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OF THE

PHILIPPINES

FROM

SEPTEMBER 16, 2008 TO SEPTEMBER 23, 2008

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MANILA
2013

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SPECIAL SECOND DIVISION

[G.R. Nos. 152359 & 174103. September 16, 2008]

DEVELOPMENT BANK OF THE PHILIPPINES, *petitioner, vs.* **WEST NEGROS COLLEGE, INC.,** *respondent.*

SYLLABUS

CIVIL LAW; REAL ESTATE MORTGAGE; FORECLOSURE SALES; RIGHT OF REDEMPTION; COMPUTATION OF PROPER REDEMPTION PRICE. — As clearly spelled out by the Court in these dispositions, the redemption price shall be the balance of BMC's obligation, plus expenses and interest, as of the date of the public auction on 24 August 1989. It comes as an unwelcome surprise, therefore, that despite the clear directive of the Court, the Court of Appeals deemed it necessary to require the parties to submit their position papers to solicit their interpretation regarding the cutoff date in the imposition and computation of the agreed interest rate, thus unnecessarily spawning this petition. Still and all, the ultimate conclusion arrived at by the Court of Appeals was fortunately correct. It is consistent with the Decision and Resolution of this Court in G.R. No. 152359, and in harmony with Section 16 of the present DBP charter, E.O. No. 81 which provides: Sec. 16. *Right of Redemption*. — Any mortgagor of the Bank whose real property has been extrajudicially sold at public auction shall, within one (1) year counted from the date of registration of the certificate

of sale, have the right to redeem the real property by paying to the Bank **all of the latter's claims against him, as determined by the Bank.** The Bank may take possession of the foreclosed property during the redemption period. When the Bank takes possession during such period, it shall be entitled to the fruits of the property with no obligation to account for them, the same being considered compensation for the interest that would otherwise accrue on the account. Neither shall the Bank be obliged to post a bond for the purpose of such possession. The above-quoted provision, as the Decision of this Court mentioned, is substantially a re-enactment of Section 31 of Commonwealth Act No. 459, the law that created DBP's predecessor agency, the Agricultural and Industrial Bank. Section 31 of Commonwealth Act No. 459 explicitly sets the redemption price to be the total indebtedness plus contractual interest as of the date of the auction sale, "with interest on the total indebtedness at the rate agreed upon in the obligation from said date." Notably, however, Section 16 of E.O. No. 81 does not contain the phrase "with interest on the total indebtedness at the rate agreed upon in the obligation from said date" but instead vaguely pegs the redemption price as "all of the latter's (Bank's) claims against him, as determined by the Bank." The Court, however, did not deem the omission of the phrase "with interest on the total indebtedness at the rate agreed upon in the obligation from said date" and its replacement in Section 16 of E.O. No. 81 by the phrase "all of the latter's (Bank's) claims against him, as determined by the Bank" a setback in its determination of the redemption price payable to DBP. It resolved, quite categorically, that WNC, as the assignee of BMC, should pay the balance of the amount owed by the latter to DBP with interest thereon at the rate agreed upon as of the date of the public auction on 24 August 1989. There was no mention at all in the Decision that contractual interest from the date of the public auction until redemption is actually effected shall continue to accrue and be considered as part of the total redemption price. This is the unmistakable mandate of the Court when it ordered the appellate court to compute the total redemption price.

APPEARANCES OF COUNSEL

Office of the Legal Counsel (DBP), Siu Jervoso Riñen Matahum Law Office for petitioner.

Albano Sevilla Yap and Associates, Leonard S. De Vera, Leon G. Moya and *Jerry Baiao* for respondent.

Loyola & Associates for intervenor Tiong Bi, Inc.

R E S O L U T I O N

TINGA, *J.*:

The Development Bank of the Philippines (DBP) questions the Resolution[1] dated 5 July 2006 issued by the Court of Appeals in CA-G.R. CV No. 38277, entitled *West Negros College, Inc. v. Development Bank of the Philippines,* which declared that the computation of the redemption price for the property subject of this case should be reckoned from the date of the public auction on 24 August 1989 and that after this date, DBP could no longer collect interest from respondent West Negros College, Inc. (WNC). DBP also assails the Resolution[2] dated 8 August 2006 which denied its motion for reconsideration.

The following antecedent facts are lifted from the Resolution[3] of the Court of Appeals in the same case dated 14 February 2006:

> On October 28, 2002, the Supreme Court rendered a decision in the above-entitled case docketed as G.R. No. 152359 (the "Decision"), setting aside and reversing the decision of this Court, declaring as void and of no effect the Certificate of Redemption issued in favor of West Negros College (WNC) and giving WNC the grace period of sixty (60) calendar days from notice of the finality of the decision within which to redeem the mortgaged properties by paying to Development Bank of the Philippines (DBP) "the balance of the credit of Bacolod Medical Center (as assumed by respondent West Negros

[1] *Rollo* (G.R. No. 174103), pp. 81-97.

[2] *Id.* at 99-101.

[3] *Id.* at 106-116.

College under a deed of assignment) secured by the properties plus the expenses and the agreed rate of interest, to be computed as of the date of the public auction on 24 August 1989, unless petitioner Development Bank of the Philippines has taken material possession of the properties in which case the proceeds of the properties shall compensate the interest but only during the period of their possession."

WNC filed a Motion for Reconsideration asking the Supreme Court to determine the propriety of the imposition of compounded interest, penalties and other charges. Ultimately, it asked for the determination of how much the redemption price should be. Acting on said Motion, the Supreme Court made a Resolution dated May 21, 2004, the dispositive portion of which reads as follows:

"WHEREFORE, the instant *Motion for Reconsideration* is GRANTED only insofar as it seeks the determination of the total redemption price to be paid by West Negros College, Inc, to the Development Bank of the Philippines which, however, shall not be lower than ₱21,500,000.00. For this purpose, the case is hereby REMANDED to the Court of Appeals which is directed to proceed accordingly with *all deliberate dispatch."*[4]

The 28 October 2002 Decision[5] and the 21 May 2004 Resolution[6] of the Supreme Court became final and executory on 22 June 2004.

Among the issues raised at the hearing conducted by the appellate court to determine the total redemption price is the interpretation of the cut-off date in the imposition and computation of the agreed interest rate to be paid by WNC. Expectedly, it was WNC's position that interest should not be imposed beyond the date of the auction sale as allegedly gleaned from the tenor of the 28 October 2002 Decision of the Supreme Court. DBP for its part contended that the computation of interest and expenses would continue to run after the foreclosure sale until the redemption of the mortgaged properties.

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[4] *Id.*

[5] *Rollo* (G.R. No. 152359), pp. 205-219.

[6] *Id.* at 511-528.

The Court of Appeals initially resolved this issue in DBP's favor, stating in its 14 February 2006 Resolution[7] that the Supreme Court had intended the interest to accrue even after the foreclosure sale.

However, in the assailed Resolution[8] dated 5 July 2006, the appellate court reversed its 14 February 2006 Resolution and ruled instead that DBP could no longer collect any interest after the date of the public auction sale for three (3) reasons: *first*, because with the finality of the 28 October 2002 Decision of the Supreme Court, DBP is, in legal contemplation, deemed to have been placed in possession of the subject property, which possession retroacts to the date of the foreclosure sale; *second*, because the provisions of Section 31of Commonwealth Act No. 459 granting DBP the right, on redemption, to recover interest on the total indebtedness at the rate agreed upon from the date of the auction sale had not been carried over to the present DBP charter, Executive Order (E.O.) No. 81 (1986), as amended; and *third*, because DBP had expressed and adopted a policy as early as 11 October 1996 not to charge interest after the foreclosure of properties mortgaged in its favor.

In its Petition for Review[9] dated 21 September 2006, DBP claims that the appellate court went beyond the remand authority given to it by this Court which is allegedly limited to the determination of the propriety of the imposition of compounded interest, penalties and other charges. DBP further asserts that apart from the fact that the "legal possession" theory adduced by the Court of Appeals was not raised by WNC itself, DBP was not in actual or material possession of the property even after the certificate of redemption dated 13 November 1991 in favor of WNC was nullified by the Court. No benefit allegedly inured to DBP from the "legal possession" the appellate court deems it to have had, which justifies the elimination of DBP's right to collect interest from WNC.

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[7] *Supra* note 3.

[8] *Supra* note 1.

[9] *Rollo* (G.R. No. 174103), pp. 40-78.

There is also allegedly no basis for the appellate court's conclusion that it is now DBP's policy not to impose interest on a mortgage obligation after foreclosure. In fact, its Board Resolution No. 0319 dated 7 March 2000, a certified copy of which was submitted by DBP, clarifies that the instruction not to continue accruing interest after foreclosure was intended for internal booking purposes only but that all interests and charges accruing to the foreclosed account are considered in determining the redemption price of the property.

WNC, in its Comment[10] dated 29 January 2007, avers that it already acquired a vested right over the policy of non-accrual of interest as expressed in DBP's Resolutions adopted on 11 October 1996 and 26 June 1998. This right allegedly cannot be impaired by Resolution No. 0319 which was issued only in 2000. WNC insists that DBP cannot collect interest and penalties after 24 August 1989 in view of DBP's own policy.

In its Reply[11] dated 17 May 2007, DBP reiterates that the appellate court went beyond the power given to it by the Court in its 21 May 2004 Resolution to determine the validity of the imposition of compounded interest, penalties and other charges. DBP also alleges that WNC cannot claim any vested right in its internal policy.

Two questions present themselves for resolution in this case. The *first* is whether the appellate court was correct in ruling that only the interest rate agreed upon in the loan documents as of the time of the auction sale on 24 August 1989 should be computed as part of the redemption price, minus the amount of ₱4,300,000.00 and costs of foreclosure which had already been paid by Bacolod Medical Center (BMC), the assignee of WNC. The *second* is whether the Court of Appeals erred in excluding from the computation of the redemption price the interest inputted by DBP after 24 August 1989.

It should be recalled that equitable considerations have been weighed by the Court when it decided to remand the case to

[10] *Id.* at 165-192.

[11] *Id.* at 205-219.

the Court of Appeals notwithstanding the fact that the questions raised in the petition were largely factual in nature. The 28 October 2002 Decision of this Court and its 21 May 2004 Resolution set out definite boundaries as to the scope of the remand of the case to the Court of Appeals. Specifically, the purpose of the remand was solely to determine the basis for or the propriety of the imposition of compounded interest, penalties and other charges to the end that the total redemption price may finally be arrived at. With these parameters, the appellate court should not have revisited the already settled reckoning date in the computation of the total redemption price. Sadly, the final disposition of this case had been sidetracked by a question which a clear-headed reading of this Court's Decision and Resolution would have readily answered.

In its 28 October 2002 Decision, the Court held that in redeeming the foreclosed property, WNC, as assignee of BMC, should pay the balance of the amount owed by the latter to DBP with interest thereon at the rate agreed upon **as of the date of the public auction on 24 August 1989**.[12] This was reiterated in the Resolution dated 21 May 2004.[13]

As clearly spelled out by the Court in these dispositions, the redemption price shall be the balance of BMC's obligation, plus expenses and interest, as of the date of the public auction on 24 August 1989. It comes as an unwelcome surprise, therefore, that despite the clear directive of the Court, the Court of Appeals deemed it necessary to require the parties to submit their position papers[14] to solicit their interpretation regarding the cutoff date

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[12] *Development Bank of the Philippines vs. West Negros College, Inc.*, G.R. No. 152359, October 28, 2002, 391 SCRA 330, 342.

[13] 429 SCRA 50, 60-61.

[14] In its Resolution dated February 14, 2006, the Court of Appeals stated that at the hearing on May 18, 2005, the parties agreed "to file their respective position papers regarding their respective stand on the interpretation as to the cut-off date in the imposition and computation of the agreed rate of interest within fifteen (15) days." *Rollo* (G.R. No. 174103), p. 107.

in the imposition and computation of the agreed interest rate, thus unnecessarily spawning this petition.

Still and all, the ultimate conclusion arrived at by the Court of Appeals was fortunately correct. It is consistent with the Decision and Resolution of this Court in G.R. No. 152359, and in harmony with Section 16 of the present DBP charter, E.O. No. 81 which provides:

> Sec. 16. *Right of Redemption.*—Any mortgagor of the Bank whose real property has been extrajudicially sold at public auction shall, within one (1) year counted from the date of registration of the certificate of sale, have the right to redeem the real property by paying to the Bank **all of the latter's claims against him, as determined by the Bank.**
>
> The Bank may take possession of the foreclosed property during the redemption period. When the Bank takes possession during such period, it shall be entitled to the fruits of the property with no obligation to account for them, the same being considered compensation for the interest that would otherwise accrue on the account. Neither shall the Bank be obliged to post a bond for the purpose of such possession. [Emphasis supplied]

The above-quoted provision, as the Decision of this Court mentioned, is substantially a re-enactment of Section 31 of Commonwealth Act No. 459, the law that created DBP's predecessor agency, the Agricultural and Industrial Bank. Section 31 of Commonwealth Act No. 459 explicitly sets the redemption price to be the total indebtedness plus contractual interest as of the date of the auction sale, "with interest on the total indebtedness at the rate agreed upon in the obligation from said date."[15] Notably, however, Section 16 of E.O. No. 81

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[15] Sec. 31. The mortgagor or debtor to the Agricultural and Industrial Bank, whose real property has been sold at public auction, judicially or extra-judicially for the full or partial payment of an obligation to said Bank, shall, within one year from the date of the auction sale, have the right to redeem the real property by paying to the Bank **all the amount he owed the latter on the date of the sale, with interest on the total indebtedness at the rate agreed upon in the obligation from said date**, unless the bidder has taken material possession of the property or unless this had

does not contain the phrase "with interest on the total indebtedness at the rate agreed upon in the obligation from said date" but instead vaguely pegs the redemption price as "all of the latter's (Bank's) claims against him, as determined by the Bank."

The Court, however, did not deem the omission of the phrase "with interest on the total indebtedness at the rate agreed upon in the obligation from said date" and its replacement in Section 16 of E.O. No. 81 by the phrase "all of the latter's (Bank's) claims against him, as determined by the Bank" a setback in its determination of the redemption price payable to DBP. It resolved, quite categorically, that WNC, as the assignee of BMC, should pay the balance of the amount owed by the latter to DBP with interest thereon at the rate agreed upon as of the date of the public auction on 24 August 1989. There was no mention at all in the Decision that contractual interest from the date of the public auction until redemption is actually effected shall continue to accrue and be considered as part of the total redemption price. This is the unmistakable mandate of the Court when it ordered the appellate court to compute the total redemption price.

Given the foregoing, the Court finds it unnecessary to discuss the other arguments raised in the petition.

WHEREFORE, the Resolutions of the Court of Appeals in CA-G.R. CV No. 38277 dated 5 July 2006 and 8 August 2006 are *AFFIRMED*. The Court of Appeals is *DIRECTED* to resume and terminate the proceedings as well as submit its report thereon to this Court in accordance with our Resolution dated 21 May 2004 with deliberate dispatch. No pronouncement as to costs.

SO ORDERED.

Puno, C.J. (Chairperson), Quisumbing, Chico-Nazario, and *Velasco, Jr., JJ.,* concur.

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been delivered to him, in which case the proceeds of the property shall compensate the interest. If the Agricultural and Industrial Bank was not the highest bidder at the auction sale, the Bank shall, in case of redemption, return to the bidder the amount it received from him as a result of the auction sale with the corresponding interest paid by the debtor. [Emphasis supplied]

THIRD DIVISION

[G.R. No. 154716. September 16, 2008]

FAR EAST BANK AND TRUST CO., TRUST AND INVESTMENT GROUP, AND FEB INVESTMENT, INC., *petitioners, vs.* **TRUST UNION SHIPPING CORP., SWEET LINES, INC., and the VESSEL M/V "SWEET GLORY" (ex M/V "SWEET RORO 2"),** *respondents.*

PHILIPPINE PORTS AUTHORITY, *intervenor.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; COMPROMISE AGREEMENT; DEFINED AND CONSTRUED. — A compromise is a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced. It is an accepted and desirable practice in courts of law and administrative tribunals. Settlement of disputes brought before the courts is, in fact, encouraged. It is settled that contracting parties may establish such stipulations, clauses, terms and conditions as they deem convenient, provided that these are not contrary to law, morals, good customs, public order, or public policy.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez Gatmaitan for petitioners.
Redentor G. Guyala and *Yulo & Bello Law Offices* for Trust Union Shipping Corp.
Teng & Cruz Law Offices for Sweet Lines. Inc.

R E S O L U T I O N

NACHURA, *J.*:

Before this Court is an Omnibus Motion praying, among others, for this Court to render judgment based on a Compromise

Agreement entered into by the parties in this case. The original Petition for Review on *Certiorari* under Rule 45 filed by petitioners prayed for the reversal of the Court of Appeals Decision[1] dated March 13, 2002 in CA-G.R. CV No. 50036, which reversed the Decision[2] of the Regional Trial Court (RTC) of Manila, Branch 35, dated January 16, 1995 in Civil Case No. 92-59963.

The factual antecedents of this case are as follows:

Sweet Lines, Inc. leased under a bareboat charter with option to buy the ship M/V Sweet Glory from respondent Trust Union Shipping Corporation, a foreign corporation based in Panama.

Sometime in 1988, Sweet Lines applied for and obtained a credit line from petitioners Far East Bank and Trust Company (FEBTC) and FEB Investment, Inc. (FEBI). Sweet Lines originally applied for a ₱30 million credit facility but petitioners, through FEBTC, approved the application only to the extent of ₱20 million credit line and ₱500,000.00 Bills Purchase Line, or a total of ₱20.5 million credit facility.[3]

On August 31, 1988, Trust Union Shipping Corp. and FEBTC executed a Deed of Ship Mortgage over M/V Sweet Glory to secure payment of Sweet Lines' ₱20.5 million loan under the 1988 credit line agreement.[4]

The credit line expired with Sweet Lines failing to pay the ₱20.5 million loan. Nonetheless, the credit line was renewed, with FEBTC extending an additional ₱9.5 million loan to Sweet

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[1] Penned by Associate Justice Alicia L. Santos, with Associate Justices Cancio C. Garcia (now a retired member of this Court) and Marina L. Buzon, concurring; *rollo*, pp. 15-36.

[2] Penned by Judge Ramon P. Makasiar; *id.* at 285-293.

[3] Petition, *id.* at 581-582.

[4] *Id.* at 582.

Lines[5] secured by chattel mortgages over M/V Sweet Time and M/V Sweet Sail and a real estate mortgage over certain Cebu properties.[6]

Sweet Lines still failed to pay its outstanding obligation in the total amount of ₱30 million.

FEBTC filed a case before the RTC of Manila for judicial foreclosure of the ship mortgage in payment of the sum of ₱30 million. Upon FEBTC's posting of a ₱20.5 million bond, the trial court issued an order for the arrest of M/V Sweet Glory.[7]

On January 16, 1995, the RTC issued a Decision,[8] the dispositive portion of which reads:

> WHEREFORE, judgment is rendered ordering defendant Sweet Lines, Inc. to pay plaintiff Far East Bank and Trust Company within ninety (90) days from service of this judgment the principal sum of ₱30,000,000.00; the interest thereon computed from January 27, 1992, at the following rates: (a) 26.8839% per annum on the sum of ₱26,000,000.00 (Exhibit C); (b) 27.50% per annum on the sum of ₱2,000,000.00 (Exhibit D); and (c) 29.00% on the sum of ₱2,000,000.00 (Exhibit E) until the principal obligation is fully paid; another sum equivalent to 25% of the principal amount due for attorney's fees; and the costs, inclusive of the port usage fees claimed by intervenor Philippine Ports Authority computed from January 30, 1992 until the departure of defendant "M/V Sweet Glory" also known as "M/V Sweet Roro 2," (sic) at the rates prescribed in the Port Tariff Rates for Vessels (Exhibits 11, 11-A, 12 amd (sic) 12-A), minus the sum of ₱65,346,02. This part of the costs should be paid directly to the intervenor.
>
> In the event defendant Sweet Lines, Inc. fails to pay in full the aforementioned amounts, the vessel "M/V Sweet Glory" also known as "M/V Sweet Roro 2" is ordered sold at public auction in accordance with the procedures prescribed in Rule 68 of the Rules of Court which are not inconsistent with Presidential Decree No. 1521, the proceeds thereof to be applied in the order as follows:

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[5] *Id.* at 595.

[6] *Id.* at 586-587.

[7] *Id.* at 592.

[8] *Id.* at 285-293.

1. To pay the port usage fees claimed by intervenor Philippine Port Authority computed from the date and at the rates, minus the amount indicated above;

2. To pay the residue to the plaintiff until the amount of ₱20,500,000.00 is covered inclusive of the sum awarded to the intervenor;

3. To turn over the amount realized in excess of ₱20,500,000.00, if any, to defendant Trust Union Shipping Corporation; (sic)

In the event the proceeds realized in the foreclosure sale is less than ₱20,500,000.00, after the claim of the intervenor has been satisfied, defendant Trust Union Shipping Corporation is ordered to pay the deficiency to the plaintiff until the sum of ₱20,500,000.00 is realized; (sic)

The principal balance, if any, of the principal obligation of defendant Sweet Lines, Inc., inclusive of attorney's fees and other costs, shall subsist as ordinary credits enforceable against the said defendant.

Defendant Sweet Lines, Inc. is ordered to reimburse to defendant Trust Union Shipping Corporation the full amount the latter actually paid to the plaintiff, not exceeding ₱20,500,000.00, plus another amount equal to 20% of the sum actually paid, as attorney's fees.

The Deputy Sheriff of this Court is hereby authorized and directed to take possession of the mortgaged vessel, the "M/V Sweet Glory," (sic) to enforce and undertake the foreclosure sale of said vessel in the event such sale becomes necessary.

SO ORDERED.[9]

Trust Union appealed the RTC Decision. In a Decision[10] dated March 13, 2002, the Court of Appeals (CA) reversed and set aside the RTC Decision, thus:

WHEREFORE**,** the Decision of the Regional Trial Court of Manila, Branch 31, dated January 16, 1995, is hereby **REVERSED and SET ASIDE,** and a new one entered as follows:

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[9] *Id.* at 292-293.

[10] *Id.* at 61-83.

1. The foreclosure of the mortgage constituted over M/V Sweet Glory is declared null and void and the arrest of M/V Sweet Glory wrongful and unjustified. Plaintiffs/appellees are ordered to pay in *solidum* defendant/appellant Trust Union as reparation of damages occasioned by the loss of its vessel, M/V Sweet Glory, the amount of ₱45 million and ten (10%) percent thereof attorney's fees.

