accused is usually circumstantial. The nature of the crime, in which only the victim and the rapist-killer would have been around during its commission, makes the prosecution of the offense particularly difficult because the victim could no longer testify against the perpetrator. Thus, resorting to circumstantial evidence is almost always inevitable, and to demand direct evidence to prove in

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[29] TSN, 12 August 2004, p. 4; TSN, 13 January 2005, p. 4.

[30] *Id.* at 5.

[31] *Ceniza-Manantan v. People*, G.R. No. 156248, 28 August 2007, 531 SCRA 364, 375; *People v. Major Comiling*, 468 Phil. 869, 890 (2004).

[32] CA *rollo*, p. 44.

[33] *Id.* at 46.

[34] *People v. Padua*, G.R. No. 169075, 23 February 2007, 516 SCRA 590, 600-601; *People v. Lopez*, 371 Phil. 852, 859 (1999); *People v. Ayola*, 416 Phil. 861, 872 (2001).

such instance the modality of the offense and the identity of the perpetrator would be unreasonable.[35]

Section 4, Rule 133 of the Rules of Court provides that circumstantial evidence is sufficient for conviction if: (1) there is more than one circumstance; (2) the inference is based on proven facts; and (3) the combination of all circumstances produces a conviction beyond reasonable doubt of the guilt of the accused.

After carefully reviewing the evidence on record and applying the foregoing parameters to this case, we hold that the evidence adduced by the prosecution adequately proved the guilt beyond reasonable doubt of the appellant. As correctly found by the RTC, the following circumstances, when pieced together, lead to the ineluctable conclusion that appellant was the perpetrator of the crime charged:

1. The victim and the accused were inside a single room house;
2. The uncontroverted fact that the victim was lying motionless on the floor while the accused was sitting and putting on his short pants;
3. There was no other person in the house;
4. The accused threatened to kill the witness (Cabague) and the latter's relatives if he (the witness) says anything on what he saw;
5. The witness did not see any wound or blood on the motionless body of the victim;
6. Death of the victim by strangulation;
7. The victim's dead body was found about ten (10) meters away from the house (of Cabague).[36]

In addition thereto, BBB narrated that appellant was nervous and uneasy when he met him along the road on the night of 25

[35] *People v. Guihama*, 452 Phil. 824, 841 (2003); *People v. Rayos*, 404 Phil. 151, 167-168 (2001).

[36] Records, pp. 90-91.

July 2001. When he told appellant that he was looking for AAA, appellant dropped his torch and hurriedly walked away.[37]

Further, Dr. Galindez testified that AAA was raped because human spermatozoa and several wounds were found in and near AAA's vagina.[38]

All of the foregoing circumstances, which were duly proven, undoubtedly constitute an unbroken chain of events leading to a fair and reasonable conclusion that appellant raped and killed AAA.

It is doctrinal that the requirement of proof beyond reasonable doubt in criminal law does not mean such a degree of proof as to exclude the possibility of error and produce absolute certainty. Only moral certainty is required or that degree of proof which produces a conviction in an unprejudiced mind.[39] This was sufficiently established in the case at bar.

The fact that Monsanto was relieved by the prosecution from this case as an accused is immaterial because appellant's guilt was duly proven by the evidence of the prosecution.

We shall now determine the propriety of the penalties imposed by the Court of Appeals.

The penalty for the special complex crime of rape with homicide is death under Article 266-B of the Revised Penal Code. However, in view of the effectivity of Republic Act No. 9346[40] prohibiting the imposition of the death penalty, the penalty to be meted out to appellant shall be *reclusion perpetua* in accordance with Section 2 thereof, which reads:

SECTION 2. In lieu of the death penalty, the following shall be imposed:

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[37] TSN, 17 June 2004, pp. 5-6.

[38] TSN, 11 September 2003, pp. 6-7.

[39] *People v. Guihama*, *supra* note 35 at 843.

[40] Approved on 24 June 2006.

a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

Notwithstanding the reduction of the penalty imposed on appellant, he is not eligible for parole following Section 3 of said law, which provides:

SECTION 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.

Thus, the Court of Appeals was correct in imposing on appellant the penalty of *reclusion perpetua* without the possibility of parole.

With regard to damages, the heirs of AAA are entitled to civil indemnity amounting to ₱100,000.00 in keeping with current jurisprudence authorizing the mandatory award of ₱50,000.00 in case of death, and ₱50,000.00 upon the finding of the fact of rape. [41] The award of moral damages amounting to ₱75,000.00 is also just and reasonable in cases of rape with homicide. [42] The Court of Appeals, therefore, acted accordingly in awarding civil indemnity amounting to ₱100,000.00 and moral damages amounting to ₱75,000.00 in favor of AAA's heirs.

As to actual damages, we have held that if the amount of the actual damages cannot be determined because no receipts were presented to prove the same, but it was shown that the heirs are entitled thereto, temperate damages amounting to ₱25,000.00 may be awarded.[43] In the instant case, no receipt or competent proof was presented to show the amount of actual damages

[41] *People v. Padua*, *supra* note 34 at 607, citing *People v. Tablon*, 429 Phil. 1, 17-18 (2002).

[42] *Id.*, citing *People v. Magallanes*, 457 Phil. 234, 259 (2003).

[43] *People v. Abrazaldo*, 445 Phil. 109, 126 (2003).

incurred by AAA's heirs. Nonetheless, it is reasonable to expect that AAA's heirs incurred expenses for her coffin, burial, and food during the wake. Hence, the Court of Appeals properly awarded temperate damages amounting to ₱25,000.00 in lieu of actual damages.

With respect to exemplary damages, Article 2230 of the New Civil Code[44] allows the award thereof as part of the civil liability when the crime was committed with one or more aggravating circumstances. The aggravating circumstance must be expressly and specifically alleged in the information;[45] otherwise, it cannot be considered by the trial court in its judgment, even if such circumstance was subsequently proved during the trial.[46] In the case at bar, no aggravating circumstance was alleged in the information. Thus, the RTC and the Court of Appeals erred in awarding exemplary damages.

WHEREFORE, after due deliberation, the Decision of the Court of Appeals in CA-G.R. CR HC No. 02103, dated 24 August 2007, is hereby *AFFIRMED* with the *MODIFICATION* that the award of exemplary damages is deleted.

SO ORDERED.

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

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[44] Article 2230, New Civil Code: 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.

[45] Sections 8 & 9, Rule 110 of the Revised Rules of Criminal Procedure.

[46] *Catiis v. Court of Appeals*, G.R. No. 153979, 9 February 2006, 482 SCRA 71, 84.

THIRD DIVISION

[G.R. No. 181594. August 28, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROLLY FLORA *y* CANDELARIA, MAURITO FLORA *y* LIM, RAMON FLORA *y* LIM, AND ERERBERTO FLORA *y* LIM,** *appellants.*

SYLLABUS

1. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; REQUISITES.— For self-defense to be appreciated, it is required that there be: (1) an unlawful aggression by the victim injured or killed by the accused; (2) reasonable necessity of the means employed to prevent or repel that unlawful aggression; and (3) lack of sufficient provocation on the part of the person defending himself. And all the foregoing conditions must concur.

2. ID.; ID.; ID.; ID.; UNLAWFUL AGGRESSION; CONSTRUED.— Unlawful aggression presupposes an actual, sudden and unexpected or imminent danger on the life and limb of a person – a mere threatening or intimidating attitude is not sufficient.

3. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; SHIFTS TO ACCUSED WHO ADMITS KILLING AND INVOKES SELF-DEFENSE.— In criminal law, it is settled that when the killing is admitted and self-defense is invoked, the burden of evidence shifts to the accused to show that the result (killing) was legally justified. Otherwise stated, the accused assumes the burden to establish his plea by credible, clear and convincing evidence; otherwise, conviction would follow from his admission that he killed the victim. In the case at bar, having owned up to the killing of the victim, the accused should be able to prove the elements of self-defense in order to avail himself of this justifying circumstance; and he must discharge this burden by clear and convincing evidence.

4. ID.; ID.; CREDIBILITY OF WITNESSES; FINDINGS OF FACT OF TRIAL COURT THEREON, IF AFFIRMED BY APPELLATE COURT, ACCORDED HIGH RESPECT, IF

NOT CONCLUSIVE EFFECT, BY THE COURT.— But whether or not Rolly, indeed, acted in self-defense is a question of fact; the well-entrenched rule is that the findings of fact of the trial court in the ascertainment of the credibility of witnesses and the probative weight of the evidence on record affirmed, on appeal, by the appellate court are accorded high respect, if not conclusive effect, by the Court; and in the absence of any justifiable reason to deviate from the said findings.

5. CRIMINAL LAW; ROBBERY WITH HOMICIDE; ESSENTIAL ELEMENTS.— Accordingly, having set aside the claim of self-defense, we now come to the crime alleged to have been committed by appellants, that is, the special complex crime of robbery with homicide. To warrant the conviction of appellants for said charge, the prosecution was burdened to prove the confluence of the following essential elements: (a) the taking of personal property with the use of violence or intimidation against a person; (b) the property thus taken belongs to another; (c) the taking is characterized by intent to gain or *animus lucrandi*; and (d) on the occasion of the robbery or by reason thereof, the crime of homicide, which is therein used in a generic sense, was committed.

6. REMEDIAL LAW; EVIDENCE; ALIBI AND DENIAL; INHERENTLY WEAK DEFENSES.— Maurito and Ramon's defense of alibi and denial, like Rolly's justification of self-defense, are unavailing and worthless. Alibi and denial are inherently weak defenses, and it is not at all persuasive in the instant case when pitted against the positive and convincing identification by all the witnesses of the prosecution.

7. ID.; ID.; ID.; CATEGORICAL AND POSITIVE IDENTIFICATION OF AN ACCUSED; PREVAILS OVER ALIBI AND DENIAL.— Well-settled is the legal principle that a categorical and positive identification of an accused, without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial. The defenses of denial and alibi deserve scant consideration when the prosecution has strong and convincing evidence identifying appellants as the perpetrators.

8. ID.; ID.; INCONSISTENCIES; DO NOT IMPINGE ON POSITIVE IDENTIFICATION OF APPELLANTS; CASE AT BAR.— Appellants' asseveration respecting the supposed

inconsistencies in the testimonies of Simeon Buesa and Jason Vargas are tenuous. While it is true that there are inconsistencies in the narration of facts of some of the witnesses for the prosecution, to our mind, such do not detract from its basic truthfulness or reliability. The supposed inconsistencies are more apparent than real and refer, at most, only to insignificant or trivial details and do not impinge on the positive identification of appellants. The foregoing bear no materiality to the commission of the special complex crime of robbery with homicide with which appellants have been charged and of which they have been convicted. As pointed out by the OSG, the seeming inconsistencies were but minor lapses that could not detract from the value of the evidence given by a disinterested person and the overwhelming logic that a person, *nay*, a victim, would not impute a grievous act on somebody other than the real perpetrator or culprit.

9. CIVIL LAW; DAMAGES; TEMPERATE DAMAGES; JUSTIFIED IN LIEU OF ACTUAL DAMAGES OF A LESSER AMOUNT.— This Court notes that the RTC awarded the heirs of the victim actual damages in the amount of ₱22,701.00. The Court of Appeals modified the amount to ₱16,892.00 for the reason that only such amount was supported by the "best obtainable receipts for the expenses during the wake of the victim x x x." But considering that the heirs of the victim have already been awarded temperate damages in the amount of ₱25,000.00, we delete the amount of ₱16,892.00 representing actual damages. As we have ruled in *People v. Werba*, citing *People v. Villanueva*, in instances where actual expenses amounting to less than ₱25,000.00 are proved during trial, the award of temperate damages of ₱25,000.00 is justified in lieu of the actual damages of a lesser amount.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.

Public Attorney's Office for appellants.

D E C I S I O N

CHICO-NAZARIO, *J.*:

On appeal[1] is the 3 October 2007 *Decision*[2] of the Court of Appeals in CA-G.R. CR-H.C. No. 02427, affirming with modification the 2 May 2002 *Decision*[3] of the Regional Trial Court (RTC) of Naga City, Branch 26, in Criminal Case No. 99-7596 for the special complex crime of robbery with homicide.

Appellants Rolly Flora *y* Candelaria (Rolly), Maurito Flora *y* Lim (Maurito), Ramon Flora *y* Lim (Ramon) and Ereberto Flora *y* Lim (Ereberto) hope for the reversal of the Court of Appeals' decision finding them "guilty beyond reasonable doubt of the special complex crime of robbery with homicide under Article 294(1) of the Revised Penal Code, as amended by Republic Act No. 7659 x x x"[4] and sentencing them to suffer the "penalty of *reclusion perpetua* x x x."[5]

On 26 July 1999, appellants Rolly, Maurito, "Peter" and "John," all surnamed Flora, were charged with the special complex crime of *robbery with homicide* before the Regional Trial Court (RTC) of Naga City, Branch 26, in an Information,[6] the accusatory portion of which states:

That on or about the 25th day of July, 1999 at about 4:00 o'clock in the afternoon at San Vicente, Canaman, Camarines Sur, Philippines, and within the jurisdiction of the Honorable Court, the above-named

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[1] Pursuant to Section 13 (c) of Rule 124 of the Rules of Court as amended by A.M. No. 00-5-03-SC; in a Resolution dated 16 November 2007, the Court of Appeals gave due course to the appellants' Notice of Appeal.

[2] Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Regalado E. Maambong and Sixto C. Marella, Jr., concurring; CA *rollo*, pp. 239-280.

[3] Penned by Hon. Filemon B. Montenegro, Presiding Judge, RTC Naga City, Branch 26; CA *rollo*, pp. 35-46.

[4] *Rollo*, p. 42.

[5] *Id.*

[6] CA *rollo*, pp. 10-11.

accused, conspiring and confederating together and helping one another, did then and there, willfully, unlawfully and feloniously, while armed with bolos and knives, forcibly barged inside the house occupied by spouses Luisito and Nenita Esperida and while thereat, with intent of (sic) gain, by means of violence and intimidation and against the consent of the owners, take and carry away One Thousand Pesos (₱1,000.00) belonging to said spouses, to the damage and prejudice of said owners in the said total sum; that on the occasion of said Robbery and for the purpose of enabling them to take, steal and carry away the money above mentioned, herein accused, in pursuance of their conspiracy, did then and there, willfully, unlawfully and feloniously with evident premeditation, taking advantage of their superior number and strength, with intent to kill, treacherously attack, assault and use personal violence upon said LUISITO ESPERIDA, by stabbing said victim and after he (victim) was already wounded continued hacking and stabbing him and thus, inflicting upon the victim Luisito Esperida serious and mortal injuries which were the direct and proximate causes of his death thereafter, to the damage and prejudice of the heir of the victim.

The case was docketed as Criminal Case No. 99-7596.

In an Amended Information dated 2 August 1999, appellants Ramon and Ereberto were named as additional accused.

Upon arraignment, appellants Rolly, Maurito, Ramon and Ereberto, all with assistance of counsel, pleaded "not guilty" to the crime charged. During pre-trial, the identities of appellants Rolly and Ereberto were admitted by both parties. Thereafter, trial ensued, with the prosecution presenting eight witnesses, namely (1) Nenita Esperida,[7] (2) Jason Vargas,[8] (3) Novie Vargas,[9] (4) Simeon Buesa,[10] (5) Domingo Pesico,[11] (6) Joseph

[7] TSN, 24 April 2001, pp. 2-16; 18 September 2001, pp. 2-14; 12 October 2001, pp. 2-22.

[8] TSN, 29 November 2000, pp. 2-30; 12 December 2000, pp. 2-9; 19 February 2001, pp. 2-13.

[9] TSN, 27 February 2001, pp. 2-20.

[10] TSN, 12 October 1999, pp. 2-21; 6 March 2002, pp. 2-15.

[11] TSN, 4 October 2000, pp. 2-10.

Alto,[12] (7) Police Officer 3 (PO3) Ernesto Molina,[13] and (8) Dr. Rhodora Roa-Perez[14] to establish appellants' culpability beyond reasonable doubt of the crime charged.

To counter the evidence above-mentioned, the defense offered the testimonies of the following: (1) Maurito,[15] (2) Ramon,[16] (3) Rolly,[17] and 4) one Emerson San Carlos.[18]

We cull the following facts from the records of the case:

From the testimonies of the witnesses of plaintiff People of the Philippines (People), the following series of events came to light: Nenita Esperida (Nenita), wife of the victim, Luisito Esperida, recounted that on 25 July 1999, at around 4:30 in the afternoon in San Vicente, Canaman, Camarines Sur, while she was inside their house together with her children and tending their *sari-sari* store, appellants Rolly, Maurito, Ramon and Ereberto barged into their dwelling place demanding money; that Rolly attempted to hack her in order to force her to give him ₱1,000.00; that Maurito punched her and demanded more money from her; that when she could not do so, Ramon grabbed her daughter and threatened to hack the latter if she did not produce more money; that it was at that time when her husband Luisito, the victim, arrived and witnessed his family being threatened; that without any warning, Rolly lunged at the victim and stabbed the latter on the left portion of his abdomen; that her husband Luisito was still able to shout, "You have no shame, you robbers," before he ran out of the house; that Maurito and Rolly chased her husband, while Ereberto and Ramon stayed behind and turned the house upside down looking for money;

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[12] TSN, 12 October 1999, pp. 21-28.

[13] TSN, 13 October 1999, pp. 14-27; 18 October 1999, pp. 2-18; 28 November 2000, pp. 2-22.

[14] TSN, 11 October 1999, pp. 2-24; 13 October 1999, pp. 2-14.

[15] TSN, 5 November 2001, pp. 2-18.

[16] TSN, 9 November 2001, pp. 2-14; 19 November 2001, pp. 2-9.

[17] TSN, 11 February 2002, pp. 2-23.

[18] TSN, 22 February 2002, pp. 2-30.

that appellants were her neighbors, the latter's house being only 10 meters away; and that they always bought something from her store.

Jason Vargas (Jason), nephew of the victim, lives 10 meters away, more or less, from the house of the latter. He narrated that he knew the four appellants; that on the day of the incident subject of the case at bar, he was inside his house with his wife Novie and their two children; that he heard the victim shout, "You shameless people, you robbers"; that he went out of their back door to see what was going on; that he saw his uncle come out of his house holding his left side, with Rolly and Maurito not far behind wielding knives and bolos; that he let the victim enter his house to seek refuge and tried to keep the assailants at bay by closing the door, but before he could do so, Maurito hacked him on his right forearm with the bolo; that although he was able to close and lock the door, Maurito entered the house from the window and attempted to stab him; that he and Maurito grappled for the knife, and Rolly attempted to stab him but he used Maurito as shield; that Rolly then turned to the victim and hacked the latter on the side of his neck; the latter, however, was still able to escape from the house through its back door; and that Ramon and Ereberto, who stood guard outside the front window of the house, went after the victim; and finally, that he escaped and ran to the next village to seek the assistance of authorities.

Novie Vargas (Novie), the wife of Jason, corroborated the testimony of the latter, adding that she knew the appellants since they lived near each other. She testified that she and her two children escaped from their house as Jason was closing the front door and preventing Maurito from entering.

The events that transpired after the victim had left Jason's house were supplied by the rest of the witnesses of plaintiff. One such eyewitness is Simeon Buesa (Simeon), team leader of the *barangay* (*brgy.*) *tanods* of *Brgy.* San Vicente, who testified that he knew the appellants and the victim, all of whom were his neighbors; that around 4:00 p.m. of the day in question, he was at the rice field in front of the victim's house gathering

"*palay*" seedlings; that later on, about two meters away from where he stood, he saw the appellants by the roadside, encircling the victim; that he then saw Rolly stab the victim in the right abdominal area with a knife, about a foot in length. Said witness added that he ran to get help, but when he saw Rolly and Ereberto take off in the other direction, he changed direction and ran after Rolly. He averred that he eventually got near Rolly and embraced him, bloodied shirt and all, in an attempt to subdue and apprehend him until another *brgy*. *tanod*, one Joseph Alto, provided assistance. He and Alto brought their captive to Brgy. Capt. Sto. Tomas and, eventually, to the Canaman police station.

Domingo Pesico (Domingo), likewise a neighbor of the victim and the appellants, narrated that at 9:00 a.m. of the day of the incident in question, he shared a bottle of gin with all the appellants, after which, all four went to the house of one Emerson San Carlos and repaired the roof of the latter's house; that at around 4:00 o'clock in the afternoon, he heard a commotion outside his house; that when he went to the door of his house to see what it was about, he saw all four appellants brandishing knives and bolos, encircling the victim; that he was just three arms-length away from the appellants and the victim; that Ramon shouted to him to stay inside his house if he did not want to get hurt; that he saw Maurito kick the victim at the back causing the latter to fall in the creek/canal; that after he heard Maurito order the rest of the appellants to leave the area, as he would be the one to take care of everything, he saw the said appellant throw away his bolo in the direction of the creek/canal; that it was at that time that he (Domingo) decided to go to the victim with the intention of helping him; that although Maurito appeared to be helping him lift the body of the victim by pulling at the latter's left forearm, he noticed that appellant was also stepping on the former's shoulder with his right foot; thus, he rebuked Maurito and told the latter to stop "helping out"; that he then summoned the victim's wife Nenita and asked her for something with which to bind the victim's abdomen, as the latter's intestines were already spilling out. After bandaging the victims gaping abdominal wound, Simeon Buesa and Eutiquio Buesa arrived and helped him (Domingo) carry the victim all the way to the

RJ Village, where they were met by Jason Vargas who arrived in an ambulance.

Joseph Alto (Joseph) is a *brgy. tanod* of the place where the subject incident took place. He confirmed the testimony of Simon Buesa that he was the one who helped the latter apprehend Rolly; that Rolly had on a bloodied t-shirt; that he and Buesa brought the appellant to the *Brgy.* Captain after which they called the police; and that when the police came, Rolly was brought to the police station.

PO3 Ernesto Molina (PO3 Molina), and Special Police Officer 3 (SPO3) Manuel Araojo were the first police officers to arrive at the scene of the crime. Molina related that on the day of the incident, after seeing the victim, he proceeded to the crime scene where he found a scabbard, with the name "Maurito Floro" engraved on it, on the ground in front of the victim's house; that when he inspected the house, he found the same to be in disarray; and thereafter, he supervised the taking of crime scene photographs. Molina added that a few days later, one Tomas Odiamar, a resident of *Barangay* San Vicente, Canaman, Camarines Sur, turned over to him a 15-inch bolo which the latter had found in the creek near the crime scene.

The last witness for the prosecution was Dr. Rhodora Roa-Perez (Dr. Roa-Perez), Municipal Health Officer of Canaman, Camarines Sur, testified that she conducted an examination of the victim's cadaver and prepared the Medico Legal Findings which contained the autopsy report where it is stated that the victim died of internal hemorrhage secondary to multiple stab wounds caused by a sharp bladed instrument.

For its part, the defense presented an entirely different scenario. Maurito admitted that he was indeed at the crime scene, but claimed that he was not the perpetrator thereof, stating that on the day of the incident, he was awakened by a loud commotion coming from outside his house; that when he went out to see who it was, he saw the victim in the creek trying to lift himself onto its bank; that the victim was crying out for help, saying he was injured; that, together with Domingo Pesico, he brought the victim all the way to the RJ Village where they were met by

Jason Vargas and an ambulance; that upon PO3 Molina's invitation, he voluntarily proceeded to the police station. Maurito further testified that the other appellants were not present at the time of the incident.

In the same vein, Ramon denied the accusation leveled against him. He maintained that on the day and time of the incident, he was in Bagumbayan Norte, Naga City, buying nails for the repair of his neighbor Emerson San Carlos' house; that on his way back he was met by the latter, who warned him not to go near his (Ramon's) house as the victim's brother was looking for him (Ramon) because his brother Ereberto had stabbed the victim. But contrary to the tale of Maurito – that appellants had nothing to do with the crime charged – Ramon testified that Rolly had admitted to him that he (Rolly) stabbed the victim on the stomach.

Rolly confirmed that he stabbed the victim, Luisito Esperida, but that he did so in self-defense. He testified that on the day of the incident, he was awakened by a commotion outside his house; that he went outside, whereupon he saw Nenita, Novie, Emerson San Carlos, his brother Ereberto and the victim; that he saw the victim punch Ereberto; that he (Rolly) was the one who pacified the two protagonists, after which Ereberto was able to flee from the scene; that, unfortunately, the victim turned his attention to him and lunged at him with a knife; that he warded off the attack, twisting the victim's hand in such manner that the blade pointed back at the victim's abdomen; and that soon thereafter, he fled the crime scene, fearful for his life.

The last witness to corroborate the theory of the defense was one Emerson San Carlos (Emerson). He testified that he was a neighbor to both the victim and the appellants. He recounted that on that fateful day, at around 3:00 p.m., he went to the *nipa* hut owned by the victim to play *tong-its*, a local card game; that when he arrived at the nipa hut, a certain Junior Tekyo was already there, as well as Ereberto, the wife of the victim (Nenita) and the wife of the nephew of the victim (Novie); that the victim arrived at around 4:00 o'clock and proceeded to the nipa hut. The witness proceeded to narrate that when he got up to urinate, he heard Ereberto invite the victim to join in

the card game; and that after a while, a heated discussion ensued between Ereberto and the victim, which culminated in the appellant throwing the deck of cards at the victim and the latter punching the former; that he (Emerson) tried to pacify the two but failed, so he left the scene to go to RJ Village to get help; that on his way there, he saw Jason Vargas with a bleeding arm and also asking for help; that he decided to seek police assistance instead; and that on his way back to the nipa hut, he came across Maurito and Simeon Buesa carrying the inert body of the victim.