2. Defendant Sweet Lines, Inc. is ordered to pay plaintiff Far East Bank and Trust Company, within ninety (90) days from service of this judgment, the principal sum of ₱30,000,000.00; the interest thereon computed from January 27, 1992, at the following rates: 26.8839% per annum on the sum of ₱26,000,000.00 (Exhibit C); (b) 27.50% per annum on the sum of ₱2,000,000.00 (Exhibit D); and (c) 29.00% per annum on the sum of ₱2,000,000.00 (Exhibit E) until the principal obligation is fully paid; another sum equivalent to ten (10%) percent of the principal amount due for attorney's fees; and the costs, inclusive of the port usage fees claimed by intervenor Philippine Ports Authority computed from January 30, 1992 at the rates prescribed in the Port Tariff Rates for Vessels (Exhibits 11, 11-A, 12 amd (sic) 12-A), minus the sum of ₱65,346,02. This part of the costs should be paid directly to the intervenor.

3. The compromise agreement between Far East Bank and Philippine Ports Authority is approved, and payment of Far East Bank to PPA in the total amount of ₱682,170.82 by way of port/berthing fees incurred by M/V Sweet Glory is noted.

4. The principal balance, if any, of the principal obligation of the defendant Sweet Lines, Inc., inclusive of attorney's fees and other costs, shall subsists (sic) as ordinary credits enforceable against SLI.

SO ORDERED.[11]

Petitioners then filed the present Petition for Review on *Certiorari*[12] before this Court. The same was given due course in a Resolution[13] dated June 29, 2005.

In an Omnibus Motion, Trust Union and Philippine Investment One (SPV-AMC), Inc. (PI One) prayed for, among others,

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[11] *Id.* at 81-82.

[12] *Id.* at 569-650.

[13] *Id.* at 1389.

this Court to render judgment on the Compromise Agreement they had entered into settling all claims, disputes, and courses of action arising from the foreclosure of the vessel M/V Sweet Glory.[14] They also prayed for the substitution of the petitioners FEBTC and FEBI by PI One. They alleged that when petitioners merged with the Bank of the Philippine Islands (BPI), the latter assigned the rights, title, interest, and causes of action in this case to Philippine Assets Investment (SPV-AMC), Inc. (PAII), which in turn assigned the same to PI One. They also prayed for this Court to direct Banco de Oro, Julia Vargas Branch, to close the escrow account deposited with it at the maturity next succeeding the receipt of this Court's resolution and to divide equally on a 50%-50% basis the remaining escrow deposit accruing interest between Trust Union and PI One. Lastly, they prayed for the dismissal of the appeal without prejudice to the right of PI One to further collect on Sweet Lines, Inc. pursuant to the Decision rendered by the CA on March 13, 2002.

The Compromise Agreement reads:

> This Compromise Agreement (this "Agreement") is entered into at Makati City, Philippines on June 26, 2008, and at Tokyo, Japan on July 11, 2008 by and between:
>
> **PHILIPPINE INVESTMENT ONE (SPV-AMC), INC.** ("PI One"), a corporation organized and existing under the laws of the Philippines, with principal office address at Unit 1615 Tower One, Exchange Plaza, corner Paseo de Roxas and Ayala Avenue, Makati City, herein represented by its Director, **MR. NORMAN MACASAET**;
>
> - and -
>
> **TRUST UNION SHIPPING CORPORATION** ("TUSC"), a corporation organized and existing under the laws of Panama, with address at P.O. Box 4493 Panama 5, Republic of Panama, herein represented by its Director and President, **MR. JUN ISHIHARA**,
>
> (each, a "Party," and collectively, the "Parties").

[14] Omnibus Motion, p. 3.

WHEREAS, the Parties make the following recitals:

A. TUSC is a respondent in an ongoing litigation before the Supreme Court in *Far East Bank and Trust Co., et al. v. Trust Union Shipping Corp., et al.* docketed as G.R. No. 1547169 (sic) (the "Case") which is an appeal from the Decision of the Court of Appeals dated March 13, 2002 in the case docketed as CA-G.R. CV No. 50036;

B. Far East Bank and Trust Co. ("FEBTC"), Trust Investment Group and FEB Investment, Inc. ("FEBI") are the petitioners in the Case. FEBTC/FEBI have been acquired by the Bank of the Philippine Islands ("BPI") through a merger where BPI was the surviving entity. Attached as **Annexes A** and **B** are the Certificate of Filing of the Articles of Merger and Plan of Merger, respectively, between BPI and FEBTC/FEBI;

C. On January 5, 2005, BPI assigned all its rights, title, interest and causes of action in the Case to Philippine Assets Investment (SPV-AMC), Inc. ("PAII");

D. On May 11, 2007, PAII assigned the subject credit involved in the case to PI One;

E. On June 16, 1997, the Court of Appeals ordered FEBTC/FEBI to deposit with Banco de Oro ("BDO") in a trust account (the "Trust Account") the amount of Nine Million Pesos (Php9,000,000.00) which constitutes sales proceeds of the sale of the vessel, M/V "Sweet Glory," in favor of Bacolod Metal.

F. The Trust Account is held in escrow in BDO – Julia Vargas Branch under Account No. 102-78313-1 (the "Escrow Account"), which shall mature on May 19, 2008 (the "Maturity Date"); and

G. PI One and TUSC have agreed to amicably settle their respective claims, counterclaims, and causes of action in this Case by way of this Agreement.

WHEREFORE, the Parties agree as follows:

1. For and in consideration of the full and faithful compliance by the Parties with their respective undertakings in paragraph 2 below, and to avoid the expenses and inconveniences of a prolonged litigation, the Parties hereby release, remise and

forever discharge one another, their respective stockholders, officers, directors, agents or employees, including their respective counsels, from any causes of action, claims/ counterclaims for sum of money, or other obligations arising from or relative to the subject matter of this Case.

2. The Parties agree that:

2.1 They shall, on the date this Agreement is signed, execute and file, by July 20, 2008 or soon thereafter, an Omnibus Motion in the Case for the (1) substitution of PI One as petitioner, in lieu of FEBTC/FEBI, (2) approval of this Agreement, and (3) dismissal of the appeal;

2.2 They shall equally divide, on a 50%-50% basis, all the proceeds stored in the Escrow Account, including all income and interests earned, and net of all expenses and costs incurred for sheriff's fees, as well as bank fees and charges, excluding remittance or transfer and related fees and charges which shall be for the account of the Party requiring remittance or transfer.

The amount payable to TUSC in Philippine currency shall be forthwith converted by BDO into U.S. Dollars and BDO shall immediately transfer such U.S. Dollar amount to the following bank account of TUSC:

Bank	:	The Shinwa Bank, Ltd.
Branch	:	Nagasaki branch
Number of Account:		101-N0-000004-0
Name of Account:		TRUST UNION SHIPPING CORPORATION

2.3 They shall cause the renewal of the terms of the Escrow Account during the Maturity Date for another month, or until June 19, 2008, and thereafter on a 14-day maturity period, until such time that the Supreme Court has approved this Agreement, in which case, the escrow account shall be closed on the maturity date subsequent to BDO's receipt of the original or certified true copy of the Supreme Court's Resolution/Decision/Order approving this Agreement.

2.4 Upon receipt of all the proceeds of the Escrow Account, including all income and interests earned, they shall

jointly cause the dismissal of the Case as between them with prejudice.

2.5 Their entering into this Agreement shall not be taken as a confession or an admission of liability, fault, and/or negligence by either of them, or by their respective stockholders, officers, directors, agents or employees, relative to the subject matter of the Case;

2.6 They shall not disclose any information concerning the terms of this Compromise Agreement to any third party; and

2.7 This Agreement shall constitute a full and complete satisfaction of any and all of their respective claims, counterclaims, and causes of action against the other in the Case.

3. The Parties have read this Agreement and have entered into it willingly, voluntarily, and with full knowledge of their rights.

4. This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the parties have signed this Agreement at Makati City, Philippines, and at [Tokyo, Japan] on the date specified above.

PHILIPPINE INVESTMENT ONE (SPV-AMC), INC. Petitioners	**TRUST UNION SHIPPING CORP.** Respondents
By:	By:
(Signed) **Mr. Norman H. Macasaet** Director	(Signed) **Mr. Jun Ishihara** Director and President
Assisted by:	Assisted by:
SyCip Salazar Hernandez & Gatmaitan 7th Floor SSHG Law Centre 105 Paseo de Roxas Makati City	Yulo & Bello Law Offices 4th Floor, La Paz Centre Rufino cor. Salcedo Streets Legaspi Village, Makati City

By: By:

(Signed) (Signed)
DOMINGO G. CASTILLO **LUCAS C. CAPRIO, JR.**

A compromise is a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced.[15] It is an accepted and desirable practice in courts of law and administrative tribunals.[16] Settlement of disputes brought before the courts is, in fact, encouraged.[17]

It is settled that contracting parties may establish such stipulations, clauses, terms and conditions as they deem convenient, provided that these are not contrary to law, morals, good customs, public order, or public policy.[18]

The Court finds that the above Compromise Agreement has been validly executed and not contrary to law, morals, good customs, public order, or public policy.

WHEREFORE, the Omnibus Motion is *GRANTED*. The Compromise Agreement is *APPROVED* and judgment is hereby rendered in accordance therewith. By virtue of such approval, this case is now deemed *TERMINATED*. No pronouncement as to costs.

SO ORDERED.

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

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[15] Civil Code, Art. 2028.

[16] *Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) v. Abella*, G.R. No. 153904, January 17, 2005, 448 SCRA 549, 565, citing *Santiago v. De Guzman*, 177 SCRA 344 (1989).

[17] *Viesca v. Gilinsky*, G.R. No. 171698, July 4, 2007, 526 SCRA 533, 558.

[18] Civil Code, Art. 1306.

THIRD DIVISION

[G.R. No. 155491. September 16, 2008]

SMART COMMUNICATIONS, INC., *petitioner, vs.* **THE CITY OF DAVAO, represented herein by its Mayor HON. RODRIGO R. DUTERTE, and the SANGGUNIANG PANLUNGSOD OF DAVAO CITY,** *respondents.*

SYLLABUS

1. TAXATION; TAX EXEMPTIONS; NATURE THEREOF, EXPLAINED. — Tax exemptions are never presumed and are strictly construed against the taxpayer and liberally in favor of the taxing authority. They can only be given force when the grant is clear and categorical. The surrender of the power to tax, when claimed, must be clearly shown by a language that will admit of no reasonable construction consistent with the reservation of the power. If the intention of the legislature is open to doubt, then the intention of the legislature must be resolved in favor of the State.

2. ID.; ID.; "IN LIEU OF ALL TAXES" CLAUSE IN SMART'S FRANCHISE REFERS ONLY TO NATIONAL TAXES AND NOT TO LOCAL TAXES. — The "in lieu of all taxes" clause applies only to national internal revenue taxes and not to local taxes. As appropriately pointed out in the separate opinion of Justice Antonio T. Carpio in a similar case involving a demand for exemption from local franchise taxes: [T]he "in lieu of all taxes" clause in Smart's franchise refers only to taxes, other than income tax, imposed under the National Internal Revenue Code. The "in lieu of all taxes" clause does not apply to local taxes. The proviso in the first paragraph of Section 9 of Smart's franchise states that the grantee shall "continue to be liable for income taxes payable under Title II of the National Internal Revenue Code." Also, the second paragraph of Section 9 speaks of tax returns filed and taxes paid to the "Commissioner of Internal Revenue or his duly authorized representative in accordance with the National Internal Revenue Code." Moreover, the same paragraph declares that the tax returns "shall be subject

to audit by the Bureau of Internal Revenue." Nothing is mentioned in Section 9 about local taxes. The clear intent is for the "in lieu of all taxes" clause to apply only to taxes under the National Internal Revenue Code and not to local taxes. Even with respect to national internal revenue taxes, the "in lieu of all taxes" clause does not apply to income tax. If Congress intended the "in lieu of all taxes" clause in Smart's franchise to also apply to local taxes, Congress would have expressly mentioned the exemption from municipal and provincial taxes. Congress could have used the language in Section 9(b) of Clavecilla's old franchise, as follows: x x x in lieu of any and all taxes of any kind, nature or description levied, established or collected by any authority whatsoever, *municipal, provincial* or national, from which the grantee is hereby expressly exempted, x x x. However, Congress did not expressly exempt Smart from local taxes. Congress used the "in lieu of all taxes" clause only in reference to national internal revenue taxes. The only interpretation, under the rule on strict construction of tax exemptions, is that the "in lieu of all taxes" clause in Smart's franchise refers only to national and not to local taxes.

3. ID.; ID.; "IN LIEU OF ALL TAXES" CLAUSE IN R.A. NO. 7294 RENDERED INEFFECTIVE BY THE ADVENT OF THE VAT LAW, CONSTRUED. — It should be noted that the "in lieu of all taxes" clause in R.A. No. 7294 has become *functus officio* with the abolition of the franchise tax on telecommunications companies. As admitted by Smart in its pleadings, it is no longer paying the 3% franchise tax mandated in its franchise. Currently, Smart along with other telecommunications companies pays the uniform 10% value-added tax. The VAT on sale of services of telephone franchise grantees is equivalent to 10% of gross receipts derived from the sale or exchange of services. R.A. No. 7716, as amended by the *Expanded Value Added Tax Law* (R.A. No. 8241), the pertinent portion of which is hereunder quoted, amended Section 9 of R.A. No. 7294: **SEC. 102. Value-added tax on sale of services and use or lease of properties. — (a) Rate and base of tax. — There shall be levied assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties. The phrase "sale or exchange of services" means the performance of all kinds of services in the Philippines for others for a fee, remuneration**

or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, rest houses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air, and water relative to their transport of goods or cargoes; **services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 117 of this Code**; services of banks, non-bank financial intermediaries and finance companies; and non-life insurance companies (except their crop insurances) including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. x x x . R.A. No. 7716, specifically Section 20 thereof, expressly repealed the provisions of all special laws relative to the rate of franchise taxes. It also repealed, amended, or modified all other laws, orders, issuances, rules and regulations, or parts thereof which are inconsistent with it. In effect, the "in lieu of all taxes" clause in R.A. No. 7294 was rendered ineffective by the advent of the VAT Law.

4. ID.; ID.; TAX EXEMPTIONS DISTINGUISHED FROM TAX EXCLUSION. — An exemption is an immunity or a privilege; it is the freedom from a charge or burden to which others are subjected. An exclusion, on the other hand, is the removal of otherwise taxable items from the reach of taxation, *e.g.*, exclusions from gross income and allowable deductions. An exclusion is, thus, also an immunity or privilege which frees a taxpayer from a charge to which others are subjected. Consequently, the rule that a tax exemption should be applied in *strictissimi juris* against the taxpayer and liberally in favor of the government applies equally to tax exclusions.

5. ID.; ID.; PUBLIC TELECOMMUNICATIONS POLICY ACT (R.A. NO. 7925); SECTION 23 OF R.A. NO. 7925 DID NOT INTEND TO OPERATE AS A BLANKET TAX EXEMPTION TO ALL TELECOMMUNICATIONS ENTITIES; THE TERM "EXEMPTION" IN SECTION 23 OF R.A. NO. 7925 REFERS TO EXEMPTION FROM CERTAIN REGULATIONS AND REQUIREMENTS IMPOSED BY THE NATIONAL TELECOMMUNICATIONS COMMISSION. — We find no reason to disturb the previous pronouncements of this Court regarding the interpretation of Section 23 of R.A. No. 7925. As aptly explained in the *en banc* decision of this Court in *Philippine Long Distance Telephone Company, Inc. v. City of Davao*, and recently in *Digital Telecommunications Philippines, Inc. (Digitel) v. Province of Pangasinan*, Congress, in approving Section 23 of R.A. No. 7925, did not intend it to operate as a blanket tax exemption to all telecommunications entities. The language of Section 23 of R.A. No. 7925 and the proceedings of both Houses of Congress are bereft of anything that would signify the grant of tax exemptions to all telecommunications entities, including those whose exemptions had been withdrawn by R.A. No. 7160. The term "*exemption*" in Section 23 of R.A. No. 7925 does not mean tax exemption. The term refers to exemption from certain regulations and requirements imposed by the National Telecommunications Commission. Furthermore, in the franchise of Globe (R.A. No. 7229), the legislature incontrovertibly stated that it will be liable for one and one-half per centum of all gross receipts from business transacted under the franchise, in lieu of any and all taxes of any kind, nature, or description levied, established, or collected by any authority whatsoever, municipal, provincial, or national, from which the grantee is hereby expressly exempted. The grant of exemption from municipal, provincial, or national is clear and categorical — that aside from the franchise tax collected by virtue of R.A. No. 7229, no other franchise tax may be collected from Globe regardless of who the taxing power is. No such provision is found in the franchise of Smart; the kind of tax from which it is exempted is not clearly specified.

6. ID.; ID.; THE FRANCHISE OF SMART DOES NOT EXPRESSLY PROVIDE FOR EXEMPTION FROM LOCAL TAXES; SUSTAINED. — However, we find that there is no violation of Article III, Section 10 of the 1987 Philippine Constitution.

As previously discussed, the franchise of Smart does not expressly provide for exemption from local taxes. Absent the express provision on such exemption under the franchise, we are constrained to rule against it. The "in lieu of all taxes" clause in Section 9 of R.A. No. 7294 leaves much room for interpretation. Due to this ambiguity in the law, the doubt must be resolved against the grant of tax exemption. Moreover, Smart's franchise was granted with the express condition that it is subject to amendment, alteration, or repeal. As held in *Tolentino v. Secretary of Finance*: It is enough to say that the parties to a contract cannot, through the exercise of prophetic discernment, fetter the exercise of the taxing power of the State. For not only are existing laws read into contracts in order to fix obligations as between parties, but the reservation of essential attributes of sovereign power is also read into contracts as a basic postulate of the legal order. The policy of protecting contracts against impairment presupposes the maintenance of a government which retains adequate authority to secure the peace and good order of society.

APPEARANCES OF COUNSEL

Estelito P. Mendoza & Lorenzo G. Timbol for petitioner.
Office of the City Legal Counsel (Davao) 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 filed by Smart Communications, Inc. (Smart) against the City of Davao, represented by its Mayor, Hon. Rodrigo R. Duterte, and the Sangguniang Panlungsod of Davao City, to annul the Decision[1] dated July 19, 2002 of the Regional Trial Court (RTC) and its Order[2] dated September 26, 2002 in Sp. Civil Case No. 28,976-2002.

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[1] Penned by Judge Renato A. Fuentes; *rollo*, pp. 101-108.

[2] *Id.* at 121-123.

The Facts

On February 18, 2002, Smart filed a special civil action for declaratory relief[3] under Rule 63 of the Rules of Court, for the ascertainment of its rights and obligations under the Tax Code of the City of Davao,[4] particularly Section 1, Article 10 thereof, the pertinent portion of which reads:

> Notwithstanding any exemption granted by any law or other special law, there is hereby imposed a tax on businesses enjoying a franchise, at a rate of seventy-five percent (75%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the income or receipts realized within the territorial jurisdiction of Davao City.

Smart contends that its telecenter in Davao City is exempt from payment of franchise tax to the City, on the following grounds: (a) the issuance of its franchise under Republic Act (R.A.) No. 7294[5] subsequent to R.A. No. 7160 shows the clear legislative intent to exempt it from the provisions of R.A. 7160;[6] (b) Section 137 of R.A. No. 7160 can only apply to exemptions already existing at the time of its effectivity and not to future exemptions; (c) the power of the City of Davao to impose a franchise tax is subject to statutory limitations such as the "*in lieu of all taxes*" clause found in Section 9 of R.A. No. 7294; and (d) the imposition of franchise tax by the City of Davao would amount to a violation of the constitutional provision against impairment of contracts.[7]

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[3] Records, pp. 2-11.

[4] City Ordinance No. 519, series of 1992, amending Ordinance No. 230, series of 1991, otherwise known as the Tax Code of the City of Davao.

[5] An act granting Smart Information Technologies, Inc. (Smart) a franchise to establish, install, maintain, lease and operate integrated telecommunications/ computer/electronic services, and stations throughout the Philippines for public domestic and international telecommunications, and for other purposes.

[6] Smart's franchise lapsed into law on March 27, 1992 without the President's signature in accordance with Article VI, Section 27(1) of the Constitution.

[7] Records, pp. 7-8.

On March 2, 2002, respondents filed their Answer[8] in which they contested the tax exemption claimed by Smart. They invoked the power granted by the Constitution to local government units to create their own sources of revenue.[9]

On May 17, 2002, a pre-trial conference was held. Inasmuch as only legal issues were involved in the case, the RTC issued an order requiring the parties to submit their respective memoranda and, thereafter, the case would be deemed submitted for resolution.[10]

On July 19, 2002, the RTC rendered its Decision[11] denying the petition. The trial court noted that the ambiguity of the "*in lieu of all taxes*" provision in R.A. No. 7294, on whether it covers both national and local taxes, must be resolved against the taxpayer.[12] The RTC ratiocinated that tax exemptions are construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority and, thus, those who assert a tax exemption must justify it with words too plain to be mistaken and too categorical not to be misinterpreted.[13] On the issue of violation of the non-impairment clause of the Constitution, the trial court cited *Mactan Cebu International Airport Authority v. Marcos*,[14] and declared that the city's power to tax is based not merely on a valid delegation of legislative power but on the direct authority granted to it by the fundamental law. It added that while such power may be subject to restrictions or conditions imposed by Congress, any such legislated limitation must be consistent with the basic policy of local autonomy.[15]

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[8] *Id.* at 21-26.

[9] CONSTITUTION, Art. X, Sec. 5.

[10] Records, p. 62.

[11] *Supra* note 1.

[12] *Id.* at 104.

[13] *Id.* at 106.

[14] G.R. No. 120082, September 11, 1996, 261 SCRA 667.

[15] *Rollo*, p. 107.

Smart filed a motion for reconsideration which was denied by the trial court in an Order[16] dated September 26, 2002.

Thus, the instant case.

Smart assigns the following errors:

[a.] THE LOWER COURT ERRED IN NOT HOLDING THAT UNDER PETITIONER'S FRANCHISE (REPUBLIC ACT NO. 7294), WHICH CONTAINS THE "IN LIEU OF ALL TAXES" CLAUSE, AND WHICH IS A SPECIAL LAW ENACTED SUBSEQUENT TO THE LOCAL GOVERNMENT CODE, NO FRANCHISE TAX MAY BE IMPOSED ON PETITIONER BY RESPONDENT CITY.

[b.] THE LOWER COURT ERRED IN HOLDING THAT PETITIONER'S FRANCHISE IS A GENERAL LAW AND DID NOT REPEAL RELEVANT PROVISIONS REGARDING FRANCHISE TAX OF THE LOCAL GOVERNMENT CODE, WHICH ACCORDING TO THE COURT IS A SPECIAL LAW.

[c.] THE LOWER COURT ERRED IN NOT HOLDING THAT SECTION 137 OF THE LOCAL GOVERNMENT CODE, WHICH, IN RELATION TO SECTION 151 THEREOF, ALLOWS RESPONDENT CITY TO IMPOSE THE FRANCHISE TAX, AND SECTION 193 OF THE CODE, WHICH PROVIDES FOR WITHDRAWAL OF TAX EXEMPTION PRIVILEGES, ARE NOT APPLICABLE TO THIS CASE.

[d.] THE LOWER COURT ERRED IN NOT HOLDING THAT SECTIONS 137 AND 193 OF THE LOCAL GOVERNMENT CODE REFER ONLY TO EXEMPTIONS ALREADY EXISTING AT THE TIME OF ITS ENACTMENT BUT NOT TO FUTURE EXEMPTIONS.

[e.] THE LOWER COURT ERRED IN APPLYING THE RULE OF STATUTORY CONSTRUCTION THAT TAX EXEMPTIONS ARE CONSTRUED STRICTLY AGAINST THE TAXPAYER.

[f.] THE LOWER COURT ERRED IN NOT HOLDING THAT PETITIONER'S FRANCHISE (REPUBLIC ACT NO. 7294) HAS BEEN AMENDED AND EXPANDED BY SECTION 23 OF REPUBLIC ACT NO. 7925, "THE PUBLIC TELECOMMUNICATIONS POLICY ACT," TAKING INTO ACCOUNT THE FRANCHISE OF GLOBE TELECOM, INC. (GLOBE) (REPUBLIC ACT NO. 7229), WHICH ARE SPECIAL PROVISIONS AND WERE ENACTED SUBSEQUENT TO THE LOCAL

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[16] *Id*. at 121-123.

GOVERNMENT CODE, THEREBY PROVIDING AN ADDITIONAL GROUND WHY NO FRANCHISE TAX MAY BE IMPOSED ON PETITIONER BY RESPONDENT CITY.

[g.] THE LOWER COURT ERRED IN DISREGARDING THE RULING OF THE DEPARTMENT OF FINANCE, THROUGH ITS BUREAU OF LOCAL GOVERNMENT FINANCE, THAT PETITIONER IS EXEMPT FROM THE PAYMENT OF THE FRANCHISE TAX IMPOSABLE BY LOCAL GOVERNMENT UNITS UNDER THE LOCAL GOVERNMENT CODE.

[h.] THE LOWER COURT ERRED IN NOT HOLDING THAT THE IMPOSITION OF THE LOCAL FRANCHISE TAX ON PETITIONER WOULD VIOLATE THE CONSTITUTIONAL PROHIBITION AGAINST IMPAIRMENT OF CONTRACTS.

[i.] THE LOWER COURT ERRED IN DENYING THE PETITION BELOW. [17]

The Issue

In sum, the pivotal issue in this case is whether Smart is liable to pay the franchise tax imposed by the City of Davao.

The Ruling of the Court

We rule in the affirmative.

I. Prospective Effect of R.A. No. 7160

On March 27, 1992, Smart's legislative franchise (R.A. No. 7294) took effect. Section 9 thereof, quoted hereunder, is at the heart of the present controversy:

Section 9. *Tax provisions*. — The grantee, its successors or assigns shall be liable to pay the same taxes on their real estate buildings and personal property, exclusive of this franchise, as other persons or corporations which are now or hereafter may be required by law to pay. **In addition thereto, the grantee, its successors or assigns shall pay a franchise tax equivalent to three percent (3%) of all gross receipts of the business transacted under this franchise by the grantee, its successors or assigns and the said percentage shall be *in lieu of all taxes* on this franchise or earnings thereof**:

[17] *Id*. at 24-26.

Provided, That the grantee, its successors or assigns shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto.

The grantee shall file the return with and pay the tax due thereon to the Commissioner of Internal Revenue or his duly authorized representative in accordance with the National Internal Revenue Code and the return shall be subject to audit by the Bureau of Internal Revenue. (Emphasis supplied.)

Smart alleges that the "in lieu of all taxes" clause in Section 9 of its franchise exempts it from all taxes, both local and national, except the national franchise tax (now VAT), income tax, and real property tax.[18]

On January 1, 1992, two months ahead of Smart's franchise, the Local Government Code (R.A. No. 7160) took effect. Section 137, in relation to Section 151 of R.A. No. 7160, allowed the imposition of franchise tax by the local government units; while Section 193 thereof provided for the withdrawal of tax exemption privileges granted prior to the issuance of R.A. No. 7160 except for those expressly mentioned therein, *viz*.:

Section 137. Franchise Tax. — Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at the rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction.

In the case of a newly started business, the tax shall not exceed one-twentieth (1/20) of one percent (1%) of the capital investment. In the succeeding calendar year, regardless of when the business started to operate, the tax shall be based on the gross receipts for the preceding calendar year, or any fraction thereon, as provided herein.

Section 151. *Scope of Taxing Powers*. — Except as otherwise provided in this Code, the city may levy the taxes, fees, and charges

[18] *Id*. at 258.

which the province or municipality may impose: Provided, however, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.

The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.

Section 193. *Withdrawal of Tax Exemption Privileges*. — Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations, except local water districts, cooperatives duly registered under RA No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code. (Emphasis supplied.)

Smart argues that it is not covered by Section 137, in relation to Section 151 of R.A. No. 7160, because its franchise was granted after the effectivity of the said law. We agree with Smart's contention on this matter. The withdrawal of tax exemptions or incentives provided in R.A. No. 7160 can only affect those franchises granted prior to the effectivity of the law. The intention of the legislature to remove all tax exemptions or incentives granted prior to the said law is evident in the language of Section 193 of R.A. No. 7160. No interpretation is necessary.

II. The "in lieu of all taxes" Clause in R.A. No. 7294

The "in lieu of all taxes" clause in Smart's franchise is put in issue before the Court. In order to ascertain its meaning, consistent with fundamentals of statutory construction, all the words in the statute must be considered. The grant of tax exemption by R.A. No. 7294 is not to be interpreted from a consideration of a single portion or of isolated words or clauses, but from a general view of the act as a whole. Every part of the statute must be construed with reference to the context.[19]

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[19] *Aquino v. Quezon City*, G.R. No. 137534, August 3, 2006, 497 SCRA 497, 507.

Smart is of the view that the only taxes it may be made to bear under its franchise are the national franchise tax (now VAT), income tax, and real property tax.[20] It claims exemption from the local franchise tax because the "in lieu of taxes" clause in its franchise does not distinguish between national and local taxes.[21]

We pay heed that R.A. No. 7294 is not definite in granting exemption to Smart from local taxation. Section 9 of R.A. No. 7294 imposes on Smart a franchise tax equivalent to three percent (3%) of all gross receipts of the business transacted under the franchise and the said percentage shall be in lieu of all taxes on the franchise or earnings thereof. R.A. No 7294 does not expressly provide what kind of taxes Smart is exempted from. It is not clear whether the "in lieu of all taxes" provision in the franchise of Smart would include exemption from local or national taxation. What is clear is that Smart shall pay franchise tax equivalent to three percent (3%) of all gross receipts of the business transacted under its franchise. But whether the franchise tax exemption would include exemption from exactions by both the local and the national government is not unequivocal.

The uncertainty in the "in lieu of all taxes" clause in R.A. No. 7294 on whether Smart is exempted from both local and national franchise tax must be construed strictly against Smart who is claiming the exemption. Smart has the burden of proving that, aside from the imposed 3% franchise tax, Congress intended it to be exempt from all kinds of franchise taxes—whether local or national. However, Smart failed in this regard.

Tax exemptions are never presumed and are strictly construed against the taxpayer and liberally in favor of the taxing authority.[22] They can only be given force when the grant is clear and

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[20] *Rollo*, p. 258.

[21] *Id*.

[22] *Commissioner of Internal Revenue v. Visayan Electric Company*, 132 Phil. 203, 215 (1968).

categorical.[23] The surrender of the power to tax, when claimed, must be clearly shown by a language that will admit of no reasonable construction consistent with the reservation of the power. If the intention of the legislature is open to doubt, then the intention of the legislature must be resolved in favor of the State.[24]

In this case, the doubt must be resolved in favor of the City of Davao. The "in lieu of all taxes" clause applies only to national internal revenue taxes and not to local taxes. As appropriately pointed out in the separate opinion of Justice Antonio T. Carpio in a similar case[25] involving a demand for exemption from local franchise taxes:

> [T]he "in lieu of all taxes" clause in Smart's franchise refers only to taxes, other than income tax, imposed under the National Internal Revenue Code. The "in lieu of all taxes" clause does not apply to local taxes. The proviso in the first paragraph of Section 9 of Smart's franchise states that the grantee shall "continue to be liable for income taxes payable under Title II of the National Internal Revenue Code." Also, the second paragraph of Section 9 speaks of tax returns filed and taxes paid to the "Commissioner of Internal Revenue or his duly authorized representative in accordance with the National Internal Revenue Code." Moreover, the same paragraph declares that the tax returns "shall be subject to audit by the Bureau of Internal Revenue." Nothing is mentioned in Section 9 about local taxes. The clear intent is for the "in lieu of all taxes" clause to apply only to taxes under the National Internal Revenue Code and not to local taxes. Even with respect to national internal revenue taxes, the "in lieu of all taxes" clause does not apply to income tax.
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> If Congress intended the "in lieu of all taxes" clause in Smart's franchise to also apply to local taxes, Congress would have expressly mentioned the exemption from municipal and provincial taxes. Congress

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[23] *Commissioner of Internal Revenue v. Rio Tuba Nickel Mining Corporation*, G.R. Nos. 83583-84, September 30, 1991, 202 SCRA 137.

[24] *Philippine Long Distance Telephone Company, Inc. v. City of Davao*, 415 Phil. 764, 775 (2001).

[25] *Philippine Long Distance Telephone Company, Inc. v. City of Davao*, 447 Phil. 571, 594 (2003).

could have used the language in Section 9(b) of Clavecilla's old franchise, as follows:

> x x x in lieu of any and all taxes of any kind, nature or description levied, established or collected by any authority whatsoever, *municipal, provincial* or national, from which the grantee is hereby expressly exempted, x x x. (Emphasis supplied).

However, Congress did not expressly exempt Smart from local taxes. Congress used the "in lieu of all taxes" clause only in reference to national internal revenue taxes. The only interpretation, under the rule on strict construction of tax exemptions, is that the "in lieu of all taxes" clause in Smart's franchise refers only to national and not to local taxes.

It should be noted that the "in lieu of all taxes" clause in R.A. No. 7294 has become *functus officio* with the abolition of the franchise tax on telecommunications companies.[26] As admitted by Smart in its pleadings, it is no longer paying the 3% franchise tax mandated in its franchise. Currently, Smart along with other telecommunications companies pays the uniform 10% value-added tax.[27]

The VAT on sale of services of telephone franchise grantees is equivalent to 10% of gross receipts derived from the sale or exchange of services.[28] R.A. No. 7716, as amended by the *Expanded Value Added Tax Law* (R.A. No. 8241), the pertinent portion of which is hereunder quoted, amended Section 9 of R.A. No. 7294:

> **SEC. 102. Value-added tax on sale of services and use or lease of properties. — (a) Rate and base of tax. — There shall be levied assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.**
>
> **The phrase "sale or exchange of services" means the performance of all kinds of services in the Philippines for others for a fee,**

[26] *Id.* at 593.

[27] *Rollo*, p. 269.

[28] Section 108, National Internal Revenue Code, as amended by the Tax Reform Act of 1997 (R.A. No. 8424).

remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, rest houses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air, and water relative to their transport of goods or cargoes; **services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 117 of this Code;** services of banks, non-bank financial intermediaries and finance companies; and non-life insurance companies (except their crop insurances) including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. x x x.[29]

R.A. No. 7716, specifically Section 20 thereof, expressly repealed the provisions of all special laws relative to the rate of franchise taxes. It also repealed, amended, or modified all other laws, orders, issuances, rules and regulations, or parts thereof which are inconsistent with it.[30] In effect, the "in lieu of all taxes"

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[29] Now Section 108, R.A. No. 8424, as amended. (Emphasis supplied.)

[30] SECTION 20. Repealing Clauses. — The provisions of any special law relative to the rate of franchise taxes are hereby expressly repealed. Sections 113, 114 and 116 of the National Internal Revenue Code are hereby repealed.

Paragraphs (c), (d), and (e) of Article 39 of Executive Order No. 226, otherwise as the Omnibus Investment Code of 1987, are hereby repealed:

Provided, however, That the benefits and incentives under said paragraphs shall continue to be enjoyed by enterprises registered with the Board of Investments before the effectivity of this Act.

Unless otherwise excluded by the President pursuant to Section 17 hereof, Sections 19 and 20 of the National Internal Revenue Code shall be repealed upon the expiration of two (2) years from the effectivity of this Act. During

clause in R.A. No. 7294 was rendered ineffective by the advent of the VAT Law.[31]

However, the franchise tax that the City of Davao may impose must comply with Sections 137 and 151 of R.A. No. 7160. Thus, the local franchise tax that may be imposed by the City must not exceed 50% of 1% of the gross annual receipts for the preceding calendar year based on the income on receipts realized within the territorial jurisdiction of Davao.

III. Opinion of the Bureau of Local Government Finance (BLGF)

In support of its argument that the "in lieu of all taxes" clause is to be construed as an exemption from local franchise taxes, Smart submits the opinion of the Department of Finance, through the BLGF, dated August 13, 1998 and February 24, 1998, regarding the franchises of Smart and Globe, respectively.[32] Smart presents the same arguments as the Philippine Long Distance Telephone Company in the previous cases already decided by this Court.[33] As previously held by the Court, the findings of the BLGF are not conclusive on the courts:

[T]he BLGF opined that §23 of R.A. No. 7925 amended the franchise of petitioner and in effect restored its exemptions from local taxes. Petitioner contends that courts should not set aside conclusions reached by the BLGF because its function is precisely the study of local tax problems and it has necessarily developed an expertise on the subject.

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the period that the freight services rendered by international cargo vessels are not covered by the value-added tax imposed under this Act, said services shall pay a tax at a rate of three per centum (3%) of their quarterly gross receipts derived from outgoing cargoes.

All other laws, orders, issuances, rules and regulations of parts thereof inconsistent with this Act are hereby repealed, amended or modified accordingly.

[31] *Philippine Long Distance Telephone Company, Inc. v. City of Davao*, *supra* note 24.

[32] *Rollo*, pp. 303-309.

[33] *Philippine Long Distance Telephone Company, Inc. v. Province of Cebu*, G.R. No. 151208, October 16, 2006; *Philippine Long Distance Telephone*

To be sure, the BLGF is not an administrative agency whose findings on questions of fact are given weight and deference in the courts. The authorities cited by petitioner pertain to the Court of Tax Appeals, a highly specialized court which performs judicial functions as it was created for the review of tax cases. In contrast, the BLGF was created merely to provide consultative services and technical assistance to local governments and the general public on local taxation, real property assessment, and other related matters, among others. The question raised by petitioner is a legal question, to wit, the interpretation of §23 of R.A. No. 7925. There is, therefore, no basis for claiming expertise for the BLGF that administrative agencies are said to possess in their respective fields.

Petitioner likewise argues that the BLGF enjoys the presumption of regularity in the performance of its duty. It does enjoy this presumption, but this has nothing to do with the question in this case. This case does not concern the regularity of performance of the BLGF in the exercise of its duties, but the correctness of its interpretation of a provision of law.[34]

IV. Tax Exclusion/Tax Exemption

Smart gives another perspective of the "in lieu of all taxes" clause in Section 9 of R.A. No. 7294 in order to avoid the payment of local franchise tax. It says that, viewed from another angle, the "in lieu of all taxes" clause partakes of the nature of a tax exclusion and not a tax exemption. A tax exemption means that the taxpayer does not pay any tax at all. Smart pays VAT, income tax, and real property tax. Thus, what it enjoys is more accurately a tax exclusion.[35]

Company, Inc. v. Province of Laguna, G.R. No. 151899, August 16, 2005, 467 SCRA 93; *Philippine Long Distance Telephone Company, Inc. v. City of Bacolod*, G.R. No. 149179, July 15, 2005, 463 SCRA 528; *Philippine Long Distance Telephone Company, Inc. v. City of Davao*, *supra* note 25; *Philippine Long Distance Telephone Company, Inc. v. City of Davao*, *supra* note 24.

[34] *Philippine Long Distance Telephone Company, Inc. v. City of Davao, supra* note 24, at 779-780.

[35] *Rollo*, pp. 276-277.

However, as previously held by the Court, both in their nature and effect, there is no essential difference between a tax exemption and a tax exclusion. An exemption is an immunity or a privilege; it is the freedom from a charge or burden to which others are subjected. An exclusion, on the other hand, is the removal of otherwise taxable items from the reach of taxation, *e.g.*, exclusions from gross income and allowable deductions. An exclusion is, thus, also an immunity or privilege which frees a taxpayer from a charge to which others are subjected. Consequently, the rule that a tax exemption should be applied in *strictissimi juris* against the taxpayer and liberally in favor of the government applies equally to tax exclusions.[36]

V. Section 23 of R.A. No. 7925

To further its claim, Smart invokes Section 23 of the Public Telecommunications Policy Act (R.A. No. 7925):

> **SECTION 23. *Equality of Treatment in the Telecommunications Industry*. — Any advantage, favor, privilege, exemption, or immunity granted under existing franchises, or may hereafter be granted, shall *ipso facto* become part of previously granted telecommunications franchise and shall be accorded immediately and unconditionally to the grantees of such franchises**: Provided, however, That the foregoing shall neither apply to nor affect provisions of telecommunications franchises concerning territory covered by the franchise, the life span of the franchise, or the type of service authorized by the franchise. (Emphasis supplied.)

In sum, Smart wants us to interpret anew Section 23 of R.A. No. 7925, in connection with the franchise of Globe (R.A. No. 7227),[37] which was enacted on March 19, 1992.

Allegedly, by virtue of Section 23 of R.A. No. 7925, otherwise known as the "most favored treatment clause" or the "equality clause," the provision in the franchise of Globe exempting it

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[36] *Philippine Long Distance Telephone Company, Inc. v. City of Davao, supra* note 24, at 775.

[37] An Act approving the merger between Globe Mackay Cable and Radio Corporation and Clavecilla Radio System and the consequent transfer of

from local taxes is automatically incorporated in the franchise of Smart.[38] Smart posits that, since the franchise of Globe contains a provision exempting it from municipal or local franchise tax, this provision should also benefit Smart by virtue of Section 23 of R.A. No. 7925. The provision in Globe's franchise invoked by Smart reads:

> (b) The grantee shall further pay to the Treasurer of the Philippines each year after the audit and approval of the accounts as prescribed in this Act, one and one-half per centum of all gross receipts from business transacted under this franchise by the said grantee in the Philippines, **in lieu of any and all taxes of any kind, nature or description levied, established or collected by any authority whatsoever, municipal, provincial or national, from which the grantee is hereby expressly exempted**, effective from the date of the approval of Republic Act Numbered Sixteen hundred eighteen.[39]

We find no reason to disturb the previous pronouncements of this Court regarding the interpretation of Section 23 of R.A. No. 7925. As aptly explained in the *en banc* decision of this Court in *Philippine Long Distance Telephone Company, Inc. v. City of Davao,*[40] and recently in *Digital Telecommunications Philippines, Inc. (Digitel) v. Province of Pangasinan,*[41] Congress, in approving Section 23 of R.A. No. 7925, did not intend it to operate as a blanket tax exemption to all telecommunications entities.[42] The language of Section 23 of R.A. No. 7925 and the proceedings of both Houses of Congress are bereft of anything that would signify the grant of tax

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the franchise of Clavecilla Radio System granted under Republic Act No. 402, as amended, to Globe Mackay Cable and Radio Corporation, extending the life of said franchise and repealing certain sections of RA No. 402, as amended.

[38] *Rollo*, p. 256.

[39] Section 9 of R.A. No. 4540. (Emphasis supplied).

[40] *Philippine Long Distance Telephone Company, Inc. v. City of Davao, supra* note 24.

[41] G.R. No. 152534, February 23, 2007, 516 SCRA 541.

[42] *Id*.

exemptions to all telecommunications entities, including those whose exemptions had been withdrawn by R.A. No. 7160.[43] The term "*exemption*" in Section 23 of R.A. No. 7925 does not mean tax exemption. The term refers to exemption from certain regulations and requirements imposed by the National Telecommunications Commission.[44]

Furthermore, in the franchise of Globe (R.A. No. 7229), the legislature incontrovertibly stated that it will be liable for one and one-half per centum of all gross receipts from business transacted under the franchise, in lieu of any and all taxes of any kind, nature, or description levied, established, or collected by any authority whatsoever, municipal, provincial, or national, from which the grantee is hereby expressly exempted.[45] The grant of exemption from municipal, provincial, or national is clear and categorical – that aside from the franchise tax collected by virtue of R.A. No. 7229, no other franchise tax may be collected from Globe regardless of who the taxing power is. No such provision is found in the franchise of Smart; the kind of tax from which it is exempted is not clearly specified.

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[43] *Id*.

[44] *Philippine Long Distance Telephone Company, Inc. v. City of Davao*, *supra* note 25.

[45] Section 11 of R.A. No. 7229 provides: "All other provisions of Republic Act No. 402, as amended by Republic Act Nos. 1618 and 4540, and the provisions of Batas Pambansa Blg. 95 which are not inconsistent with the provisions of this Act and are still unrepealed shall continue to be in full force and effect."

In view of the above-mentioned provision, Section 3 of R.A. No. 4540, the pertinent portion of which is quoted herein, is incorporated into R.A. No. 7229: "(b) The grantee shall further pay to the Treasurer of the Philippines each year after the audit and approval of the accounts as prescribed in this Act, one and one-half per centum of all gross receipts from business transacted under this franchise by the said grantee in the Philippines, in lieu of any and all taxes of any kind, nature or description levied, established or collected by an authority whatsoever, municipal, provincial or national, from which the grantee is hereby expressly exempted, effective from the date of the approval of Republic Act Numbered Sixteen hundred eighteen."

As previously explained by the Court, the stance of Smart would lead to absurd consequences.

> The acceptance of petitioner's theory would result in absurd consequences. To illustrate: In its franchise, Globe is required to pay a franchise tax of only one and one-half percentum (1½%) of all gross receipts from its transactions while Smart is required to pay a tax of three percent (3%) on all gross receipts from business transacted. Petitioner's theory would require that, to level the playing field, any "advantage, favor, privilege, exemption, or immunity" granted to Globe must be extended to all telecommunications companies, including Smart. If, later, Congress again grants a franchise to another telecommunications company imposing, say, one percent (1%) franchise tax, then all other telecommunications franchises will have to be adjusted to "level the playing field" so to speak. This could not have been the intent of Congress in enacting §23 of Rep. Act 7925. Petitioner's theory will leave the Government with the burden of having to keep track of all granted telecommunications franchises, lest some companies be treated unequally. It is different if Congress enacts a law specifically granting uniform advantages, favor, privilege, exemption, or immunity to all telecommunications entities.[46]

VI. Non-impairment Clause of the Constitution

Another argument of Smart is that the imposition of the local franchise tax by the City of Davao would violate the constitutional prohibition against impairment of contracts. The franchise, according to petitioner, is in the nature of a contract between the government and Smart.[47]

However, we find that there is no violation of Article III, Section 10 of the 1987 Philippine Constitution. As previously discussed, the franchise of Smart does not expressly provide for exemption from local taxes. Absent the express provision on such exemption under the franchise, we are constrained to rule against it. The "in lieu of all taxes" clause in Section 9 of R.A. No. 7294 leaves much room for interpretation. Due to

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[46] *Philippine Long Distance Telephone Company, Inc. v. City of Davao, supra* note 24, at 776.