After trial, in a judgment promulgated on 13 May 2002, the RTC found all appellants guilty of the special complex crime of robbery with homicide. The dispositive part of the trial court's judgment reads:

> WHEREFORE, judgment is hereby rendered:
>
> 1. Convicting the accused Rolly Flora y Candelaria, Maurito Flora *y* Lim, Ramon Flora *y* Lim and Ereberto Flora *y* Lim guilty beyond reasonable doubt of the special complex crime of robbery with homicide defined and penalized under Article 294 of the Revised Penal Code as amended by Republic Act No. 7659 and hereby sentences each of them to suffer the penalty of *Reclusion Perpetua*;
>
> 2. To jointly and severally indemnify the heirs of Luisito Esperida the amount of ₱50,000.00 as civil indemnity for the death of Luisito Esperida, funeral and burial expenses in the amount of ₱22,701.00 and ₱50,000.00 as moral damages; and
>
> 3. To pay the costs without subsidiary imprisonment in case of insolvency.[19]

In holding appellants accountable for said crime, the RTC held that –

> Considering that the accused Rolly Flora invoked self-defense, it is therefore incumbent upon him to establish the same by clear and convincing evidence x x x.

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

xxx xxx xxx

From the evidence adduced, it is clear that the accused have miserably failed to prove the aforecited requisites for self-defense. Their contention that the deceased Luisito Esperida was the aggressor is entirely belied by the straightforward, clear and convincing testimony of the prosecution witnesses, namely: the widow Nenita Esperida, the spouses Jason and Novie Vargas, Simeon Buesa and Domingo Pesico x x x eyewitnesses attested to the fact that Luisito Esperida was unarmed and utterly defenseless when he was simultaneously assaulted by the accused and fatally stabbed by accused Rolly Flora, thereby clearly showing that the victim could not have been the unlawful aggressor immediately prior to the concerted attack and fatal stabbing.

xxx xxx xxx

Besides, this Court takes notice of the Medico Legal Findings issued by Dra. Rhodora Roa-Perez, Municipal Health Officer of Canaman, Camarines Sur, which states that the deceased Luisito Esperida *y* Sanchez suffered four (4) different stab wounds x x x. The testimony of said doctor that with the sizes of the wounds it may have been caused by one or two weapons, is given great weight by this Court and the possibility of two or more assailants was never destroyed even on cross examination.

Accused's (sic) defense of alibi must fail in view of the positive identification of Ramon, Ereberto and Maurito as the co-perpetrators of the crime. The testimonies of the prosecution's eyewitnesses xxx that the said accuseds (sic) were present and actively participated in the commission of the crime charged belies accused denial xxx.

xxx xxx xxx

On the witness stand, Ramon Flora testified that his house is merely 25 meters away from Esperida's residence x x x. Although he testified that he is (sic) in Bagumbayan Norte, Naga City, on that fateful date and time, buying nails as they were repairing the house of Emerson San Carlos, yet, this was belied by the testimony of the defense's own witness Emerson San Carlos who testified that they finished repairing his house before noontime x x x. Emerson San Carlos also testified that his house is merely 30 meters away from Esperida's residence x x x. To the mind of this court, the short distances and negligible time between the accused's (sic) residences and the place of the commission of the crime negate their defense of alibi.

Accused Maurito Flora denied any participation or involvement in the offense charged against him. He claimed that his only participation, if any, was to help retrieve the body of the victim from the creek and to carry him to the waiting ambulance x x x Accused merely denied these allegations without presenting any clear and convincing evidence to support such denials x x x.[20]

The RTC also clarified that the crime committed was robbery with homicide, reasoning that:

In the instant case, the testimony of prosecution eyewitnesses Nenita Esperida, and the spouses Jason and Novie Vargas show that the killing of the deceased took place simultaneously with robbery. The deceased witnessed that after Nenita handed the amount of One Thousand Pesos demanded by the accused Rolly Flora while Maurito Flora was asking for more amount and their other co-accused Ramon and Ereberto were ransacking the house for more valuables to steal causing him to get mad and shouted, "You shameless people, you robbers", (sic) of which Rolly Flora rushed and attacked the victim. These simultaneous events show accused intention to both rob and kill the victim and these matters were unrebutted.[21]

In the end, it concluded that:

As the evidence stand, the prosecution in the perception of the court, and to any unprejudiced observer has by clear, strong and convincing evidence, effectively pierced the constitutional presumption of innocence in favor of the accused Rolly Flora after he admitted having stabbed and killed Luisito Esperida in self-defense which he miserably failed to prove. The court therefore finds the accused Rolly Flora, Maurito Flora, Ramon Flora and Ereberto Flora guilty beyond reasonable doubt of the special complex crime of robbery with homicide without any aggravating or mitigating circumstances. There being neither aggravating nor mitigating circumstances, Article 63 of the Revised Penal Code dictates that the lesser penalty, or only *reclusion perpetua*, be imposed x x x.[22]

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

[21] *Id.* at 44.

[22] *Id.* at 45-46.

Aggrieved, appellants filed a Notice of Appeal[23] in due time, and the case was elevated to this Court.

In view of the penalty imposed by the RTC, and conformably with *People v. Mateo*,[24] in a Resolution dated 27 March 2006,[25] we directed the transfer of this case to the Court of Appeals for intermediate review.

With modification, the Court of Appeals affirmed the conviction of appellants in a Decision dated 3 October 2007 in CA-G.R. CR-H.C. No. 02427. In addition to the amount of ₱50,000.00 representing civil indemnity awarded to the heirs of the victim and another ₱50,000.00 as moral damages, the appellate court awarded temperate damages in the amount of ₱25,000.00 and ₱1,000.00 as reparation for the stolen amount. With respect to the actual damages of ₱22,701.00, however, the latter was reduced to ₱16,892.00, because only said amount was supported by the "best obtainable receipts for the expenses during the wake of the victim x x x as attached to the summary of expenses."[26] The *fallo* of the Court of Appeals decision provides:

> WHEREFORE, premises considered, the Decision dated 02 May 2002 of the Regional Trial Court of Naga City, Branch 26 in *Crim. Case No. 99-7596* finding appellants Rolly Flora *y* Candelaria, Maurito Flora *y* Lim, Ramon Flora *y* Lim and Ereberto Flora *y* Lim guilty beyond reasonable doubt of the special complex crime of robbery with homicide under Article 294 (1) of the Revised Penal Code, as amended by Republic Act No. 7659, and sentencing each of them to suffer the penalty of *reclusion perpetua* is AFFIRMED with MODIFICATION in that in addition to the amounts of Php50,000.00 as civil indemnity, and Php50,000.00 as moral damages which they should jointly and severally pay the heirs of the victim Luisito Esperida, they are further ordered to jointly and severally pay the heirs of the victim the reduced amount of Php16,892.00 as

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[23] *Id.* at 47.

[24] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.

[25] CA *rollo,* pp. 123-124.

[26] *Rollo,* p. 42.

actual damages, Php25,000.00 as temperate damages, and Php1,000.00 as reparation for the stolen amount.[27]

Appellants judiciously filed a Notice of Appeal with the Court of Appeals, which, in a Resolution dated 16 November 2007, gave due course to the appeal. Hence, the present case is again before us for our final disposition, anchored on the following assignment of errors, to wit:

I.

THE COURT *A QUO* GRAVELY ERRED IN NOT APPRECIATING THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE IN FAVOR OF APPELLANT ROLLY FLORA; and

II.

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANTS MAURITO, RAMON AND ERIBERTO FLORA GUILTY BEYOND REASONABLE DOUBT OF THE SPECIAL COMPLEX CRIME OF ROBBERY WITH HOMICIDE.[28]

It is essentially the contention of appellants that the trial and the appellate courts erred in finding them guilty beyond reasonable doubt of the crime charged despite their claim of a justifying circumstance, *i.e.*, self-defense. They maintain that the prosecution witnesses failed to prove that the victim did not attack Rolly Flora or that he (victim) was not utterly defenseless when he was stabbed. Particularly, they argue that:

When Rolly was pushed and fell to the ground and the deceased attempted to stab him, x x x, there already exist (sic) an imminent danger to his life. With the existence of the threat to his life, the act of Rolly in twisting the right hand of Esperida and which caused the knife to hit the latter's stomach appear reasonable (sic) necessary under the circumstances. Thus, it was just but natural that to the mind of Rolly Flora, his life was in peril and that should he decide not to do something to repel the imminent attack, he will be the one harmed.

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[27] *Id.*

[28] CA *rollo*, p. 74.

As to the reasonable necessity of the means employed to repel the aggression, there is at least a reasonable doubt, the benefit of which must be given the accused, and that the self-defense is complete x x x. [29]

They argue further that the testimonies of the witnesses presented by the prosecution were mottled with inconsistencies and discrepancies that made them insufficient to establish appellants' guilt beyond reasonable doubt as the perpetrators of the special complex crime of robbery with homicide. In their Brief, they question the reliability of prosecution witnesses: (1) Simeon Buesa, because he was not able to witness the actual stabbing of the victim; (2) Jason Vargas, when he claimed that only Ereberto and Ramon were the ones who ran after the victim, as Maurito was being detained by him (Jason), contrary to Buesa's statement that Maurito was present when the victim was stabbed by his co-appellant Rolly; and (3) Dr. Rhodora Roa-Perez, though she averred that "it was possible that the wounds sustained by the victim could have been inflicted by more than one instrument," but she contradicted her own conclusion when she likewise stated that it was possible that the first and second wound were caused by only one instrument although the strength used was different.[30] In view of the foregoing, they construe that:

The fact that the people who were supposedly present at the scene of the crime could not agree as to the simple details relating to the incident on the night in question inevitably casts doubt on their credibility. [31]

Anent the assigned error respecting the supposed innocence of appellants Ramon, Maurito and Ereberto, they insist that:

The admission by accused-appellant Rolly Flora should prevail over the testimony of the prosecution witnesses considering that

[29] *Id.* at 84-85.

[30] *Id.* at 85.

[31] *Id.* at 87.

the said admission is more credible and consistent with human nature.[32]

considering that:

> No one in his right mind would readily admit to a criminal act and exculpate his co-perpetrators with such serious repercussions to the former, if all of them had really participated in the commission of the crime. If all of the appellants indeed participated in the killing of Esperida, as alleged by the prosecution witnesses, the natural reaction of the one who confessed to the crime would be to reveal his co-perpetrators.[33]

All told, appellants, thus, assert that the significant discrepancies in the testimonies of the witnesses of the prosecution showing them to be the perpetrators of the crime charged are tantamount to reasonable doubt respecting their legal culpability thereto. And there being reasonable doubt, their constitutionally guaranteed right to be presumed innocent was not overcome.

The Office of the Solicitor General (OSG), for the *People of the Philippines*, on the other hand, asserts that the alleged conflicting points in the testimony of the witnesses of the prosecution are but trivial in nature and do not depart from the fact that appellants were positively identified as the authors of the crime charged. In defense of Simeon Buesa's testimony, the OSG points out that "[a]ppellants failed to adduce any proof of malice or ill-motive on the part of Simeon to pinpoint and falsely implicate them as the assailants of the victim."[34] With respect to Jason Vargas, it rationalized that "[t]he purpose of Jason in testifying at (sic) this case cannot be doubted. It is natural for him to seek the vindication of his right and those of this (sic) family as they were aggrieved by the appellants. It is not in accord with human experience that he who was a victim would impute such a grievous act on somebody other than the real culprits."[35]

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[32] *Id.* at 88.

[33] *Id.*

[34] *Id.* at 165.

[35] *Id.*

The OSG then reminds that:

> Finely embedded in our jurisprudence is the rule that positive identification, where categorical and consistent and without any showing of ill-motive on the part of the eye-witnesses testifying in the matter, prevails over alibi and denial which, if not substantiated by clear and convincing proof, are negative and self-serving evidence undeserving of weight in law.[36]

The justifying circumstance of self-defense raised by appellants is lightly brushed aside by the OSG reasoning that:

> In the case at bar five (5) prosecution eyewitnesses in the persons of Nenita Esperida, spouses Jason and Novie Vargas, Simeon Buesa and Domingo Pesico testified in a straightforward, clear and categorical manner that Luisito was unarmed and utterly defenseless when he was simultaneously assaulted by the appellants and fatally stabbed by Rolly, thereby showing that the victim could not have been the unlawful aggressor immediately prior to the concerted attack and fatal stabbing x x x.[37]

The OSG then concludes that:

> All these, plus the lack of any corroborating testimony on the part of any independent witness for the defense duly supported with the evidence on record or physical evidence, weaken appellant Rolly's claim of self-defense.[38]

Considering the preceding arguments and counter-arguments, the threshold issue in this case, therefore, is whether or not the prosecution was able to prove the guilt of defendents-appellants beyond reasonable doubt of the special complex crime of robbery with homicide on the basis of the evidence presented by the prosecution witnesses.

The appeal has no merit. This Court is convinced that appellants are all equally guilty of the special complex crime of robbery with homicide.

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[36] *Id.* at 164.

[37] *Id.* at 149.

[38] *Id.* at 163.

In criminal law, it is settled that when the killing is admitted and self-defense is invoked, the burden of evidence shifts to the accused to show that the result (killing) was legally justified. Otherwise stated, the accused assumes the burden to establish his plea by credible, clear and convincing evidence; otherwise, conviction would follow from his admission that he killed the victim.[39] In the case at bar, having owned up to the killing of the victim, the accused should be able to prove the elements of self-defense in order to avail himself of this justifying circumstance; and he must discharge this burden by clear and convincing evidence.

For self-defense to be appreciated, it is required that there be: (1) an unlawful aggression by the victim injured or killed by the accused; (2) reasonable necessity of the means employed to prevent or repel that unlawful aggression; and (3) lack of sufficient provocation on the part of the person defending himself. And all the foregoing conditions must concur.[40]

Herein, the RTC and the Court of Appeals were both correct when they held that the justifying circumstance of self-defense was baselessly invoked by appellant Rolly. The latter failed to discharge the burden of proving this justifiable circumstance. His claim that the victim initiated the fracas with his unlawful act of trying to stab the former is specious at best. Unlawful aggression presupposes an actual, sudden and unexpected or imminent danger on the life and limb of a person – a mere threatening or intimidating attitude is not sufficient.[41] But whether or not Rolly, indeed, acted in self-defense is a question of fact;[42] the well-entrenched rule is that the findings of fact of the trial court in the ascertainment of the credibility of witnesses and

[39] *People v. Tagana*, 468 Phil. 784, 800-801 (2004).

[40] *Id.* at 801.

[41] *Martinez v. Court of Appeals*, G.R. No. 168827, 13 April 2007, 521 SCRA 176, 194-195.

[42] *People v. De los Reyes*, G.R. No. 140680, 28 May 2004, 430 SCRA 166, 173; *Senoja v. People*, G.R. No. 160341, 19 October 2004, 440 SCRA 695, 706.

the probative weight of the evidence on record affirmed, on appeal, by the appellate court are accorded high respect, if not conclusive effect, by the Court; and in the absence of any justifiable reason to deviate from the said findings.[43]

The RTC gave no credence and probative value to the evidence proffered by appellants to prove that Rolly acted in self-defense when he stabbed the victim; and that the rest (Ramon, Maurito and Ereberto) had no actual participation in said act. All of them failed to establish that the RTC and Court of Appeals misconstrued or ignored facts and circumstances of substance which, if considered, would have warranted a reversal of the guilty verdict of the trial court, and affirmed by the appellate court.

Contrary to the claim of appellants, the prosecution witnesses clearly and positively established the factual backdrop leading to the stabbing of the victim. That there existed no unlawful aggression is evident from the facts of the case – the victim, after arriving at his residence, was caught unaware of the crime being committed inside his house and, after sustaining a stab wound on his abdomen, ran away from appellants. Luisito Esperida was never an aggressor; from the time he was attacked inside his residence until he ended up at the creek, he was a victim. There can be no self-defense unless the accused proves unlawful aggression. Considering that the element of unlawful aggression is absent, there is no use discussing whether or not the other elements – the reasonable necessity of the means employed to repel the unlawful aggression and the lack of sufficient provocation on the part of the person defending him – have been adequately proved.

Accordingly, having set aside the claim of self-defense, we now come to the crime alleged to have been committed by appellants, that is, the special complex crime of robbery with homicide.

Article 294, paragraph 1 of the Revised Penal Code, as amended by Republic Act No. 7659, reads:

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[43] *Rugas v. People*, 464 Phil. 493, 504 (2004).

ART. 294. *Robbery with violence against or intimidation of persons. Penalties.* – Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

xxx xxx xxx.

To warrant the conviction of appellants for said charge, the prosecution was burdened to prove the confluence of the following essential elements:

(a) the taking of personal property with the use of violence or intimidation against a person;

(b) the property thus taken belongs to another;

(c) the taking is characterized by intent to gain or *animus lucrandi*; and

(d) on the occasion of the robbery or by reason thereof, the crime of homicide, which is therein used in a generic sense, was committed.[44]

In this case, the prosecution proved beyond reasonable doubt that appellants conspired and confabulated with each other in robbing the victim and his wife, Nenita Esperida, of money, at least; and in killing the victim, in the face of the clear and positive identification of appellants as the perpetrators.

Maurito and Ramon's defense of alibi and denial, like Rolly's justification of self-defense, are unavailing and worthless. Alibi and denial are inherently weak defenses,[45] and it is not at all persuasive in the instant case when pitted against the positive and convincing identification by all the witnesses of the prosecution.[46] Here, the defense of alibi and denial, *i.e.*, Maurito's

[44] *People v. Gamo*, 351 Phil. 944, 953-954 (1998).

[45] *People v. Suarez*, G.R. Nos. 153573-76, 15 April 2005, 456 SCRA 333, 349.

[46] *People v. Isla, Jr.*, 432 Phil. 414, 431 (2002).

plea that he was asleep from the time prior to seeing the victim struggling at the creek; and Ramon's argument that he was at Bagumbayan Norte, Naga City, to buy nails, do not evince credible exculpation. We quote with approval the appellate court's pronouncement rejecting Maurito and Ramon's excuses, *viz*:

> The time-tested rule is that alibi cannot prevail over the positive assertions of prosecution witnesses, more so in this case where appellant failed to prove that he was at another place at the time of the commission of the crime and that it was physically impossible for him to be at the crime scene (citation omitted). for the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time the crime was committed but that it was likewise impossible for him to be at the *locus criminis* or its immediate vicinity at the time of the alleged crime. Where there is even the least chance for the accused to be present at the crime scene, the defense of alibi will not hold water. Furthermore, appellant's denial fails in the light of the positive identification and declarations of the prosecution witnesses. The positive identification of an accused by eyewitnesses prevails over the defenses of denial of alibi and denial. Courts generally view the defenses of denial and alibi with disfavor on account of the facility with which an accused can concoct them to suit his defense. Being evidence that is negative in nature and self-serving, they cannot attain more credibility than the testimonies of prosecution witnesses who testify on clear and positive evidence (citation omitted).[47]

It is noted that Rolly and Maurito acknowledged being at the crime scene.[48] They have not shown the impossibility of their committing the bestial deed although they were allegedly in another place at some point, given the distance of their supposed whereabouts from the scene of the crime. Equally unimpressed with the alibi and denial of appellants, the trial court held that:

> Again, the accused miserably failed to discharge this burden. On the witness stand, Ramon Flora testified that his house is merely 25 meters away from Esperida's residence (tsn, November 19, 2001, p. 2). Although he testified that he is in Bagumbayan Norte, Naga City, on that fateful date and time, buying nails as they were repairing

[47] *Rollo*, p. 32.

[48] TSN of 5 November 2001, pp. 7-10; and 11 February 2002, pp. 5-9.

the house of Emerson San Carlos, yet, this was belied by the testimony of the defense's own witness Emerson San Carlos who testified that they finished repairing his house before noontime (tsn, February 22, 2002, p. 14). Emerson San Carlos also testified that his house is merely 30 meters away from Esperida's residence. In the same manner, Maurito Flora testified that his house is just beside the house of Ramon Flora, which is merely 25 meters away from Esperida's residence (tsn, November 5, 2001, p. 3). To the mind of this court, the short distances and negligible time between the accused's (sic) residences and the place of commission of the crime negate their defense of alibi.[49]

In the case at bar, we are satisfied that the witnesses of the prosecution, eyewitnesses to the events that transpired on the fateful day, have positively identified appellants as the malefactors. We do not believe that they could have fabricated their charges and testimonies by weaving or inventing a tale purely out of mere imagination. Though not one of them was able to witness the entire event – from the time appellants barged into the house of the victim, until the latter ended up at the creek with a gaping wound in his abdomen – but each of them positively narrated that he/she witnessed appellants attacking and/or pursuing the victim; and, when put together, each testimony interlocked with the others like pieces of a puzzle to form one whole picture. Taken *seriatim*, but evaluated as one, the testimonies would rival a celluloid version, had one been actually recorded. Neither do we think that their testimonies were anything but spontaneous and brought forth only from what they saw the victim actually endured from the hands of appellants. Like the trial court and the appellate court, this Court finds no reason to be suspicious of the testimonies of the witnesses of the prosecution. The testimonies, appreciated in whole, are more than candid and definitive enough to sustain conviction of the appellants.

Well-settled is the legal principle that a categorical and positive identification of an accused, without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial.[50] The defenses of denial and alibi deserve

[49] CA *rollo*, p. 43.

[50] *People v. Suarez*, *supra* note 45 at 349.

scant consideration when the prosecution has strong and convincing evidence identifying appellants as the perpetrators.

Appellants' asseveration respecting the supposed inconsistencies in the testimonies of Simeon Buesa and Jason Vargas are tenuous. While it is true that there are inconsistencies in the narration of facts of some of the witnesses for the prosecution, to our mind, such do not detract from its basic truthfulness or reliability. The supposed inconsistencies are more apparent than real and refer, at most, only to insignificant or trivial details and do not impinge on the positive identification of appellants. The foregoing bear no materiality to the commission of the special complex crime of robbery with homicide with which appellants have been charged and of which they have been convicted. As pointed out by the OSG, the seeming inconsistencies were but minor lapses that could not detract from the value of the evidence given by a disinterested person and the overwhelming logic that a person, *nay*, a victim, would not impute a grievous act on somebody other than the real perpetrator or culprit.

As to the damages awarded by the Court of Appeals, however, this Court finds that a modification needs to be made. It is our obligation to correct said error, albeit not assigned as such, as may be found in the judgment appealed from, since an appeal in a criminal case throws the whole case wide open for review.[51]

This Court notes that the RTC awarded the heirs of the victim actual damages in the amount of ₱22,701.00. The Court of Appeals modified the amount to ₱16,892.00 for the reason that only such amount was supported by the "best obtainable receipts for the expenses during the wake of the victim x x x." But considering that the heirs of the victim have already been awarded temperate damages in the amount of ₱25,000.00, we delete the amount of ₱16,892.00 representing actual damages. As we have ruled in *People v. Werba*,[52] citing *People v. Villanueva*,[53] in instances where actual expenses amounting to less than ₱25,000.00

[51] *Ferrer v. People*, G.R. No. 143487, 22 February 2006, 483 SCRA 31, 54.

[52] G.R. No. 144599, 9 June 2004, 431 SCRA 482, 499.

[53] 456 Phil. 14, 28-29 (2003).

are proved during trial, the award of temperate damages of ₱25,000.00 is justified in lieu of the actual damages of a lesser amount.[54]

WHEREFORE, in light of the foregoing, the appeal is hereby *DENIED* for lack of merit. Accordingly, the Decision of the Court of Appeals dated 3 October 2007 in CA-G.R. CR-H.C. No. 02427 is *AFFIRMED* with *MODIFICATION* to the effect that the amount of ₱16,892.00 as actual damages is deleted in view of the award of ₱25,000.00 as temperate damages. Appellants Rolly Flora *y* Candelaria, Maurito Flora *y* Lim, Ramon Flora *y* Lim and Ereberto Flora *y* Lim are hereby found *GUILTY* of the special complex crime of *ROBBERY WITH HOMICIDE* and are hereby sentenced each to suffer the penalty of *Reclusion Perpetua* and are ordered to pay the heirs of Luisito Esperida, jointly and severally, the amount of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱25,000.00 as temperate damages and ₱1,000.00 as reparation for the amount stolen by appellants. Costs *de oficio*.

SO ORDERED.

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

[54] *People v. Werba, supra* 52 at 499-500.

THIRD DIVISION

[Adm. Case No. 7549. August 29, 2008]

AURELIO M. SIERRA, *complainant, vs.* **JHOSEP Y. LOPEZ, City Prosecutor of Manila, EUFROCINO SULLA, 1st Assistant City Prosecutor (ACP), ACP ALEXANDER T. YAP, ACP MARLO CAMPANILLA, and ACP ARMANDO VELASCO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; CONFRONTATION BETWEEN PARTIES, NOT REQUIRED; RATIONALE.—** Rule 112, particularly Section 3 of the Rules of Court, lays down the basic procedure in preliminary investigation. This provision of the Rules does not require a confrontation between the parties. Preliminary investigation is ordinarily conducted through submission of affidavits and supporting documents, through the exchange of pleadings. In *Rodis, Sr. v. Sandiganbayan* we ruled that — (the New Rules on Criminal Procedure) do not require as a condition *sine qua non* to the validity of the proceedings (in the preliminary investigation) the presence of the accused for as long as efforts to reach him were made, and an opportunity to controvert evidence of the complainant is accorded him. The obvious purpose of the rule is to block attempts of unscrupulous respondents to thwart the prosecution of offenses by hiding themselves or by employing dilatory tactics.