[47] *Rollo*, pp. 310-313.

this ambiguity in the law, the doubt must be resolved against the grant of tax exemption.

Moreover, Smart's franchise was granted with the express condition that it is subject to amendment, alteration, or repeal.[48] As held in *Tolentino v. Secretary of Finance*:[49]

> It is enough to say that the parties to a contract cannot, through the exercise of prophetic discernment, fetter the exercise of the taxing power of the State. For not only are existing laws read into contracts in order to fix obligations as between parties, but the reservation of essential attributes of sovereign power is also read into contracts as a basic postulate of the legal order. The policy of protecting contracts against impairment presupposes the maintenance of a government which retains adequate authority to secure the peace and good order of society.
>
> In truth, the Contract Clause has never been thought as a limitation on the exercise of the State's power of taxation save only where a tax exemption has been granted for a valid consideration. x x x.

WHEREFORE, the instant 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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[48] CONSTITUTION, Art. XII, Sec. 11.

[49] G. R. No. 115455, August 25, 1994, 235 SCRA 630, 685.

THIRD DIVISION

[G.R. No. 159308. September 16, 2008]

REPUBLIC OF THE PHILIPPINES, represented by the Department of Environment and Natural Resources (DENR), *petitioner, vs.* **PAGADIAN CITY TIMBER CO., INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; REVISED FORESTRY CODE (P.D. NO. 705); TIMBER LICENSE AGREEMENT; NATURE THEREOF, CONSTRUED. — IFMA No. R-9-040 is a license agreement under Presidential Decree (P.D.) No. 705 (Revised Forestry Code), the law which is the very basis for its existence. Under Section 3, paragraph (dd) thereof, a license agreement is defined as "a **privilege** granted by the State to a person to utilize forest resources within any forest land with the right of possession and occupation thereof to the exclusion of others, except the government, but with the corresponding obligation to develop, protect and rehabilitate the same in accordance with the terms and conditions set forth in said agreement." This is evident in the following features, among others, of IFMA No. R-9-040, to wit: 1. The State agreed to devolve to the holder of IFMA No. R-9-040 the responsibility to manage the specified IFMA area for a period of 25 years, specifically until October 14, 2019, which period is automatically renewable for another 25 years thereafter; 2. The State imposed upon respondent, as holder of IFMA No. R-9-040, the conditions, the means, and the manner by which the IFMA area shall be managed, developed, and protected; 3. The State, through the DENR Secretary, shall not collect any rental within the first five (5) years of the IFMA, after which it shall be entitled to annual rental of fifty centavos (₱0.50) per hectare from the sixth to the tenth year thereof, and one peso (₱1.00) per hectare thereafter; 4. The IFMA area, except only the trees and other crops planted and the permanent improvements constructed by the IFMA holder, remains the property of the State; and 5. Upon cancellation of the IFMA through the fault of the holder, all improvements including forest plantations existing within the IFMA area shall revert to and

become the property of the State. An IFMA has for its precursor the Timber License Agreement (TLA), one of the tenurial instruments issued by the State to its grantees for the efficient management of the country's dwindling forest resources. Jurisprudence has been consistent in holding that license agreements are not contracts within the purview of the due process and the non-impairment of contracts clauses enshrined in the Constitution.

2. POLITICAL LAW; CONSTITUTIONAL LAW; DECLARATION OF PRINCIPLES AND STATE POLICIES; PRIVATE RIGHTS MUST YIELD WHEN THEY COME IN CONFLICT WITH PUBLIC POLICY AND COMMON INTEREST; APPLICATION IN CASE AT BAR. — All Filipino citizens are entitled, by right, to a balanced and healthful ecology as declared under Section 16, Article II of the Constitution. This right carries with it the correlative duty to refrain from impairing the environment, particularly our diminishing forest resources. To uphold and protect this right is an express policy of the State. The DENR is the instrumentality of the State mandated to actualize this policy. It is "the primary government agency responsible for the conservation, management, development and proper use of the country's environment and natural resources, including those in reservation and watershed areas, and lands of the public domain, as well as the licensing and regulation of all natural resources as may be provided for by law in order to ensure equitable sharing of the benefits derived therefrom for the welfare of the present and future generations of Filipinos." Thus, private rights must yield when they come in conflict with this public policy and common interest. They must give way to the police or regulatory power of the State, in this case through the DENR, to ensure that the terms and conditions of existing laws, rules and regulations, and the IFMA itself are strictly and faithfully complied with.

3. CIVIL LAW; REVISED FORESTRY CODE (P.D. NO. 705); TIMBER LICENSE AGREEMENT; CANCELLATION THEREOF, PROPER; RATIONALE. — In this case, despite the lack of any specific recommendation from the Evaluation Team for the cancellation of the IFMA, DENR Secretary Cerilles deemed it proper to cancel the IFMA due to the extent and the gravity of respondent's violations. It is also futile for respondent to claim that it is entitled to an arbitration under Section 36 of IFMA No. R-9-040 before the license agreement may be canceled. A reading of the said Section shows that the dispute should be based on the

provisions of the IFMA to warrant a referral to arbitration of an irreconcilable conflict between the IFMA holder and the DENR Secretary. In this case, the cancellation was grounded on Section 26 of DAO No. 97-04, particularly respondent's failure to implement the approved CDMP and its failure to implement or adopt agreements made with communities and other relevant sectors. The contrary notwithstanding, what remains is that respondent never refuted the findings of the Evaluation Team when given the opportunity to do so but waited until IFMA No. R-9-040 was already cancelled before it made its vigorous objections as to the conduct of the evaluation, harping only on its alleged right to due process. Indeed, respondent was given the opportunity to contest the findings that caused the cancellation of its IFMA when it moved to reconsider the Order of cancellation and when it filed its appeal and motion for reconsideration before the OP. The essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. What the law prohibits is the absolute absence of the opportunity to be heard; hence, a party cannot feign denial of due process where he had been afforded the opportunity to present his side.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
King Cabangon & De Guzman Law Offices for respondent.

D E C I S I O N

NACHURA, *J.*:

This is a Petition for Review on *Certiorari* [1] under Rule 45 of the Rules of Court seeking to nullify and set aside the Decision[2] dated October 18, 2001 and the Resolution[3] dated July 24, 2003

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

[2] *Id.* at 42-55.

[3] *Id.* at 56.

of the Court of Appeals in CA-G.R. SP No. 59194 entitled *"Pagadian City Timber Co., Inc. v. Antonio Cerilles, as Secretary of the Department of Environment and Natural Resources (DENR) and Antonio Mendoza, as Regional Executive Director, DENR, Region IX."*

The antecedent facts are as follows:

On October 14, 1994, petitioner, through the DENR, and respondent Pagadian City Timber Co., Inc. executed Industrial Forest Management Agreement (IFMA) No. R-9-040[4] whereby petitioner, represented by then Regional Executive Director (RED) for Region IX, Leonito C. Umali, authorized respondent, represented by its President Filomena San Juan, to develop, utilize, and manage a specified forest area covering 1,999.14 hectares located in Barangays Langapod, Cogonan, and Datagan, Municipality of Labangan, Zamboanga del Sur, for the production of timber and other forest products subject to a production-sharing scheme.

Respondent later submitted the required Comprehensive Development and Management Plan (CDMP) which the DENR approved on August 17, 1995.

On October 8, 1998, in response to the numerous complaints filed by members of the Subanen tribe regarding respondent's alleged failure to implement the CDMP, disrespect of their rights as an indigenous people, and the constant threats and harassment by armed men employed by respondent, RED Antonio Mendoza, DENR Region IX, issued Regional Special Order No. 217 creating a regional team to evaluate and assess IFMA No. R-9-040.

Thus, the DENR sent a letter dated October 22, 1998 to respondent, giving notice of the evaluation and assessment to be conducted on the area from October 22-30, 1998 covering the years 1997 and 1998. In the notice, the DENR requested any representative of the company to appear at the CENRO Office, Pagadian City, and bring with him documents and maps concerning its IFMA operations.

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[4] *Id.* at 57-66; also referred to as IFMA No. R9-040 and IFMA No. R-9-04.

On October 23, 1998, a DENR Evaluation Team composed of Aniceto Wenceslao (Forester, DENR, Zamboanga del Sur), Isabelo Mangaya-ay (Intern Chief, RCBF/MCO), Philidor Lluisma (Forester II, Regional Office), Chanito Paul Siton (C. Forester, CENRO-Pagadian City), Adelberto Roullo (Forester, CENRO, Pagadian City), and Francisco Martin (Carto LEP, CENRO, Pagadian City) went to the IFMA site. After a briefing conference between the Evaluation Team and respondent's Operations Manager, Inocencio Santiago, actual field evaluation and assessment followed.

On October 29, 1998, an exit conference and dialogue on post evaluation and assessment of IFMA R-9-04 was held between DENR officials, namely, CENR Officer Maximo O. Dichoso, IFMA Regional Team Leader, Forester Isabelo C. Mangaya-ay, and IFMA Regional Team Member, Forester Philidor O. Lluisma, and IFMA Representative and Operations Manager Inocencio Santiago at the CENRO, Pagadian City.[5] The exit conference was called to order at 1:30 p.m. and was concluded at 3:00 p.m. Forester Mangaya-ay presented the representative results and findings of the Evaluation Team, to wit:

> The presiding officer started with the mango plantation in the Noran, Langapod side. That out of the estimated number of seedlings planted of about 2,008 hills, within an equivalent area of 20 hectares, the result or finding of the inventory conducted at 100% intensity is only 98 hills of seedlings survived including the doubtful and badly deformed. The species planted along trails are Gmelina and Mahogany species. The said foot trail planted with the aforementioned species starts from the entrance of the IFMA are where the notice billboard is posted up to the only existing look-out tower. The estimated average of percent survival for Gmelina is more or less 30%. There are also portions where higher percentage of survival is recorded at 56% and lower at 14%. There are areas planted declared by Kagawad Cerning Becagas of Barangay Cogonan now covered by CSC. The areas covered by CSC, a waiver is needed to be issued by the IFMA holder.

[5] Per Excerpts, *id.* at 67-68.

CENR Officer Maximo O. Dichoso commented that during a meeting held before, the IFMA holder was willing to give up the said areas.

The presiding officer continued that on the courtesy call made to the Barangay Chairman of Barangay Cogonan, Mr. Roberto Palaran recounted the assistance extended by the IFMA holder to his *barangay* as Community Assistance/service which includes electric generator, handheld radio and laborers for the repair of Noburan – Cogonan road and the repair of the hanging bridge at Sitio Tialaic to which the said *Barangay* Chairman issued a duly signed certification to this effect.

With regards, the seedling stock within the nursery, there are approximately a total number of about 44,460 seedlings of Gmelina species. That the infrastructure implemented or constructed, there exist only one look-out tower of the reported 4 look-out towers constructed. Moreover, the team had also noted only 1 bunkhouse and 1 stockroom or shedhouse. There is also 1 Multi-purpose shed and 1 dilapidated or neglected notice billboard poster at the entrance trail leading to the IFMA area. That with regards the concrete monument, there are only 2 recorded. The other corners visible are those located at junctions of creeks and rivers. But the others cannot be visibly or never planted for the same cannot be pinpointed or shown to the team allegedly for lack of knowledge by the representative of the IFMA holder. Finally, the presiding officer reminded the herein IFMA representative Mr. Inocencio Santiago that per actual survey, inspection and ground verification, the team believes that the other reported areas planted are located outside the designated IFMA area particularly the Noburan and Langapod sides.[6]

After the presentation, Mangaya-ay asked Santiago if he had comments, suggestions, or questions regarding the matter and the manner of the conduct of the evaluation and assessment by the Evaluation Team. Santiago said he had none, but requested a copy of the report of the Evaluation Team. Mangaya-ay informed him that it was only RED Mendoza who may furnish him a copy of the report.

Later, the Evaluation Team submitted a report through a Memorandum[7] dated November 6, 1998 to the DENR-RED of

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[6] *Id.*

[7] CA *rollo*, pp. 277-279.

Region 9, Zamboanga City, on the evaluation and assessment of respondent under IFMA No. R-9-040. The said Memorandum stated –

In compliance with Regional Special Order No. 217, Series of 1998, please be informed that the herein information is the result or findings of the team for the conduct of evaluation and assessment following the guidelines setforth under Department Administrative Order (DAO) No. 11, Series of 1995 of Pagadian Timber Co., Inc. under IFMA No. R9-040 against their actual accomplishment as mandated under the terms and conditions of the IFMA including other applicable laws, rules and regulations of the department on the matter.

At the onset, the team conducted a briefing conference and dialogue with the IFMA holder, the CENR Officer of Pagadian City and personnel concerned for the proper and orderly implementation and conduct of the evaluation and assessment (please see attached).

The team was composed of the Regional Evaluating Team, the CENRO and PENRO representatives and the representatives of the IFMA holder. The team proceeded to the western portion of the area of the herein IFMA particularly Barangay Cogonan, Labangan, Zamboanga del Sur. The evaluation and assessment was then conducted on the main nursery, the established plantation, the look-out towers, the boundary of ISF and claimed or occupied areas, natural or residual forest, the IFMA boundary, monuments planted, foot trails, other improvements introduced and the billboard and signboard posted. The inspection, evaluation and assessment conducted were all undertaken in the presence of the IFMA holder, representatives, laborers and other personnel on the area. (please see attached report, tall sheets, pictorials and map).

In the conduct of the same, the IFMA representatives or laborers that assisted the team could only show the subject area under evaluation but the other areas alluded to as accomplished or undertaken by the company appeared upon actual verification and inspection to be negative and non-existent thus dispelling their allegation.

With regard the information and dissemination conducted by the IFMA holder including other services extended to the communities within the IFMA area and vicinities, it is noteworthy for recognition the donations made by the company. (Please see attached minutes

of the dialogue with the *barangay* officials of Barangay Cogonan and pictorials).

The evaluation conducted on the nursery operations show that the facilities and other necessary implements were generally below par. An inventory of the seedlings stock of pure Gmelina species have already lapsed its plantability or have overgrown in the seedbed with an average grand total of about 44,460 within the established 2-hectare main nursery area. There was no other subsidiary nursery established in the area. Also noted is the enrichment planting conducted along both sides of the foot-trail which extends approximately 18 kms. From the entrance of the IFMA area going to the lookout tower of the four (4) lookout towers reported, only one (1) has been noted remaining in the area and the rest were destroyed or burned (pls. see attached pictorials). The signboard posted was unattended and in the state of disrepair. There were no monument planted or any marking along the IFMA boundary and in residual forest except the monuments found in the ISF boundaries within the IFMA area (please see attached pictorials). The plantation established is composed of Gmelina species with 4 x 4 spacing over a total of about 10.18 hectares. Basing on 5% estimate inventory, the result is 43% seedling survival.

Thereafter, the team also conducted evaluation and assessment at the eastern portion particularly at Langapod, Labangan, Zamboanga del Sur. The team inspected and verified on the ground the reported 20 hectares mango plantation with a spacing of 10 x 10 meters at 100% intensity inventory. The accounted number of mango seedlings planted of about 2,008 hills, only 98 seedlings survived. Wherefore, it generally represents 5% seedling survival. (Please see attached).

Finally, the team conducted an exit conference with the CENR Officer, and the IFMA holder where the tentative and general findings of the evaluation and assessment was laid-out and presented to the body. (Please see attached)[8]

On the basis of such findings, the Evaluation Team made the following recommendations –

1. The lessee should be required to explain why they failed to develop their IFMA area (Plantation Development) in

[8] *Id.* at 277-278.

accordance with the approved Comprehensive Development and Management Plan (CDMP);

2. The boundary and area coverage of IFMA No. R9-040 should be amended to exclude areas covered by Certificates of Stewardship Contracts (CSC) under the ISF Program with an area of 226.17 hectares, other areas previously identified as *"occupied/claimed"* and other conflict areas;

3. The amended boundary should be delineated/surveyed on the ground with a precise instrument and all corners appropriately marked/monumented;

4. The company should hire a full time forester.[9]

Acting on the Memorandum dated November 6, 1998, RED Antonio M. Mendoza, DENR-IX, Zamboanga City, submitted to the DENR Secretary a Memorandum[10] dated April 7, 1999 regarding the performance evaluation of IFMA No. R-9-040. The RED Memorandum reads —

This has reference with the instruction to validate the performance/ accomplishment of IFMAs of Region IX, Western Mindanao. Validation of IFMAs is in accordance with the existing policy of the DENR, to determine the capabilities of the holders to develop their Lease areas in consonance with their submitted and approved Comprehensive Development Management Plan.

xxx xxx xxx

On 6 November 1998, Foresters Isabelo C. Mangaya-ay and Philidor Lluisma, pursuant to Regional Special Order No. 217, Series of 1998, conducted the evaluation of the performance of IFMA No. R9-040 of Pagadian City Timber Company, Inc. located at Langapod and Cogonan, Municipality of Labangan and Datagan, Municipality of Sominot, all of Zamboanga del Sur. Result of the evaluation reveals that the holder violated the following DENR existing Rules and Regulations particularly Section 26 of DAO 97-04 GROUNDS FOR CANCELLATION of IFMA which provides that, "any of the following violations shall be sufficient grounds for the cancellation of IFMA."

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[9] *Id.* at 278-279.

[10] *Rollo*, pp. 69-70.

1. Paragraph *26.5, Section 26, DAO 97-04,* Series of 1997, provides that failure to implement the approved Comprehensive Development and Management Plan.

   As of 1998, the 4th year of existence of IFMA No. R9-040, the holder must have developed a total of 1,597.0 hectares as per approved CDMP. However, based on the report submitted by the Evaluation Team only 365.2 hectares was planted which are about 22.8%. During the evaluation, however, the IFMA representative could not even pinpoint the planted areas.

   Per report of the Pagadian *CENRO Composite Monitoring Team* conducted on 21 August 1998 the plantation area was burned resulting to the damage of about 300 hectares leaving only about 20.0 hectares undamaged. No report had been submitted/received since then.

   In infrastructure, the holder managed to put up one (1) out of four (4) programmed look-out towers; developed one (1) out of two (2) forest nurseries and constructed only 6 km. foot trail which is only about 27% accomplishment of the whole infrastructure.

2. Paragraph 26.8 of Section 26, DAO 97-04, specifically provides that failure to implement or adopt agreements made with communities and other relevant sectors.

   Attached herewith, please find several petitions, sworn statements, affidavits and resolutions from various sectors particularly the Subanen Communities (IP's) within the area. The existence and approval of IFMA No. R9-040 contract is being protested and is demanding for its cancellation.

   The primary complaint was a blatant disrespect to their rights as an *Indigenous People* and the non-peaceful co-existence between them and the holder of the IFMA R9-040. Accordingly, they were constantly threatened/harassed by armed men employed by the holder.

In the same Memorandum, RED Mendoza recommended to the DENR Secretary the cancellation of IFMA No. R-9-040.[11]

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[11] *Id.* at 70.

It appears that RED Mendoza issued a subsequent but similar Memorandum[12] dated April 21, 1999 to the DENR Secretary relative to IFMA No. R-9-040. It stated –

This has reference with the instruction to validate the performance/ accomplishment of IFMAs of Region IX, Western Mindanao. Validation of IFMAs is in accordance with the existing policy of the DENR to determine the capabilities of the holders to develop their Lease areas in consonance with their approved Comprehensive Development and Management Plan.

In furtherance thereto, Foresters Isabelo C. Mangaya-ay and Philidor Lluisma, pursuant to Regional Special Order No. 217, Series of 1998, conducted the e valuation of the performance of IFMA No. R9-040 of Pagadian City Timber Company, Inc. located at the Municipalities of Labangan, Datagan and Sominot, all of Zamboanga del Sur, on November 6, 1998. Result of the evaluation revealed that the holder violated Rules and Regulations which are sufficient ground for cancellation as stipulated under Section 26 of DAO 97-04, they are as follows

1. FAILURE TO IMPLEMENT THE APPROVED COMPREHENSIVE DEVELOPMENT AND MANAGEMENT PLAN.

Under the approved comprehensive and development plan, 1,597.0 ha of plantation should have been established from the Approval of the CDMP. However, only 365.2 ha were reportedly planted from CY 1995 to 1997. This represents only 28% of the targeted goal on plantation establishment.

Field validation of the reported established plantation revealed otherwise. The findings of the team are:

A. Portion of the area reported as established plantation by the IFMA holder is an ISF project with an area of 226.17 ha. These are covered with Certificate of Stewardship;

B. Locations and boundaries of reported plantations established from 1995 to 1997 cannot be located on the ground by the team neither by the representative of the IFMA holder who accompanied the validating team; and

C. No plantation was established during CY 1998.

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[12] CA *rollo*, pp. 282-283.

On Infrastructure, the holder constructed only one (1) lookout tower as against the goal of 4 towers; established one (1) nursery as against the goal of two (2); and constructed only 6km foot trail. These represent only 27% of the total infrastructure to be undertaken by the holder over the area.

2. FAILURE TO IMPLEMENT OR ADOPT AGREEMENT WITH COMMUNITIES AND OTHER RELEVANT SECTORS.

Attached herewith are copies of petitions, sworn statements, affidavit and resolutions from Subanen Communities (IP's) and other sectors in the area demanding the cancellation of IFMA R9-040.

The complaints and demand for cancellation by the people where the IFMA is located is a manifestation and proof of non-social acceptance of the project by the residents in the locality.

In view of the above findings, IFMA No. R9-040 is hereby recommended for cancellation.[13]

Acting on the latter Memorandum from RED Mendoza, then DENR Secretary Antonio H. Cerilles, on June 7, 1999, issued an Order[14] canceling IFMA No. R-9-040 for failure to implement the approved CDMP and for failure of the lessee to protect the area from forest fires. The dispositive portion of the Order reads:

WHEREFORE, premises considered, IFMA No. R9-040 issued to Pagadian City Timber Co., Inc. is hereby ordered cancelled. The IFMA holder is hereby ordered to immediately vacate the area and to surrender/return copy of the Agreement to the Regional Executive Director, DENR Region 9, Zamboanga City.

The RED concerned or his duly authorized representative is hereby directed to serve this Order; determine best end use of the land; take appropriate measures to protect the same and inform this Office immediately of his compliance.

SO ORDERED.[15]

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[13] *Id*.

[14] *Rollo,* pp. 71-72.

[15] *Id*.

On July 2, 1999, respondent's President, Filomena S. San Juan, wrote DENR Secretary Cerilles that the company was surprised to receive the Order of the cancellation of IFMA No. R-9-040 on June 22, 1999. She claimed that –

> The DENR regional office is fully aware that the company is doing its best to manage and develop the area by continually planting trees and protecting the area from forest fires and illegalities. No company would ever set fire on its own plantation for obvious reasons. The company observed precautionary measures especially during the time of the El Niño phenomenon. If there have been mistakes and miscommunications in the reports of the DENR field officers, these could have been threshed out by a conference between DENR and the Pagadian Timber Company Inc.
>
> The company was not accorded due process before the order of cancellation was issued. The company was not furnished copy of the evaluation and recommendation of the DENR Regional Executive Director of Region IX. Had the company been given the opportunity to contest the findings, evaluation and recommendation of the said office, the result would be otherwise.[16]

She appealed for the reconsideration of the Order asking that a re-investigation be conducted to comply with due process.

Even as the said letter for reconsideration was not yet acted upon, respondent appealed to the Office of the President (OP).

In the Resolution[17] dated January 12, 2000, the OP affirmed the cancellation order based on the results of the actual evaluation and assessment of the DENR team. It ruled that the cancellation of IFMA No. R-9-040 was primarily and specifically governed by Section 26 of Department Administrative Order (DAO) 97-04. Relative to respondent's invocation of due process, the OP held that respondent was afforded the right to be heard when it filed its motion for reconsideration and its subsequent appeal to the OP.

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[16] *Id.* at 73.

[17] CA *rollo*, pp. 44-49.

The motion for reconsideration filed by respondent of the January 12, 2000 Resolution was denied by the OP in the Resolution[18] dated May 8, 2000.

Respondent went up to the Court of Appeals (CA) *via* a petition for review with a prayer for the issuance of a writ of preliminary injunction against the implementation of the assailed Order dated June 7, 1999.

In its Resolution dated January 17, 2001, the CA issued the writ of preliminary injunction prayed for, "directing and ordering respondents (petitioner) and/or any other person acting under their command, authority and/or for and in their behalf, to DESIST from implementing the assailed Order of cancellation dated June 7, 1999, and/or taking over the IFMA premises of [respondent], pending the termination of this proceeding."

In its Decision[19] dated October 18, 2001, the CA ruled in favor of respondents. In striking down the rulings of the OP and the Order dated June 7, 1999, the CA declared that IFMA No. R-9-040 was a contract that could not be unilaterally cancelled without infringing on the rights of respondent to due process and against impairment of contracts. The appellate court agreed with respondent when the latter argued that it was entitled to the benefits of Sections 35[20] and 36[21] of IFMA No. R-9-040 such that respondent should have been given 30 days, after due notice, to remedy any breach or default of the provisions of the IFMA and/or that the dispute regarding the

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[18] *Id.* at 50.

[19] Penned by Associate Justice Teodoro P. Regino, with Associate Justices Delilah Vidallon-Magtolis and Josefina Guevara-Salonga, concurring; *rollo*, pp. 42-55.

[20] 35. In the event of any default or breach of any provisions of this AGREEMENT by either party, the other party may, by notice to the party in default or breach, specify such default or breach and require the same to be remedied within thirty (30) days after service of notice.

[21] 36. Except for issues covering compensation addressed in paragraph 29 above, in the event of any dispute between the SECRETARY and the IFMA HOLDER which cannot be settled by mutual accord, such dispute shall be referred to arbitration which shall be held at a mutually acceptable location.

bases for the cancellation of the IFMA should have first been submitted to arbitration.

Petitioner moved to reconsider the CA Decision. In the Resolution[22] dated July 24, 2003, the motion was denied for lack of merit. Hence, this petition based on the following grounds:

I. The Court of Appeals gravely erred in ruling that IFMA No. R9-040 is a contract and not a mere privilege granted by the State to respondent.

II. The Court of Appeals seriously erred in ordaining that respondent can rightfully invoke prior resort to arbitration or the option to mend its violations under IFMA No. R9-040.[23]

In essence, petitioner argues that an IFMA is not an ordinary contract which is protected by the Constitution against impairment[24] but a mere privilege granted by the State to qualified persons by means of a permit, license, franchise, agreement, or other similar concessions, which in this case is the exploration, development and utilization of the forest lands belonging to the State under its full control and supervision. Thus, the cancellation of the IFMA does not amount to a rescission of a contract but a mere withdrawal of this privilege. As such, the due process clause under the Constitution[25] does not likewise apply since the IFMA area cannot be considered as property of respondent. According to petitioner, IFMA No. R-9-040, with the forest lands covered by it, is imbued with paramount considerations of public interest and public welfare such that whatever rights respondent may have under it must yield to the police power of the State. In this sense, respondent cannot take refuge in Sections 35 and 36 of IFMA No. R-9-040 to prevent the IFMA's cancellation.

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[22] *Supra* note 3.

[23] *Id.* at 19.

[24] CONSTITUTION, Art. III, Sec. 10. "No law impairing the obligation of contracts shall be passed."

[25] *Id.*, Section 1. "No person shall be deprived of life, liberty or property without due process of law x x x."

Inasmuch as the grounds cited by petitioner are interrelated, they shall be jointly discussed hereunder.

The petition is impressed with merit.

IFMA No. R-9-040 is a license agreement under Presidential Decree (P.D.) No. 705 (Revised Forestry Code), the law which is the very basis for its existence.[26] Under Section 3, paragraph (dd) thereof, a license agreement is defined as "a **privilege**[27] granted by the State to a person to utilize forest resources within any forest land with the right of possession and occupation thereof to the exclusion of others, except the government, but with the corresponding obligation to develop, protect and rehabilitate the same in accordance with the terms and conditions set forth in said agreement." This is evident in the following features, among others, of IFMA No. R-9-040, to wit:

1. The State agreed to devolve to the holder of IFMA No. R-9-040 the responsibility to manage the specified IFMA area for a period of 25 years, specifically until October 14, 2019, which period is automatically renewable for another 25 years thereafter;

2. The State imposed upon respondent, as holder of IFMA No. R-9-040, the conditions, the means, and the manner by which the IFMA area shall be managed, developed, and protected;

3. The State, through the DENR Secretary, shall not collect any rental within the first five (5) years of the IFMA, after which it shall be entitled to annual rental of fifty centavos (₱0.50) per hectare from the sixth to the tenth year thereof, and one peso (₱1.00) per hectare thereafter;

4. The IFMA area, except only the trees and other crops planted and the permanent improvements constructed by the IFMA holder, remains the property of the State; and

5. Upon cancellation of the IFMA through the fault of the holder, all improvements including forest plantations existing within the IFMA area shall revert to and become the property of the State.

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[26] *PICOP Resources, Inc. v. Calo*, G.R. No. 161798, October 20, 2004, 441 SCRA 46.

[27] Emphasis supplied.

An IFMA has for its precursor the Timber License Agreement (TLA), one of the tenurial instruments issued by the State to its grantees for the efficient management of the country's dwindling forest resources. Jurisprudence has been consistent in holding that license agreements are not contracts within the purview of the due process and the non-impairment of contracts clauses enshrined in the Constitution. Our pronouncement in *Alvarez v. PICOP Resources, Inc.*[28] is enlightening –

> In unequivocal terms, we have consistently held that such licenses concerning the harvesting of timber in the country's forests cannot be considered contracts that would bind the Government regardless of changes in policy and the demands of public interest and welfare. (citing *Oposa v. Factoran, Jr.*, G.R. No. 101083, July 30, 1993, 224 SCRA 792, 811) Such unswerving verdict is synthesized in *Oposa v. Factoran, Jr.*, (*id.*, at pp. 811, 812) where we held:
>
> > In the first place, the respondent Secretary did not, for obvious reasons, even invoke in his motion to dismiss the non-impairment clause. If he had done so, he would have acted with utmost infidelity to the Government by providing undue and unwarranted benefits and advantages to the timber license holders because he would have forever bound the Government to strictly respect the said licenses according to their terms and conditions regardless of changes in policy and the demands of public interest and welfare. He was aware that as correctly pointed out by petitioners, into every timber license must be read Section 20 of the Forestry Reform Code (P.D. No. 705) which provides:
> >
> > > "x x x Provided, that when the national interest so requires, the President may amend, modify, replace or rescind any contract, concession, permit, licenses or any other form of privilege granted herein x x x."
> >
> > Needless to say, all licenses may thus be revoked or rescinded by executive action. It is not a contract, property or a property right protected by the due process clause of the constitution.

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[28] G.R. Nos. 162243, 164516, 171875, November 29, 2006, 508 SCRA 498, 532-535.

In *Tan vs. Director of Forestry*, [125 SCRA 302, 325 (1983)] this Court held:

> "x x x A timber license is an instrument by which the State regulates the utilization and disposition of forest resources to the end that public welfare is promoted. A timber license is not a contract within the purview of the due process clause; it is only a license or privilege, which can be validly withdrawn whenever dictated by public interest or public welfare as in this case."
>
> "A license is merely a permit or privilege to do what otherwise would be unlawful, and is not a contract between the authority, federal, state, or municipal, granting it and the person to whom it is granted; neither is it property or a property right, nor does it create a vested right; nor is it taxation (37 C.J. 168). Thus, this Court held that the granting of license does not create irrevocable rights, neither is it property or property rights. (*People vs. Ong Tin*, 54 O.G. 7576). x x x"

We reiterated this pronouncement in *Felipe Ysmael, Jr. & Co., Inc. vs. Deputy Executive Secretary* [190 SCRA 673, 684 (1990)]:

> "x x x Timber licenses, permits and license agreements are the principal instruments by which the State regulates the utilization and disposition of forest resources to the end that public welfare is promoted. And it can hardly be gainsaid that they merely evidence a privilege granted by the State to qualified entities, and do not vest in the latter a permanent or irrevocable right to the particular concession area and the forest products therein. They may be validly amended, modified, replaced or rescinded by the Chief Executive when national interests so require. Thus, they are not deemed contracts within the purview of the due process of law clause. [See Sections 3(ee) and 20 of Pres. Decree No. 705, as amended. Also, *Tan v. Director of Forestry*, G.R. No. L-24548, October 27, 1983, 125 SCRA 302]."

Since timber licenses are not contracts, the non-impairment clause, which reads:

> "SEC. 10. No law impairing, the obligation of contracts shall be passed."

cannot be invoked.

Even assuming *arguendo* that an IFMA can be considered a contract or an agreement, we agree with the Office of the Solicitor General that the alleged property rights that may have arisen from it are not absolute.

All Filipino citizens are entitled, by right, to a balanced and healthful ecology as declared under Section 16,[29] Article II of the Constitution. This right carries with it the correlative duty to refrain from impairing the environment,[30] particularly our diminishing forest resources. To uphold and protect this right is an express policy of the State.[31] The DENR is the instrumentality of the State mandated to actualize this policy. It is "the primary government agency responsible for the conservation, management, development and proper use of the country's environment and natural resources, including those in reservation and watershed areas, and lands of the public domain, as well as the licensing and regulation of all natural resources as may be provided for by law in order to ensure equitable sharing of the benefits derived therefrom for the welfare of the present and future generations of Filipinos."[32]

Thus, private rights must yield when they come in conflict with this public policy and common interest. They must give way to the police or regulatory power of the State, in this case through the DENR, to ensure that the terms and conditions of existing laws, rules and regulations, and the IFMA itself are strictly and faithfully complied with.

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[29] SEC. 16. The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

[30] *Oposa v. Factoran, Jr.*, G.R. No. 101083, July 30, 1993, 224 SCRA 792, 805.

[31] *C&M Timber Corporation v. Alcala*, 339 Phil. 589, 603 (1997).

[32] Section 4, Executive Order No. 192 (The Reorganization Act of the Department of Environment and Natural Resources).

Respondent was not able to overturn by sufficient evidence the presumption of regularity in the performance of official functions of the Evaluation Team when the latter inspected, assessed, and reported the violations respondent committed under DAO No. 97-04 which eventually led to the cancellation of IFMA No. R-9-040.

It is worthy to note that petitioner followed regular procedure regarding the assessment of IFMA No. R-9-040. It gave notice of the evaluation on October 22, 1998 to be held within the period October 22-30, 1998. Respondent admitted through the affidavits of its President,[33] Operations Manager,[34] and workers[35] that an Evaluation Team arrived at the IFMA area on October 23, 1998. On October 23, 1998, prior to the actual assessment, a briefing was held on the conduct thereof in the presence of the IFMA representatives. On October 29, 1998, an exit conference with IFMA Operations Manager Inocencio Santiago was held at the CENRO Office, Pagadian City, where the results of the assessment were presented. That day, the DENR officials asked Santiago if he had any questions or comments on the assessment results and on the manner the evaluation was conducted, but the latter replied that he had none.

We do not understand why Santiago did not lift a finger or raise an objection to the assessment results, and only much later in his Affidavit executed almost ten months thereafter, or on August 12, 1999, to claim so belatedly that there was no notice given on October 22, 1998, that the Evaluation Team did not actually extensively inspect the IFMA area on October 23, 1998, and that there was no proper exit conference held on October 29, 1998. The same observation applies to respondent's President herself, who instead claimed that she vehemently opposed the appointment of then DENR Secretary Cerilles because he was bent on canceling the IFMA at all costs, prior to the cancellation of IFMA No. R-9-040.

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[33] CA *rollo*, pp. 121-122.

[34] *Id.* at 146.

[35] *Id.* at 117-120.

Besides, the detailed findings on the failure of respondent to implement its CDMP under its IFMA, as shown by the November 6, 1998 Report of the Evaluation Team and the Memoranda dated April 7, 1999 and April 21, 1999, together with all its attachments, belie respondent's claim that there was no actual evaluation and assessment that took place on October 23, 1998. That the Evaluation Report was dated November 6, 1998 does not conclusively show that the evaluation was actually held on that date. Neither was this properly proven by the Memoranda of RED Mendoza which stated that the evaluation was conducted on November 6, 1998, since RED Mendoza could have been merely misled into such an assumption because of the date of the Evaluation Report. The sweeping denials made by the IFMA representatives and their self-serving accomplishment reports cannot prevail over the actual inspection conducted, the results of which are shown by documentary proof.

Respondent, likewise, cannot insist that, pursuant to Section 35 of IFMA No. R-9-040, it should have been given notice of its breach of the IFMA and should have been given 30 days therefrom to remedy the breach. It is worthy to note that Section 35 uses the word "may" which must be interpreted as granting petitioner the discretion whether or not to give such notice and allow the option to remedy the breach. In this case, despite the lack of any specific recommendation from the Evaluation Team for the cancellation of the IFMA, DENR Secretary Cerilles deemed it proper to cancel the IFMA due to the extent and the gravity of respondent's violations.

It is also futile for respondent to claim that it is entitled to an arbitration under Section 36 of IFMA No. R-9-040 before the license agreement may be canceled. A reading of the said Section shows that the dispute should be based on the provisions of the IFMA to warrant a referral to arbitration of an irreconcilable conflict between the IFMA holder and the DENR Secretary. In this case, the cancellation was grounded on Section 26 of DAO No. 97-04, particularly respondent's failure to implement the approved CDMP and its failure to implement or adopt agreements made with communities and other relevant

sectors. The contrary notwithstanding, what remains is that respondent never refuted the findings of the Evaluation Team when given the opportunity to do so but waited until IFMA No. R-9-040 was already cancelled before it made its vigorous objections as to the conduct of the evaluation, harping only on its alleged right to due process.

Indeed, respondent was given the opportunity to contest the findings that caused the cancellation of its IFMA when it moved to reconsider the Order of cancellation and when it filed its appeal and motion for reconsideration before the OP.

> The essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. What the law prohibits is the absolute absence of the opportunity to be heard; hence, a party cannot feign denial of due process where he had been afforded the opportunity to present his side.[36]

WHEREFORE, the Decision dated October 18, 2001 and the Resolution dated July 24, 2003 of the Court of Appeals in CA-G.R. SP No. 59194 are *REVERSED* and *SET ASIDE*, and the Order dated June 7, 1999 of then DENR Secretary Antonio Cerilles, and the Resolutions of the Office of the President dated January 12, 2000 and May 8, 2000 affirming the said Order, are *REINSTATED* and *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

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

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[36] *Sarapat v. Salanga*, G.R. No. 154110, November 23, 2007, 538 SCRA 324, 333; *Audion Electric Co., Inc. v. NLRC*, 367 Phil. 620, 633 (1999).

SECOND DIVISION

[G.R. No. 161032. September 16, 2008]

ERWIN TULFO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and ATTY. CARLOS T. SO,** *respondents.*

[G.R. No. 161176. September 16, 2008]

SUSAN CAMBRI, REY SALAO, JOCELYN BARLIZO, and PHILIP PICHAY, *petitioners, vs.* **COURT OF APPEALS, PEOPLE OF THE PHILIPPINES, and CARLOS SO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; FREEDOM OF THE PRESS; EXERCISE OF THIS RIGHT COMES WITH AN EQUAL BURDEN OF RESPONSIBLE EXERCISE OF THAT RIGHT. — The Court has long respected the freedom of the press, and upheld the same when it came to commentaries made on public figures and matters of public interest. Even in cases wherein the freedom of the press was given greater weight over the rights of individuals, the Court, however, has stressed that such freedom is not absolute and unbounded. The exercise of this right or any right enshrined in the Bill of Rights, indeed, comes with an equal burden of responsible exercise of that right. The recognition of a right is not free license for the one claiming it to run roughshod over the rights of others. The *Journalist's Code of Ethics* adopted by the National Union of Journalists of the Philippines shows that the press recognizes that it has standards to follow in the exercise of press freedom; that this freedom carries duties and responsibilities. Art. I of said code states that journalists "recognize the duty to air the other side and the duty to correct substantive errors promptly." Art. VIII states that journalists "shall presume persons accused of crime of being innocent until proven otherwise."

2. ID.; ID.; ID.; ID.; EXERCISE OF PRESS FREEDOM MUST BE DONE CONSISTENT WITH GOOD FAITH AND

REASONABLE CARE; VIOLATION IN CASE AT BAR. — Reading more deeply into the case, the exercise of press freedom must be done "consistent with good faith and reasonable care." This was clearly abandoned by Tulfo when he wrote the subject articles. This is no case of mere error or honest mistake, but a case of a journalist abdicating his responsibility to verify his story and instead misinforming the public. Journalists may be allowed an adequate margin of error in the exercise of their profession, but this margin does not expand to cover every defamatory or injurious statement they may make in the furtherance of their profession, nor does this margin cover total abandonment of responsibility. *Borjal* may have expanded the protection of qualified privileged communication beyond the instances given in Art. 354 of the RPC, but this expansion does not cover Tulfo. The addition to the instances of qualified privileged communications is reproduced as follows: To reiterate, fair commentaries on matters of public interest are privileged and constitute a valid defense in an action for libel or slander. The doctrine of fair comment means that while in general every discreditable imputation publicly made is deemed false, because every man is presumed innocent until his guilt is judicially proved, and every false imputation is deemed malicious, nevertheless, when the discreditable imputation is directed against a public person in his public capacity, it is not necessarily actionable. **In order that such discreditable imputation to a public official may be actionable, it must either be a false allegation of fact or a comment based on a false supposition.** If the comment is an expression of opinion, based on established facts, then it is immaterial that the opinion happens to be mistaken, as long as it might reasonably be inferred from the facts. The expansion speaks of "fair commentaries on matters of public interest." While *Borjal* places fair commentaries within the scope of qualified privileged communication, the mere fact that the subject of the article is a public figure or a matter of public interest does not automatically exclude the author from liability. *Borjal* allows that for a discreditable imputation to a public official to be actionable, it must be a false allegation of fact or a comment based on a false supposition. As previously mentioned, the trial court found that the allegations against Atty. So were false and that Tulfo did not exert effort to verify the information before publishing his articles. x x x The prosecution showed that Tulfo could present no proof of his

allegations against Atty. So, only citing his one unnamed source. It is not demanded of him that he name his source. The confidentiality of sources and their importance to journalists are accepted and respected. What cannot be accepted are journalists making no efforts to verify the information given by a source, and using that unverified information to throw wild accusations and besmirch the name of possibly an innocent person. Journalists have a responsibility to report the truth, and in doing so must at least investigate their stories before publication, and be able to back up their stories with proof. The rumors and gossips spread by unnamed sources are not truth. Journalists are not storytellers or novelists who may just spin tales out of fevered imaginings, and pass them off as reality. There must be some foundation to their reports; these reports must be warranted by facts. *Jurado* also established that the journalist should exercise some degree of care even when writing about public officials. The case stated: Clearly, the public interest involved in freedom of speech and the individual interest of judges (and for that matter, all other public officials) in the maintenance of private honor and reputation need to be accommodated one to the other. And the point of adjustment or accommodation between these two legitimate interests is precisely found in the norm which requires those who, invoking freedom of speech, publish statements which are clearly defamatory to identifiable judges or other public officials to exercise *bona fide* care in ascertaining the truth of the statements they publish. The norm does *not* require that a journalist guarantee the truth of what he says or publishes. But the norm does prohibit the *reckless* disregard of private reputation by publishing or circulating *defamatory* statements without any *bona fide* effort to ascertain the truth thereof. That this norm represents the generally accepted point of balance or adjustment between the two interests involved is clear from a consideration of both the pertinent civil law norms and the Code of Ethics adopted by the journalism profession in the Philippines.

3. ID.; ID.; ID.; ID.; PRIVILEGED COMMUNICATION; ELEMENTS; NOT PRESENT IN CASE AT BAR. — Tulfo has clearly failed in this regard. His articles cannot even be considered as qualified privileged communication under the second paragraph of Art. 354 of the RPC which exempts from

the presumption of malice "a fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative, or other official proceedings which are not of confidential nature, or any statement, report, or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions." This particular provision has several elements which must be present in order for the report to be exempt from the presumption of malice. The provision can be dissected as follows: In order that the publication of a report of an official proceeding may be considered privileged, the following conditions must exist: (a) That it is a *fair* and *true* report of a judicial, legislative, or other official *proceedings* which are *not* of confidential nature, or of a *statement, report* or *speech* delivered in said proceedings, or of any other *act* performed by a public officer *in the exercise* of his functions; (b) That it is made in *good faith*; and (c) That it is *without* any comments or remarks. The articles clearly are not the fair and true reports contemplated by the provision. They provide no details of the acts committed by the subject, Atty. So. They are plain and simple baseless accusations, backed up by the word of one unnamed source. Good faith is lacking, as Tulfo failed to substantiate or even attempt to verify his story before publication. Tulfo goes even further to attack the character of the subject, Atty. So, even calling him a disgrace to his religion and the legal profession. As none of the elements of the second paragraph of Art. 354 of the RPC is present in Tulfo's articles, it cannot thus be argued that they are qualified privileged communications under the RPC.