2. **ID.; ID.; ID.; COUNTER-AFFIDAVIT CAN BE SWORN TO BEFORE NOTHER PROSECUTOR.—** Since confrontation between the parties is not imperative, it follows that it is not necessary that the counter-affidavit of respondent be sworn to before the investigating prosecutor himself. It can be sworn to before another prosecutor. In fact, this is specifically provided in paragraph (c) of Sec. 3, which states that the "counter-affidavit shall be subscribed and sworn to and certified as provided in paragraph (a) of this section x x x"; and paragraph (a), provides: the affidavits shall be subscribed

and sworn to before any prosecutor or government official or in their absence or unavailability, before a notary public x x x.

3. ID.; ID.; ID.; CLARIFICATORY QUESTIONING; DECISION TO CALL WITNESSES ADDRESSED TO SOUND DISCRETION OF INVESTIGATOR ALONE.— Lastly, we hold that the investigating prosecutors did not abuse their discretion when they denied the request of the complainant for the conduct of clarificatory questioning. Under paragraph (e) of Section 3 above, the conduct of clarificatory questioning is discretionary upon the prosecutor. Indeed, we already held in *Webb v. De Leon* that the decision to call witnesses for clarificatory questions is addressed to the sound discretion of the investigator, and the investigator alone.

D E C I S I O N

NACHURA, *J.*:

The instant controversy arose from a complaint for dereliction of duty and gross ignorance of the law by Aurelio M. Sierra against City Prosecutor of Manila Jhosep Y. Lopez, 1st Assistant City Prosecutor (ACP) Eufrocino Sulla, Assistant City Prosecutors Alexander Yap, Marlo Campanilla and Armando Velasco.

The facts of the case are as follows:

On July 27, 2006 and August 1, 2006, complainant Aurelio M. Sierra filed several cases before the Office of the City Prosecutor of Manila for Misrepresentation through Deceit and Syndicated Large Scale Fraud in Land Titling with Conspiracy, Land Grabbing, Falsification of Public Document and Economic Sabotage.

These cases were first assigned to ACP Alexander T. Yap. The principal respondents therein, namely: Alfredo C. Ramos, Presentacion Ramos, George S.K. Ty, Atty. Emmanuel Leonardo, and a certain Mr. Cayaban, did not appear during the scheduled hearing. However, Alfredo and Presentacion Ramos appeared in the morning of that day ahead of the complainant in which

they submitted their respective counter-affidavits, subscribed and sworn to before ACP Yap. The respondents asked that they be allowed to submit their counter-affidavits ahead of the scheduled hearing because they had an urgent matter to attend to in the afternoon. In the case of George S.K. Ty and Mr. Cayaban, their respective counter-affidavits were submitted by their lawyers during the scheduled hearing in the afternoon, already subscribed and sworn to before a Pasig Prosecutor. Atty. Leonardo did not submit any counter-affidavit.

Because of ACP Yap's failure to require the presence of respondents in said cases simultaneously with the complainant, Mr. Sierra asked for the prosecutor's inhibition. The cases were then re-raffled to the respondent ACP Marlo Campanilla who likewise did not require the presence of the respondents in the preliminary investigation. Because of this, he too was asked to inhibit from the cases by complainant.

The cases were then re-raffled to ACP Armando Velasco who also handled the cases in the same manner as the two other prosecutors before him. City Prosecutor Jhosep Y. Lopez and 1st ACP Eufrocino A. Sulla affirmed the correctness of the manner in which their investigating prosecutors handled the cases.

On April 26, 2007, Sierra filed a complaint with the Supreme Court for dereliction of duty and gross ignorance of the law against City Prosecutor Lopez, 1st ACP Sulla, ACP Yap, ACP Campanilla, and ACP Velasco.

In his complaint, Sierra raises the following questions of law: (1) whether the parties must appear together before the investigating prosecutor during preliminary investigation; (2) whether the counter-affidavits of the respondents should be sworn to only before the investigating prosecutor; and (3) whether the investigating prosecutor erred in denying the request of the complainant for clarificatory questioning.

The Supreme Court Third Division then issued a Resolution dated July 25, 2008 requiring respondents to comment on the complaint.

In compliance with the Honorable Court's order, respondents filed their Comment dated March 7, 2008 stating that they handled the cases properly and in accordance with what was provided by law. They also argued that they had not committed any dereliction of duty and gross ignorance of the law.

We find no merit in the complaint.

Rule 112, particularly Section 3 of the Rules of Court, lays down the basic procedure in preliminary investigation, as follows:

Sec. 3. Procedure. – The preliminary investigation shall be conducted in the following manner:

(a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or, in their absence or unavailability, before a notary public, each of whom must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.

The respondent shall have the right to examine the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense. If the evidence is voluminous, the complainant may be required to specify those which he intends to present against the respondent, and these shall be made available for examination or copying by the respondent at his expense.

Objects as evidence need not be furnished a party but shall be made available for examination, copying, or photographing at the expense of the requesting party.

(c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other

supporting documents relied upon for his defense. The counter-affidavits, shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.

(d) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10) day period, the investigating officer shall resolve the complaint based on the evidence presented by the complainant.

(e) The investigating officer may set a hearing if there are facts and issues to be clarified from a party or a witness. The parties can be present at the hearing but without the right to examine or cross-examine. They may, however, submit to the investigating officer questions which may be asked to the party or witness concerned.

The hearing shall be held within ten (10) days from submission of the counter-affidavits and other documents or from the expiration of the period for their submission. It shall be terminated within five (5) days.

(f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.

This provision of the Rules does not require a confrontation between the parties. Preliminary investigation is ordinarily conducted through submission of affidavits and supporting documents, through the exchange of pleadings.

In *Rodis, Sr. v. Sandiganbayan*[1] we ruled that —

> (the New Rules on Criminal Procedure) do not require as a condition *sine qua non* to the validity of the proceedings (in the preliminary investigation) the presence of the accused for as long as efforts to reach him were made, and an opportunity to controvert evidence of the complainant is accorded him. The obvious purpose of the rule is to block attempts of unscrupulous respondents to thwart the prosecution of offenses by hiding themselves or by employing dilatory tactics.

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[1] G.R. Nos. 71404-09, October 26, 1988, 166 SCRA 618.

Since confrontation between the parties is not imperative, it follows that it is not necessary that the counter-affidavit of respondent be sworn to before the investigating prosecutor himself. It can be sworn to before another prosecutor. In fact, this is specifically provided in paragraph (c) of Sec. 3, which states that the "counter-affidavit shall be subscribed and sworn to and certified as provided in paragraph (a) of this section x x x"; and paragraph (a), provides:

the affidavits shall be subscribed and sworn to before any prosecutor or government official or in their absence or unavailability, before a notary public x x x.

Lastly, we hold that the investigating prosecutors did not abuse their discretion when they denied the request of the complainant for the conduct of clarificatory questioning. Under paragraph (e) of Section 3 above, the conduct of clarificatory questioning is discretionary upon the prosecutor. Indeed, we already held in *Webb v. De Leon*[2] that the decision to call witnesses for clarificatory questions is addressed to the sound discretion of the investigator, and the investigator alone.

WHEREFORE, premises considered, the complaint is *DENIED* for lack of merit.

SO ORDERED.

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

[2] G.R. Nos. 121245 &121297, August 23, 1995, 247 SCRA 653.

THIRD DIVISION

[G.R. No. 157660. August 29, 2008]

ELIGIO P. MALLARI, *petitioner, vs.* **BANCO FILIPINO SAVINGS & MORTGAGE BANK,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; AVAILABLE WHERE THERE IS NO APPEAL OR ANY PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW.— First to be resolved is the issue of whether the remedy of *certiorari* may be availed of by petitioner in assailing the RTC Orders granting the issuance of a writ of possession. The well-trenched rule provided for in Section 1, Rule 65 of the Rules of Court and elucidated in *Metropolitan Bank and Trust Co., Inc. v. National Wages and Productivity Commission*, is that: *Certiorari* as a special civil action is available only if the following essential requisites concur: (1) it must be directed against the tribunal, board or any officer exercising judicial or quasi-judicial functions; (2) the tribunal, board or officer must have 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**. x x x A remedy is considered plain, speedy and adequate if it will promptly relieve the petitioner from the injurious effects of the judgment or rule, order or resolution of the lower court or agency.

2. ID.; ID.; ID.; ID.; EXCEPTIONS.— Indeed, the Court in some instances has allowed a petition for *certiorari* to prosper notwithstanding the availability of an appeal, such as, (a) when public welfare and the advancement of public policy dictate it; (b) when the broader interest of justice so requires; (c) when the writs issued are null; and (d) when the questioned order amounts to an oppressive exercise of judicial authority."

3. CIVIL LAW; MORTGAGE; EXTRAJUDICIAL FORECLOSURE; POSSESSION; SECTION 8 OF ACT NO. 3135, AS AMENDED.— The broader interest of justice would, in fact,

be better served by following the procedural steps set forth in Section 8, Act No. 3135, as amended, to wit: SEC. 8. The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; **but the order of possession shall continue in effect during the pendency of the appeal**. The above procedure affords both parties the most expeditious way to resolve any conflict regarding the writ of possession alone.

4. ID.; ID.; ID.; ID.; ID.; REMEDY OF A PARTY FROM TRIAL COURT'S ORDER GRANTING THE ISSUANCE OF A WRIT OF POSSESSION; CASE AT BAR.— In *Green Asia Construction & Development Corp. v. Court of Appeals*, the Court categorically ruled that under Section 8, Act No. 3135, the remedy of a party from the trial court's order granting the issuance of a writ of possession is to file a petition to set aside the sale and cancel the writ of possession, and the aggrieved party may then appeal from the order denying or granting said petition. This is the plain, speedy and adequate remedy envisioned in Rule 65 of the Rules of Court, and since petitioner could have availed himself of such procedure, he is not entitled to the remedy of *certiorari*. On this point alone, the CA acted properly in dismissing the subject petition for *certiorari*.

5. ID.; ID.; ID.; ID.; ANY QUESTION REGARDING THE VALIDITY OF THE MORTGAGE OR ITS FORECLOSURE IS NOT A LEGAL GROUND FOR REFUSING THE ISSUANCE OF A WRIT OF POSSESSION.— In *Espiridion v. Court of Appeals*, a case that is closely akin to the present petition, the Court expounded thus: Where the court acts on a matter that is within its jurisdiction, grave abuse of discretion

must be shown to nullify the act. **In this case, since the issuance of the writ of possession did not involve an exercise of discretion, no abuse of discretion could have been committed by the trial court.** Thus, the instant petition for *certiorari* has no leg to stand on. The issue of nullity of the extrajudicial foreclosure sale was of no moment. It could not bar the issuance of the writ of possession. **As a rule, any question regarding the validity of the mortgage or its foreclosure is not a legal ground for refusing the issuance of a writ of execution/writ of possession.** x x x Again, in *Saguan v. Philippine Bank of Communications*, the Court reiterated that: x x x Consequently, the purchaser, who has a right to possession after the expiration of the redemption period, becomes the absolute owner of the property when no redemption is made. In this regard, the bond is no longer needed. **The purchaser can demand possession at any time following the consolidation of ownership in his name and the issuance to him of a new TCT. After consolidation of title in the purchaser's name for failure of the mortgagor to redeem the property, the purchaser's right to possession ripens into the absolute right of a confirmed owner. At that point, the issuance of a writ of possession, upon proper application and proof of title, to a purchaser in an extrajudicial foreclosure sale becomes merely a ministerial function. Effectively, the court cannot exercise its discretion.** Therefore, the issuance by the RTC of a writ of possession in favor of the respondent in this case is proper. **We have consistently held that the duty of the trial court to grant a writ of possession in such instances is ministerial, and the court may not exercise discretion or judgment.** x x x

APPEARANCES OF COUNSEL

Eligio P. Mallari in his own behalf.
Edmundo Dantes M. Samson for respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

This resolves the Petition for Review on *Certiorari* under

Rule 45 of the Rules of Court, seeking the reversal of the Court of Appeals (CA) Decision[1] dated March 14, 2003, dismissing the petition for *certiorari* filed by Eligio P. Mallari (petitioner).

The antecedent facts are as follows.

Petitioner obtained a loan from Banco Filipino Savings and Mortgage Bank (respondent) and as security therefor, he executed a Deed of Mortgage over a parcel of land located in Pampanga. Due to his failure to pay the loan, respondent extra-judicially foreclosed the mortgaged property. Respondent was the highest bidder at the public auction sale, and the Certificate of Sale issued in its favor was annotated on the title of the subject property on May 20, 1999. Petitioner failed to redeem said property within the redemption period which expired on May 20, 2000. Respondent then consolidated its title to the foreclosed property. **Petitioner's certificate of title to the property was cancelled and a new one was issued in the name of respondent on August 30, 2000**.

Thereafter, on January 18, 2001, respondent filed with the Regional Trial Court (RTC) an *Ex-Parte Petition for the Issuance of Writ of Possession Under Act No. 3135*. On March 22, 2001, petitioner filed a *Motion to Dismiss/Opposition to Petition*, alleging that there was still a pending action between the parties for declaration of nullity of the extra-judicial foreclosure proceedings which was filed as early as May 16, 2000. Nevertheless, on May 18, 2001, the RTC issued an Order granting respondent's petition for issuance of a writ of possession. Petitioner's motion for reconsideration thereof was denied.

Aggrieved, petitioner filed a petition for *certiorari* with the CA. On March 14, 2003, the CA promulgated the herein assailed Decision dismissing the petition for lack of merit, ruling that under the law, the purchaser in the foreclosure sale should be placed in possession of the property without delay, and that it was the ministerial duty of the courts to uphold the mortgagee's

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[1] Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Bernardo P. Abesamis and Edgardo F. Sundiam, concurring, *rollo*, p. 26.

[2] CA Decision, *rollo*, p. 29

right to possession even during the redemption period.[2] The CA added that an appeal, which was available to petitioner, was the appropriate remedy, and therefore, he could not avail himself of the writ of *certiorari*.

Petitioner then filed the present petition for review on *certiorari* alleging that:

1. THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN UPHOLDING THE GRANT OF WRIT OF POSSESSION IN FAVOR OF RESPONDENT BANCO FILIPINO AGAINST THE SPOUSES ELIGIO AND MARCELINA MALLARI ON THE PROPERTY SUBJECT MATTER OF THIS CASE.
2. THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN UPHOLDING THE DENIAL ORDER OF THE TRIAL COURT TO RECONSIDER THE ORDER DATED MAY 18, 2001, AND ORDERING THE DEPUTY SHERIFF TO IMPLEMENT THE WRIT OF POSSESSION DATED MAY 18, 2001.
3. THE HONORABLE COURT OF APPEALS COMMITTED AN ERROR WHEN IT RULED THAT *CERTIORARI* WILL NOT LIE AS APPEAL IS THE APPROPRIATE REMEDY WHICH IS STILL AVAILABLE IN THE CASE.[3]

The petition fails for lack of merit. The CA committed no error.

First to be resolved is the issue of whether the remedy of *certiorari* may be availed of by petitioner in assailing the RTC Orders granting the issuance of a writ of possession. The well-trenched rule provided for in Section 1, Rule 65 of the Rules of Court and elucidated in *Metropolitan Bank and Trust Co., Inc. v. National Wages and Productivity Commission*,[4] is that:

> *Certiorari* as a special civil action is available only if the following essential requisites concur: (1) it must be directed against the tribunal, board or any officer exercising judicial or quasi-judicial functions;

[3] *Rollo*, pp. 17-18.

[4] G.R. No. 144322, February 6, 2007, 514 SCRA 346.

(2) the tribunal, board or officer must have 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**.

xxx xxx xxx

x x x A remedy is considered plain, speedy and adequate if it will promptly relieve the petitioner from the injurious effects of the judgment or rule, order or resolution of the lower court or agency.[5] (Emphasis supplied)

Indeed, the Court in some instances has allowed a petition for *certiorari* to prosper notwithstanding the availability of an appeal, such as, (a) when public welfare and the advancement of public policy dictate it; (b) when the broader interest of justice so requires; (c) when the writs issued are null; and (d) when the questioned order amounts to an oppressive exercise of judicial authority."[6]

However, in the present case, the Court finds no cogent reason to sustain petitioner's claim that the CA erred when it ruled that *certiorari* would not lie, as appeal is the appropriate remedy. There is no issue here that involves public welfare or policy. The broader interest of justice would, in fact, be better served by following the procedural steps set forth in Section 8, Act No. 3135, as amended, to wit:

SEC. 8. The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the

[5] *Id.* at 356-357.

[6] *Leyte IV Electric Cooperative, Inc., v. LEYECO IV Employees Union–ALU*, G.R. No. 157775, October 19, 2007, 537 SCRA 154, 166.

bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; **but the order of possession shall continue in effect during the pendency of the appeal**. (Emphasis supplied)

The above procedure affords both parties the most expeditious way to resolve any conflict regarding the writ of possession alone.

Jose v. Zulueta,[7] *Matute v. Court of Appeals*,[8] *Romero, Sr. v. Court of Appeals*[9] and *Belfront Surety and Insurance Co. v. People of the Philippines*[10] cited by petitioner are not applicable to the present case. Those cases involved writs of possession issued in the course of the execution of judgment, totally unlike this case in which the writ of possession was issued by reason of an extra-judicial foreclosure.

In *Green Asia Construction & Development Corp. v. Court of Appeals*,[11] the Court categorically ruled that under Section 8, Act No. 3135, the remedy of a party from the trial court's order granting the issuance of a writ of possession is to file a petition to set aside the sale and cancel the writ of possession, and the aggrieved party may then appeal from the order denying or granting said petition. This is the plain, speedy and adequate remedy envisioned in Rule 65 of the Rules of Court, and since petitioner could have availed himself of such procedure, he is not entitled to the remedy of *certiorari*. On this point alone, the CA acted properly in dismissing the subject petition for *certiorari*.

However, just to put petitioner's mind at ease that the dismissal of his petition for *certiorari* was not grounded solely on technicalities, the Court will discuss the issue of the propriety

[7] No. L-16598, May 31, 1961, 2 SCRA 574.

[8] No. L-26751, January 31, 1969, 26 SCRA 768.

[9] No. L-29659, July 30, 1971, 40 SCRA 172.

[10] No. L-47309, January 30, 1982, 111 SCRA 385.

[11] G.R. No. 163735, November 24, 2006, 508 SCRA 79, 85.

of the issuance of the writ of possession by the trial court.

The writ of possession was issued in accordance with law and jurisprudence. The writ of possession granted by the RTC was not a nullity; neither was its issuance an oppressive exercise of judicial authority.

In *Espiridion v. Court of Appeals*,[12] a case that is closely akin to the present petition, the Court expounded thus:

> x x x The issuance of a writ of possession to a purchaser in a public auction is a ministerial act. **After the consolidation of title in the buyer's name for failure of the mortgagor to redeem the property, the writ of possession becomes a matter of right. Its issuance to a purchaser in an extrajudicial foreclosure sale is merely a ministerial function.** The trial court has no discretion on this matter. Hence, **any talk of discretion in connection with such issuance is misplaced.**
>
> A clear line demarcates a discretionary act from a ministerial one. Thus:
>
> > The distinction between a ministerial and discretionary act is well delineated. A purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment.
>
> Clearly, the use of discretion and the performance of a ministerial act are mutually exclusive.
>
> Where the court acts on a matter that is within its jurisdiction, grave abuse of discretion must be shown to nullify the act. **In this case, since the issuance of the writ of possession did not involve an exercise of discretion, no abuse of discretion could have been committed by the trial court.** Thus, the instant petition for *certiorari* has no leg to stand on.

[12] G.R. No. 146933, June 8, 2006, 490 SCRA 273.

The issue of nullity of the extrajudicial foreclosure sale was of no moment. It could not bar the issuance of the writ of possession. **As a rule, any question regarding the validity of the mortgage or its foreclosure is not a legal ground for refusing the issuance of a writ of execution/ writ of possession.**

The fact that no bond was posted by SBDB was also of no consequence. Since ownership of the property had already been consolidated in the name of the bank, there was nothing legally questionable in the issuance of the writ of possession even if no bond was posted. The posting of a bond as a condition for the issuance of the writ of possession becomes necessary only if it is applied for within one year from the registration of the sale with the register of deeds, *i.e.*, during the redemption period inasmuch as ownership has not yet vested on the creditor-mortgagee. **After the one-year period, however, the mortgagor loses all interest over it. The purchaser, who has a right to possession that extends after the expiration of the redemption period, becomes the absolute owner of the property when no redemption is made.** Thus, the posting of a bond is no longer needed.[13] (Emphasis supplied)

Again, in *Saguan v. Philippine Bank of Communications*,[14] the Court reiterated that:

x x x Consequently, the purchaser, who has a right to possession after the expiration of the redemption period, becomes the absolute owner of the property when no redemption is made. In this regard, the bond is no longer needed. **The purchaser can demand possession at any time following the consolidation of ownership in his name and the issuance to him of a new TCT. After consolidation of title in the purchaser's name for failure of the mortgagor to redeem the property, the purchaser's right to possession ripens into the absolute right of a confirmed owner. At that point, the issuance of a writ of possession, upon proper application and proof of title, to a purchaser in an extrajudicial foreclosure sale becomes merely a ministerial function. Effectively, the court cannot exercise its discretion.**

Therefore, the issuance by the RTC of a writ of possession in favor of the respondent in this case is proper. **We have consistently**

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[13] *Espiridion v. Court of Appeals*, *supra* note 12, at 276-278.

[14] G.R. No. 159882, November 23, 2007, 538 SCRA 390.

held that the duty of the trial court to grant a writ of possession in such instances is ministerial, and the court may not exercise discretion or judgment. x x x

We emphasize that the proceeding in a petition for a writ of possession is *ex-parte* and summary in nature. It is a judicial proceeding brought for the benefit of one party only and without need of notice to any person claiming an adverse interest. It is a proceeding wherein relief is granted even without giving the person against whom the relief is sought an opportunity to be heard. By its very nature, an *ex-parte* petition for issuance of a writ of possession is a non-litigious proceeding authorized under Act No. 3135, as amended.

Be that as it may, the debtor or mortgagor is not without recourse. x x x

xxx xxx xxx

x x x a party may file a petition to set aside the foreclosure sale and to cancel the writ of possession in the same proceedings where the writ of possession was requested.[15]

From the foregoing, it is quite clear that petitioner's contention — that the trial court acted with grave abuse of discretion in issuing the writ of possession despite the pendency between herein parties of an action for declaration of nullity of the extra-judicial foreclosure — does not hold water.

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

SO ORDERED.

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

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[15] *Saguan v. Philippine Bank of Communications*, *supra* note 14, at 396-397.

FIRST DIVISION

[G.R. No. 158084. August 29, 2008]

J.K. MERCADO & SONS AGRICULTURAL ENTERPRISES, INC., *petitioner, vs.* **HON. PATRICIA A. STO. TOMAS, in her capacity as Secretary of Labor and Employment, ANICETO S. TORREJOS, SR., JOHNNY MANGARIN, ZOSIMO ALBASIN, ALBERTO ABAD, RONALD ABAD, EDGARDO FLORES, JOSEPH COSIDO, MAYORMITO VELCHES, EDUARDO BIGNO, BENEDICTO NOTARTE, CARLOS LIBRE, DIOSDADO ORE, LITO DAGUPAN, EPIFANIO BULILAWA, JUSTINIANO BADIANA, VALERIO VIADO, LORENZO GRAPA, LEONARDO BULILAWA, RUBEN BAYANSAW, LUISITO DOCUSIN, CARLO MAGNO CANO, JOSEPH DUMAYANOS, FELIX BAYANG, NILO PROCURATO, REY LACABO, ALEJANDRO NAGAYO, JR., DOMINADOR QUIBO, RICHARD TAMPARONG, MANUEL LEOCADIO, GERSON PENA, REY MENDEZ, FERNANDO VALLEJO, TOMAS DAHUNOG, DIONESIO FERNIS, ESTITIA PAQUERA, JOEL JAMOROL, GERSON RECTO, ELADIO JAECTIN, JUDE PROCURATO, ERNESTO SOTTO, FAUSTINO MONTECILLO, RUDY QUIBO, JUSTINIANO CAL, JR., ROSELITO GONZALES, CLET QUETE, ELDIE DAGUPAN, HENIA PROCURATO, BIENVENIDO BORROMEO and CRISANTO MORALES,** *respondents*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; MONEY CLAIMS; 3-YEAR PRESCRIPTIVE PERIOD TO FILE CLAIMS.— Art. 291 of the Labor Code applies to money claims in general and provides for a 3-year prescriptive period to file them. Stated otherwise, a claimant has three years to press a money claim.

2. ID.; ID.; ID.; ID.; ONCE JUDGMENT IS RENDERED IN CLAIMANT'S FAVOR, HE HAS FIVE YEARS TO ASK FOR ITS EXECUTION.— Respondent employees' money claims in this case had been reduced to a judgment, in the form of a Wage Order, which has become final and executory. Once judgment is rendered in her favor, she has five years to ask for execution of the judgment, counted from its finality.

APPEARANCES OF COUNSEL

Alcantara & Alcantara Law Office for petitioner.

E.C. De Vera & F.A.D. De Vera Law Offices for respondents.

D E C I S I O N

AZCUNA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court.