4. CRIMINAL LAW; LIBEL; PERSONS RESPONSIBLE; APPLICATION IN CASE AT BAR. — The language of Art. 360 of the RPC is plain. It lists the persons responsible for libel: Art. 360. *Persons responsible*. — Any person who shall publish, exhibit, or cause the publication or exhibition of any defamation in writing or by similar means, shall be responsible for the same. The author or editor of a book or pamphlet, or the editor or business manager of a daily newspaper, magazine or serial publication, shall be responsible for the defamations contained therein to the same extent as if he were the author thereof. The claim that they had no participation does not shield them from liability. The provision in the RPC does not provide absence of participation as a defense, but

rather plainly and specifically states the responsibility of those involved in publishing newspapers and other periodicals. It is not a matter of whether or not they conspired in preparing and publishing the subject articles, because the law simply so states that they are liable as they were the author. Neither the publisher nor the editors can disclaim liability for libelous articles that appear on their paper by simply saying they had no participation in the preparation of the same. They cannot say that Tulfo was all alone in the publication of *Remate*, on which the subject articles appeared, when they themselves clearly hold positions of authority in the newspaper, or in the case of Pichay, as the president in the publishing company. As Tulfo cannot simply say that he is not liable because he did not fulfill his responsibility as a journalist, the other petitioners cannot simply say that they are not liable because they did not fulfill their responsibilities as editors and publishers. An editor or manager of a newspaper, who has active charge and control of its management, conduct, and policy, generally is held to be equally liable with the owner for the publication therein of a libelous article. On the theory that it is the duty of the editor or manager to know and control the contents of the paper, it is held that said person cannot evade responsibility by abandoning the duties to employees, so that it is immaterial whether or not the editor or manager knew the contents of the publication.

5. ID.; ID.; IMPOSABLE PENALTY. — Though we find petitioners guilty of the crime charged, the punishment must still be tempered with justice. Petitioners are to be punished for libel for the first time. They did not apply for probation to avoid service of sentence possibly in the belief that they have not committed any crime. In *Buatis, Jr. v. People*, the Court, in a criminal case for libel, removed the penalty of imprisonment and instead imposed a fine as penalty. In *Sazon v. Court of Appeals*, the accused was merely fined in lieu of the original penalty of imprisonment and fine. Freedom of expression as well as freedom of the press may not be unrestrained, but neither must it be reined in too harshly. In light of this, considering the necessity of a free press balanced with the necessity of a responsible press, the penalty of a fine of PhP 6,000 for each count of libel, with subsidiary imprisonment in case of insolvency, should suffice. Lastly, the responsibilities of the members of the press notwithstanding, the difficulties and

hazards they encounter in their line of work must also be taken into consideration.

6. CIVIL LAW; DAMAGES; ACTUAL DAMAGES; AWARD THEREOF CANNOT STAND WITHOUT PROOF OF ACTUAL LOSS. — The award of damages by the lower court must be modified. Art. 2199 of the Civil Code provides, "Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages." There was no showing of any pecuniary loss suffered by the complainant Atty. So. Without proof of actual loss that can be measured, the award of actual damages cannot stand.

7. ID.; ID.; MORAL DAMAGES; MAY BE RECOVERED IN CASES OF LIBEL, SLANDER OR ANY OTHER FORM OF DEFAMATION. — It was the articles of Tulfo that caused injury to Atty. So, and for that Atty. So deserves the award of moral damages. Justification for the award of moral damages is found in Art. 2219(7) of the Civil Code, which states that moral damages may be recovered in cases of libel, slander, or any other form of defamation. As the cases involved are criminal cases of libel, they fall squarely within the ambit of Art. 2219(7). Moral damages can be awarded even in the absence of actual or compensatory damages. The fact that no actual or compensatory damage was proven before the trial court does not adversely affect the offended party's right to recover moral damages. And while on the subject of moral damages, it may not be amiss to state at this juncture that Tulfo's libelous articles are abhorrent not only because of its vilifying and demeaning effect on Atty. So himself, but also because of their impact on members of his family, especially on the children and possibly even the children's children. The Court can perhaps take judicial notice that the sense of kinship runs deeply in a typical Filipino family, such that the whole family usually suffers or rejoices at the misfortune or good fortune, as the case may be, of any of its member. Accordingly, any attempt to dishonor or besmirch the name and reputation of the head of the family, as here, invariably puts the other members in a state of disrepute, distress, or anxiety. This reality adds an imperative dimension to the award of moral damages to the defamed party.

8. ID.; ID.; EXEMPLARY DAMAGES; CANNOT BE JUSTIFIED IN THE ABSENCE OF AGGRAVATING CIRCUMSTANCES IN THE COMMISSION OF THE LIBELOUS ACTS. — The award of exemplary damages, however, cannot be justified. Under Art. 2230 of the 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." No aggravating circumstances accompanied the commission of the libelous acts; thus, no exemplary damages can be awarded.

APPEARANCES OF COUNSEL

Franklin C. Sunga for S. Cambri, *et al.*
Oliver O. Lozano and *Vicente B. Chuidan* for E. Tulfo.

D E C I S I O N

VELASCO, JR., *J.*:

The freedom of the press is one of the cherished hallmarks of our democracy; but even as we strive to protect and respect the fourth estate, the freedom it enjoys must be balanced with responsibility. There is a fine line between freedom of expression and libel, and it falls on the courts to determine whether or not that line has been crossed.

The Facts

On the complaint of Atty. Carlos "Ding" So of the Bureau of Customs, four (4) separate informations were filed on September 8, 1999 with the Regional Trial Court in (RTC) Pasay City. These were assigned to Branch 112 and docketed as Criminal Case Nos. 99-1597 to 99-1600, and charged petitioners Erwin Tulfo, as author/writer, Susan Cambri, as managing editor, Rey Salao, as national editor, Jocelyn Barlizo, as city editor, and Philip Pichay, as president of the Carlo Publishing House, Inc., of the daily tabloid *Remate*, with the crime of libel in connection with the publication of the articles in the column

"Direct Hit" in the issues of May 11, 1999; May 12, 1999; May 19, 1999; and June 25, 1999.[1] The four informations read as follows:

Criminal Case No. 99-1598

That on or about the 11th day of May, 1999 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, being then the columnist, publisher and managing editor, respectively of "REMATE," a tabloid published daily and of general circulation in the Philippines, did then and there willfully, unlawfully and feloniously and with malicious intent to discredit or dishonor complainant, ATTY. CARLOS "DING" SO, and with the malicious intent of injuring and exposing said complainant to public hatred, contempt and ridicule, write and publish in the regular issue of said publication on May 11, 1999, its daily column "DIRECT HIT," quoted hereunder, to wit:

PINAKAMAYAMAN SA CUSTOMS

Ito palang si Atty. Ding So ng Intelligence Division ng Bureau of Customs and [sic] *pinakamayaman na yata na* government official *sa buong bansa sa pangungurakot lamang diyan sa* South Harbor.

Hindi matibag ang gagong attorney dahil malakas daw ito sa Iglesia ni Kristo.

Hoy, So! . . nakakahiya ka sa mga INC, ikaw na yata ang pinakagago at magnanakaw na miyembro nito.

Balita ko, malapit ka nang itiwalag ng nasabing simbahan dahil sa mga kalokohan mo.

Abangan bukas ang mga raket ni So sa BOC.

WHEREIN said complainant was indicated as an extortionist, a corrupt public official, smuggler and having illegally acquired wealth, all as already stated, with the object of destroying his reputation, discrediting and ridiculing him before the bar of public opinion.[2]

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[1] *Rollo* (G.R. No. 161032), p. 39.

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

Criminal Case No. 99-1599

That on or about the 12th day of May, 1999 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, being then the columnist, publisher and managing editor, respectively of "REMATE", a tabloid published daily and of general circulation in the Philippines, did then and there willfully, unlawfully and feloniously and with malicious intent to discredit or dishonor complainant, ATTY. CARLOS "DING" SO, and with the malicious intent of injuring and exposing said complainant to public hatred, contempt and ridicule, write and publish in the regular issue of said publication on May 12, 1999, in daily column "DIRECT HIT," quoted hereunder, to wit:

SI ATTY. SO NG BOC

"LINTEK" din sa pangungurakot itong Ding So ng Bureau of Customs Intelligence Unit *sa* South Harbor.

Daan-daang libong piso ang kinikita ng masiba at matakaw na si So sa mga importer *na ayaw ideklara ang totoong laman ng mga container para makaiwas sa pagbayad ng malaking customs duties at taxes.*

*Si So ang nagpapadrino sa mga pag-*inspection *ng mga* container *na ito. Siyempre-binibigyan din niya ng salapi yung ibang mga ahensiya para pumikit na lang at itikom ang kanilang nga [sic] bibig diyan sa mga buwayang taga BOC.*

Awang-awa ako sa ating gobyerno. Bankrupt *na nga, ninanakawan pa ng mga kawatan tulad ni So.*

Ewan ko ba rito kay Atty. So, bakit hindi na lang tumayo ng sarili niyang robbery-hold-up *gang para kumita ng mas mabilis.*

Hoy So.. hindi bagay sa iyo ang pagiging attorney . . . *Mas bagay sa iyo ang pagiging buwayang naka korbata at holdaper. Magnanakaw ka So*!!"

WHEREIN said complainant was indicated as an extortionist, a corrupt public official, smuggler and having illegally acquired wealth, all as already stated, with the object of destroying his reputation, discrediting and ridiculing him before the bar of public opinion.[3]

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

Criminal Case No. 99-1600

That on or about 19th day of May, 1999 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, being then the columnist, publisher and managing editor, respectively of "REMATE", a tabloid published daily and of general circulation in the Philippines, did then and there willfully, unlawfully and feloniously and with malicious intent to discredit or dishonor complainant, ATTY. CARLOS "DING" SO, and with the malicious intent of injuring and exposing said complainant to public hatred, contempt and ridicule, write and publish in the regular issue of said publication on May 19, 1999, in daily column "DIRECT HIT," quoted hereunder, to wit:

xxx xxx xxx

"*Tulad ni Atty. Ding So ng* Bureau of Customs Intelligence Division, *saksakan din ng lakas itong si Daniel Aquino ng* Presidential Anti-Smuggling Unit *na nakatalaga sa* South Harbor.

Tulad ni So, magnanakaw na tunay itong si Aquino.

Panghihingi ng pera sa mga brokers, *ang lakad nito.*

Pag hindi nagbigay ng pera ang mga brokers, *maiipit ang pagre-*release *ng kanilang kargamento*."

WHEREIN said complainant was indicated as an extortionist, a corrupt public official, smuggler and having illegally acquired wealth, all as already stated, with the object of destroying his reputation, discrediting and ridiculing him before the bar of public opinion.[4]

Criminal Case No. 99-1597

That on or about 25th day of June, 1999 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, being then the columnist, publisher and managing editor, respectively of "REMATE," a tabloid published daily and of general circulation in the Philippines, did then and there willfully, unlawfully and feloniously and with malicious intent to discredit or dishonor complainant, ATTY. CARLOS "DING" T. SO,

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

and with the malicious intent of injuring and exposing said complainant to public hatred, contempt and ridicule, write and publish in the regular issue of said publication on June 25, 1999, its daily column "DIRECT HIT," quoted hereunder, to wit:

x x x x x x x x x

Nagfile ng ₱10 M *na libel suit itong si Atty. Carlos So ng* Bureau of Customs *laban sa inyong lingkod at ilang opisyales ng Remate sa Pasay City Court. Nagalit itong tarantadong si Atty. So dahil binanatan ko siya at inexpose ang kagaguhan niya sa BOC.*

Hoy, So . . . dagdagan mo pa ang pagnanakaw mo dahil hindi kita tatantanan. Buhay ka pa sinusunog na ang iyong kaluluwa sa impyerno.

WHEREIN said complainant was indicated as an extortionist, a corrupt public official, smuggler and having illegally acquired wealth, all as already stated, with the object of destroying his reputation, discrediting and ridiculing him before the bar of public opinion.[5]

On November 3, 1999, Tulfo, Salao, and Cambri were arraigned, while Barlizo and Pichay were arraigned on December 15, 1999. They all pleaded not guilty to the offenses charged.

At pre-trial, the following were admitted by petitioners: (1) that during the four dates of the publication of the questioned articles, the complaining witness was not assigned at South Harbor; (2) that the accused and complaining witness did not know each other during all the time material to the four dates of publication; (3) that *Remate* is a newspaper/tabloid of general circulation in the Philippines; (4) the existence and genuineness of the *Remate* newspaper; (5) the column therein and its authorship and the alleged libelous statement as well as the editorial post containing the designated positions of the other accused; and (6) the prosecution's qualified admission that it is the duty of media persons to expose corruption.[6]

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[5] *Id.* at 41-42.

[6] *Id.* at 42.

The prosecution presented four witnesses, namely: Oscar M. Ablan, Atty. James Fortes, Jr., Gladys Fontanilla, and complainant Atty. So. The prosecution presented documentary evidence as well.

Ablan testified that he had read the four columns written by Tulfo, and that the articles were untrue because he had known Atty. So since 1992 and had worked with him in the Customs Intelligence and Investigation Service Division of the Bureau of Customs. He further testified that upon reading the articles written by Tulfo, he concluded that they referred to Atty. So because the subject articles identified "Atty. Carlos" as "Atty. 'Ding' So" of the Customs Intelligence and Investigation Service Division, Bureau of Customs and there was only one Atty. Carlos "Ding" So of the Bureau of Customs.[7]

Fontanilla, Records Officer I of the Bureau of Customs, testified that she issued a certification in connection with these cases upon the request of Atty. So.[8] This certification stated that as per records available in her office, there was only one employee by the name of "Atty. Carlos T. So" who was also known as "Atty. Ding So" in the Intelligence Division of the Customs Intelligence and Investigation Service or in the entire Bureau of Customs.[9]

Atty. Fortes testified that he knew Atty. So as a fellow member of the *Iglesia Ni Kristo* and as a lawyer, and that having read the articles of Tulfo, he believed that these were untrue, as he knew Atty. Carlos "Ding" So.[10]

Atty. So testified that he was the private complainant in these consolidated cases. He further testified that he is also known as Atty. "Ding" So, that he had been connected with the Bureau of Customs since October 1981, and that he was assigned as Officer-in-Charge (OIC) of the Customs Intelligence

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[7] *Id.* at 43.

[8] *Id.* at 44.

[9] *Rollo* (G.R. No. 161176), p. 88.

[10] *Rollo* (G.R. No. 161032), p. 44.

and Investigation Service Division at the Manila International Container Port since December 27, 1999. He executed two complaint-affidavits, one dated June 4, 1999 and the other dated July 5, 1999, for Criminal Case Nos. 99-1598 to 99-1600. Prior to this, he also filed 14 cases of libel against Raffy Tulfo, brother of petitioner Erwin Tulfo. He testified that petitioner Tulfo's act of imputing upon him criminality, assailing his honesty and integrity, caused him dishonor, discredit, and contempt among his co-members in the legal profession, co-officers of the Armed Forces of the Philippines, co-members and peers in the *Iglesia ni Kristo*, his co-officers and employees and superior officers in the Bureau of Customs, and among ordinary persons who had read said articles. He said it also caused him and his family sleepless nights, mental anguish, wounded feelings, intrigues, and embarrassment. He further testified that he included in his complaint for libel the officers of *Remate* such as the publisher, managing editor, city editor, and national editor because under Article 360 of the Revised Penal Code (RPC), they are equally responsible and liable to the same extent as if they were the author of the articles. He also testified that "Ding" is his nickname and that he is the only person in the entire Bureau of Customs who goes by the name of Atty. Carlos T. So or Atty. Carlos "Ding" So.[11]

In his defense, petitioner Tulfo testified that he did not write the subject articles with malice, that he neither knew Atty. So nor met him before the publication of the articles. He testified that his criticism of a certain Atty. So of the South Harbor was not directed against the complainant, but against a person by the name of Atty. "Ding" So at the South Harbor. Tulfo claimed that it was the practice of certain people to use other people's names to advance their corrupt practices. He also claimed that his articles had neither discredited nor dishonored the complainant because as per his source in the Bureau of Customs, Atty. So had been promoted. He further testified that he did not do any research on Atty. So before the subject articles, because as a columnist, he

[11] *Id.* at 45-46.

had to rely on his source, and that he had several sources in the Bureau of Customs, particularly in the South Harbor.[12]

Petitioner Salao testified that he came to know Atty. Carlos "Ding" So when the latter filed a case against them. He testified that he is an employee of Carlo Publishing House, Inc.; that he was designated as the national editor of the newspaper *Remate* since December 1999; that the duties of the position are to edit, evaluate, encode, and supervise layout of the news from the provinces; and that Tulfo was under the supervision of Rey Briones, Vice President for Editorial and Head of the Editorial Division. Salao further testified that he had no participation in the subject articles of Tulfo, nor had he anything to do with the latter's column.[13]

Petitioner Cambri, managing editor of *Remate,* testified that she classifies the news articles written by the reporters, and that in the Editorial Division, the officers are herself; Briones, her supervisor; Lydia Bueno, as news and city editor; and Salao as national editor. She testified that petitioner Barlizo is her subordinate, whose duties and responsibilities are the typesetting, editing, and layout of the page assigned to her, the Metro page. She further testified that she had no participation in the writing, editing, or publication of the column of Tulfo because the column was not edited. She claimed that none among her co-accused from the *Remate* newspaper edited the columns of Tulfo, that the publication and editing of the subject articles were the responsibility of Tulfo, and that he was given blanket authority to write what he wanted to write. She also testified that the page wherein Tulfo's column appeared was supervised by Bueno as news editor.[14]

Petitioner Pichay testified that he had been the president of Carlo Publishing House, Inc. since December 1998. He testified that the company practice was to have the columnists report directly to the vice-president of editorials, that the columnists

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[12] *Id.* at 46-47.

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

[14] *Id.* at 49-50.

were given autonomy on their columns, and that the vice-president for editorials is the one who would decide what articles are to be published and what are not. He further testified that Tulfo was already a regular contributor.[15]

The Ruling of the RTC

In a Decision dated November 17, 2000, the RTC found petitioners guilty of the crime of Libel. The dispositive portion reads as follows:

> WHEREFORE, the Court finds the accused ERWIN TULFO, SUSAN CAMBRI, REY SALAO, JOCELYN BARLIZO and PHILIP PICHAY guilty beyond reasonable doubt of four (4) counts of the crime of LIBEL, as defined in Article 353 of the Revised Penal Code, and penalized by *prision correccional* in its minimum and medium periods, or a fine ranging from ₱200.00 Pesos to ₱6,000.00 Pesos or both, under Article 355 of the same Code.
>
> Applying the Indeterminate Sentence Law, the Court hereby sentences EACH of the accused to suffer imprisonment of SIX (6) MONTHS of *arresto mayor*, as minimum, to FOUR (4) YEARS and TWO (2) MONTHS of *prision correccional*, as maximum, for EACH count with accessory penalties provided by law.
>
> Considering that the accused Erwin Tulfo, Susan Cambri, Rey Salao, Jocelyn Barlizo and Philip Pichay wrote and published the four (4) defamatory articles with reckless disregard, being, in the mind of the Court, of whether it was false or not, the said articles libelous per se, they are hereby ordered to pay, jointly and severally, the sum of EIGHT HUNDRED THOUSAND (₱800,000.00) PESOS, as actual damages, the sum of ONE MILLION PESOS (₱1,000,000.00), as moral damages, and an additional amount of FIVE HUNDRED THOUSAND PESOS (₱500,000.00), by way of exemplary damages, all with subsidiary imprisonment, in case of insolvency, and to pay the costs.
>
> SO ORDERED.[16]

The Ruling of the Court of Appeals

Before the Court of Appeals (CA), Tulfo assigned the following errors:

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[15] *Id*. at 50-51.

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

1. THE LOWER COURT ERRED IN IGNORING THE UNREBUTTED TESTIMONY OF THE APPELLANT THAT HE DID NOT CRITICIZE THE PRIVATE COMPLAINANT WORKING AT THE NAIA. HE CRITICIZED ANOTHER PERSON WORKING AT THE SOUTH HARBOR. HENCE, THE ELEMENT OF IDENTITY IS LACKING.
2. THE LOWER COURT ERRED IN IGNORING THE LACK OF THE ESSENTIAL ELEMENT OF DISCREDIT OR DISHONOR, AS DEFINED BY JURISPRUDENCE.
3. THERE WAS NO MALICE AGAINST THE PRIVATE COMPLAINANT ATTY. CARLOS "DING" SO.[17]

His co-accused assigned the following errors:

A

The trial court seriously erred in holding accused Susan Cambri, Rey Salao, Jocelyn Barlizo and Philip Pichay liable for the defamations contained in the questioned articles despite the fact that the trial court did not have any finding as to their participation in the writing, editing and/or publication of the questioned articles.

B

The trial court seriously erred in concluding that libel was committed by all of the accused on the basis of its finding that the elements of libel have been satisfactorily established by evidence on record.

C

The trial court seriously erred in considering complainant to be the one referred to by Erwin Tulfo in his articles in question.[18]

In a Decision[19] dated June 17, 2003, the Eighth Division of the CA dismissed the appeal and affirmed the judgment of the trial court. A motion for reconsideration dated June 30, 2003 was filed by Tulfo, while the rest of his co-accused filed a motion for reconsideration dated July 2, 2003. In a Resolution

[17] *Id.* at 52.

[18] *Id.* at 53.

[19] Penned by Associate Justice Mercedes Gozo-Dadole and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Rosemari D. Carandang.

dated December 11, 2003, both motions were denied for lack of merit.[20]

Petitions for Review on *Certiorari* under Rule 45

Tulfo brought this petition docketed as G.R. No. 161032, seeking to reverse the Decision of the CA in CA-G.R. CR No. 25318 which affirmed the decision of the RTC. Petitioners Cambri, Salao, Barlizo, and Pichay brought a similar petition docketed as G.R. No. 161176, seeking the nullification of the same CA decision.

In a Resolution dated March 15, 2004, the two cases were consolidated since both cases arise from the same set of facts, involve the same parties, assail the same decision of the CA, and seek identical reliefs.[21]

Assignment of Errors

Petitioner Tulfo submitted the following assignment of errors:

I

Assuming that the Prosecution presented credible and relevant evidence, the Honorable CA erred in not declaring the assailed articles as privileged; the CA erred in concluding that malice in law exists by the court's having incorrectly reasoned out that malice was presumed in the instant case.

II

Even assuming *arguendo* that the articles complained of are not privileged, the lower court, nonetheless, committed gross error as defined by the provisions of Section 6 of Rule 45 by its misappreciation of the evidence presented on matters substantial and material to the guilt or innocence of the petitioner.[22]

Petitioners Cambri, Salao, Barlizo, and Pichay submitted their own assignment of errors, as follows:

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[20] *Rollo* (G.R. No. 161032), p. 68.

[21] *Rollo* (G.R. No. 161176), p. 168.

[22] *Rollo* (G.R. No. 161032), pp. 16-17.

A - The Court of Appeals Seriously Erred In Its Application of Article 360 Of The Revised Penal Code By Holding Cambri, Salao And Barlizo Liable For The Defamatory Articles In The May 11, 12, 19 And June 25, 1999 Issues Of Remate Simply Because They Were Managing Editor, National Editor And City Editor Respectively Of Remate And By Holding Pichay Also Liable For Libel Merely Because He Was The President Of Carlo Publishing House, Inc. Without Taking Into Account The Unrebutted Evidence That Petitioners Had No Participation In The Editing Or Publication Of The Defamatory Articles In Question.

B - The Court Of Appeals Committed Grave Abuse Of Discretion In Manifestly Disregarding The Unrebutted Evidence That Petitioners Had No Participation In The Editing Or Publication Of The Defamatory Articles In Question.

C - The Court Of Appeals Seriously Misappreciated The Evidence In Holding That The Person Referred To In The Published Articles Was Private Complainant Atty. Carlos So.[23]

Our Ruling

The petitions must be dismissed.

The assignment of errors of petitioner Tulfo shall be discussed first.

In his appeal, Tulfo claims that the CA erred in not applying the ruling in *Borjal v. Court of Appeals*.[24] In essence, he argues that the subject articles fall under "qualifiedly privileged communication" under *Borjal* and that the presumption of malice in Art. 354 of the RPC does not apply. He argues that it is the burden of the prosecution to prove malice in fact.

This case must be distinguished from *Borjal* on several points, the *first* being that *Borjal* stemmed from a civil action for damages based on libel, and was not a criminal case. *Second*, the ruling in *Borjal* was that there was no sufficient identification of the complainant, which shall be differentiated from the present case in discussing the second assignment of error of Tulfo.

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[23] *Rollo* (G.R. No. 161176), p. 20.

[24] G.R. No. 126466, January 14, 1999, 301 SCRA 1.

Third, the subject in *Borjal* was a private citizen, whereas in the present case, the subject is a public official. Finally, it was held in *Borjal* that the articles written by Art Borjal were "fair commentaries on matters of public interest."[25] It shall be discussed and has yet to be determined whether or not the articles fall under the category of "fair commentaries."

In passing, it must be noted that the defense of Tulfo's articles being qualifiedly privileged communication is raised for the first time in the present petition, and this particular issue was never brought before either the RTC or the CA. Thus, neither the RTC nor the CA had a chance to properly consider and evaluate this defense. Tulfo now draws parallels between his case and that of Art Borjal, and argues that the prosecution should have proved malice in fact, and it was error on the part of the trial and appellate courts to use the presumption of malice in law in Art. 354 of the RPC. This lays an unusual burden on the part of the prosecution, the RTC, and the CA to refute a defense that Tulfo had never raised before them. Whether or not the subject articles are privileged communications must first be established by the defense, which it failed to do at the level of the RTC and the CA. Even so, it shall be dealt with now, considering that an appeal in a criminal proceeding throws the whole case open for review.

There is no question of the status of Atty. So as a public official, who served as the OIC of the Bureau of Customs Intelligence and Investigation Service at the Ninoy Aquino International Airport (NAIA) at the time of the printing of the allegedly libelous articles. Likewise, it cannot be refuted that the goings-on at the Bureau of Customs, a government agency, are matters of public interest. It is now a matter of establishing whether the articles of Tulfo are protected as qualified privileged communication or are defamatory and written with malice, for which he would be liable.

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[25] *Id.* at 22.

Freedom of the Press *v.* Responsibility of the Press

The Court has long respected the freedom of the press, and upheld the same when it came to commentaries made on public figures and matters of public interest. Even in cases wherein the freedom of the press was given greater weight over the rights of individuals, the Court, however, has stressed that such freedom is not absolute and unbounded. The exercise of this right or any right enshrined in the Bill of Rights, indeed, comes with an equal burden of responsible exercise of that right. The recognition of a right is not free license for the one claiming it to run roughshod over the rights of others.

The *Journalist's Code of Ethics* adopted by the National Union of Journalists of the Philippines shows that the press recognizes that it has standards to follow in the exercise of press freedom; that this freedom carries duties and responsibilities. Art. I of said code states that journalists "recognize the duty to air the other side and the duty to correct substantive errors promptly." Art. VIII states that journalists "shall presume persons accused of crime of being innocent until proven otherwise."

In the present case, it cannot be said that Tulfo followed the *Journalist's Code of Ethics* and exercised his journalistic freedom responsibly.

In his series of articles, he targeted one Atty. "Ding" So of the Bureau of Customs as being involved in criminal activities, and was using his public position for personal gain. He went even further than that, and called Atty. So an embarrassment to his religion, saying "*ikaw na yata ang pinakagago at magnanakaw sa miyembro nito.*"[26] He accused Atty. So of stealing from the government with his alleged corrupt activities.[27] And when Atty. So filed a libel suit against him, Tulfo wrote another article, challenging Atty. So, saying, "*Nagalit itong tarantadong si* Atty. So *dahil binabantayan ko siya at in-*expose *ang kagaguhan niya sa* [Bureau of Customs]."[28]

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[26] *Rollo* (G.R. No. 161032), p. 10.

[27] *Id.* at 11.

[28] *Id.* at 12.

In his testimony, Tulfo admitted that he did not personally know Atty. So, and had neither met nor known him prior to the publication of the subject articles. He also admitted that he did not conduct a more in-depth research of his allegations before he published them, and relied only on his source at the Bureau of Customs.

In his defense before the trial court, Tulfo claimed knowledge of people using the names of others for personal gain, and even stated that he had been the victim of such a practice. He argued then that it may have been someone else using the name of Atty. So for corrupt practices at the South Harbor, and this person was the target of his articles. This argument weakens his case further, for even with the knowledge that he may be in error, even knowing of the possibility that someone else may have used Atty. So's name, as Tulfo surmised, he made no effort to verify the information given by his source or even to ascertain the identity of the person he was accusing.

The trial court found Tulfo's accusations against Atty. So to be false, but Tulfo argues that the falsity of contents of articles does not affect their privileged character. It may be that the falsity of the articles does not prove malice. Neither did *Borjal* give journalists *carte blanche* with regard to their publications. It cannot be said that a false article accusing a public figure would always be covered by the mantle of qualified privileged communication. The portion of *Borjal* cited by Tulfo must be scrutinized further:

> Even assuming that the contents of the articles are false, mere error, inaccuracy or even falsity alone does not prove actual malice. Errors or misstatements are inevitable in any scheme of truly free expression and debate. **Consistent with good faith and reasonable care**, the press should not be held to account, to a point of suppression, for honest mistakes or imperfections in the choice of language. There must be some room for misstatement of fact as well as for misjudgment. Only by giving them much leeway and tolerance can they courageously and effectively function as critical agencies in our democracy. In *Bulletin Publishing Corp. v. Noel* we held –

> A newspaper especially one national in reach and coverage, should be free to report on events and developments in which the public has a legitimate interest with minimum fear of being hauled to court by one group or another on criminal or civil charges for libel, so long as the newspaper respects and keeps within the standards of morality and civility prevailing within the general community.

To avoid the self-censorship that would necessarily accompany strict liability for erroneous statements, rules governing liability for injury to reputation are required to allow an adequate margin of error by protecting some inaccuracies. It is for the same reason that the *New York Times* doctrine requires that liability for defamation of a public official or public figure may not be imposed in the absence of proof of "actual malice" on the part of the person making the libelous statement.[29] (Emphasis supplied.)

Reading more deeply into the case, the exercise of press freedom must be done "consistent with good faith and reasonable care." This was clearly abandoned by Tulfo when he wrote the subject articles. This is no case of mere error or honest mistake, but a case of a journalist abdicating his responsibility to verify his story and instead misinforming the public. Journalists may be allowed an adequate margin of error in the exercise of their profession, but this margin does not expand to cover every defamatory or injurious statement they may make in the furtherance of their profession, nor does this margin cover total abandonment of responsibility.

Borjal may have expanded the protection of qualified privileged communication beyond the instances given in Art. 354 of the RPC, but this expansion does not cover Tulfo. The addition to the instances of qualified privileged communications is reproduced as follows:

> To reiterate, fair commentaries on matters of public interest are privileged and constitute a valid defense in an action for libel or slander. The doctrine of fair comment means that while in general every discreditable imputation publicly made is deemed false, because every man is presumed innocent until his guilt is judicially proved,

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[29] *Supra* note 24, at 30-31.

and every false imputation is deemed malicious, nevertheless, when the discreditable imputation is directed against a public person in his public capacity, it is not necessarily actionable. **In order that such discreditable imputation to a public official may be actionable, it must either be a false allegation of fact or a comment based on a false supposition.** If the comment is an expression of opinion, based on established facts, then it is immaterial that the opinion happens to be mistaken, as long as it might reasonably be inferred from the facts.[30] (Emphasis supplied.)

The expansion speaks of "fair commentaries on matters of public interest." While *Borjal* places fair commentaries within the scope of qualified privileged communication, the mere fact that the subject of the article is a public figure or a matter of public interest does not automatically exclude the author from liability. *Borjal* allows that for a discreditable imputation to a public official to be actionable, it must be a false allegation of fact or a comment based on a false supposition. As previously mentioned, the trial court found that the allegations against Atty. So were false and that Tulfo did not exert effort to verify the information before publishing his articles.

Tulfo offered no proof for his accusations. He claimed to have a source in the Bureau of Customs and relied only on this source for his columns, but did no further research on his story. The records of the case are bereft of any showing that Atty. So was indeed the villain Tulfo pictured him to be. Tulfo's articles related no specific details or acts committed to prove Atty. So was indeed a corrupt public official. These columns were unsubstantiated attacks on Atty. So, and cannot be countenanced as being privileged simply because the target was a public official. Although wider latitude is given to defamatory utterances against public officials in connection with or relevant to their performance of official duties, or against public officials in relation to matters of public interest involving them, such defamatory utterances do not automatically fall within the ambit of constitutionally protected speech.[31] Journalists still bear the burden of writing responsibly when practicing their

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[30] *Borjal*, *supra* at 23.

[31] *Brillante v. Court of Appeals*, G.R. Nos. 118757 & 121571, October 19, 2004, 440 SCRA 541, 574.

profession, even when writing about public figures or matters of public interest. As held in *In Re: Emil P. Jurado*:

> Surely it cannot be postulated that the law protects a journalist who deliberately prints lies or distorts the truth; or that a newsman may ecape liability who publishes derogatory or defamatory allegations against a person or entity, but recognizes no obligation *bona fide* to establish beforehand the factual basis of such imputations and refuses to submit proof thereof when challenged to do so. It outrages all notions of fair play and due process, and reduces to uselessness all the injunctions of the Journalists' Code of Ethics to allow a newsman, with all the potential of his profession to influence popular belief and shape public opinion, to make shameful and offensive charges destructive of personal or institutional honor and repute, and when called upon to justify the same, cavalierly beg off by claiming that to do so would compromise his sources and demanding acceptance of his word for the reliability of those sources.[32]

The prosecution showed that Tulfo could present no proof of his allegations against Atty. So, only citing his one unnamed source. It is not demanded of him that he name his source. The confidentiality of sources and their importance to journalists are accepted and respected. What cannot be accepted are journalists making no efforts to verify the information given by a source, and using that unverified information to throw wild accusations and besmirch the name of possibly an innocent person. Journalists have a responsibility to report the truth, and in doing so must at least investigate their stories before publication, and be able to back up their stories with proof. The rumors and gossips spread by unnamed sources are not truth. Journalists are not storytellers or novelists who may just spin tales out of fevered imaginings, and pass them off as reality. There must be some foundation to their reports; these reports must be warranted by facts.

Jurado also established that the journalist should exercise some degree of care even when writing about public officials. The case stated:

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[32] A.M. No. 93-2-037 SC, April 6, 1995, 243 SCRA 299, 332.

Clearly, the public interest involved in freedom of speech and the individual interest of judges (and for that matter, all other public officials) in the maintenance of private honor and reputation need to be accommodated one to the other. And the point of adjustment or accommodation between these two legitimate interests is precisely found in the norm which requires those who, invoking freedom of speech, publish statements which are clearly defamatory to identifiable judges or other public officials to exercise *bona fide* care in ascertaining the truth of the statements they publish. The norm does *not* require that a journalist guarantee the truth of what he says or publishes. But the norm does prohibit the *reckless* disregard of private reputation by publishing or circulating *defamatory* statements without any *bona fide* effort to ascertain the truth thereof. That this norm represents the generally accepted point of balance or adjustment between the two interests involved is clear from a consideration of both the pertinent civil law norms and the Code of Ethics adopted by the journalism profession in the Philippines.[33]

Tulfo has clearly failed in this regard. His articles cannot even be considered as qualified privileged communication under the second paragraph of Art. 354 of the RPC which exempts from the presumption of malice "a fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative, or other official proceedings which are not of confidential nature, or any statement, report, or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions." This particular provision has several elements which must be present in order for the report to be exempt from the presumption of malice. The provision can be dissected as follows:

In order that the publication of a report of an official proceeding may be considered privileged, the following conditions must exist:

(a) That it is a *fair* and *true* report of a judicial, legislative, or other official *proceedings* which are *not* of confidential nature, or of a *statement, report* or *speech* delivered in said proceedings, or of any other *act* performed by a public officer *in the exercise* of his functions;

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[33] *Id.* at 327.

(b) That it is made in *good faith;* and

(c) That it is *without* any comments or remarks.[34]

The articles clearly are not the fair and true reports contemplated by the provision. They provide no details of the acts committed by the subject, Atty. So. They are plain and simple baseless accusations, backed up by the word of one unnamed source. Good faith is lacking, as Tulfo failed to substantiate or even attempt to verify his story before publication. Tulfo goes even further to attack the character of the subject, Atty. So, even calling him a disgrace to his religion and the legal profession. As none of the elements of the second paragraph of Art. 354 of the RPC is present in Tulfo's articles, it cannot thus be argued that they are qualified privileged communications under the RPC.

Breaking down the provision further, looking at the terms "fair" and "true," Tulfo's articles do not meet the standard. "Fair" is defined as "having the qualities of impartiality and honesty."[35] "True" is defined as "conformable to fact; correct; exact; actual; genuine; honest."[36] Tulfo failed to satisfy these requirements, as he did not do research before making his allegations, and it has been shown that these allegations were baseless. The articles are not "fair and true reports," but merely wild accusations.

Even assuming *arguendo* that the subject articles are covered by the shield of qualified privileged communication, this would still not protect Tulfo.

In claiming that his articles were covered by qualified privileged communication, Tulfo argues that the presumption of malice in law under Art. 354 of the RPC is no longer present, placing upon the prosecution the burden of proving malice in fact. He then argues that for him to be liable, there should have been

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[34] 2 Reyes, Luis B., *THE REVISED PENAL CODE* 858 (13th ed., 1993).

[35] BLACK'S *LAW DICTIONARY* 595 (6th ed., 1990).

[36] *Id.* at 1508.

evidence that he was motivated by ill will or spite in writing the subject articles.

The test to be followed is that laid down in *New York Times Co. v. Sullivan,*[37] and reiterated in *Flor v. People,* which should be to determine whether the defamatory statement was made with actual malice, that is, with knowledge that it was false or with reckless disregard of whether it was false or not.[38]

The trial court found that Tulfo had in fact written and published the subject articles with reckless disregard of whether the same were false or not, as proven by the prosecution. There was the finding that Tulfo failed to verify the information on which he based his writings, and that the defense presented no evidence to show that the accusations against Atty. So were true. Tulfo cannot argue that because he did not know the subject, Atty. So, personally, there was no malice attendant in his articles. The test laid down is the "reckless disregard" test, and Tulfo has failed to meet that test.

The fact that Tulfo published another article lambasting respondent Atty. So can be considered as further evidence of malice, as held in *U.S. vs. Montalvo,*[39] wherein publication after the commencement of an action was taken as further evidence of a malicious design to injure the victim. Tulfo did not relent nor did he pause to consider his actions, but went on to continue defaming respondent Atty. So. This is a clear indication of his intent to malign Atty. So, no matter the cost, and is proof of malice.

Leaving the discussion of qualified privileged communication, Tulfo also argues that the lower court misappreciated the evidence presented as to the identity of the complainant: that Tulfo wrote about Atty. "Ding" So, an official of the Bureau of Customs who worked at the South Harbor, whereas the complainant was Atty. Carlos So who worked at the NAIA. He claims that

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[37] 376 US 254, 11 L ed. 2nd 686.

[38] G.R. No. 139987, March 31, 2005, 454 SCRA 440, 456.

[39] 29 Phil. 595 (1915).

there has arisen a cloud of doubt as to the identity of the real party referred to in the articles.

This argument is patently without merit.

The prosecution was able to present the testimonies of two other witnesses who identified Atty. So from Tulfo's articles. There is the certification that there is only one Atty. So in the Bureau of Customs. And most damning to Tulfo's case is the last column he wrote on the matter, referring to the libel suit against him by Atty. So of the Bureau of Customs. In this article, Tulfo launched further attacks against Atty. So, stating that the libel case was due to the exposés Tulfo had written on the corrupt acts committed by Atty. So in the Bureau of Customs. This last article is an admission on the part of Tulfo that Atty. So was in fact the target of his attacks. He cannot now point to a putative "Atty. Ding So" at South Harbor, or someone else using the name of Atty. So as the real subject of his attacks, when he did not investigate the existence or non-existence of an Atty. So at South Harbor, nor investigate the alleged corrupt acts of Atty. So of the Bureau of Customs. Tulfo cannot say that there is doubt as to the identity of the Atty. So referred to in his articles, when all the evidence points to one Atty. So, the complainant in the present case.

Having discussed the issue of qualified privileged communication and the matter of the identity of the person referred to in the subject articles, there remains the petition of the editors and president of *Remate*, the paper on which the subject articles appeared.

In sum, petitioners Cambri, Salao, Barlizo, and Pichay all claim that they had no participation in the editing or writing of the subject articles, and are thus not liable.

The argument must fail.

The language of Art. 360 of the RPC is plain. It lists the persons responsible for libel:

Art. 360. *Persons responsible.*—Any person who shall publish, exhibit, or cause the publication or exhibition of any defamation in writing or by similar means, shall be responsible for the same.

The author or editor of a book or pamphlet, or the editor or business manager of a daily newspaper, magazine or serial publication, shall be responsible for the defamations contained therein to the same extent as if he were the author thereof.

The claim that they had no participation does not shield them from liability. The provision in the RPC does not provide absence of participation as a defense, but rather plainly and specifically states the responsibility of those involved in publishing newspapers and other periodicals. It is not a matter of whether or not they conspired in preparing and publishing the subject articles, because the law simply so states that they are liable as they were the author.

Neither the publisher nor the editors can disclaim liability for libelous articles that appear on their paper by simply saying they had no participation in the preparation of the same. They cannot say that Tulfo was all alone in the publication of *Remate*, on which the subject articles appeared, when they themselves clearly hold positions of authority in the newspaper, or in the case of Pichay, as the president in the publishing company.

As Tulfo cannot simply say that he is not liable because he did not fulfill his responsibility as a journalist, the other petitioners cannot simply say that they are not liable because they did not fulfill their responsibilities as editors and publishers. An editor or manager of a newspaper, who has active charge and control of its management, conduct, and policy, generally is held to be equally liable with the owner for the publication therein of a libelous article.[40] On the theory that it is the duty of the editor or manager to know and control the contents of the paper,[41] it is held that said person cannot evade responsibility by abandoning

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[40] *Smith v. Utley*, 92 Wis 133, 65 NW 744; *Faulkner v. Martin*, 133 NJL 605, 45 A2d 596; *World Pub. Co. v. Minahan*, 70 Okla 107, 173 P 815.

[41] *Faulkner, supra*.

the duties to employees,[42] so that it is immaterial whether or not the editor or manager knew the contents of the publication.[43] In *Fermin v. People of the Philippines*,[44] the Court held that the publisher could not escape liability by claiming lack of participation in the preparation and publication of a libelous article. The Court cited *U.S. v. Ocampo*, stating the rationale for holding the persons enumerated in Art. 360 of the RPC criminally liable, and it is worth reiterating:

> According to the legal doctrines and jurisprudence of the United States, the printer of a publication containing libelous matter is liable for the same by reason of his direct connection therewith and his cognizance of the contents thereof. With regard to a publication in which a libel is printed, not only is the publisher but also all other persons who in any way participate in or have any connection with its publication are liable as publishers.
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> In the case of *State vs. Mason* (26 L.R.A., 779; 26 Oreg., 273, 46 Am. St. Rep., 629), the question of the responsibility of the manager or proprietor of a newspaper was discussed. The court said, among other things (pp. 782, 783):
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> "The question then recurs as to whether the manager or proprietor of a newspaper can escape criminal responsibility solely on the ground that the libelous article was published without his knowledge or consent. When a libel is published in a newspaper, such fact alone is sufficient evidence *prima facie* to charge the manager or proprietor with the guilt of its publication.
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> "The manager and proprietor of a newspaper, we think ought to be held *prima facie* criminally for whatever appears in his paper; and it should be no defense that the publication was made without his knowledge or consent, x x x.
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> "One who furnishes the means for carrying on the publication of a newspaper and entrusts its management to servants or employees

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[42] *World Pub. Co., supra*.

[43] *Faulkner*, *supra*; *Goudy v. Dayron Newspapers, Inc.*, 14 Ohio App 2d 207, 43 Ohio Ops 2d 444, 237 NE2d 909.

[44] G.R. No. 157643, March 20, 2008.

whom he selects and controls may be said to cause to be published what actually appears, and should be held responsible therefore, whether he was individually concerned in the publication or not, x x x. Criminal responsibility for the acts of an agent or servant in the course of his employment necessarily implies some degree of guilt or delinquency on the part of the publisher; x x x.

"We think, therefore, the mere fact that the libelous article was published in the newspaper without the knowledge or consent of its proprietor or manager is no defense to a criminal prosecution against such proprietor or manager."

In the case of *Commonwealth vs. Morgan* (107 Mass., 197), this same question was considered and the court held that in the criminal prosecution of a publisher of a newspaper in which a libel appears, he is *prima facie* presumed to have published the libel, and that the exclusion of an offer by the defendant to prove that he never saw the libel and was not aware of its publication until it was pointed out to him and that an apology and retraction were afterwards published in the same paper, gave him no ground for exception. In this same case, Mr. Justice Colt, speaking for the court, said:

"It is the duty of the proprietor of a public paper, which may be used for the publication of improper communications, to use reasonable caution in the conduct of his business that no libels be published." (Wharton's *Criminal Law,* Secs. 1627, 1649; 1 Bishop's *Criminal Law*, Secs. 219, 221; *People vs. Wilson*, 64 Ill., 195; *Commonwealth vs. Damon*, 136 Mass., 441.)

The above doctrine is also the doctrine established by the English courts. In the case of *Rex vs. Walte*r (3 Esp., 21) Lord Kenyon said that he was "clearly of the opinion that the proprietor of a newspaper was answerable criminally as well as civilly for the acts of his servants or agents for misconduct in the management of the paper."

This was also the opinion of Lord Hale, Mr. Justice Powell, and Mr. Justice Foster.

Lofft, an English author, in his work on Libel and Slander, said:

"An information for libel will lie against the publisher of a papers, although he did not know of its being put into the paper and stopped the sale as soon as he discovered it."

In the case of *People vs. Clay* (86 Ill., 147) the court held that –

"A person who makes a defamatory statement to the agent of a newspaper for publication, is liable both civilly and criminally, and his liability is shared by the agent and all others who aid in publishing it."[45]

Under Art. 360 of the RPC, as Tulfo, the author of the subject articles, has been found guilty of libel, so too must Cambri, Salao, Barlizo, and Pichay.