The facts are stated in the Decision of the Court of Appeals in CA-G.R. SP No. 70003 dated March 10, 2003:

On December 3, 1993, the Regional Tripartite Wages and Productivity Board, Region XI, issued Wage Order No. RTWPB-XI-03, granting a Cost of Living Allowance (COLA) to covered workers.

On January 28, 1994, petitioner filed an application for exemption from the coverage of the aforesaid wage order. Thus, however, was denied by the regional wage board in an Order dated April 11, 1994, the dispositive portion of which states:

> "WHEREFORE, premises considered, the application for exemption from compliance with Wage Order No. RTWPB-XI-03 is DENIED for Lack of Merit. Applicant J.K. MERCADO AND SONS AGRICULTURAL ENTERPRISES, INCORPORATED is hereby ordered to pay its covered workers the allowance prescribed under said Wage Order plus interest of one percent (1%) per month retroactive December 1, 1993.
>
> Let copies of the Order be furnished the Regional Director of the Department of Labor and Employment, Region XI to

cause the computation of the award and the issuance of writ of execution, the parties concerned and the National Wages Productivity Commission for their information and guidance.

Notwithstanding the said order, private respondents were not given the benefits due them under Wage Order No. RTWPB-XI-03. On July 10, 1998, private respondents filed an *Urgent Motion for Writ of Execution, and Writ of Garnishment* in RTWPB-XI-03-CBBE-94 NWPBC Case No. E-95-087 Case No. R1100 seeking the enforcement of subject wage order against several entities including herein petitioner.

In reaction thereto, petitioner submitted an *Inquiry* dated August 13, 1998, stating that it is not a party to the aforesaid case and has not entered appearance therein.

On October 7, 1998, the OIC-Regional Director, Region XI, issued a *Writ of Execution* for the enforcement of the Order dated April 11, 1994 of the Regional Tripartite Wages and Productivity Board.

On November 17, 1998 and November 23, 1998, respectively, petitioner filed a *Motion to Quash the Writ of Execution* and a *Supplemental Motion to the Motion to Quash.* Petitioner argued that herein private respondents' right had already prescribed due to their failure to move for the execution of the April 11, 1994 Order within the period provided under Article 291 of the Labor Code, as amended, or within three (3) years from the finality of the said order.

Ruling that the benefits which remained unpaid have not prescribed and that the private respondents need not file a claim to be entitled thereto, the Regional Director denied the Motion to Quash in an *Order* dated January 7, 1999.

Not satisfied with the denial of its motion to quash, petitioner filed a *Notice of Appeal* on January 29, 1999.

Petitioner argued on appeal that the Regional Director abused his discretion in issuing the writ of execution since it was not a party to RTWPB-XI-03-CBBE-97-NWPC Case No. E-95-087. Petitioner likewise argued that the Regional Director abused his discretion in issuing the writ of execution in the absence of any motion filed by private respondents. Petitioner likewise claimed that since more than three (3) years have already elapsed from the time of the finality of the order dated April 11, 1994, the right of private respondents to claim the benefits under the same had already prescribed.

Denying the appeal, the dispositive portion of the assailed order dated February 2, 2001 reads:

> "WHEREFORE, the Appeal is denied for lack of merit and the order dated January 7, 1999, is affirmed."

On March 2, 2001, petitioner filed a *Motion for Reconsideration* but the same was denied for lack of merit by public respondent in an Order dated March 14, 2002.

The Court of Appeals stated the issues, thus:

Before us petitioner contends that:

"xxx the Honorable Undersecretary and Hon. Secretary of Labor and Employment committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed Orders [Annexes A & B], as the same are contrary to Law and Jurisprudence, in:

1. Declaring that an application for exemption from compliance with Wage Orders before the Wage Board is equivalent to 'money claims' provided for under Article 291 of the Labor Code.

2. Deliberately refusing and failing to recognize that the prescriptive period to file money claims under Article 291 of the Labor Code applies to money claims for COLA granted under Wage Order No. RTWPB-XI-03.

3. Ruling that DOLE Regional Directors can legally issue writs of execution to enforce Wage Orders pursuant to Policy Instruction No. 55, beyond the 3-year prescriptive period provided under Article 291 of the Labor Code, pursuant to Section 1, Rule 39 of the Revised Rules of Court.

The assailed Decision resolved the issues, as follows:

The petition is not meritorious.

It must be stressed at the outset that while the filing by herein private respondents of *the Urgent Motion for Writ of Execution and Writ of Garnishment* refer to recovery of benefits under the subject Wage Order No. RTWPB-XI-03, which entitled respondents to a cost of living allowance (COLA), Article 291 of the Labor Code finds no application in the case at bar since what is being enforced is the final order dated April 11, 1994 denying petitioner's application for exemption under the wage order. Being a final order, the same

may be the subject of execution *motu proprio* or upon motion by any of the parties concerned.

The law is equivocal that a judgment may be executed on motion within five (5) years from the date of its entry or from the date it becomes final and executory. Hence, we see no basis for petitioner's insistence on the applicability of Article 291 of the Labor Code in the instant case.

Arguing that a money claim must be filed by herein private respondents to avail of the wage differential or COLA granted under Wage Order No. 3, petitioner avers:

> "The crux of the controversy in the case at bar is not when the writ of execution issued by the Regional Director of Region XI can be enforced, but rather, whether a money claim must be filed first by private respondents against petitioner for the latter's refusal to pay the COLA granted under WO 03."

We are not persuaded.

Clearly, petitioner's contention is premised on the mistaken belief that the right of private respondents to recover their wage differential or COLA under Wage Order No. 03 is still a contestable issue.

It must be emphasized that the order dated April 11, 1994 had long become final and executory. Petitioner did not appeal the said order. Having failed to avail of the remedy of appeal of the said order, petitioner cannot belatedly avoid its duty to comply with the said order by insisting that a money claim must first be filed by herein private respondents. A contrary ruling would result to absurdity and would even unjustly benefit petitioner who for quite sometime had exerted every effort to avoid the obligation of giving the wage differential or COLA granted under Wage Order No. 3.

Petitioner now presents the following issues:

1. Whether or not the Honorable Court of Appeals committed an error in holding that Article 291 of the Labor Code is not applicable to recovery of benefits under the subject Wage Order No. RTWPB-XI-03, which entitled respondents to a cost of living allowance (COLA).

2. Whether or not the Court of Appeals committed an error in holding that the cost of living allowance (COLA) granted by Wage

Order No. RTWPB-XI-03 can be enforced without the appropriate case having been filed by herein private respondents within the three (3) year prescriptive period.

3. Whether or not the claim of the private respondents for cost of living allowance (COLA) pursuant to Wage Order No. RTWPB-XI-03 has already prescribed because of the failure of the respondents to make the appropriate claim within the three (3) year prescriptive period provided by Article 291 of the Labor Code, as amended.

The Court sees no error on the part of the Court of Appeals.

Art. 291 of the Labor Code applies to money claims in general and provides for a 3-year prescriptive period to file them.

On the other hand, respondent employees' money claims in this case had been reduced to a judgment, in the form of a Wage Order, which has become final and executory. The prescription applicable, therefore, is not the general one that applies to money claims, but the specific one applying to judgments. Thus, the right to enforce the judgment, having been exercised within five years, has not yet prescribed.

Stated otherwise, a claimant has three years to press a money claim. Once judgment is rendered in her favor, she has five years to ask for execution of the judgment, counted from its finality. This is consistent with the rule on statutory construction that a general provision should yield to a specific one and with the mandate of social justice that doubts should be resolved in favor of labor.

WHEREFORE, the petition is *DENIED*.

No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 163331. August 29, 2008]

ARELLANO NOVICIO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; REQUISITES.— The requisites of self-defense are: (1) unlawful aggression; (2) reasonable necessity of the means employed to repel or prevent it; and (3) lack of sufficient provocation on the part of the person defending himself.

2. REMEDIAL LAW; EVIDENCE; SELF-DEFENSE; ACCUSED HAS BURDEN OF JUSTIFYING HIS ACT.— Petitioner invokes self-defense. Thus, it was incumbent upon him to prove by clear and convincing evidence that he indeed acted in defense of himself. For in invoking self-defense, the accused admits killing or seriously wounding the victim and accordingly, has the burden of justifying his act.

3. ID.; ID.; FINDINGS OF FACT OF TRIAL COURT; ACCORDED BY COURT HIGH RESPECT WHEN AFFIRMED BY COURT OF APPEALS.— Entrenched is the legal aphorism that factual findings of the trial court and its calibration of the testimonies of the witnesses and its conclusions anchored on its findings are accorded by the appellate court high respect, if not conclusive effect, more so when affirmed by the CA.

4. ID.; ID.; ID.; ID.; EXCEPTIONS.— The exception is when it is established that the trial court ignored, overlooked, misconstrued or misinterpreted cogent facts and circumstances which, if considered, will change the outcome of the case.

5. CRIMINAL LAW; HOMICIDE; INTENT TO KILL; WHAT ARE TO BE CONSIDERED TO ESTABLISH INTENT TO KILL.— It is petitioner's postulation that the lone gunshot wound of Mario does not establish intent to kill. However, the number of wounds inflicted is not the sole consideration in proving intent to kill. In *Adame v. Hon. Court of Appeals*,

a single gunshot wound was inflicted on the victim but this Court convicted the accused therein of frustrated homicide. Just like in *Adame*, it is worth stressing that petitioner used a gun in this case, and, if not for Mario's act of shoving the table at him, petitioner could have fired a second shot. Furthermore, the nature and location of the wound should also be considered. Dr. Correa's positive testimony was that the wound sustained by Mario could cause death if left untreated. In fact, the first hospital to which Mario was brought could not fully cater to the medical treatment required, and Mario had to be transferred to the Center. This Court has repeatedly held that if the victim's wound would normally cause death, then the last act necessary to produce homicide would have been performed and death would have resulted were it not for the timely medical attention given to the victim.

APPEARANCES OF COUNSEL

Amoroso Amoroso & Associates for petitioner.

The Solicitor General for respondent.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Civil Procedure seeking the reversal of the Court of Appeals (CA) Decision[2] dated July 31, 2003 which affirmed the Decision[3] of the Regional Trial Court (RTC) of Baler, Aurora, Branch 66, dated May 9, 2001, convicting petitioner Arellano Novicio (petitioner) of the crime of Frustrated Homicide.

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[1] *Rollo*, pp. 39-54.

[2] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices B.A. Adefuin-de La Cruz and Perlita J. Tria Tirona concurring; *id.* at 208-216.

[3] Penned by Judge Armando A. Yanga; *id*. at 149-157.

The Facts

Petitioner was charged with the crime of Frustrated Homicide in an Information[4] dated December 11, 1998, for allegedly shooting private complainant Mario Mercado (Mario). The accusatory portion thereof states:

> That at about 8:00 o'clock in the evening on September 24, 1998 in Bacong, San Luis, Aurora and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, did then and there, unlawfully, feloniously and willfully attack, assault and use personal violence upon Mario Mercado by shooting him with a short firearm as a result of which the latter sustained a gunshot wound: POE 1 cm., (R) public area, POX 1", lacerated stellate (L) gluteus thereby performing all the acts of execution which would produce crime of Homicide were it not for a timely and effective medical attendance which prevented his death.
>
> CONTRARY TO LAW.

Petitioner voluntarily surrendered and posted the corresponding bail bond for his provisional liberty in the amount of ₱24,000.00. Thus, the RTC ordered that the warrant of arrest issued against petitioner be recalled.[5] Upon arraignment on January 29, 1999, petitioner pleaded not guilty to the offense charged.[6] Thus, trial on the merits ensued. In the course of the trial, two varying versions arose. Said versions as found by the CA are culled as follows:

> There are two versions of what had transpired on September 24, 1998, at about 8:00 o'clock in the evening, at Bacong, San Luis, Aurora, particularly in front of the house of Reynaldo Novicio, where the latter's grandchild was having a birthday celebration.
>
> According to private complainant Mario F. Mercado, on that day, time and place, he was at the party[,] drinking with Edmund Acosta, Alipio Leander, Jr., Reynaldo Novicio, Aniano Paquia, Demetrio Valenzuela and a certain Andy[,] when accused-appellant Arellano

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[4] Records, pp. 1-2.

[5] RTC Order dated January 7, 1999; *id*. at 40.

[6] RTC Order dated January 20, 1999; *id*. at 47.

Novicio arrived; as the accused-appellant sat with them, he (Arellano) drew a gun from his waist and sat on it after a while, the accused-appellant pointed to him (Mario) saying "*Huwag kang tatayo Boy*"; when he (Mario) was about to stand the accused-appellant shot him; he (Mario) ran to the house of Reynaldo Novicio to hide in a room but Arnold Novicio, the son of the accused-appellant, forcibly opened it saying "*Ano-ano Boy, tapusin na kita*" while aiming a short gun at him; Shelly Novicio[-]Iporac, who was inside the room, shouted "*Papa, may tama si Kuya Mar*" so Arnold left him; then, he (Mario) went out of his hiding place and was later brought to the hospital for treatment,[7] the accused-appellant had a continuing grudge against him because in the evening of July 23, 1998,[8] the former also pointed a gun at him.[9] The private complainant's story is corroborated by his wife, Maricris Mercado[10] and his father-in-law Demetrio Valenzuela.[11]

On the part of accused-appellant Arellano Novicio, he claims that when he arrived on that day, time and place via a motorcycle driven by Walfredo Cruz, they were invited to drink with Demetrio Valenzuela, Aniano Paquia, Edmund Acosta, his brother-in-law Andy, his brother Reynaldo Novicio and private complainant Mario Mercado, who were already noisy as there were empty bottles of gin scattered around; before he (Arellano) could sit, the private complainant told him "*O, dumating na pala ang bata ni Governor*," which statement he ignored because it was obvious that the latter was already drunk; as he (Arellano) conversed with the group, the private complainant told him "*Paano ngayon Sec., amin na ang munisipyo*," but he pretended not to hear it; it seemed that the private complainant was not satisfied since he continued riling him to the extent of even telling him to prepare because he would be axed (*sibakin*) from the government service; when he (Arellano) could no longer endure the fabrications and lies being told by the private complainant, he told him to stop because no one would believe him; the private complainant, resenting what he (Arellano) had told him, suddenly stood and drew a .38 caliber revolver from his waist and pointed it at him; immediately, he

[7] Exhibits C and D, Records, pp. 32-34.

[8] Exhibit A; *id*. at 35-37.

[9] Exhibit B; *id*. at 30-31.

[10] *Id*. at 26-29.

[11] *Id*. at 3-4.

(Arellano) held the hand of the private complainant and tried to get the gun from the latter; since he (Arellano) could not get hold of the gun, he did his best to change the direction to which the same was pointing, as a result of which they grappled with each other until they fell to the ground, causing the gun to go off and finally fall to the ground; at that moment, his (Arellano) brother Reynaldo pulled him and told him to run because the private complainant was in the act of picking up the gun so he ran away as fast as he could; for fear that the private complainant was still looking for him, he (Arellano) went to the house of Dading Serrano and returned home only the following morning when he was informed by his brother Reynaldo that the private complainant was a wounded when the gun went off while they were grappling for its possession; he (Arellano) never had the intention of killing nor injuring the private complainant as shown by the circumstance that he could have shot the private complainant in a vital part of his body as he was very near him.[12] The accused-appellant's version is corroborated by Reynaldo Novicio,[13] Edmund Acosta,[14] Walfredo Cruz,[15] Arnold Novicio[16] and Arnel Pena.[17] In addition, they allege that after the accused-appellant ran away, they saw the private complainant handing the gun to his father-in-law Demetrio Valenzuela. Arnold Novicio also denied pointing a gun at the complainant.[18]

As a result of this incident, per medical findings of one Dr. Roberto Correa, (Dr. Correa), Medical Officer IV of the Aurora Memorial Hospital (Hospital), Mario sustained a gunshot wound, the point of entry of which was located in the right pubic area (lower abdomen), measuring one (1) inch in size and the point of exit was located at the left gluteus (buttocks), measuring one (1) inch in size and stellated in shape.[19] Dr. Correa testified

[12] Exhibit 6; *id*. at 11-13.

[13] Exhibit 4; *id*. at 14-15.

[14] *Id*.

[15] Exhibit 1; *id*. at 18-19.

[16] Exhibit 5; *id*. at 22-23.

[17] Exhibit 2; *id*. at 7.

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

[19] Exhibit D; *id*. at 33.

that it is possible that the wound was fatal in nature. Thus, due to the nature of the injury sustained and the possibility of hitting a vital organ, the doctors decided that Mario be transferred to the Dr. Paulino J. Garcia Memorial Research and Medical Center (Center) in Cabanatuan City.[20]

The RTC's Ruling

On May 9, 2001, the RTC found material inconsistencies in the testimonies of the petitioner and his witnesses, thereby placing their candor and credibility in question. Moreover, the RTC opined that the finding that the crime committed was Frustrated Homicide could be inferred from the kind of weapon used, the location of the wound and the seriousness thereof. Finding that the petitioner used a short revolver as weapon, that Mario sustained a gunshot wound at his lower abdomen and that such was fatal in nature per Dr. Correa's testimony, the RTC held that petitioner was guilty beyond reasonable doubt of the crime of Frustrated Homicide. Thus, the RTC disposed of this case in this wise:

> WHEREFORE, premises considered, the Court finds accused Arellano Novicio GUILTY beyond reasonable doubt of the crime of frustrated homicide and considering the mitigating circumstance of voluntary surrender without any aggravating circumstance to offset the same and applying the Indeterminate Sentence Law, hereby sentences him to suffer an indeterminate penalty ranging from **four (4) years, two (2) months and one (1) day of *prision correccional* as minimum up to eight (8) years of *prision mayor* as maximum and to pay the costs.**
>
> The Court reserves to Mario Mercado the right to institute a separate civil action for the recovery of the civil liability of the accused.
>
> SO ORDERED.

Aggrieved, petitioner appealed the RTC Decision to the CA.[21]

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[20] TSN, August 27, 1999, p. 2.

[21] Notice of Appeal dated June 4, 2001; records, p. 136 .

The CA's Ruling

On July 31, 2003, the CA affirmed *in toto* the ruling of the RTC, holding that the petitioner's claim that the prosecution's evidence is fabricated and imaginary cannot prevail over the testimonies by the victim, Mario and his father-in-law, Demetrio Valenzuela (Demetrio), which were credible, sincere and without any showing of ill motive on the latter's part. The CA also held that it is not the number of witnesses that will move a trial court to acquit or convict an accused but the credibility of the witnesses and their sincerity in narrating the events leading to the incident in question. Moreover, the CA discarded petitioner's defense that he merely acted in self-defense. The CA opined that Mario did not commit any unlawful aggression against the petitioner as the latter was in possession of the gun at the time. Finally, the CA accorded great weight and respect to the factual findings of the RTC, particularly in the evaluation of the testimonies of witnesses.

Petitioner filed a Motion for Reconsideration[22] of the assailed Decision which the CA denied in its Resolution[23] dated April 20, 2004.

Hence, this Petition based on the following assignment of errors:

1. THE HONORABLE COURT *A QUO* ERRED IN RULING OUT THAT THE APPELLANT-PETITIONER ACTED IN SELF-DEFENSE; [AND]
2. THE HONORABLE COURT *A QUO* ERRED IN RULING THAT THE APPELLANT-PETITIONER ACTED WITH INTENT TO KILL.

Petitioner argued that: based on the testimonies of the petitioner and his witnesses, it is clear that petitioner merely acted in self-defense; Mario was the aggressor because he drew his gun and aimed it at petitioner; and the CA manifestly overlooked and failed to perceive such fact. Moreover, petitioner claimed that:

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[22] *Rollo,* pp. 217-224.

[23] *Id.* at 131.

petitioner did not act with intent to kill since Mario sustained a single gunshot wound which required only a few days of hospital confinement; the testimony of Dr. Correa gives rise to a reasonable doubt as to the serious nature of the said wound as Dr. Correa stated that it was possible that the wound was fatal in nature; Dr. Correa's medical findings do not justify petitioner's conviction for Frustrated Homicide as it is required that the assailant must have performed all acts of execution to effectuate the intent to kill. Verily, such intent must be proved beyond reasonable doubt. Thus, where intent to kill was not sufficiently established, the accused must be convicted of a less serious offense.[24] Furthermore, petitioner's defense that he did not own the said gun must be given credence by this Court as it was corroborated by other competent witnesses that before Mario boarded the tricycle, he handed the said gun to Demetrio. Lastly, petitioner submitted that there is a question of law involved in this case as the Court is asked to resolve the doubts or differences as to what the law is on certain state of facts, hence, the instant Petition under Rule 45 is in order.[25]

On the other hand, respondent People of the Philippines through the Office of the Solicitor General (OSG) averred that: the petitioner's guilt has been proven beyond reasonable doubt; petitioner failed to establish his claim of self-defense; invoking such claim of self-defense, the burden of proving his innocence is now shifted to the petitioner; standing by the ruling of the RTC, it is unnatural for the petitioner's relatives not to tender any aid if he was indeed attacked by Mario; petitioner could have reported the matter immediately to the police; Shelly Novacio-Iporac's testimony rebutted the claim of the petitioner and his other witnesses that Mario as the aggressor immediately ran away after the incident and that petitioner handed the gun to his father-in-law, Demetrio; there was no unlawful aggression on the part of Mario to justify petitioner's act of shooting him and absent such element of unlawful aggression, there could never be self-defense, whether complete or incomplete. Moreover, petitioner's intent to kill was clearly manifested in his acts of

[24] *Supra* note 1.

[25] Reply dated February 14, 2005; *rollo*, pp. 268-275.

using a lethal weapon, *i.e.*, a gun, in attempting to shoot the victim for the second time, and in the seriousness of the injury sustained. The OSG posited that when Dr. Correa in his testimony said that the wound was possibly fatal, he clearly meant that without the proper medical attention and intervention, Mario could have died. Thus, Mario was transferred to another hospital. The OSG claimed that by questioning the serious nature of the injury sustained, petitioner raised a question of fact which is beyond the office of a Petition for Review on *Certiorari* under Rule 45 as only pure questions of law may be entertained in this case. Lastly, the OSG submitted that the factual findings of the RTC as affirmed by the CA must be given credence.[26]

On the first issue, petitioner invokes self-defense. Thus, it was incumbent upon him to prove by clear and convincing evidence that he indeed acted in defense of himself. For in invoking self-defense, the accused admits killing or seriously wounding the victim and accordingly, has the burden of justifying his act. The requisites of self-defense are: (1) unlawful aggression; (2) reasonable necessity of the means employed to repel or prevent it; and (3) lack of sufficient provocation on the part of the person defending himself.[27]

The settled rule is that the determination of whether or not the accused acted in self-defense, complete or incomplete, is a factual issue. And equally entrenched is the legal aphorism that factual findings of the trial court and its calibration of the testimonies of the witnesses and its conclusions anchored on its findings are accorded by the appellate court high respect, if not conclusive effect, more so when affirmed by the CA. The exception is when it is established that the trial court ignored, overlooked, misconstrued or misinterpreted cogent facts and circumstances which, if considered, will change the outcome of the case.

We have reviewed the records of the RTC and the CA and we find no justification to deviate from the trial court's findings

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[26] OSG Comment dated January 12, 2005; *id*. at 244-260.

[27] *Andrada v. People*, G.R. No. 135222, March 4, 2005, 452 SCRA 685, 694.

and its conclusion.[28] We find that the petitioner has not adequately discharged his burden of proving the elements of self-defense.

As found by the RTC, affirmed by the CA and espoused by the OSG, there are indeed material inconsistencies in the testimonies of petitioner and his witnesses as to the incident. Petitioner and his witnesses claimed that after the shooting incident, Mario ran away, carried his gun with him and before boarding the tricycle, handed the same to Demetrio. Mario denied this, testifying that he ran to Reynaldo Novicio's house and hid in the room of Shelly Novicio-Iporac. Shelly herself corroborated the testimony of Mario. This rebuts the defense contention that Mario owned the gun and tried to hide the weapon through Demetrio. Likewise, we find it contrary to human reason and experience that petitioner's brother, relatives and friends, who were present at the time in the house of Reynaldo, merely stood by when petitioner was allegedly assaulted by Mario. Petitioner would have been defended by his relatives the moment Mario allegedly insulted and poked the gun at petitioner. Thus, we agree with the RTC's and the CA's ruling that the prosecution's version is credible and clear. Moreover, it is of record that petitioner at an earlier date poked a gun at Mario. Logically, then, petitioner was the aggressor. Because the first element of self-defense is not present, such defense must fail.

Note that the RTC found Mario and Demetrio to be credible witnesses, deserving full faith and credence. Note likewise that the CA did not disturb the RTC's appreciation of their credibility. It is doctrinal that the trial court's assessment of the credibility of witnesses especially when affirmed by the CA is entitled to great weight and respect. Petitioners failed to show any persuasive reason for us to depart from this doctrine, other than insisting that several witnesses for the defense contradicted the prosecution's version of the incident. Credibility is weighed not by the number of witnesses but by the quality of their testimonies.[29]

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[28] *Casitas v. People*, 466 Phil. 861, 869 (2004).

[29] *Ureta v. People*, 436 Phil. 148, 159 (2002).

On the second issue, our ruling in *Rivera v. People*[30] is instructive:

> An essential element of murder and homicide, whether in their consummated, frustrated or attempted stage, is intent of the offenders to kill the victim immediately before or simultaneously with the infliction of injuries. Intent to kill is a specific intent which the prosecution must prove by direct or circumstantial evidence, while general criminal intent is presumed from the commission of a felony by *dolo*.
>
> In *People v. Delim* [444 Phil. 430, 450 (2003)], the Court declared that evidence to prove intent to kill in crimes against persons may consist, *inter alia*, in **the means used by the malefactors, the nature, location and number of wounds sustained by the victim, the conduct of the malefactors before, at the time, or immediately after the killing of the victim, the circumstances under which the crime was committed and the motives of the accused.** If the victim dies as a result of a deliberate act of the malefactors, intent to kill is presumed.

It is petitioner's postulation that the lone gunshot wound of Mario does not establish intent to kill. However, the number of wounds inflicted is not the sole consideration in proving intent to kill. In *Adame v. Hon. Court of Appeals*,[31] a single gunshot wound was inflicted on the victim but this Court convicted the accused therein of frustrated homicide. Just like in *Adame*, it is worth stressing that petitioner used a gun in this case, and, if not for Mario's act of shoving the table at him, petitioner could have fired a second shot. Furthermore, the nature and location of the wound should also be considered. Dr. Correa's positive testimony was that the wound sustained by Mario could cause death if left untreated. In fact, the first hospital to which Mario was brought could not fully cater to the medical treatment required, and Mario had to be transferred to the Center. This Court has repeatedly held that if the victim's wound would normally cause death, then the last act necessary to produce homicide would

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[30] G.R. No. 166326, January 25, 2006, 480 SCRA 188, 196-197. (Emphasis supplied).

[31] 440 Phil. 827 (2002).

have been performed and death would have resulted were it not for the timely medical attention given to the victim.[32]

All told, we find no reversible error on the part of the findings of both the RTC and the CA.

WHEREFORE, the instant Petition is *DENIED*. The assailed Court of Appeals Decision in CA-G.R. CR No. 25312, dated July 31, 2003, finding petitioner Arellano Novicio guilty beyond reasonable doubt of the crime of Frustrated Homicide, is hereby *AFFIRMED*. Costs against the petitioner.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 164790. August 29, 2008]

SOCIAL SECURITY SYSTEM and LORELIE B. SOLIDUM, Branch Manager, Cubao Branch, *petitioners, vs.* **GLORIA DE LOS SANTOS,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; SOCIAL SECURITY ACT OF 1997; TIME OF DEATH OF COVERED MEMBER; RECKONING POINT IN DETERMINING BENEFICIARIES.— At the outset, let it be recalled that in 2005, this Court ruled in *Dycaico v. Social Security System* that the proviso "as of the date of retirement" in Section 12-B(d) of Republic Act

[32] *Id.* at 839, citing *People vs. Salva*, 424 Phil. 63, 78-79 (2002) and *People vs. Bangcado*, 346 SCRA 189, 206-207 (2000).

No. 8282, which qualifies the term "primary beneficiaries," is unconstitutional for it violates the due process and equal protection clauses. In deciding that death benefits should not be denied to the wife who was married to the deceased retiree only after the latter's retirement, this Court in *Dycaico* reasoned: x x x In particular, the proviso was apparently intended to prevent sham marriages or those contracted by persons solely to enable one spouse to claim benefits upon the anticipated death of the other spouse. x x x However, classifying dependent spouses and determining their entitlement to survivor's pension based on whether the marriage was contracted before or after the retirement of the other spouse, regardless of the duration of the said marriage, bears no relation to the achievement of the policy objective of the law, *i.e.*, "provide meaningful protection to members and their beneficiaries against the hazard of disability, sickness, maternity, old age, death and other contingencies resulting in loss of income or financial burden." xxx That said, the reckoning point in determining the beneficiaries of the deceased Antonio should be the **time** of his death.

2. ID.; ID.; "DEPENDENCY"; AS INTERPRETED IN *SOCIAL SECURITY SYSTEM V. AGUAS*.— *Social Security System v. Aguas* is instructive in determining the extent of the required "dependency" under the SS Law. In *Aguas*, the Court ruled that although a husband and wife are obliged to support each other, whether one is actually dependent for support upon the other cannot be presumed from the fact of marriage alone. Further, *Aguas* pointed out that a wife who left her family until her husband died and lived with other men, was **not** dependent upon her husband for support, financial or otherwise, during the entire period.

3. ID.; ID.; ID.; ID.; CASE AT BAR.— Respondent herself admits that she left the conjugal abode on two (2) separate occasions, to live with two different men. The first was in 1965, less than one year after their marriage, when she contracted a second marriage to Domingo Talens. The second time she left Antonio was in 1983 when she went to the US, obtained a divorce, and later married an American citizen. In fine, these uncontroverted facts remove her from qualifying as a primary beneficiary of her deceased husband.

APPEARANCES OF COUNSEL

Amador M. Monteiro, Joselito A. Vivit & Joseph C. Desunia for petitioners.

Arcinas and Arcinas for respondent.

D E C I S I O N

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

AN ESTRANGED wife who was not dependent upon her deceased husband for support is not qualified to be his beneficiary.

The principle is applied in this petition for review on *certiorari* of the Decision[1] of the Court of Appeals (CA), awarding benefits to respondent Gloria de los Santos.

The Facts

Antonio de los Santos and respondent Gloria de los Santos, both Filipinos, were married on April 29, 1964 in Manila. Less than one (1) year after, in February 1965, Gloria left Antonio and contracted another marriage with a certain Domingo Talens in Nueva Ecija. Sometime in 1969, Gloria went back to Antonio and lived with him until 1983. They had three children: Alain Vincent, Arlene, and Armine.

In 1983, Gloria left Antonio and went to the United States (US). On May 8, 1986, she filed for divorce against Antonio with the Superior Court of Orange, Sta. Ana, California. On May 21, 1983, she executed a document waiving all her rights to their conjugal properties and other matters. The divorce was granted on November 5, 1986.

On May 23, 1987, Antonio married Cirila de los Santos in Camalig, Albay. Their union produced one child, May-Ann N. de los Santos, born on May 15, 1989. On her part, Gloria married

[1] *Rollo*, pp. 8-14. CA-G.R. SP No. 70891. Penned by Associate Justice Arsenio J. Magpale, with Associate Justices Conrado M. Vasquez, Jr. and Bienvenido L. Reyes, concurring.

Larry Thomas Constant, an American citizen, on July 11, 1987, in the US.

On May 15, 1989, Antonio amended his records at the Social Security System (SSS). He changed his beneficiaries from Mrs. Margarita de los Santos to Cirila de los Santos; from Gloria de los Santos to May-Ann de los Santos; and from Erlinda de los Santos to Armine de los Santos.

Antonio retired from his employment on March 1, 1996, and from then on began receiving monthly pension. He died of respiratory failure on May 15, 1999. Upon his death, Cirila applied for and began receiving his SSS pension benefit, beginning December 1999.

On December 21, 1999, Gloria filed a claim for Antonio's death benefits with the SSS Cubao Branch. Her claim was denied because she was not a qualified beneficiary of Antonio. The SSS letter of denial dated September 1, 2000 stated:

> We regret to inform you that your claim is denied for the following reason/s:
>
> We received documents showing that you have remarried in the United States to one Larry T. Constant. You were also the one who filed for petition for dissolution of your marriage with the deceased member, which was in fact granted by the Superior Court of California, County of Orange.
>
> These circumstances are sufficient ground for denial as the SSS law specifically defines beneficiaries as "the dependent spouse, until he or she remarries, the dependent legitimate, legitimated or legally adopted and illegitimate children who shall be the primary beneficiary." x x x[2]

SSC Disposition

Gloria elevated her claim to the Social Security Commission (SSC). On February 12, 2001, she filed a petition to claim

[2] Records, p. 11.

death benefits, with a prayer that she be declared the rightful beneficiary of the deceased Antonio.[3]

The SSC *motu proprio* impleaded Cirila as respondent in the case, it appearing that she was another claimant to the death benefits of Antonio. Upon receipt of the summons, Cirila moved to dismiss the petition of Gloria. She argued that Gloria had no personality to sue because the latter is neither a dependent nor a beneficiary of Antonio, as evidenced by the E-4 form accomplished and submitted by him when he was still alive. Gloria had also remarried an American citizen in the US. And that she, Cirila, was the true and legal wife of Antonio.

Cirila likewise reasoned out that the authority to determine the validity of the two marriages of Antonio lay with the regular courts. Since Gloria had already filed for settlement of the intestate estate of Antonio before the Regional Trial Court (RTC), the petition she filed with the SSC should be considered as forum shopping.

Gloria opposed the motion to dismiss. She contended that her marriage to Larry Constant was not the subsequent marriage contemplated under the Social Security Law (SS Law)[4] that would disqualify her as a beneficiary; that the decree of divorce issued by a foreign state involving Filipino citizens has no validity and effect under Philippine law. Lastly, Gloria remonstrated that there was no forum shopping because the petition she filed before the RTC did not involve the issue of her entitlement to SSS benefits.

The SSC denied the motion to dismiss. After submission of position papers from both sides, it issued a Resolution, dated February 13, 2002,[5] dismissing Gloria's petition with the following disposition:

WHEREFORE, this Commission finds, and so holds, that May-Ann de los Santos, daughter of Antonio and private respondent Cirila de los Santos is the secondary beneficiary of the former and as such,

[3] *Id.* at 1-13.

[4] Republic Act (R.A.) No. 1161, as amended by R.A. No. 8282, known as the Social Security Act of 1997, May 24, 1997.

[5] *Rollo*, pp. 42-48.

she is entitled to the balance of her father's five-year guaranteed pension.

Accordingly, the SSS is hereby ordered to compute the balance of the five-year guaranteed pension less the amount of ₱21,200 representing the total of the monthly pensions and dependent's pension previously received by private respondent Cirila Nimo and minor May-Ann de los Santos, respectively, and to pay the latter, through her natural guardian Cirila Nimo, the difference between the two amounts, if any. If there was overpayment of pension, the private respondent is hereby ordered to forthwith refund the amount thereof to the SSS.

The petition is dismissed for lack of merit.

SO ORDERED.[6]

The SSC deemed that Gloria abandoned Antonio when she obtained a divorce against him abroad and subsequently married another man. She thus failed to satisfy the requirement of dependency required of primary beneficiaries under the law. The Commission likewise rejected her efforts to use the invalidity of the divorce, which she herself obtained, to claim benefits from the SSS for her personal profit.

However, despite all the sophistry with which petitioner, through her counsel, sought to justify her acts in the USA, the petition must fail. The petitioner, who was primarily responsible for obtaining the decree of marital dissolution from an American court, now wishes to invoke the very invalidity of her divorce and subsequent marriage in order to lay hands on the benefit she seeks. *It is sheer folly, if not downright reprehensible, for the petitioner to seek to profit from committing an act considered as unlawful under Philippine law.* This Commission will not allow itself to be used as an instrument to subvert the policies laid down in the SS Law which it has sworn to uphold at all times. x x x[7] (Emphasis added)

The SSC added that since the marriage of Antonio to Cirila was void, the latter was likewise not a qualified beneficiary. The fruit of their union, May-Ann, was considered as an

[6] *Id.* at 47.

[7] *Id.* at 46.

illegitimate child and qualified as a secondary beneficiary. May-Ann was entitled to 50% of the share of the legitimate children of Antonio in accordance with Section 8(k) of the SS Law.[8] However, considering that the legitimate children of Antonio have reached the age of majority, May-Ann is the only remaining qualified beneficiary and was thus entitled to 100% of the benefit.

R.A. No. 8282, which is the law in force at the time of retiree Antonio's death on May 15, 1999, provides as follows:

"Section 12-B. *Retirement Benefits.* x x x

(d) Upon the death of the retired member, his primary beneficiaries *as of the date of his retirement* shall be entitled to receive the monthly pension. Provided, That if he has no primary beneficiaries and *he dies within sixty (60) months from the start of his monthly pension, his secondary beneficiaries shall be entitled to a lump sum benefit* equivalent to the total monthly pensions corresponding to the *balance of the five-year guaranteed period, excluding the dependents' pension*." (Emphasis supplied)

Since Antonio de los Santos retired on March 1, 1996, and began receiving monthly pension since then, the determination of who his primary beneficiaries were at that times should be based on the relevant provisions of the applicable prevailing law then, R.A. No. 1161, as amended, which is quoted hereunder:

"Section 8. *Terms Defined.* x x x

xxx xxx xxx

(k) *Beneficiaries*. – The *dependent spouse until he remarries and dependent children who shall be the primary beneficiaries*. In their absence, the dependent parents, and subject to the restrictions imposed on dependent children, the legitimate descendants and *illegitimate children* who shall be the *secondary beneficiaries*. In the absence of any of the foregoing, any other person designed by the covered employee as secondary beneficiary." (Emphasis supplied)

Applying these provisions to the case at hand, May-Ann de los Santos as the illegitimate child of Antonio and Cirila is considered

[8] See note 4.

her father's secondary beneficiary who, in the absence of a primary beneficiary x x x, becomes entitled to the balance of the five-year guaranteed pension as Antonio died just three (3) years after he began receiving his retirement pension, pursuant to Section 12-B par. (d) of the SS Law, as amended.[9]

CA Decision

Gloria appealed the above SSC Resolution to the CA. She insisted that she, as the legal wife, was the qualified beneficiary to Antonio's death benefits.

The CA agreed with the SSC in its determination that the marriage of Gloria and Antonio subsisted until his death and the subsequent marriages contracted by both of them were void for being bigamous. But contrary to findings of the SSC, the CA found that being the legal wife, Gloria was entitled by law to receive support from her husband. Thus, her status qualified Gloria to be a dependent and a primary beneficiary under the law. The dispositive portion of the CA decision reads:

> WHEREFORE, in the light of the foregoing, the Petition for Review is GRANTED and the appealed Resolution dated February 13, 2003, is hereby REVERSED and SET ASIDE. Respondent SSS is DIRECTED to compute the amount of benefits to which petitioner is entitled under the law.[10]

Issues

Petitioner SSS and the concerned Branch head present a lone issue for Our consideration: THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT RESPONDENT IS STILL QUALIFIED AS A PRIMARY BENEFICIARY OF DECEASED SSS MEMBER ANTONIO, UNDER SECTION 12-B IN RELATION TO SECTION 8(e) and (k) OF THE SS LAW.[11]

The controversy revolves on who between respondent Gloria, the first wife who divorced Antonio in the US, or Cirila, the

[9] *Rollo*, pp. 46-47.

[10] *Id.* at 37.

[11] *Id.* at 23.

second wife, is his primary beneficiary entitled to claim death benefits from the SSS.

Our Ruling

At the outset, let it be recalled that in 2005, this Court ruled in *Dycaico v. Social Security System*[12] that the proviso "as of the date of retirement" in Section 12-B(d) of Republic Act No. 8282,[13] which qualifies the term "primary beneficiaries," is unconstitutional for it violates the due process and equal protection clauses. For ready reference, the concerned provision is reproduced below:

> SECTION 12-B. *Retirement Benefits*. – (a) A member who has paid at least one hundred twenty (120) monthly contributions prior to the semester of retirement and who (1) has reached the age of sixty (60) years and is already separated from employment or has ceased to be self-employed or (2) has reached the age of sixty-five (65) years, shall be entitled for as long as he lives to the monthly pension; Provided, That he shall have the option to receive his first eighteen (18) monthly pensions in lump sum discounted at a preferential rate of interest to be determined by the SSS.
>
> xxx xxx xxx
>
> (d) Upon the death of the retired member, his primary beneficiaries *as of the date of his retirement* shall be entitled to receive the monthly pension; Provided, That if he has no primary beneficiaries and he dies within sixty (60) months from the start of his monthly pension, his secondary beneficiaries shall be entitled to a lump sum benefit equivalent to the total monthly pensions corresponding to the balance of the five-year guaranteed period, excluding the dependents' pension. (Emphasis added)

In deciding that death benefits should not be denied to the wife who was married to the deceased retiree only after the latter's retirement, this Court in *Dycaico* reasoned:

> x x x In particular, the proviso was apparently intended to prevent sham marriages or those contracted by persons solely to enable one

[12] G.R. No. 161357, November 30, 2005, 476 SCRA 538.

[13] The Social Security Law, as amended, see note 4.

spouse to claim benefits upon the anticipated death of the other spouse.

x x x However, classifying dependent spouses and determining their entitlement to survivor's pension based on whether the marriage was contracted before or after the retirement of the other spouse, regardless of the duration of the said marriage, bears no relation to the achievement of the policy objective of the law, *i.e.*, "provide meaningful protection to members and their beneficiaries against the hazard of disability, sickness, maternity, old age, death and other contingencies resulting in loss of income or financial burden." xxx[14]

That said, the reckoning point in determining the beneficiaries of the deceased Antonio should be the **time** of his death. There is no need to look into the time of his retirement, as was the course followed by the SSC in resolving the claim of respondent. We note, however, that considering the circumstances of this case, the *Dycaico* ruling does not substantially affect the determination of Antonio's beneficiaries.

The SS Law clearly and expressly provides who are the qualified beneficiaries entitled to receive benefits from the deceased:

"Section 8. *Terms Defined.* – For the purposes of this Act, the following terms shall, unless the context indicates otherwise, have the following meanings:

xxx xxx xxx

(e) Dependents – The dependents shall be the following:

(1) The legal spouse entitled by law to receive support from the member;

(2) The legitimate, legitimated or legally adopted, and illegitimate child who is unmarried, not gainfully employed and has not reached twenty-one years (21) of age, or if over twenty-one (21) years of age, he is congenitally or while still a minor has been permanently incapacitated and incapable of self-support, physically or mentally; and

(3) The parent who is receiving regular support from the member.

xxx xxx xxx

[14] *Dycaico v. Social Security System, supra* note 12, at 553.

(k) Beneficiaries – The dependent spouse until he or she remarries, the dependent legitimate, legitimated or legally adopted, and illegitimate children, who shall be the primary beneficiaries of the member: Provided, That the dependent illegitimate children shall be entitled to fifty percent (50%) of the share of the legitimate, legitimated or legally adopted children: Provided, further, That in the absence of the dependent legitimate, legitimated or legally adopted children of the member, his/her dependent illegitimate children shall be entitled to one hundred percent (100%) of the benefits. In their absence, the dependent parents who shall be the secondary beneficiaries of the member. In the absence of all of the foregoing, any other person designated by the member as his/her secondary beneficiary.

As found by both the SSC and the CA, the divorce obtained by respondent against the deceased Antonio was not binding in this jurisdiction. Under Philippine law, only aliens may obtain divorces abroad, provided they are valid according to their national law.[15] The divorce was obtained by respondent Gloria while she was still a Filipino citizen and thus covered by the policy against absolute divorces. It did not sever her marriage ties with Antonio.

However, although respondent was the legal spouse of the deceased, We find that she is still **disqualified** to be his primary beneficiary under the SS Law. She fails to fulfill the requirement of dependency upon her deceased husband Antonio.

Social Security System v. Aguas[16] is instructive in determining the extent of the required "dependency" under the SS Law. In *Aguas*, the Court ruled that although a husband and wife are obliged to support each other, whether one is actually dependent for support upon the other cannot be presumed from the fact of marriage alone.[17]

Further, *Aguas* pointed out that a wife who left her family until her husband died and lived with other men, was **not** dependent upon her husband for support, financial or otherwise, during the entire period.

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[15] *Llorente v. Court of Appeals*, G.R. No. 124371, November 23, 2000, 345 SCRA 592.

[16] G.R. No. 165546, February 27, 2006, 483 SCRA 383.

[17] *Social Security System v. Aguas*, *id.*

Said the Court:

In a parallel case involving a claim for benefits under the GSIS law, the Court defined a *dependent* as "one who derives his or her main support from another. Meaning, relying on, or subject to, someone else for support; not able to exist or sustain oneself, or to perform anything without the will, power, or aid of someone else." It should be noted that the GSIS law likewise defines a *dependent spouse* as "the legitimate spouse dependent for support upon the member or pensioner." In that case, the Court found it obvious that a wife who abandoned the family for more than 17 years until her husband died, and lived with other men, was not dependent on her husband for support, financial or otherwise, during that entire period. Hence, the Court denied her claim for death benefits.

The obvious conclusion then is that a wife who is already separated *de facto* from her husband cannot be said to be "dependent for support" upon the husband, absent any showing to the contrary. Conversely, if it is proved that the husband and wife were still living together at the time of his death, it would be safe to presume that she was dependent on the husband for support, unless it is shown that she is capable of providing for herself.[18]

Respondent herself admits that she left the conjugal abode on two (2) separate occasions, to live with two different men. The first was in 1965, less than one year after their marriage, when she contracted a second marriage to Domingo Talens. The second time she left Antonio was in 1983 when she went to the US, obtained a divorce, and later married an American citizen.

In fine, these uncontroverted facts remove her from qualifying as a primary beneficiary of her deceased husband.

WHEREFORE, the petition is *GRANTED* and the appealed Decision *REVERSED* and *SET ASIDE*. The Resolution of the Social Security Commission is *REINSTATED.*

SO ORDERED.

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

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[18] *Id.* at 401.

THIRD DIVISION

[G.R. No. 167045. August 29, 2008]

COCOMANGAS HOTEL BEACH RESORT and/or SUSAN MUNRO, *petitioners, vs.* **FEDERICO F. VISCA, JOHNNY G. BAREDO, RONALD Q. TIBUS, RICHARD G. VISCA and RAFFIE G. VISCA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHEN CA CAN TAKE COGNIZANCE OF A PETITION THEREFOR.— The CA, therefore, can take cognizance of a petition for *certiorari* if it finds that the NLRC, in its assailed decision or resolution, committed grave abuse of discretion by capriciously, whimsically, or arbitrarily disregarding evidence which is material to or decisive of the controversy. The CA cannot make this determination without looking into the evidence presented by the parties. The appellate court needs to evaluate the materiality or significance of the evidence, which is alleged to have been capriciously, whimsically, or arbitrarily disregarded by the NLRC, in relation to all other evidence on record. Thus, pursuant to *Garcia*, the appellate court can grant a petition for *certiorari* when the factual findings complained of are not supported by the evidence on record; when it is necessary to prevent a substantial wrong or to do substantial justice; when the findings of the NLRC contradict those of the LA; and when necessary to arrive at a just decision of the case.

2. ID.; CIVIL PROCEDURE; APPEALS; CHANGE OF THEORY OF A PARTY'S CASE ON APPEAL IS NOT ALLOWED.— The NLRC should not have considered the new theory offered by the petitioners in their Motion for Reconsideration. As the object of the pleadings is to draw the lines of battle, so to speak, between the litigants and to indicate fairly the nature of the claims or defenses of both parties, a party cannot subsequently take a position contrary to, or inconsistent, with his pleadings. It is a matter of law that when a party adopts a particular theory and the case is tried and decided upon that

theory in the court below, he will not be permitted to change his theory on appeal. The case will be reviewed and decided on that theory and not approached and resolved from a different point of view. To permit a party to change his theory on appeal will be unfair to the adverse party.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; PROJECT EMPLOYEES; CONSTRUED.— At any rate, after a careful examination of the records, the Court finds that the CA did not err in finding that respondents were regular employees, not project employees. A project employee is one whose "employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season." Before an employee hired on a per-project basis can be dismissed, a report must be made to the nearest employment office, of the termination of the services of the workers every time completes a project, pursuant to Policy Instruction No. 20.

4. ID.; ID.; ID.; CONVERSION FROM PROJECT EMPLOYEE STATUS TO REGULAR EMPLOYEES STATUS, WHEN PRESENT.— In *Maraguinot, Jr. v. National Labor Relations Commission*, the Court ruled that "once a project or work pool employee has been: (1) continuously, as opposed to intermittently, rehired by the same employer for the same tasks or nature of tasks; and (2) these tasks are vital, necessary and indispensable to the usual business or trade of the employer, then the employee must be deemed a regular employee, pursuant to Article 280 of the Labor Code and jurisprudence."

5. ID.; ID.; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; WHAT AN ILLEGALLY DISMISSED EMPLOYEE MAY BE ENTITLED TO UNDER ARTICLE 279 OF THE CODE.— Article 279 of the Labor Code, as amended, provides that an illegally dismissed employee shall be entitled to reinstatement, full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

6. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; SUPREME COURT; IMBUED WITH AUTHORITY TO

REVIEW MATTERS, NOT OTHERWISE ASSIGNED AS ERRORS ON APPEAL, TO SERVE INTERESTS OF JUSTICE.— While as a general rule, a party who has not appealed is not entitled to affirmative relief other than the ones granted in the decision of the court below, this Court is imbued with sufficient authority and discretion to review matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice. Besides, substantive rights like the award of backwages resulting from illegal dismissal must not be prejudiced by a rigid and technical application of the rules.

APPEARANCES OF COUNSEL

Gina C. Garcia for petitioners.

Public Attorney's 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 Decision[1] dated July 30, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 78620 which reversed and set aside the Resolution dated February 27, 2003 of the National Labor Relations Commission (NLRC) in NLRC Case No. V-000714-2000; and the CA Resolution[2] dated February 2, 2005 which denied petitioners' Motion for Reconsideration.

The present controversy stemmed from five individual complaints[3] for illegal dismissal filed on June 15, 1999 by Federico

[1] Penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Elvi John S. Asuncion and Ramon Bato, Jr., CA *rollo*, p. 133.

[2] Penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Arsenio J. Magpale and Ramon Bato, Jr., CA *rollo*, p. 166.

[3] Records, pp. 1-10.

F. Visca (Visca), Johnny G. Barredo, Ronald Q. Tibus, Richard G. Visca and Raffie G. Visca (respondents) against Cocomangas Hotel Beach Resort and/or its owner-manager, Susan Munro (petitioners) before Sub-Regional Arbitration Branch No. VI of the National Labor Relations Commission (NLRC) in Kalibo, Aklan.

In their consolidated Position Paper,[4] respondents alleged that they were regular employees of petitioners, with designations and dates of employment as follows:

Name	Designation	Date Employed
Federico F. Visca	Foreman	October 1, 1987
Johnny G. Barredo	Carpenter	April 23, 1993
Ronald Q. Tibus	Mason	November 9, 1996
Richard G. Visca	Carpenter	April 1988
Raffie G. Visca	Mason/Carpenter	March 27, 1993

tasked with the maintenance and repair of the resort facilities; on May 8, 1999, Maria Nida Iñigo-Tañala, the Front Desk Officer/ Sales Manager, informed them not to report for work since the ongoing constructions and repairs would be temporarily suspended because they caused irritation and annoyance to the resort's guests; as instructed, they did not report for work the succeeding days; John Munro, husband of petitioner Susan Munro, subsequently visited respondent foreman Visca and informed him that the work suspension was due to budgetary constraints; when respondent Visca later discovered that four new workers were hired to do respondents' tasks, he confronted petitioner Munro who explained that respondents' resumption of work was not possible due to budgetary constraints; when not less than ten workers were subsequently hired by petitioners to do repairs in two cottages of the resort and two workers were retained after the completion without respondents being allowed to resume work, they filed their individual complaints for illegal dismissal. In addition to reinstatement with payment of full backwages, respondents prayed for payment of premium pay

[4] Records, p. 48.

for rest day, service incentive leave pay, 13th month pay, and cost-of-living allowance, plus moral and exemplary damages and attorney's fees.

In their Position Paper,[5] petitioners denied any employer-employee relationship with respondents and countered that respondent Visca was an independent contractor who was called upon from time to time when some repairs in the resort facilities were needed and the other respondents were selected and hired by him.

On June 30, 2000, the Labor Arbiter (LA) rendered a Decision[6] dismissing the complaint, holding that respondent Visca was an independent contractor and the other respondents were hired by him to help him with his contracted works at the resort; that there was no illegal dismissal but completion of projects; that respondents were project workers, not regular employees.

On August 9, 2000, respondents filed a Memorandum of Appeal[7] with the NLRC. No comment thereon was filed by the petitioners.

On August 29, 2002, the NLRC rendered a Decision,[8] setting aside the Decision of the LA and ordering the payment to respondents of backwages computed from May 8, 1999 to July 31, 2002, 13th month pay and service incentive leave pay for three years, in addition to 10% attorney's fees. The dispositive portion of the NLRC Decision reads:

> WHEREFORE, the decision dated June 30, 2000 of the Labor Arbiter is VACATED and SET ASIDE and a new decision rendered declaring the Illegal Dismissal of the complainant (sic) and ordering respondent Susan Munro to pay the complainants the following:
>
> | | | |
> |---|---|---|
> | 1. Federico F. Visca | ₱ | 288,816.53 |
> | 2. Johnny G. Barredo | ₱ | 211,058.47 |

[5] Records, p. 45.

[6] *Id*. at 94.

[7] *Id*. at 100.

[8] *Id*. at 119.

3. Ronald Q. Tibus	₱ 175,774.00
4. Richard C. Visca	₱ 200,977.85
5. Raffie C. Visca	₱ 211,058.47
	₱ 1,087,685.32
6. Attorney's fees (10%)	₱ 108,768.53
Total Award	₱ 1,196,453.85[9]

Petitioners failed to convince the NLRC that respondent Visca was not an independent contractor and the other respondents were selected and hired by him. The NLRC held that respondents were regular employees of petitioners since all the factors determinative of employer-employee relationship were present and the work done by respondents was clearly related to petitioners' resort business. It took into account the following: (a) respondent Visca was reported by petitioners as an employee in the Quarterly Social Security System (SSS) report; (b) all of the respondents were certified to by petitioner Munro as workers and even commended for their satisfactory performance; (c) respondents were paid their holiday and overtime pay; and (d) respondents had been continuously in petitioners' employ from three to twelve years and were all paid by daily wage given weekly.

On November 18, 2002, petitioners filed a Motion for Reconsideration, arguing that respondents were project employees.[10] Petitioners also filed a Supplemental to their Motion for Reconsideration.[11] No opposition or answer to petitioners' motion for reconsideration and supplement was filed by respondents despite due notice.[12]

On February 27, 2003, the NLRC made a complete turnabout from its original decision and issued a Resolution[13] dismissing the complaint, holding that respondents were not regular

[9] Records, p. 126.

[10] *Id.* at 127.

[11] *Id.* at 139.

[12] *Id.*

[13] *Id.* at 157.

employees but project employees, hired for a short period of time to do some repair jobs in petitioners' resort business. Nonetheless, it ordered payment of ₱10,000.00 to each complainant as financial assistance.

Respondents then filed a Petition for *Certiorari*[14] with the CA raising three issues for resolution: (a) whether or not the respondents were project employees of petitioners; (b) whether or not the respondents' dismissal from work was based on valid grounds; (c) whether or not the NLRC had sufficient basis to overturn its own decision despite its overwhelming findings that respondents were illegally dismissed.

On July 30, 2004, the CA rendered its assailed Decision,[15] the dispositve portion of which reads:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered by us REVERSING and SETTING ASIDE the NLRC Resolution dated February 28, 2003, REINSTATING the NLRC Decision dated August 29, 2000 [sic], and ORDERING the private respondents to pay damages in the amount of ₱50,000.00. The instant case is hereby REMANDED to the 4th Division NLRC, Cebu City for the purpose of UPDATING the award promulgated in its Decision dated August 29, 2000 [sic].
>
> SO ORDERED.[16]

The CA held respondents were regular employees, not project workers, since in the years that petitioners repeatedly hired respondents' services, the former failed to set, even once, specific periods when the employment relationship would be terminated; that the repeated hiring of respondents established that the services rendered by them were necessary and desirable to petitioners' resort business; at the least, respondents were regular seasonal employees, hired depending on the tourist season and when the need arose in maintaining petitioners' resort for the benefit of guests.

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[14] Records, p. 2.

[15] *Supra* note 1.

[16] CA *rollo*, p. 138.

In addition to the amounts granted by the NLRC in its August 29, 2002 Decision, the CA awarded respondents ₱50,000.00 as damages, since their termination was attended by bad faith, in that petitioners not only gave respondents the run-around but also blatantly hired others to take respondents' place despite their claim that the so-called temporary stoppage of work was due to budgetary constraints.

On August 18, 2004, petitioners filed a Motion for Reconsideration,[17] but it was denied by the CA in a Resolution[18] dated February 2, 2005.

Petitioners then filed the present petition[19] on the following grounds:

I

THE HONORABLE COURT OF APPEALS ERRED IN GIVING DUE COURSE TO THE SPECIAL CIVIL ACTION UNDER RULE 65 NOTWITHSTANDING THE FACT THAT RESPONDENTS HAVE FAILED TO PROVE THE GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION THAT WOULD ALLOW THE NULLIFICATION OF THE ASSAILED RESOLUTION OF THE NATIONAL LABOR RELATIONS COMMISSION.

II

THE HONORABLE COURT OF APPEALS ERRED IN REVERSING AND SETTING ASIDE THE RESOLUTION DATED FEBRUARY 27, 2003 AND REINSTATING THE DECISION DATED AUGUST 29, 2002 RENDERED BY THE NATIONAL LABOR RELATIONS COMMISSION.[20]

Petitioners argue that the CA erred in giving due course to respondents' petition, since respondents failed to recite specifically how the NLRC abused its discretion, an allegation essentially required in a petition for *certiorari* under Rule 45 of the Rules

[17] CA *rollo*, p. 149.

[18] *Supra* note 2.

[19] *Rollo*, p. 12.

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

of Court; the three issues raised by respondents in their petition before the CA required appreciation of the evidence presented below and are therefore errors of judgment, not of jurisdiction; that the factual findings of the LA and the NLRC on the lack of employer-employee relationship between petitioners and respondents should be accorded not only respect but finality.

On the other hand, respondents contend that the issues raised by the petitioners call for reevaluation of the evidence presented by the parties, which is not proper in petitions for review under Rule 45 of the Rules of Court; in any case, they argue that they have amply established that they are regular employees of petitioners, since their jobs as carpenters, which include the repairs of furniture, motor boats, cottages and windbreakers, are not at all foreign to the business of maintaining a beach resort.

The petition is bereft of merit.

The extent of judicial review by *certiorari* of decisions or resolutions of the NLRC, as exercised previously by this Court and now by the CA, is described in *Zarate, Jr. v. Olegario*,[21] thus:

> The rule is settled that the original and exclusive jurisdiction of this Court to review a decision of respondent NLRC (or Executive Labor Arbiter as in this case) in a petition for *certiorari* under Rule 65 does not normally include an inquiry into the correctness of its evaluation of the evidence. Errors of judgment, as distinguished from errors of jurisdiction, are not within the province of a special civil action for *certiorari*, which is merely confined to issues of jurisdiction or grave abuse of discretion. **It is thus incumbent upon petitioner to satisfactorily establish that respondent Commission or executive labor arbiter acted capriciously and whimsically in total disregard of evidence material to or even decisive of the controversy, in order that the extraordinary writ of *certiorari* will lie**. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, and it must be shown that the discretion was exercised arbitrarily or despotically. For *certiorari* to lie, there must be capricious, arbitrary and whimsical exercise of power, the very antithesis of

[21] 331 Phil. 278 (1996).

the judicial prerogative in accordance with centuries of both civil law and common law traditions.[22] (Emphasis supplied)

The CA, therefore, can take cognizance of a petition for *certiorari* if it finds that the NLRC, in its assailed decision or resolution, committed grave abuse of discretion by capriciously, whimsically, or arbitrarily disregarding evidence which is material to or decisive of the controversy. The CA cannot make this determination without looking into the evidence presented by the parties. The appellate court needs to evaluate the materiality or significance of the evidence, which is alleged to have been capriciously, whimsically, or arbitrarily disregarded by the NLRC, in relation to all other evidence on record.[23]

In *Garcia v. National Labor Relations Commission*,[24] the Court elucidated on when *certiorari* can be properly resorted to, thus:

> [I]n *Ong v. People*, we ruled that *certiorari* can be properly resorted to **where the factual findings complained of are not supported by the evidence on record**. Earlier, in *Gutib v. Court of Appeals*, we emphasized thus:
>
> > [I]t has been said that a wide breadth of discretion is granted a court of justice in *certiorari* proceedings. The cases in which *certiorari* will issue cannot be defined, because to do so would be to destroy its comprehensiveness and usefulness. So wide is the discretion of the court that authority is not wanting to show that *certiorari* is more discretionary than either prohibition or *mandamus*. In the exercise of our superintending control over inferior courts, we are to be guided by all the circumstances of each particular case "as the ends of justice may require." So it is that the **writ will be granted where necessary to prevent a substantial wrong or to do substantial justice.**
>
> And in another case of recent vintage, we further held:

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[22] *Id.* at 287-288.

[23] *Marival Trading, Inc. v. National Labor Relations Commission*, G.R. No. 169600, June 26, 2007, 525 SCRA 708, 722; *DOLE Philippines, Inc. v. Esteva*, G.R. No. 161115, November 30, 2006, 509 SCRA 332, 363.

[24] G.R. No. 147427, February 7, 2005, 450 SCRA 535.

> In the review of an NLRC decision through a special civil action for *certiorari*, resolution is confined only to issues of jurisdiction and grave abuse of discretion on the part of the labor tribunal. Hence, the Court refrains from reviewing factual assessments of lower courts and agencies exercising adjudicative functions, such as the NLRC. **Occasionally, however, the Court is constrained to delve into factual matters where, as in the instant case, the findings of the NLRC contradict those of the Labor Arbiter**.
>
> In this instance, the Court in the exercise of its equity jurisdiction may look into the records of the case and re-examine the questioned findings. As a corollary, this Court is clothed with ample authority to review matters, even if they are not assigned as errors in their appeal, if it **finds that their consideration is necessary to arrive at a just decision of the case. The same principles are now necessarily adhered to and are applied by the Court of Appeals in its expanded jurisdiction over labor cases elevated through a petition for *certiorari***; thus, we see no error on its part when it made anew a factual determination of the matters and on that basis reversed the ruling of the NLRC.[25] (Emphasis supplied)

Thus, pursuant to *Garcia*, the appellate court can grant a petition for *certiorari* when the factual findings complained of are not supported by the evidence on record; when it is necessary to prevent a substantial wrong or to do substantial justice; when the findings of the NLRC contradict those of the LA; and when necessary to arrive at a just decision of the case.[26]

In the present case, respondents alleged in its petition with the CA that the NLRC's conclusions had no basis in fact and in law, in that "it totally disregarded the evidence of the [respondents] and gave credence to the [petitioners'] asseverations which were in themselves insufficient to overturn duly established facts and conclusions."[27] Consequently, the CA was correct in giving due course to the Petition for *Certiorari*, since respondents

[25] *Id.* at 548-549.

[26] *Marival Trading, Inc. v. National Labor Relations Commission*, *supra* note 23.

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

drew attention to the absence of substantial evidence to support the NLRC's complete turnabout from its original Decision dated August 29, 2002 finding that respondents were regular employees, to its subsequent Resolution dated February 27, 2003 classifying respondents as project employees.

The next issue before the Court is whether the CA committed an error in reversing the NLRC Resolution dated February 27, 2003. The resolution of this issue principally hinges on the determination of the question whether respondents are regular or project employees.

Generally, the existence of an employer-employee relationship is a factual matter that will not be delved into by this Court, since only questions of law may be raised in petitions for review.[28] However, the Court is constrained to resolve the issue of whether respondents are regular or permanent employees due to the conflicting findings of fact of the LA, the NLRC and the CA, thus, necessitating a review of the evidence on record.[29]

The petitioners were ambivalent in categorizing respondents. In their Position Paper [30] filed before the LA, petitioners classified respondent Visca as an independent contractor and the other respondents as his employees; while in their Motion for Reconsideration[31] before the NLRC, petitioners treated respondents as project employees.

Further, petitioners' position in their Motion for Reconsideration before the NLRC runs contrary to their earlier submission in

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[28] *Pacquing v. Coca-Cola Philippines, Inc.*, G.R. No. 157966, January 31, 2008, 543 SCRA 344; *Sigaya v. Mayuga*, G.R. No. 143254, August 18, 2005, 467 SCRA 341, 352; *Centeno v. Spouses Viray*, 440 Phil. 881, 887 (2002); *Villarico v. Court of Appeals*, 424 Phil. 26, 32 (2002).

[29] *Pacquing v. Coca-Cola Philippines, Inc.*, *supra* note 28; *Heirs of Dicman v. Cariño*, G.R. No. 146459, June 8, 2006, 490 SCRA 240, 261; *Bank of the Philippine Islands v. Sarmiento*, G.R. No. 146021, March 10, 2006, 484 SCRA 261, 267-268; *Almendrala v. Ngo*, G.R. No. 142408, September 20, 2005, 471 SCRA 311, 322.

[30] Records, p. 45.

[31] *Id.* at 127.

their Position Paper before the LA. While initially advancing the absence of an employer-employee relationship, petitioners on appeal, sang a different tune, so to speak, essentially invoking the termination of the period of their employer-employee relationship.

The NLRC should not have considered the new theory offered by the petitioners in their Motion for Reconsideration. As the object of the pleadings is to draw the lines of battle, so to speak, between the litigants and to indicate fairly the nature of the claims or defenses of both parties, a party cannot subsequently take a position contrary to, or inconsistent, with his pleadings.[32] It is a matter of law that when a party adopts a particular theory and the case is tried and decided upon that theory in the court below, he will not be permitted to change his theory on appeal. The case will be reviewed and decided on that theory and not approached and resolved from a different point of view. To permit a party to change his theory on appeal will be unfair to the adverse party.[33]

At any rate, after a careful examination of the records, the Court finds that the CA did not err in finding that respondents were regular employees, not project employees. A project employee is one whose "employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season."[34] Before an employee hired on a per-project basis can be dismissed, a report must be made to the nearest employment office, of the

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[32] *Manila Electric Company v. Benamira*, G.R. No. 145271, July 14, 2005, 463 SCRA 331; *Philippine Ports Authority v. City of Iloilo*, G.R. No. 109791, July 14, 2003, 406 SCRA 88, 95.

[33] *Toledo v. People*, G.R. No. 158057, September 24, 2004, 439 SCRA 94, 102-103; *Chua v. Court of Appeals*, 449 Phil. 25, 41 (2003).

[34] LABOR CODE, Art. 280.

termination of the services of the workers every time completes a project, pursuant to Policy Instruction No. 20.[35]

In the present case, respondents cannot be classified as project employees, since they worked continuously for petitioners from three to twelve years without any mention of a "project" to which they were specifically assigned. While they had designations as "foreman," "carpenter" and "mason," they performed work other than carpentry or masonry. They were tasked with the maintenance and repair of the furniture, motor boats, cottages, and windbreakers and other resort facilities. There is likewise no evidence of the project employment contracts covering respondents' alleged periods of employment. More importantly, there is no evidence that petitioners reported the termination of respondents' supposed project employment to the DOLE as project employees. Department Order No. 19, as well as the old Policy Instructions No. 20, requires employers to submit a report of an employee's termination to the nearest public employment office every time his employment is terminated due to a completion of a project. Petitioners' failure to file termination reports is an indication that the respondents were not project employees but regular employees.[36]

This Court has held that an employment ceases to be coterminous with specific projects when the employee is continuously rehired due to the demands of employer's business and re-engaged for many more projects without interruption.[37]

The Court is not persuaded by petitioners' submission that respondents' services are not necessary or desirable to the usual

[35] *Liganza v. RBL Shipyard Corporation*, G.R. No. 159862, October 17, 2006, 504 SCRA 678, 684; *Brahm Industries, Inc. v. National Labor Relations Commission*, 345 Phil. 1077, 1083 (1997).

[36] *Philippine Long Distance Telephone Company, Inc. (PLDT) v. Ylagan*, G.R. No. 155645, November 24, 2006, 508 SCRA 31, 36; *Grandspan Development Corporation v. Bernardo*, G.R. No. 141464, September 21, 2005, 470 SCRA 461, 470; *Filipinas Pre-Fabricated Building Systems (Filsystems), Inc. v. Puente*, G.R. No. 153832, March 18, 2005, 453 SCRA 820, 827-828.

[37] *Liganza v. RBL Shipyard Corporation, supra* note 35; *Tomas Lao Construction v. National Labor Relations Commission*, 344 Phil. 268, 279 (1997).

trade or business of the resort. The repeated and continuing need for their services is sufficient evidence of the necessity, if not indispensability, of their services to petitioners' resort business.[38]

In *Maraguinot, Jr. v. National Labor Relations Commission*,[39] the Court ruled that "once a project or work pool employee has been: (1) continuously, as opposed to intermittently, rehired by the same employer for the same tasks or nature of tasks; and (2) these tasks are vital, necessary and indispensable to the usual business or trade of the employer, then the employee must be deemed a regular employee, pursuant to Article 280 of the Labor Code and jurisprudence."[40]

That respondents were regular employees is further bolstered by the following evidence: (a) the SSS Quarterly Summary of Contribution Payments[41] listing respondents as employees of petitioners; (b) the Service Record Certificates stating that respondents were employees of petitioners for periods ranging from three to twelve years and all have given "very satisfactory performance";[42] (c) petty cash vouchers[43] showing payment of respondents' salaries and holiday and overtime pays.

Thus, substantial evidence supported the CA finding that respondents were regular employees. Being regular employees, they were entitled to security of tenure, and their services may not be terminated except for causes provided by law.

Article 279[44] of the Labor Code, as amended, provides that an illegally dismissed employee shall be entitled to reinstatement,

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[38] *Universal Robina Corporation v. Catapang*, G.R. No. 164736, October 14, 2005, 473 SCRA 189, 204; *Magsalin v. National Organization of Working Men*, 451 Phil. 254, 261 (2003).

[39] 348 Phil. 580 (1998).

[40] *Id.* at 600-601.

[41] Exhibit "A", Records, p. 68.

[42] *Id.* at 59-63.

[43] Exhibits "B", "B-1" to "B-6", "G", "G-1" to "G-3", "H", "H-1"to "H-6", "I", "I-1" to "I-6", "J", "J-1" to "J-5", *Id.* at 68.

[44] LABOR CODE, Art. 279. SECURITY OF TENURE. – In cases of regular employment, the employer shall not terminate the services of an employee

full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

The Court notes that the NLRC, in its earlier Decision dated August 29, 2002 which was affirmed by the CA, computed the award for backwages from May 8, 1999 to July 31, 2002 only. It is evident that respondents' backwages should not be limited to said period. The backwages due respondents must be computed from the time they were unjustly dismissed until actual reinstatement to their former positions. Thus, until petitioners implement the reinstatement aspect, its obligation to respondents, insofar as accrued backwages and other benefits are concerned, continues to accumulate.

The fact that the CA failed to consider this when it affirmed the August 29, 2002 decision of the NLRC or that respondents themselves did not appeal the CA Decision on this matter, does not bar this Court from ordering its modification. While as a general rule, a party who has not appealed is not entitled to affirmative relief other than the ones granted in the decision of the court below, this Court is imbued with sufficient authority and discretion to review matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice.[45]

Besides, substantive rights like the award of backwages resulting from illegal dismissal must not be prejudiced by a rigid and

except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. (As amended by Sec. 34, Republic Act No. 6715).

[45] *Asian Terminals, Inc. v. National Labor Relations Commission*, G.R. No. 158458, December 19, 2007, 541 SCRA 105, 115; *Aurora Land Projects Corp. v. National Labor Relations Commission*, 334 Phil. 44, 59 (1997).

technical application of the rules.[46] The computation of the award for backwages from the time compensation was withheld up to the time of actual reinstatement is a mere legal consequence of the finding that respondents were illegally dismissed by petitioners.

WHEREFORE, the petition is *DENIED.* The assailed Decision dated July 30, 2004 and Resolution dated February 2, 2005 of the Court of Appeals in CA-G.R. SP No. 78620 are *AFFIRMED with MODIFICATION* that the award for backwages should be computed from the time compensation was withheld up to the time of actual reinstatement.

Double costs against petitioners.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 170834. August 29, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ANTONIO NOGRA,** *accused-appellant.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; "MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (R.A. NO. 8042); CONCEPT OF ILLEGAL RECRUITMENT UNDER THE LABOR CODE, BROADENED.— R.A. No. 8042 broadened the concept of illegal recruitment under the Labor Code and

[46] *Asian Terminals, Inc. v. National Labor Relations Commission, supra* note 45, at 115; *St. Michael's Institute v. Santos*, 422 Phil. 723, 736 (2001).

provided stiffer penalties, especially those that constitute economic sabotage, *i.e.*, Illegal Recruitment in Large Scale and Illegal Recruitment Committed by a Syndicate. Appellant was charged with illegal recruitment in large scale under Section 6 (l) and (m) of R.A. No. 8042. Section 6 (l) refers to the failure to actually deploy without valid reason, as determined by the Department of Labor and Employment (DOLE). Section 6 (m) involves the failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases in which the deployment does not actually take place without the worker's fault.

2. ID.; ID.; SECTION 6 (L) OF R.A. NO. 8042; INDEPENDENT EVIDENCE FROM DOLE NEEDED TO ESTABLISH REASON FOR NON-DEPLOYMENT.— The law requires not only that the failure to deploy be **without valid reason** "*as determined by the Department of Labor and Employment.*" The law envisions that there be independent evidence from the DOLE to establish the reason for non-deployment, such as the absence of a proper job order.

3. ID.; ID.; ID.; DEFENSE OF BEING A MERE EMPLOYEE NOT A SHIELD AGAINST AN ACCUSED'S CONVICTION FOR LARGE-SCALE ILLEGAL RECRUITMENT.— The defense of being a mere employee is not a shield against his conviction for large scale illegal recruitment. In *People v. Gasacao* and *People v. Sagayaga*, the Court reiterated the ruling in *People v. Cabais*, *People v. Chowdury* and *People v. Corpuz* that an employee of a company or corporation engaged in illegal recruitment may be held liable as principal by direct participation, together with its employer, if it is shown that he actively and consciously participated in the recruitment process.

4. ID.; ID.; ID.; WHEN CONSIDERED LARGE-SCALE.— Under the last paragraph of Section 6 of R.A. No. 8042, illegal recruitment shall be considered an offense involving economic sabotage if committed in large scale, *viz*, committed against three or more persons individually or as a group.

5. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF TRIAL COURT; ENTITLED TO GREAT WEIGHT BY THE COURT, PARTICULARLY WHEN AFFIRMED BY THE COURT OF APPEALS.— It is a settled rule that factual findings of the

trial courts, including their assessment of the witnesses' credibility, are entitled to great weight and respect by the Supreme Court, particularly when the CA affirmed such findings. After all, the trial court is in the best position to determine the value and weight of the testimonies of witnesses. The absence of any showing that the trial court plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case, or that its assessment was arbitrary, impels the Court to defer to the trial court's determination according credibility to the prosecution evidence.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before the Court is an appeal from the Decision[1] dated August 31, 2005 of the Court of Appeals (CA) in CA-G.R. C.R. No. 00244 affirming the Judgment of the Regional Trial Court (RTC), Branch 19, Naga City in Criminal Case No. 98-7182, convicting Antonio Nogra (appellant) of large scale illegal recruitment under Section 6(m) in relation to Section 7(b) of Republic Act No. 8042 (R.A. No. 8042),[2] otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995."[3]

The inculpatory portion of the Information charging one Lorna G. Orciga and appellant with large scale illegal recruitment reads as follows:

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[1] Penned by Associate Justice Eugenio S. Labitoria (now retired) and concurred in by Associate Justices Eliezer R. delos Santos (now deceased) and Arturo D. Brion (now a member of this Court), CA *rollo*, p. 123.

[2] An Act to Institute the Policies of Overseas Employment and Establish a Higher Standard of Protection and Promotion of the Welfare of Migrant Workers, Their Families and Overseas Filipinos in Distress and for Other Purposes.

[3] Now often referred to as the Magna Carta for Overseas Filipino Workers.

That sometime during the period of March 1997 to November, 1997 in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the General Manager and Operations Manager of LORAN INTERNATIONAL OVERSEAS RECRUITMENT CO., LTD., with office at Concepcion Grande, Naga City, conspiring, confederating together and mutually helping each other, representing themselves to have the capacity to contract, enlist, hire and transport Filipino workers for employment abroad, did then and there willfully, unlawfully and criminally, for a fee, recruit and promise employment/job placement to the herein complaining witnesses RENATO ALDEN, OLIVER SARMIENTO, FE ZABALLA, TEOFILA LUALHATI, PILIPINA MENDOZA and KERWIN DONACAO, but failed to actually deploy them without valid reason, as well as to reimburse their documentation, placement and processing expenses for purposes of deployment despite their repeated demands for the return of the same, to their damage and prejudice in the amounts as may be proven in court.

CONTRARY TO LAW.[4]

Only appellant was brought to the jurisdiction of the trial court since Lorna G. Orciga was then and still is at large. Arraigned with the assistance of counsel, appellant entered a plea of "NOT GUILTY" to the crime charged. Thereafter, trial of the case ensued.

Of the six complainants, the prosecution was able to present five of them, namely: Renato Alden, Fe Zaballa, Teofila Lualhati, Filipina Mendoza and Kerwin Donacao. Anaielyn Sarmiento, wife of complainant Oliver Sarmiento, also testified for the prosecution.

The facts, as established by the prosecution, are aptly summarized by the Office of the Solicitor General (OSG), as follows:

Appellant held office at Loran International Overseas Recruitment Co., (Loran) in Concepcion Grande, Naga City (p. 4, TSN, October 19, 1998). A nameplate on his table prominently displayed his name and position as operations manager (p. 11, TSN, November 17, 1998; p. 4, TSN, January 12, 1999; p. 21, TSN, November 19, 1998). The license of Loran also indicated appellant as the operations manager

[4] CA *rollo*, p. 17.

(p. 5, TSN, February 10, 1999). The POEA files also reflect his position as operations manager of Loran (Exhibit L to L-4, pp. 5-9, TSN, November 19, 1998).

Sometime in December 1996, Renato Alden went to Loran to apply for a job as hotel worker for Saipan. He was interviewed by appellant, who required Alden to submit an NBI clearance and medical certificate and to pay the placement fee. Alden paid the amount of ₱31,000.00. The additional amount of ₱4,000.00 was to be paid prior to his departure to Saipan (pp. 5-6, TSN, November 17, 1998). Appellant promised Alden that he would leave within a period of three to four months. After one year of waiting Alden was not able to leave. Alden filed a complaint with the NBI when he was not able to recover the amount and could no longer talk with appellant (p. 6, TSN, November 17, 1998).

On April 18, 1997, Teofila Lualhati applied for employment as hotel worker for Saipan with Loran (pp. 1-3, 10, TSN, November 19, 1998). Appellant required her to submit an NBI clearance and medical certificate and to pay the processing fee in the amount of ₱35,000.00 so she could leave immediately. She paid the amount of ₱35,000.00 to Loran's secretary in the presence of appellant. She was promised that within 120 days or 4 months she would be able to leave (pp. 11-13, TSN, November 19, 1998). Despite repeated follow-ups, Lualhati was unable to work in Saipan. She demanded the refund of the processing fee. When the amount was not returned to her, she filed a complaint with the NBI (pp. 14-15, TSN, November 19, 1998).

Sometime in April 1998, Filipina Mendoza went to Loran to apply for employment as hotel worker (p. 4, TSN, July 12, 1999). She paid the amount of ₱35,000.00 as placement fee. When she was not able to work abroad, she went to Loran and sought the return of ₱35,000.00 from appellant (p. 7, TSN, January 21, 1999).

Sometime in October 1997, Kerwin Donacao went to Loran to apply for employment as purchaser in Saipan (p. 4, TSN, February 10, 1999). He was required to submit NBI clearance, police clearance, previous employment certificate and his passport. He paid the placement fee of ₱35,000.00 (pp.4-5, TSN, February 10, 1999). After paying the amount, he was told to wait for two to three months. When he was not able to leave for Saipan, he demanded the return of the placement fee, which was not refunded (pp. 6-7, TSN, February 10, 1999).

During the first week of November 1997, Annelyn Sarmiento and her husband, Oliver Sarmiento, applied for overseas employment. For the application of Oliver Sarmiento, they submitted his medical certificate and certification of previous employment. They were also made to pay the amount of ₱27,000.00 as processing fee. Oliver Sarmiento was promised that within 1 month, he would be able to leave. Initially, Oliver Sarmiento was told that allegedly his visa was yet to be obtained. When he was not able to leave and what he paid was not refunded, he filed a complaint with the NBI (pp. 4-6, TSN, April 23, 1999).

Sometime in May 1997, Fe Zaballa applied for overseas employment in Saipan with Loran (p. 4, TSN, May 21, 1999). She was required to submit her medical certificate, original copy of her birth certificate, NBI clearance and police clearance. She was also required to pay the amount of ₱35,000.00 as placement fee. When she could not be deployed, she sought to recover the amount she paid, which was not returned (pp. 7-8, TSN, May 2, 1999).[5]

On the other hand, appellant presented the following evidence:

The defense presented [appellant] Antonio Nogra and the agency's secretary and cashier, Maritess Mesina.

From their testimonies it was established that LORAN INTERNATIONAL OVERSEAS RECRUITMENT CO., LTD., (LORAN, for brevity) was owned by accused Lorna Orciga and Japanese national Kataru Tanaka (TSN, September 30, 2000, p. 7). Sometime in July 1994, [appellant] Antonio Nogra read from outside the agency's main office at Libertad, Mandaluyong City that it was in need of a liaison officer. He applied for the position. The part-owner and co-accused, Lorna Orciga, hired him instead as Operations Manager as the agency was then still in the process of completing the list of personnel to be submitted to the POEA. (TSN, January 31, 2001, p. 5).

[Appellant] Nogra started working with LORAN in October 1994. In 1995, he was transferred to Naga City when the agency opened a branch office thereat. Although he was designated as the Operations Manager, [appellant] Nogra was a mere employee of the agency. He was receiving a monthly salary of ₱5,000.00 and additional ₱2,000.00 monthly meal allowance. He was in-charge of the advertisement of the company. He also drove for the company. He

[5] *Rollo*, pp. 27-30.

fetched from the airport the agency's visitors and guests and drove them to hotels and other places. (TSN, May 3, 2000, pp. 2-9).

Although part-owner Lorna Orciga was stationed in Manila, she, however, actually remained in control of the branch office in Naga City. She conducted the final interview of the applicants and transacted with the foreign employers. She also controlled the financial matters and assessment fees of the agency in Naga City (TSN, September 20, 2000, pp. 8-9). The placement and processing fees collected by the agency in Naga City were all deposited in the bank account of Lorna Orciga and not a single centavo went to the benefit of [appellant] Nogra (TSN, January 10, 2000, pp. 14-22).[6]

On March 26, 2003, the RTC rendered Judgment [7] finding appellant guilty beyond reasonable doubt of the crime charged. The *fallo* of the decision reads:

WHEREFORE, the Court finds the accused ANTONIO NOGRA guilty beyond reasonable doubt of the crime of Illegal Recruitment Committed in Large Scale defined under Sections 6(m) and 7(b) of RA 8042, otherwise known as The Migrant Workers and Overseas Filipinos Act of 1995 and, accordingly, hereby imposes upon him the penalty of life imprisonment and a fine of Five hundred thousand pesos (₱500,000.00).

SO ORDERED.[8]

On April 10, 2003, appellant filed a Notice of Appeal.[9] The RTC ordered the transmittal of the entire records of the case to this Court.

Conformably to the ruling in *People v. Mateo*,[10] the case was referred to the CA for intermediate review.[11]

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[6] Brief for Appellant, CA *rollo*, pp. 58-59.

[7] *Id.* at 33.

[8] CA *rollo*, pp. 38-39.

[9] *Id.* at 40.

[10] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[11] *Id.* at 50-a.

On August 31, 2005, the CA rendered a Decision[12] affirming the decision of the RTC. The CA held that being an employee is not a valid defense since employees who have knowledge and active participation in the recruitment activities may be criminally liable for illegal recruitment activities, based upon this Court's ruling in *People v. Chowdury*[13] and *People v. Corpuz*;[14] that appellant had knowledge of and active participation in the recruitment activities since all the prosecution witnesses pinpointed appellant as the one whom they initially approached regarding their plans of working overseas and he was the one who told them about the fees they had to pay, as well as the papers that they had to submit; that the mere fact that appellant was not issued special authority to recruit does not exculpate him from any liability but rather strongly suggests his guilt; that appellant's invocation of non-flight cannot be weighed in his favor since there is no established rule that non-flight is, in every instance, an indication of innocence.

A Notice of Appeal[15] having been timely filed by appellant, the CA forwarded the records of the case to this Court for further review.

In his Brief, appellant assigns as errors the following:

I

THE TRIAL COURT ERRED IN NOT FINDING THAT THE ACCUSED-APPELLANT WAS A MERE EMPLOYEE OF THE RECRUITMENT AGENCY DESPITE HIS DESIGNATION AS ITS OPERATIONS MANAGER.

II

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE OFFENSE-CHARGED DESPITE THE FACT

[12] *Id.* at 123.

[13] 582 Phil. 459 (2000).

[14] 459 Phil. 100 (2003).

[15] CA *rollo*, p. 137.

THAT UNDER THE LAW, HE WAS NOT CRIMINALY LIABLE FOR HIS AGENCY'S TRANSACTIONS.[16]

Appellant argues that the agency was under the management and control of Orciga, and that he was a mere employee; that he could not be held personally liable for illegal recruitment in the absence of any showing that he was validly issued special authority to recruit workers, which was approved by the Philippine Overseas Employment Administration (POEA); that his non-flight is indicative of his innocence.

Appellee, through the OSG, counters that appellant is not a mere clerk or secretary of Loran, but its Operations Manager who directly participated in the recruitment scheme by promising private complainants work abroad, but failed to deploy them and refused to reimburse the applicants' placement fees when demanded.

The appeal fails. The CA did not commit any error in affirming the decision of the RTC.

R.A. No. 8042 broadened the concept of illegal recruitment under the Labor Code[17] and provided stiffer penalties, especially those that constitute economic sabotage, *i.e.*, Illegal Recruitment in Large Scale and Illegal Recruitment Committed by a Syndicate.

Section 6 of R.A. No. 8042 defined when recruitment is illegal:

SEC. 6. *Definition*. – For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: Provided, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. **It shall likewise**

[16] *Id.* at 59-60.

[17] Article 13(b) of the Labor Code of the Philippines defines recruitment and placement as follows:

include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority:

xxx xxx xxx

(l) Failure to actually deploy without valid reason as determined by the Department of Labor and Employment; and

(m) Failure to reimburse expenses incurred by the workers in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault. Illegal recruitment when committed by a syndicate or in large scale shall be considered as offense involving economic sabotage.

Illegal recruitment is deemed committed by a syndicate carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

The persons criminally liable for the above offenses are the principals, accomplices, and accessories. In case of juridical persons, the officers having control, management or direction of their business shall be liable. (Emphasis and underscoring supplied)

In the present case, evidence for the prosecution showed that Loran International Overseas Recruitment Co., Ltd. is a duly licensed recruitment agency with authority to establish a branch office. However, under R.A. No. 8042, even a licensee or holder of authority can be held liable for illegal recruitment, should he commit or omit to do any of the acts enumerated in Section 6.

Appellant was charged with illegal recruitment in large scale under Section 6 (l) and (m) of R.A. No. 8042. Section 6 (l) refers to the failure to actually deploy without valid reason, as

(b) "Recruitment and placement" refers to 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. Provided, That any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement.

determined by the Department of Labor and Employment (DOLE). Section 6 (m) involves the failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases in which the deployment does not actually take place without the worker's fault.

A thorough scrutiny of the prosecution's evidence reveals that it failed to prove appellant's liability under Section 6 (l) of R.A. No. 8042. The law requires not only that the failure to deploy be **without valid reason** "*as determined by the Department of Labor and Employment*." The law envisions that there be independent evidence from the DOLE to establish the reason for non-deployment, such as the absence of a proper job order. No document from the DOLE was presented in the present case to establish the reason for the accused's failure to actually deploy private complainants. Thus, appellant cannot be held liable under Section 6 (l) of R.A. No. 8042.

As to Section 6 (m) of R.A. No. 8042, the prosecution has proven beyond reasonable doubt that private complainants made payments to Loran, and appellant failed to reimburse the amounts paid by private complainants when they were not deployed. The prosecution presented the receipts issued by Loran to private complainants evidencing payment of placement fees ranging from ₱27,000.00 to ₱35,000.00.

Appellant does not dispute that private complainants were not deployed for overseas work, and that the placement fees they paid were not returned to them despite demand. However, he seeks to exculpate himself on the ground that he is a mere employee of Loran.

The Court is unswayed by appellant's contention.

The penultimate paragraph of Section 6 of R.A. No. 8042 explicitly states that those criminally liable are the "*principals, accomplices, and accessories. In case of juridical persons, the officers having control, management or direction of their business shall be liable*." Contrary to appellant's claim, the testimonies of the complaining witnesses and the documentary

evidence for the prosecution clearly established that he was not a mere employee of Loran, but its Operations Manager. The license of Loran, the files of the POEA and the nameplate prominently displayed on his office desk reflected his position as Operations Manager. As such, he received private complainants' job applications; and interviewed and informed them of the agency's requirements prior to their deployment, such as NBI clearance, police clearance, medical certificate, previous employment certificate and the payment of placement fee. He was also responsible for the radio advertisements and leaflets, which enticed complaining witnesses to apply for employment with the agency. Clearly, as Operations Manager, he was in the forefront of the recruitment activities.

The defense of being a mere employee is not a shield against his conviction for large scale illegal recruitment. In *People v. Gasacao*[18] and *People v. Sagayaga*,[19] the Court reiterated the ruling in *People v. Cabais*,[20] *People v. Chowdury*[21] and *People v. Corpuz*[22] that an employee of a company or corporation engaged in illegal recruitment may be held liable as principal by direct participation, together with its employer, if it is shown that he actively and consciously participated in the recruitment process.

In the present case, it was clearly established that appellant dealt directly with the private complainants. He interviewed and informed them of the documentary requirements and placement fee. He promised deployment within a three or four month-period upon payment of the fee, but failed to deploy them and to reimburse, upon demand, the placement fees paid.

The Court is not persuaded by appellant's argument that his non-flight is indicative of his innocence. Unlike the flight of an accused, which is competent evidence against him tending to

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[18] G.R. No. 168445, November 11, 2005, 474 SCRA 812, 822.

[19] 467 Phil. 961, 971 (2004).

[20] 407 Phil. 37 (2001).

[21] *Supra* note 14.

[22] *Supra* note 15.

establish his guilt, non-flight is simply inaction, which may be due to several factors. It may not be construed as an indication of innocence.[23]

Of marked relevance is the absence of any showing that the private complainants had any ill motive against appellant other than to bring him to the bar of justice to answer for the crime of illegal recruitment. Besides, for strangers to conspire and accuse another stranger of a most serious crime just to mollify their hurt feelings would certainly be against human nature and experience.[24] Where there is nothing to show that the witnesses for the prosecution were actuated by improper motive, their positive and categorical declarations on the witness stand under the solemnity of an oath deserve full faith and credence.[25]

It is a settled rule that factual findings of the trial courts, including their assessment of the witnesses' credibility, are entitled to great weight and respect by the Supreme Court, particularly when the CA affirmed such findings.[26] After all, the trial court is in the best position to determine the value and weight of the testimonies of witnesses.[27] The absence of any showing that the trial court plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case, or that its assessment was arbitrary, impels the Court to defer to the trial court's determination according credibility to the prosecution evidence.

Under the last paragraph of Section 6 of R.A. No. 8042, illegal recruitment shall be considered an offense involving economic sabotage if committed in large scale, *viz*, committed against three or more persons individually or as a group. In the present case, five complainants testified against appellant's acts

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[23] *People v. Omar*, 383 Phil. 979, 987 (2000).

[24] *People v. Logan*, 414 Phil. 113, 124 (2001).

[25] *People v. Cabbab, Jr.*, G.R. No. 173479, July 12, 2007, 527 SCRA 589, 602.

[26] *People v. Aguila*, G.R. No. 171017, December 6, 2006,510 SCRA 642.

[27] *Abarquez v. People*, G.R. No. 150762, January 20, 2006, 479 SCRA 225, 233.

of illegal recruitment, thereby rendering his acts tantamount to economic sabotage. Under Section 7 (b) of R.A. 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.

Thus, the RTC and the CA correctly found appellant guilty beyond reasonable doubt of large scale illegal recruitment.

WHEREFORE, the appeal is *DISMISSED*. The Decision dated August 31, 2005 of the Court of Appeals affirming the conviction of appellant Antonio Nogra for large scale illegal recruitment under Sections 6 (m) and 7 (b) of Republic Act No. 8042 is *AFFIRMED*.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Velasco, Jr.[*], and *Reyes, JJ.*, concur.

THIRD DIVISION

[G.R. Nos. 182136-37. August 29, 2008]

BON-MAR REALTY AND SPORT CORPORATION, *petitioner, vs.* **SPOUSES NICANOR AND ESTHER DE GUZMAN, EVELYN UY AND THE ESTATE OF JAYME UY, HON. LORNA CATRIS F. CHUA-CHENG, Presiding Judge, Branch 168 of RTC-Marikina City, (formerly Pasig City), HON. AMELIA A. FABROS, Branch 160 of RTC-San Juan, (formerly Pasig City), and THE REGISTRAR OF DEEDS OF SAN JUAN,** *respondents.*

[*] Justice Presbitero J. Velasco, Jr. as additional member per the July 30, 2008 Division Raffle, vice Justice Antonio Eduardo B. Nachura.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; PARTY-IN-INTEREST; CASE AT BAR.— A necessary party must be joined in the suit if complete relief is to be accorded as to those already parties, or for a complete determination or settlement of the claim subject of the action. With the finality of the decision in Civil Case No. 67315 (declaring BON-MAR as owner of the subject lots) it acquired legal interest to defend its title against any threat or challenge. The pronouncement by the Court of Appeals in CA-G.R. SP No. 82807 that BON-MAR is a stranger to the litigation in Civil Case No. 56393 thus no longer applies, because the facts which gave rise to the decision in said case no longer hold true. Having been declared the owner of the subject lots, BON-MAR is now possessed of the legal interest to intervene in Civil Case No. 56393, and to oppose DE GUZMANS' attempt to re-acquire the subject lots through execution proceedings.

2. ID.; ID.; INTERVENTION; REQUISITES WHICH MUST CONCUR.— To warrant intervention, two requisites must concur: (a) the movant has a legal interest in the matter in litigation, and (b) intervention must not unduly delay or prejudice the adjudication of the rights of the parties nor should the claim of the intervenor be capable of being properly decided in a separate proceeding. The interest, which entitles a person to intervene in a suit, must involve the matter in litigation and of such direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment.

3. ID.; ID.; EXECUTION; THIRD-PARTY CLAIM; RIGHTS OF PARTIES THEREUNDER.— Section 16, Rule 39 of the Rules of Court bestows upon third parties claiming rights to property under execution the right to protect their interests by interposing a third-party claim in the same case, or by instituting a separate reivindicatory action against the executing creditor. The third-party claim that is heard in the same case may be tried at length or summarily. Proceedings to resolve the possession of third-party claimants may proceed independently of the action which said claimants may bring to enforce or protect their claim of ownership over the property.

4. ID.; ID.; ID.; ACTIONS *QUASI IN REM;* EXPLAINED.— Civil Case Nos. 56393 and 67315 — despite involving title to real property, are essentially actions *quasi in rem*. Judgment in both cases affects only the parties thereto and their successors-in-interest; it does not bind the whole world. A judgment directing a party to deliver possession of a property to another is *in personam*; it is binding only against the parties and their successors in interest by title subsequent to the commencement of the action. "Suits to quiet title are not technically suits *in rem*, nor are they, strictly speaking, *in personam*, but being against the person in respect of the *res*, these proceedings are characterized as *quasi in rem*. The judgment in such proceedings is conclusive only between the parties." In this case, the action below is basically one for declaration of nullity of title and recovery of ownership of real property, or re-conveyance. "An action to recover a parcel of land is a real action but it is an action *in personam*, for it binds a particular individual only although it concerns the right to a tangible thing." "Any judgment therein is binding only upon the parties properly impleaded."

5. CIVIL LAW; LAND REGISTRATION; REGISTRAR OF DEEDS' DENIAL OF REQUEST FOR ISSUANCE OF TITLE; REMEDY IS APPEAL BY *CONSULTA* TO THE COMMISSIONER OF LAND REGISTRATION AUTHORITY.— Regarding the Registrar of Deeds' denial of BON-MAR's request for issuance of titles pursuant to the judgment in Civil Case No. 67315, under Presidential Decree No. 1529, or the Property Registration Decree, BON-MAR should appeal the Registrar of Deeds' denial by *consulta* to the Commissioner of the Land Registration Authority. Thus: SECTION 117. Procedure. — When the Register of Deeds is in doubt with regard to the proper step to be taken or memorandum to be made in pursuance of any deed, mortgage or other instrument presented to him for registration, or where any party in interest does not agree with the action taken by the Register of Deeds with reference to any such instrument, the question shall be submitted to the Commissioner of Land Registration by the Register of Deeds, or by the party in interest thru the Register of Deeds. Where the instrument is denied registration, the Register of Deeds shall notify the interested party in writing, setting forth the defects of the instrument or legal grounds relied upon, and advising him that if he is not

agreeable to such ruling, he may, without withdrawing the documents from the Registry, elevate the matter by *consulta* within five days from receipt of notice of the denial of registration to the Commissioner of Land Registration. x x x

6. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; COURT OF APPEALS; HAS EXCLUSIVE JURISDICTION OVER RESOLUTIONS OF COMMISSIONER OF LAND REGISTRATION ON THE *CONSULTA*.— Under the 1997 Rules of Procedure, the resolution by the Commissioner of the Land Registration Authority on the *consulta* may be appealed to the Court of Appeals, which has exclusive jurisdiction to decide the same, within the period and in the manner provided in Rule 43 thereof. The basis of this rule is the last paragraph of Section 117 of P.D. No. 1529, thus: The Commissioner of Land Registration, considering the *consulta* and the records certified to him after notice to the parties and hearing, shall enter an order prescribing the step to be taken or memorandum to be made. His resolution or ruling in *consultas* shall be conclusive and binding upon all Registers of Deeds, provided, that the party in interest who disagrees with the final resolution, ruling or order of the Commissioner relative to *consultas* may appeal to the Court of Appeals within the period and in the manner provided in Republic Act No. 5434.

APPEARANCES OF COUNSEL

Lawrence L. Ko Teh for petitioner.
Arrojado Serrano & Calizo for Sps. Uy.
Joseph Cohon for N.C. de Guzman, Jr.
Fernandez & Associates for Registrar of Deeds of San Juan.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition for review on *certiorari* assails the November 14, 2007 Decision[1] and March 17, 2008 Resolution[2] of the Court of Appeals in the consolidated cases involving CA-G.R. SP Nos. 94945[3] and 97812.[4]

In CA-G.R. SP No. 94945, the Court of Appeals denied Bon-Mar Realty and Sport Corporation's (BON-MAR) petition to intervene in Civil Case No. 56393, a case filed by Spouses Nicanor, Jr. and Esther de Guzman (the DE GUZMANS) for annulment of titles and reconveyance of the properties against Mario and Erlina Siochi (SIOCHIS) and Jayme and Evelyn Uy (UYS), and affirmed the orders of the trial court granting the motion for issuance of a writ of possession of the DE GUZMANS.

In CA-G.R. SP No. 97812, the Court of Appeals granted the DE GUZMANS' leave to intervene in SCA No. 2988-SJ, a proceeding for indirect contempt instituted by BON-MAR against the Registrar of Deeds of San Juan for the latter's refusal to cancel the DE GUZMANS' titles and issue new ones in BON-MAR's name.

The antecedent facts:

The DE GUZMANS were the owners of two lots located in Greenhills, San Juan, Metro Manila (the subject lots or properties), which were covered by Transfer Certificates of Title (TCT) Nos. 9052 and 9053. Owing to the need for campaign funds for Nicanor's candidacy as member of the House of Representatives,

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[1] *Rollo*, pp. 66-86; penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Lucenito N. Tagle.

[2] *Id.* at 120-121.

[3] Entitled "*Bon-Mar Realty and Sport Corp. v. Hon. Lorna Catris F. Chua-Cheng*."

[4] Entitled "*Nicanor de Guzman, Jr. v. Hon. Amelia A. Fabros and Bon-Mar Realty and Sport Corp*."

the DE GUZMANS borrowed money from the SIOCHIS. As collateral, the DE GUZMANS executed a deed of sale dated April 10, 1987 in favor of the Siochis over the subject lots.

The SIOCHIS, however, caused the cancellation of TCT Nos. 9052 and 9053 by virtue of the April 10, 1987 deed of sale. New titles, TCT Nos. 275-R and 276-R, were issued in their name.

Thereafter, the SIOCHIS sold the subject lots to the UYS who were issued TCT Nos. 277-R and 278-R. Subsequently, the UYS entered into a lease agreement with Roberto Salapantan.

Upon learning of the said transfers, the DE GUZMANS filed Civil Case No. 56393 [5] seeking to annul the sales to the SIOCHIS and the UYS, as well as the lease to Salapantan. On December 28, 1990, the Regional Trial Court of Pasig City, Branch 168 rendered a Decision[6] finding the agreement between the DE GUZMANS and the SIOCHIS as a mere equitable mortgage, which precluded the latter from selling or foreclosing upon the subject lots without the knowledge and consent of the DE GUZMANS. Thus the trial court ordered the nullification of the deeds of sale to the SIOCHIS and the UYS, as well as the lease to Salapantan; the reconveyance of the subject lots to the DE GUZMANS; and the cancellation of the certificates of title issued in the name of the UYS.

The SIOCHIS and the UYS appealed to the Court of Appeals which affirmed the ruling of the trial court.

From the appellate court's adverse decision, the SIOCHIS appealed to this Court, docketed as G.R. No. 109217; the UYS likewise appealed docketed as G.R. No. 109197.

On June 21, 1993, the Court, in G.R. No. 109217, issued a Resolution denying SIOCHIS' petition. Judgment in said case became final upon entry of judgment on December 11, 1994.

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[5] Regional Trial Court of Pasig City, Branch 168.

[6] *Rollo,* pp. 383-396.

Meanwhile, on March 10, 1999 or while the UYS' petition in G.R. No. 109197 was pending, BON-MAR filed Civil Case No. 67315[7] for nullification of title against the UYS and the Register of Deeds of San Juan. BON-MAR claimed that after G.R. No. 109217 became final and executory (on December 11, 1994), the UYS' titles were cancelled and in lieu thereof new titles were issued in the name of the DE GUZMANS (TCT Nos. 6982-R and 6983-R); that thereafter, the DE GUZMANS sold the subject lots to spouses Abundia and Jose Garcia (the GARCIAS); that on January 23, 1996, BON-MAR bought the lots from the GARCIAS and, as a result, TCT Nos. 7480-R and 7481-R were issued in its name; that on April 1, 1996, BON-MAR caused the subdivision of the properties into four (4) lots, under TCT Nos. 7650-R to 7653-R; that TCT Nos. 7650-R to 7653-R were transferred to the UYS on January 10, 1997, to whom TCT Nos. 8238-R to 8241-R were issued; however, the said January 10, 1997 transfer in favor of the UYS was a forgery, as the latter allegedly forged the signature of BON-MAR's President (Bonifacio Choa or CHOA) on the deed of sale and other related documents.

On March 11, 1999, BON-MAR caused the annotation of a notice of *lis pendens* in Civil Case No. 67315, under Entry No. 34865, on the titles covering the subject properties.

On June 21, 2001, this Court rendered a Decision[8] in G.R. No. 109197 finding that the UYS were not buyers in good faith of the subject lots; that as equitable mortgagees, the SIOCHIS could not validly appropriate the subject lots since they were not the owners thereof; that the UYS, as mere transferees of the SIOCHIS, acquired no better right to the subject lots than what the latter had. The said decision became final and executory on November 20, 2001.

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[7] Regional Trial Court of Pasig, Branch 167, entitled "*Bon-Mar Realty and Sport Corp. v. Spouses Jayme and Evelyn Uy and the Register of Deeds of San Juan, Metro Manila*."

[8] *Rollo*, pp. 397-408; penned by Associate Justice Jose A.R. Melo and concurred in by Associate Justices Jose C. Vitug, Artemio V. Panganiban, Minerva Gonzaga-Reyes and Angelina Sandoval-Gutierrez.

Meanwhile, on September 25, 2001, the trial court in Civil Case No. 67315 rendered a Decision,[9] which nullified and cancelled UYS' titles (TCT Nos. 8238-R to 8241-R) and ordered the Register of Deeds of San Juan to reinstate BON-MAR's titles (TCT Nos. 7650-R to 7653-R).

Aggrieved, the UYS appealed to the Court of Appeals,[10] but it was dismissed on August 16, 2004. The dismissal became final and executory, and entry of judgment thereon was made on September 5, 2004. The Court of Appeals[11] declared that the UYS, in accordance with the ruling in G.R. No. 109197, have no right over the subject lots; hence, they may not assail BON-MAR's title over the same.

Meanwhile, on May 28, 2002, the DE GUZMANS, in Civil Case No. 56393, moved for the issuance of a writ of execution, which was granted by the trial court.[12] The writ of execution was issued on August 1, 2002 but it was not implemented because BON-MAR filed an Omnibus Motion[13] asking leave to intervene and to quash the writ.

In its Omnibus Motion, BON-MAR alleged that by virtue of the judgment in G.R. No. 109217, the DE GUZMANS were able to re-acquire title over the subject lots (TCT Nos. 6982-R and 6983-R), and sold the same to the GARCIAS who in turn sold the subject lots to BON-MAR in 1996; that the DE GUZMANS no longer have any right to move for execution, for the second time, on the decision in said civil case because it has been satisfied already; that by allowing the DE GUZMANS to execute on the judgment anew would constitute unjust enrichment and double recovery upon a judgment; that since it

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[9] *Id.* at 160-173.

[10] Entitled "*Bon-Mar Realty and Sport Corp. v. Spouses Jayme Uy and Evelyn Uy and the Register of Deeds of San Juan, Metro Manila*.

[11] *Rollo*, pp. 175-182; penned by Associate Justice Eloy R. Bello, Jr. and concurred in by Associate Justices Regalado E. Maambong and Lucenito N. Tagle.

[12] *Id.* at 409.

[13] *Id.* at 410-425.

(BON-MAR) is the successor-in-interest of the DE GUZMANS, it must be considered as the present lawful registered owner of the subject lots, such that it possesses actual legal interest to intervene in Civil Case No. 56393 in order to defend its title. BON-MAR thus prayed for intervention in the proceedings; for a stay in the execution of the judgment; for the quashal of the writ of execution; and for the issuance of an order decreeing that judgment in Civil Case No. 56393 has been fully satisfied.

On December 18, 2003, however, the trial court denied[14] BON-MAR's motion to intervene and to quash the writ of execution on the ground that its right to the subject lots was merely inchoate, since BON-MAR's claim was still the subject of a pending appeal in the Court of Appeals. The writ of execution in Civil Case No. 56393 was thus carried out, and TCT Nos. 8238-R to 8241-R in the name of the UYS were cancelled and TCT Nos. T-11566-R to T-11569-R were issued in the name of the DE GUZMANS. These titles were consolidated into two titles, TCT Nos. 11607-R and 11608-R.[15] Entry No. 34865, or the notice of *lis pendens* covering Civil Case No. 67315, was carried over to these titles.

BON-MAR appealed the denial of its Omnibus Motion to the Court of Appeals which was denied. The appellate court ruled that BON-MAR is a stranger to the litigation in Civil Case No. 56393, which is a case between the DE GUZMANS and the UYS, and that the writ of execution that was issued in said case was directed against the UYS, who were the registered owners of the property in question at the time, and not BON-MAR. The appellate court likewise found BON-MAR's attempt at intervention to be belated and improper since the case was in its execution stage.

BON-MAR filed a motion for reconsideration which was denied. BON-MAR did not appeal the aforequoted decision to

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[14] *Id.* at 427-429.

[15] *Id.* at 20, 334.

this Court, thereby rendering the same final and executory on February 10, 2006.[16]

Meanwhile, after finality of the judgment in Civil Case No. 67315 declaring it as owner of the subject properties, BON-MAR moved for execution which was granted by the trial court. A writ of execution was issued on March 29, 2005, but the Register of Deeds of San Juan refused to transfer the titles in BON-MAR's name.

On the other hand, the DE GUZMANS in Civil Case No. 56393, moved for the issuance of a Writ of Possession,[17] which BON-MAR opposed.[18] The trial court granted[19] the DE GUZMANS' prayer for the issuance of a writ of possession, to which BON-MAR filed a motion for reconsideration. On February 16, 2006, BON-MAR also filed an Affidavit of Third-Party Claim[20] executed by CHOA, whereby it set forth its claim of ownership.

On May 24, 2006, the trial court denied[21] BON-MAR's motion for reconsideration of the Order granting a writ of possession in favor of the DE GUZMANS. As for BON-MAR's third-party claim, the trial court did not conduct a hearing thereon, nor did it consider the same in the resolution of BON-MAR's motion for reconsideration.

On June 26, 2006, BON-MAR appealed the trial court's denial of its motion for reconsideration to the Order granting a writ of possession in favor of the DE GUZMANS to the Court of Appeals, docketed as CA-G.R. SP No. 94945,[22] which issued a writ of

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[16] *Id.* at 19.

[17] *Id.* at 208-212.

[18] *Id.* at 213-217.

[19] *Id.* at 450-452.

[20] *Id.* at 443-446.

[21] *Id.* at 453-455.

[22] *Id.* at 22, 456-482; entitled "*Bon-Mar Realty and Sport Corporation v. Hon. Lorna Catris F. Chua-Cheng, Spouses Nicanor (Jr.) and Esther de Guzman, Evelyn Uy and the Estate of Jaime Uy, and the Registrar of Deeds of San Juan.*"

preliminary injunction, thus preventing the enforcement of the writ of possession.

Meanwhile, after BON-MAR's request to cancel the titles in UYS' names and issue new ones in its favor as decreed by the trial court in its final and executory decision in Civil Case No. 67315, was denied by the Registrar of Deeds of San Juan, BON-MAR filed SCA No. 2988-SJ,[23] a special civil action for contempt against the Registrar of Deeds of San Juan. The DE GUZMANS sought to intervene,[24] but it was denied[25] by the trial court. The DE GUZMANS' motion for reconsideration was denied,[26] hence they appealed to the Court of Appeals through a petition for *certiorari* in CA-G.R. SP No. 97812.[27]

After the Court of Appeals ordered the consolidation of CA-G.R. SP No. 97812 and CA-G.R. SP No. 94945, it rendered the herein assailed November 14, 2007 Decision, the dispositive portion of which, reads:

> WHEREFORE, above premises considered, judgment is hereby rendered, as follows:
>
> The petition in CA G.R. SP No. 94945 is DENIED for lack of merit. The November 30, 2005 and the June 15, 2006 Order(s) of the Regional Trial Court of Marikina City, Br. 168, granting the motion for issuance of a writ of possession in Civil Case No. 56393 are declared VALID. Accordingly, the writ of preliminary injunction issued by this Court is hereby LIFTED and the bond posted therefor is ORDERED RELEASED. With costs.
>
> The petition in CA-G.R. SP No. 97812 is hereby GRANTED. The November 8, 2006 and the January 18, 2007 Order(s) of the Regional

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[23] Regional Trial Court of Pasig, Branch 160, entitled "*Bon-Mar Realty and Sport Corp. v. Atty. Corazon Chavez in her capacity as Register of Deeds of San Juan.*"

[24] *Rollo*, pp. 338, 491-494; Motion for Leave to Intervene dated July 21, 2006.

[25] *Id.* at 260-261.

[26] *Id.* at 262.

[27] Entitled "*Nicanor de Guzman, Jr., as Administrator of the Conjugal Property v. Hon. Amelia A. Fabros, Presiding Judge of RTC Br. 160, Pasig City and Bon-Mar Realty and Sport Corporation.*"

Trial Court of Pasig City, Br. 160, are declared NULL and VOID. The Spouses Nicanor, Jr. and Esther de Guzman are given leave to intervene in SCA No. 2988-SJ and the said court is DIRECTED to proceed with the case accordingly. No costs.

SO ORDERED.[28]

Hence, the instant petition.

The issues for resolution are:

I. May BON-MAR intervene in the proceedings in Civil Case No. 56393? – Yes.

II. Are the DE GUZMANS entitled to a writ of possession? – No.

III. May the DE GUZMANS intervene in SCA No. 2988-SJ? – No.

I. BON-MAR MAY INTERVENE IN CIVIL CASE NO. 56393.

The decision in Civil Case No. 67315 declared BON-MAR as successor-in-interest of the DE GUZMANS. Thus, BON-MAR is not a mere stranger to the litigation in Civil Case No. 56393; it is a necessary party who must be joined in the suit if complete relief is to be accorded as to those already parties, or for a complete determination or settlement of the claim subject of the action.[29] BON-MAR's intervention is necessary in order to put an end to Civil Case No. 56393, because if it were established that BON-MAR obtained its title from the GARCIAS who in turn obtained the same from the DE GUZMANS, then there is nothing left for the DE GUZMANS to execute, because their claim in Civil Case No. 56393 has been fully satisfied as early as 1995.[30] There would thus be no

[28] *Rollo*, p. 85.

[29] RULES OF COURT, Rule 3, Sec. 8.

[30] When the UYS' titles (TCT Nos. 277-R and 278-R) were cancelled under Inscription Nos. 13241 and 13242 of the Primary Log Book of the Register of Deeds of San Juan and TCT Nos. 6982-R and 6983-R in the name of the DE GUZMANS were issued by virtue of the Certification issued by the Clerk of Court of the Court of Appeals, Entry of Judgment issued by this Court in G.R. No. 109217.

further reason for the proceedings in Civil Case No. 56393 to continue.

The trial court did not err when it initially denied on December 18, 2003 BON-MAR's Omnibus Motion (to intervene and to quash the writ of execution) because at that time, the decision in Civil Case No. 67315 (which cancelled UYS' titles and recognized BON-MAR's ownership over the subject lots) had not yet become final and executory. Said decision attained finality only on September 5, 2004.

BON-MAR could not yet intervene in Civil Case No. 56393 until its title to the subject lots is established, or recognized, by way of a final and executory decision in Civil Case No. 67315. Since title to the subject lots were then still registered in the name of the UYS, BON-MAR had nothing to show to the trial court in Civil Case No. 56393 that it had any legal interest to protect in the subject lots.

However, with the finality of the decision in Civil Case No. 67315 (declaring BON-MAR as owner of the subject lots) it acquired legal interest to defend its title against any threat or challenge. The pronouncement by the Court of Appeals in CA-G.R. SP No. 82807 that BON-MAR is a stranger to the litigation in Civil Case No. 56393 thus no longer applies, because the facts which gave rise to the decision in said case no longer holds true. Having been declared the owner of the subject lots, BON-MAR is now possessed of the legal interest to intervene in Civil Case No. 56393, and to oppose DE GUZMANS' attempt to re-acquire the subject lots through execution proceedings.

To warrant intervention, two requisites must concur: (a) the movant has a legal interest in the matter in litigation, and (b) intervention must not unduly delay or prejudice the adjudication of the rights of the parties nor should the claim of the intervenor be capable of being properly decided in a separate proceeding.[31] The interest, which entitles a person to intervene in a suit, must involve the matter in litigation and of such direct and immediate

[31] *Mabayo Farms, Inc. v. Court of Appeals*, G.R. No. 140058, August 1, 2002, 386 SCRA 110, 116.

character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment.[32]

The judgment in Civil Case No. 67315 declaring BON-MAR as owner of the subject lots should have convinced the trial court to conduct an inquiry. Although BON-MAR may have conceded that it is a stranger to the litigation, the same does not bind the Court. Besides, the facts and the law belie this claim. While this Court gives considerable weight to the parties' formulation of the issues, the resolution of the controversy may warrant an approach that goes beyond the narrow confines of the issues raised.[33] Justice does not depend on the depth of the parties' arguments; it is based on the established facts and the applicable law.

Thus, when BON-MAR moved to reconsider the trial court's Order denying its motion to intervene and granting the writ of possession to the DE GUZMANS, the trial court should have granted the same in view of the final and executory judgment in Civil Case No. 67315 declaring BON-MAR as owner of the subject lots.

Moreover, the trial court erred in ignoring BON-MAR's third-party claim, which the latter filed after its attempt at intervention was rebuffed. Rule 39 of the Rules of Court, provides:

> Sec. 16. Proceedings where property claimed by third person.
>
> If the property levied on is claimed by any person other than the judgment obligor or his agent, and such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and a copy thereof upon the judgment obligee, the officer shall not be bound to keep the property, unless such judgment obligee, on demand of the officer, files a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of

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[32] *Garcia v. David*, 67 Phil. 279, 284 (1939).

[33] *Integrated Bar of the Philippines v. Zamora*, G.R. No. 141284, August 15, 2000, 338 SCRA 81, 103.

execution. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.

The officer shall not be liable for damages for the taking or keeping of the property, to any third-party claimant if such bond is filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property in a separate action, or prevent the judgment obligee from claiming damages in the same or a separate action against a third-party claimant who filed a frivolous or plainly spurious claim.

When the writ of execution is issued in favor of the Republic of the Philippines, or any officer duly representing it, the filing of such bond shall not be required, and in case the sheriff or levying officer is sued for damages as a result of the levy, he shall be represented by the Solicitor General and if held liable therefor, the actual damages adjudged by the court shall be paid by the National Treasurer out of such funds as may be appropriated for the purpose.

The above provision bestows upon third parties claiming rights to property under execution the right to protect their interests by interposing a third-party claim in the same case, or by instituting a separate reivindicatory action against the executing creditor.[34] The third-party claim that is heard in the same case may be tried at length or summarily. Proceedings to resolve the possession of third-party claimants may proceed independently of the action which said claimants may bring to enforce or protect their claim of ownership over the property.[35]

The records show that BON-MAR's third-party claim was not even considered by the trial court, despite its declaration of ownership over the subject lots pursuant to the judgment in Civil Case No. 67315. BON-MAR is not an ordinary stranger charged with knowledge of the DE GUZMANS' pending suit with respect to the disputed lots; it is one which claims ownership precisely as a result of *that* suit.

[34] *China Banking Corp. v. Ordinario*, G.R. No. 121943, March 24, 2003, 399 SCRA 430, 435.

[35] *Unchuan v. Court of Appeals*, G.R. No. 78775, May 31, 1988, 161 SCRA 710, 718.

Thus, BON-MAR should be given the opportunity to ventilate, in Civil Case No. 56393, and not in another suit, its claim that the DE GUZMANS are unlawfully attempting to execute anew a judgment that has been previously satisfied. The judgment in Civil Case No. 67315 is superior to that in Civil Case No. 56393, because the evidence established in the former renders the decision in the latter case moot. It is therefore unnecessary for BON-MAR to file a separate action against the DE GUZMANS.

II. THE DE GUZMANS ARE NOT ENTITLED TO A WRIT OF POSSESSION.

A writ of possession may not be issued in favor of the DE GUZMANS pending resolution of BON-MAR's intervention *cum* third-party claim. If possession were surrendered to the DE GUZMANS before BON-MAR's claim is resolved, and it is later adjudged that BON-MAR is the true owner such that the disputed lots should then be returned to it, then the court would have simply engaged in futile endeavor.

> (I)t is impractical to award possession to a party who, after all, purchased the property with knowledge of the existence of a third-party claim, before said claim has been decided, even at least preliminarily, after a hearing, only to return said possession to the third-party claimant should he win. Such a procedure is liable to give rise to more complications than if the procedure laid down above were followed.[36]

A proceeding for the issuance of a writ of possession is a mere incident in the transfer of title;[37] the courts may not grant the writ where title is in doubt, as in this case, where the trial court still has to hear BON-MAR on its claim. The prudent course of action, therefore, is to hold in abeyance proceedings for the issuance of the writ. Actual possession under claim of ownership raises a disputable presumption of ownership. The true owner must resort to judicial process for the recovery of

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[36] Dissenting Opinion of Justice Barredo in *Guevara v. Ramos*, G.R. No. L-24358, March 31, 1971, 38 SCRA 194, 208.

[37] *Yu v. Philippine Commercial International Bank*, G.R. No. 147902, March 17, 2006, 485 SCRA 56, 71.

the property, not summarily through a motion for the issuance of a writ of possession.[38]

Civil Case Nos. 56393 and 67315 – despite involving title to real property, are essentially actions *quasi in rem*. Judgment in both cases affects only the parties thereto and their successors-in-interest; it does not bind the whole world.

A judgment directing a party to deliver possession of a property to another is *in personam*; it is binding only against the parties and their successors in interest by title subsequent to the commencement of the action. "Suits to quiet title are not technically suits *in rem*, nor are they, strictly speaking, *in personam*, but being against the person in respect of the *res*, these proceedings are characterized as *quasi in rem*. The judgment in such proceedings is conclusive only between the parties." In this case, the action below is basically one for declaration of nullity of title and recovery of ownership of real property, or re-conveyance. "An action to recover a parcel of land is a real action but it is an action *in personam*, for it binds a particular individual only although it concerns the right to a tangible thing." "Any judgment therein is binding only upon the parties properly impleaded."[39]

Thus, the DE GUZMANS cannot be bound by what has been decreed in Civil Case No. 67315 unless they are given the opportunity to refute it. Conversely, BON-MAR may not be prevented from attacking the judgment in Civil Case No. 56393, in order to preserve its title. Under these circumstances, there is no other practical venue for both parties to present their conflicting claims than in Civil Case No. 56393, through BON-MAR's intervention *cum* third-party claim.

III. THE DE GUZMANS CANNOT INTERVENE IN SCA NO. 2988-SJ.

Anent the propriety of DE GUZMANS' intervention in SCA No. 2988-SJ, this Court finds that contempt is not the proper

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[38] *Serra Serra v. Court of Appeals*, G.R. Nos. L-34080 & L-34693, March 22, 1991, 195 SCRA 482, 491-492.

[39] *Alonso v. Cebu Country Club*, G.R. No. 130876, January 31, 2002, 375 SCRA 390, 408-409.

remedy available to BON-MAR for the Registrar of Deeds' denial of its request for issuance of titles pursuant to the judgment in Civil Case No. 67315. Under Presidential Decree No. 1529, or the Property Registration Decree, BON-MAR should appeal the Registrar of Deeds' denial by *consulta* to the Commissioner of the Land Registration Authority. Thus:

> SECTION 117. Procedure. — When the Register of Deeds is in doubt with regard to the proper step to be taken or memorandum to be made in pursuance of any deed, mortgage or other instrument presented to him for registration, or where any party in interest does not agree with the action taken by the Register of Deeds with reference to any such instrument, the question shall be submitted to the Commissioner of Land Registration by the Register of Deeds, or by the party in interest thru the Register of Deeds.
>
> Where the instrument is denied registration, the Register of Deeds shall notify the interested party in writing, setting forth the defects of the instrument or legal grounds relied upon, and advising him that if he is not agreeable to such ruling, he may, without withdrawing the documents from the Registry, elevate the matter by *consulta* within five days from receipt of notice of the denial of registration to the Commissioner of Land Registration.
>
> The Register of Deeds shall make a memorandum of the pending *consulta* on the certificate of title which shall be cancelled *motu proprio* by the Register of Deeds after final resolution or decision thereof, or before resolution, if withdrawn by petitioner.
>
> The Commissioner of Land Registration, considering the *consulta* and the records certified to him after notice to the parties and hearing, shall enter an order prescribing the step to be taken or memorandum to be made. His resolution or ruling in *consultas* shall be conclusive and binding upon all Registers of Deeds, provided, that the party in interest who disagrees with the final resolution, ruling or order of the Commissioner relative to *consultas* may appeal to the Court of Appeals within the period and in manner provided in Republic Act No. 5434.

Under the 1997 Rules of Procedure, the resolution by the Commissioner of the Land Registration Authority on the *consulta* may be appealed to the Court of Appeals, which has exclusive jurisdiction to decide the same, within the period and in the

manner provided in Rule 43 thereof. SCA No. 2988-SJ should thus be dismissed for being the wrong mode of remedy.

WHEREFORE, the Court hereby resolves as follows:

1) The petition in CA-G.R. SP No. 94945 is *GRANTED*. The assailed Decision of the Court of Appeals dated November 14, 2007 denying BON-MAR Realty and Sport Corporation's petition for intervention in Civil Case No. 56393 and granting Spouses Nicanor, Jr. and Esther de Guzman's motion for issuance of a writ of possession, and the Resolution dated March 17, 2008 denying reconsideration thereof, are *REVERSED and SET ASIDE*. The Regional Trial Court of Pasig City, Branch 168, in Civil Case No. 56393 is *DIRECTED* to receive evidence on Bon-Mar Realty and Sport Corporation's third-party claim with a view to determining the nature and extent of its claim to the subject lots and to hold in abeyance the enforcement of the writ of possession.

2) The petition in CA-G.R. SP No. 97812 is *DISMISSED*. The November 14, 2007 Decision of the Court of Appeals granting the leave to intervene of the Spouses Nicanor, Jr. and Esther de Guzman in SCA No. 2988-SJ, as well as the March 17, 2008 Resolution denying the motion for reconsideration are *REVERSED and SET ASIDE*. SCA No. 2988-SJ is ordered *DISMISSED* for being the wrong mode of remedy.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and *Reyes, JJ.*, concur.

INDEX

INDEX

APPEALS

. Re

CITATION

Page

I. LOCAL CASES

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

II. FOREIGN CASES

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

Page

B. STATUTES

Page

Page

Page

Page

Page

C. OTHERS

Page

D. BOOKS

II. FOREIGN AUTHORITIES

BOOKS