Though we find petitioners guilty of the crime charged, the punishment must still be tempered with justice. Petitioners are to be punished for libel for the first time. They did not apply for probation to avoid service of sentence possibly in the belief that they have not committed any crime. In *Buatis, Jr. v. People*,[46] the Court, in a criminal case for libel, removed the penalty of imprisonment and instead imposed a fine as penalty. In *Sazon v. Court of Appeals*,[47] the accused was merely fined in lieu of the original penalty of imprisonment and fine. Freedom of expression as well as freedom of the press may not be unrestrained, but neither must it be reined in too harshly. In light of this, considering the necessity of a free press balanced with the necessity of a responsible press, the penalty of a fine of PhP 6,000 for each count of libel, with subsidiary imprisonment in case of insolvency, should suffice.[48] Lastly, the responsibilities of the members of the press notwithstanding, the difficulties and hazards they encounter in their line of work must also be taken into consideration.

The award of damages by the lower court must be modified. Art. 2199 of the Civil Code provides, "Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly

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[45] *U.S. v. Ocampo*, 18 Phil. 1, 50-52 (1910).

[46] G.R. No. 142409, March 24, 2006, 485 SCRA 275.

[47] G.R. No. 120715, March 29, 1996, 255 SCRA 692.

[48] Administrative Circular No. 08-2008. See *Fermin v. People*, G.R. No. 157643, March 28, 2008.

proved. Such compensation is referred to as actual or compensatory damages." There was no showing of any pecuniary loss suffered by the complainant Atty. So. Without proof of actual loss that can be measured, the award of actual damages cannot stand.

In *Del Mundo v. Court of Appeals*, it was held, as regards actual and moral damages:

> A party is entitled to an adequate compensation for such pecuniary loss actually suffered by him as he has duly proved. Such damages, to be recoverable, must not only be capable of proof, but must actually be proved with a reasonable degree of certainty. We have emphasized that these damages cannot be presumed, and courts, in making an award must point out specific facts which could afford a basis for measuring whatever compensatory or actual damages are borne.
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> Moral damages, upon the other hand, may be awarded to compensate one for manifold injuries such as physical suffering, mental anguish, serious anxiety, besmirched reputation, wounded feelings and social humiliation. These damages must be understood to be in the concept of grants, not punitive or corrective in nature, calculated to compensate the claimant for the injury suffered. Although incapable of exactness and no proof of pecuniary loss is necessary in order that moral damages may be awarded, the amount of indemnity being left to the sound discretion of the court, it is imperative, nevertheless, that (1) injury must have been suffered by the claimant, and (2) such injury must have sprung from any of the cases expressed in Article 2219 and Article 2220 of the Civil Code. A causal relation, in fine, must exist between the act or omission referred to in the Code which underlies, or gives rise to, the case or proceeding on the one hand, and the resulting injury, on the other hand; *i.e*. the first must be the proximate cause and the latter the direct consequence thereof.[49]

It was the articles of Tulfo that caused injury to Atty. So, and for that Atty. So deserves the award of moral damages. Justification for the award of moral damages is found in Art. 2219(7) of the Civil Code, which states that moral damages may be recovered in cases of libel, slander, or any other form

[49] G.R. No. 1045676, January 20, 1995, 240 SCRA 348, 356-357.

of defamation. As the cases involved are criminal cases of libel, they fall squarely within the ambit of Art. 2219(7).

Moral damages can be awarded even in the absence of actual or compensatory damages. The fact that no actual or compensatory damage was proven before the trial court does not adversely affect the offended party's right to recover moral damages.[50]

And while on the subject of moral damages, it may not be amiss to state at this juncture that Tulfo's libelous articles are abhorrent not only because of its vilifying and demeaning effect on Atty. So himself, but also because of their impact on members of his family, especially on the children and possibly even the children's children.

The Court can perhaps take judicial notice that the sense of kinship runs deeply in a typical Filipino family, such that the whole family usually suffers or rejoices at the misfortune or good fortune, as the case may be, of any of its member. Accordingly, any attempt to dishonor or besmirch the name and reputation of the head of the family, as here, invariably puts the other members in a state of disrepute, distress, or anxiety. This reality adds an imperative dimension to the award of moral damages to the defamed party.

The award of exemplary damages, however, cannot be justified. Under Art. 2230 of the 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." No aggravating circumstances accompanied the commission of the libelous acts; thus, no exemplary damages can be awarded.

Conclusion

The press wields enormous power. Through its widespread reach and the information it imparts, it can mold and shape

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[50] *Patricio v. Leviste*, G.R. No. 51832, April 26, 1989, 172 SCRA 774, 781.

thoughts and opinions of the people. It can turn the tide of public opinion for or against someone, it can build up heroes or create villains.

It is in the interest of society to have a free press, to have liberal discussion and dissemination of ideas, and to encourage people to engage in healthy debate. It is through this that society can progress and develop.

Those who would publish under the aegis of freedom of the press must also acknowledge the corollary duty to publish responsibly. To show that they have exercised their freedom responsibly, they must go beyond merely relying on unfounded rumors or shadowy anonymous sources. There must be further investigation conducted, some shred of proof found to support allegations of misconduct or even criminal activity. It is in fact too easy for journalists to destroy the reputation and honor of public officials, if they are not required to make the slightest effort to verify their accusations. Journalists are supposed to be reporters of facts, not fiction, and must be able to back up their stories with solid research. The power of the press and the corresponding duty to exercise that power judiciously cannot be understated.

But even with the need for a free press, the necessity that it be free does not mean that it be totally unfettered. It is still acknowledged that the freedom can be abused, and for the abuse of the freedom, there must be a corresponding sanction. It falls on the press to wield such enormous power responsibly. It may be a cliché that the pen is mightier than the sword, but in this particular case, the lesson to be learned is that such a mighty weapon should not be wielded recklessly or thoughtlessly, but always guided by conscience and careful thought.

A robust and independently free press is doubtless one of the most effective checks on government power and abuses. Hence, it behooves government functionaries to respect the value of openness and refrain from concealing from media corruption and other anomalous practices occurring within their backyard. On the other hand, public officials also deserve respect

and protection against false innuendoes and unfounded accusation of official wrongdoing from an abusive press. As it were, the law and jurisprudence on libel heavily tilt in favor of press freedom. The common but most unkind perception is that government institutions and their officers and employees are fair game to official and personal attacks and even ridicule. And the practice on the ground is just as disconcerting. Reports and accusation of official misconduct often times merit front page or primetime treatment, while defenses set up, retraction issued, or acquittal rendered get no more, if ever, perfunctory coverage. The unfairness needs no belaboring. The balm of clear conscience is sometimes not enough.

Perhaps lost in the traditional press freedom versus government impasse is the fact that a maliciously false imputation of corruption and dishonesty against a public official, as here, leaves a stigmatizing mark not only on the person but also the office to which he belongs. In the ultimate analysis, public service also unduly suffers.

WHEREFORE, in view of the foregoing, the petitions in G.R. Nos. 161032 and 161176 are *DISMISSED*. The CA Decision dated June 17, 2003 in CA-G.R. CR No. 25318 is hereby *AFFIRMED* with the *MODIFICATIONS* that in lieu of imprisonment, the penalty to be imposed upon petitioners shall be a fine of six thousand pesos (PhP 6,000) for each count of libel, with subsidiary imprisonment in case of insolvency, while the award of actual damages and exemplary damages is *DELETED*. The Decision dated November 17, 2000 of the RTC, Branch 112 in Pasay City in Criminal Case Nos. 99-1597 to 99-1600 is modified to read as follows:

WHEREFORE, the Court finds the accused ERWIN TULFO, SUSAN CAMBRI, REY SALAO, JOCELYN BARLIZO, and PHILIP PICHAY guilty beyond reasonable doubt of four (4) counts of the crime of LIBEL, as defined in Article 353 of the Revised Penal Code, *and sentences EACH of the accused to pay a fine of SIX THOUSAND PESOS (Ph~~P~~6,000) per count of libel with subsidiary imprisonment, in case of insolvency.*

Considering that the accused Erwin Tulfo, Susan Cambri, Rey Salao, Jocelyn Barlizo, and Philip Pichay wrote and published the four (4) defamatory articles with reckless disregard whether it was false or not, the said articles being libelous *per se*, *they are hereby ordered to pay complainant Atty. Carlos T. So, jointly and severally, the sum of ONE MILLION PESOS (Php1,000,000) as moral damages. The claim of actual and exemplary damages is denied for lack of merit.*

Costs against petitioners.

SO ORDERED.

Carpio Morales, Nachura,[*] and *Brion, JJ.*, concur.

Quisumbing, J. (Chairperson), I dissent on the ground of sufficient proof lacking for "actual malice" required in libel case prosecution.

SECOND DIVISION

[G.R. No. 165012. September 16, 2008]

RACHEL BEATRIZ RUIVIVAR, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN and DR. CONNIE BERNARDO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME COURT UNDER RULE 45; APPEALS FROM THE DECISIONS OF THE OFFICE OF THE OMBUDSMAN IN ADMINISTRATIVE DISCIPLINARY CASES SHOULD BE TAKEN TO THE COURT OF APPEALS. — The case of *Fabian v. Desierto* arose from the doubt created in the application of Section 27 of R.A. No. 6770 (The Ombudsman's Act) and Section 7, Rule III of A.O. No. 7 (Rules

[*] Additional member as per August 27, 2008 raffle.

of Procedure of the Office of the Ombudsman) on the availability of appeal before the Supreme Court to assail a decision or order of the Ombudsman in administrative cases. In *Fabian*, we invalidated Section 27 of R.A. No. 6770 (and Section 7, Rule III of A.O. No. 7 and the other rules implementing the Act) insofar as it provided for appeal by *certiorari* under Rule 45 from the decisions or orders of the Ombudsman in administrative cases. We held that Section 27 of R.A. No. 6770 had the effect, not only of increasing the appellate jurisdiction of this Court without its advice and concurrence in violation of Section 30, Article VI of the Constitution; it was also inconsistent with Section 1, Rule 45 of the Rules of Court which provides that a petition for review on *certiorari* shall apply only to a review of "judgments or final orders of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court, or other *courts* authorized by law." We pointedly said: As a consequence of our ratiocination that Section 27 of Republic Act No. 6770 should be struck down as unconstitutional, and in line with the regulatory philosophy adopted in appeals from quasi-judicial agencies in the 1997 Revised Rules of Civil Procedure, appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the CA under the provisions of Rule 43.

2. POLITICAL LAW; ADMINISTRATIVE LAW; EXHAUSTION OF ADMINISTRATIVE REMEDIES; A REQUISITE FOR THE FILING OF A PETITION FOR *CERTIORARI*. — The CA Decision dismissed the petition for *certiorari* on the ground that the petitioner failed to exhaust all the administrative remedies available to her before the Ombudsman. This ruling is legally correct as exhaustion of administrative remedies is a requisite for the filing of a petition for *certiorari.* Other than this legal significance, however, *the ruling necessarily carries the direct and immediate implication that the petitioner has been granted the opportunity to be heard and has refused to avail of this opportunity*; hence, she cannot claim denial of due process. In the words of the CA ruling itself: *"Petitioner was given the opportunity by public respondent to rebut the affidavits submitted by private respondent. . . and had a speedy and adequate administrative remedy but she failed to avail thereof for reasons only known to her."*

3. ID.; ID.; ID.; DISTINGUISHED FROM DUE PROCESS. — We clarify that although they are separate and distinct concepts, exhaustion of administrative remedies and due process embody linked and related principles. The "exhaustion" principle applies when the *ruling court or tribunal* is not given the opportunity to re-examine its findings and conclusions because of an *available opportunity* that a party seeking recourse against the court or the tribunal's ruling omitted to take. Under the concept of "due process," on the other hand, a violation occurs when a court or tribunal rules against *a party* without giving him or her the opportunity to be heard. Thus, the exhaustion principle is based on the perspective of the ruling court or tribunal, while due process is considered from the point of view of the litigating party against whom a ruling was made. The commonality they share is in the same "opportunity" that underlies both. In the context of the present case, the available opportunity to consider and appreciate the petitioner's counter-statement of facts was denied the Ombudsman; hence, the petitioner is barred from seeking recourse at the CA because the ground she would invoke was not considered at all at the Ombudsman level. At the same time, the petitioner — who had the same opportunity to rebut the belatedly-furnished affidavits of the private respondent's witnesses — was not denied and cannot now claim denial of due process because she did not take advantage of the opportunity opened to her at the Ombudsman level.

APPEARANCES OF COUNSEL

Perlas De Guzman Antonio & Herbosa Law Firm for petitioner.

Ble-sire Labuntog- Dela Cruz for private respondent.

D E C I S I O N

BRION, *J.*:

Before us is the petition for review on *certiorari* under Rule 45 of the Rules of Court commenced by Rachel Beatriz Ruivivar (*petitioner*). It seeks to set aside:

(a) the Decision of the Court of Appeals (*CA*)[1] dated May 26, 2004[2] dismissing the petition for *certiorari* filed by the petitioner and affirming the Decision dated November 4, 2002[3] (*November 4, 2002 Decision*) and the Order dated February 12, 2003[4] (*February 12, 2003 Order*) of the Office of the Ombudsman (*Ombudsman*); the Ombudsman's Decision and Order found the petitioner administratively liable for discourtesy in the course of official duties as Chairperson of the Land Transportation Office (*LTO*) Accreditation Committee on Drug Testing, and imposed on her the penalty of reprimand; and

(b) the CA Resolution dated August 20, 2004[5] which denied the petitioner's subsequent motion for reconsideration.

THE ANTECEDENTS

On May 24, 2002, the private respondent filed an Affidavit-Complaint charging the petitioner before the Ombudsman of serious misconduct, conduct unbecoming of a public official, abuse of authority, and violations of the Revised Penal Code and of the Graft and Corrupt Practices Act.[6] The private respondent stated in her complaint that she is the President of the Association of Drug Testing Centers (*Association*) that conducts drug testing and medical examination of applicants for driver's license. In this capacity, she went to the Land Transportation Office (*LTO*) on May 17, 2002 to meet with representatives from the Department of Transportation and

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[1] Docketed as CA-G.R. SP No. 77029 and assigned to the Fourteenth Division. The assailed CA issuances were penned by Associate Justice Magdangal de Leon and concurred in by Associate Justice Marina Buzon, as Chairman, and Associate Justice Mariano del Castillo, as Member.

[2] *Rollo*, pp. 36-44.

[3] *Id.*, pp. 57-67.

[4] *Id.*, pp. 76-81.

[5] *Id.*, pp. 46-47.

[6] See: paragraph 8 of the private respondent's Affidavit-Complaint; *id.*, p. 48.

Communication (*DOTC*) and to file a copy of the Association's request to lift the moratorium imposed by the LTO on the accreditation of drug testing clinics. Before proceeding to the office of the LTO Commissioner for these purposes, she passed by the office of the petitioner to conduct a follow up on the status of her company's application for accreditation. While there, the petitioner — without provocation or any justifiable reason and in the presence of other LTO employees and visitors — shouted at her in a very arrogant and insulting manner, hurled invectives upon her person, and prevented her from entering the office of the LTO Commissioner. The petitioner also accused the private respondent of causing intrigues against her at the DOTC. To prove her allegations, the private respondent presented the affidavits of three witnesses.[7]

The Ombudsman furnished the petitioner a copy of the Complaint-Affidavit and required her to file her counter-affidavit. In her Counter-Affidavit, the petitioner denied the private respondent's allegations and claimed that she merely told the private respondent to bring her request to the LTO Assistant Secretary who has the authority to act on the matter, not to the DOTC.[8] The petitioner also claimed that the private respondent also asked her to lift the moratorium and pressured her to favorably act on the private respondent's application for accreditation. To prove these claims, petitioner presented the affidavits of her two witnesses.[9]

The Ombudsman called for a preliminary conference that the parties attended. The petitioner manifested her intent to submit the case for resolution. The Ombudsman then directed the parties to submit their respective memoranda. Only the petitioner filed a Memorandum where she stressed that the complaint is not properly substantiated for lack of supporting affidavits and other evidence.[10]

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[7] They are Jubair Macaumbos, Merlie Bando and Jesse Cosme whose affidavits were not immediately furnished the petitioner; *id.*, pp. 72-74.

[8] See: paragraph 2 of the petitioner's Counter Affidavit; *id.*, p. 50.

[9] They are Corazon Javier and Conchita Ramos; *id.*, pp. 52-53.

[10] See: the petitioner's Memorandum; *id.*, pp. 54-56.

The Office of the Ombudsman

The Ombudsman rendered the November 4, 2002 Decision based on the pleadings and the submitted affidavits. It found the petitioner administratively liable for discourtesy in the course of her official functions and imposed on her the penalty of reprimand.

The Ombudsman ruled that the petitioner's verbal assault on the private respondent was sufficiently established by the affidavits of the private respondent's witnesses who had not been shown by evidence to have any motive to falsely testify against petitioner. In contrast, the petitioner's witnesses, as her officemates, were likely to testify in her favor. Given that the incident happened at the LTO and that the petitioner had authority to act on the private respondent's application for accreditation, the Ombudsman also found that the petitioner's ascendancy over the private respondent made the petitioner's verbal assault more likely. The Ombudsman concluded that such verbal assault might have been caused by the private respondent's decision to air the LTO moratorium issue (on accreditation for drug testing centers) before the DOTC; this decision also negated the petitioner's defense that the case was filed to exert pressure on her to act favorably on private respondent's application for accreditation.

The petitioner filed a Motion for Reconsideration arguing that *she was deprived of due process because she was not furnished copies of the affidavits of the private respondent's witnesses.*[11] In the same motion, petitioner questioned the Ombudsman's disregard of the evidence she had presented, and disagreed with the Ombudsman's statement that she has ascendancy over the private respondent.

The Ombudsman responded to the petitioner's motion for reconsideration by ordering that the petitioner be furnished with copies of the affidavits of the private respondent's witnesses.[12]

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[11] *Id.*, p. 68.

[12] See: Order dated January 17, 2003; *id.*, p. 70.

The Ombudsman's order also contained the *"directive to file, within ten (10) days from receipt of this Order, such pleading which she may deem fit under the circumstances."*

Records show that the petitioner received copies of the private respondent's witnesses' affidavits but she did not choose to controvert these affidavits or to file a supplement to her motion for reconsideration. She simply maintained in her Manifestation that her receipt of the affidavits did not alter the fact the she was deprived of due process nor cure the irregularity in the November 4, 2002 Decision.

Under these developments, the Ombudsman ruled that the petitioner was not denied due process. It also maintained the findings and conclusions in its November 4, 2002 Decision, declaring them supported by substantial evidence.[13]

The Court of Appeals

The petitioner's chosen remedy, in light of the Ombudsman ruling, was to file a petition for *certiorari* (docketed as CA-GR SP No. 77029) with the CA. In its Decision dated May 26, 2004, the CA dismissed the petition on the ground that the petitioner used the wrong legal remedy and failed to exhaust administrative remedies before the Ombudsman.[14] The CA said:

"… as held in *Fabian v. Desierto*, a party aggrieved by the decision of the Office of the Ombudsman may appeal to this Court by way of a petition for review under Rule 43. As succinctly held by the Supreme Court:

> 'As a consequence of our ratiocination that Section 27 of Republic Act No. 6770 should be struck down as unconstitutional, and in line with regulatory philosophy adopted in appeals from quasi-judicial agencies in the 1997 Revised Rules of Civil Procedure, **appeals from decision of the Office of the Ombudsman in administrative disciplinary cases should be taken to the CA under the provisions of Rule 43.**'

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[13] *Id.*, p. 79.

[14] *Id.*, pp. 42-43.

Even assuming, *argumentatis*, that public respondent committed grave abuse of discretion, such fact is not sufficient to warrant the issuance of the extraordinary writ of *certiorari*, as was held in *Union of Nestle Workers Cagayan de Oro Factory vs. Nestle Philippines, Inc.*:

> 'x x x . For *certiorari* to prosper, it is not enough that the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction, as alleged by petitioners. The requirement that there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law must likewise be satisfied. x x x'

Petitioner was given the opportunity by public respondent to rebut the affidavits submitted by private respondent, in its Order dated January 17, 2003. Petitioner, therefore, had a speedy and adequate remedy, but she failed to avail thereof for reasons only known to her.

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Moreover, instead of filing a petition for review under Rule 43, she filed the present petition for *certiorari* under Rule 65. In view of our above disquisition, We find no further reason to discuss the merits of the case. Petitioner having resorted to the wrong remedy, the dismissal of the present petition is in order.[15]

After the CA's negative ruling on the motion for reconsideration, the petitioner filed the present petition for review on *certiorari* with this Court, raising the following issues:

THE ISSUES

I. WHETHER OR NOT A PETITION FOR *CERTIORARI* UNDER RULE 65 IS THE PROPER AND ONLY AVAILABLE REMEDY WHEN THE PENALTY IMPOSED IN AN ADMINISTRATIVE COMPLAINT WITH THE OFFICE OF THE OMBUDSMAN IS CONSIDERED FINAL AND UNAPPEALABLE.

II. WHETHER OR NOT PETITIONER WAS DENIED OF *(sic)* THE CONSTITUTIONAL GUARANTEE TO DUE PROCESS WHEN SHE WAS DEPRIVED OF HER RIGHT TO CONFRONT THE EVIDENCE SUBMITTED AGAINST HER

[15] *Id.*, pp. 42-44.

BEFORE THE DECISION OF THE OFFICE OF THE OMBUDSMAN WAS RENDERED.

On the first issue, the petitioner argued that the ruling in *Fabian v. Desierto*[16] can only be applied when the decision of the Ombudsman is appealable. The ruling in *Fabian* is not applicable to the Ombudsman rulings under the express provisions of Section 27 of Republic Act (R.A.) No. 6770[17] and Section 7, Rule III of Administrative Order (A.O.) No. 7[18] since the penalty of reprimand imposed is final and unappealable. The appropriate remedy, under the circumstances, is not the appellate remedy provided by Rule 43 of the Rules of Court but a petition for *certiorari* under Rule 65 of these Rules.

On the second issue, the petitioner maintained that she was denied due process because no competent evidence was

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[16] G.R. No. 129742, September 16, 1998, 295 SCRA 470.

[17] SEC. 27. *Effectivity and Finality of Decisions*. — (1) All provisionary orders of the Office of the Ombudsman are immediately effective and executory

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Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one month's salary shall be final and unappealable.

In all administrative disciplinary cases, orders, directives, or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for *certiorari* within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.

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[18] *Section 7. Finality and execution.* — Where respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the CA on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.

presented to prove the charge against her. While she was belatedly furnished copies of the affidavits of the private respondent's witnesses, this was done after the Ombudsman had rendered a decision. She posited that her belated receipt of the affidavits and the subsequent proceedings before the Ombudsman did not cure the irregularity of the November 4, 2002 Decision as she was not given the opportunity to refute the private respondent's evidence *before the Ombudsman's decision was rendered*. The petitioner advanced the view that on this ground alone, she should be allowed to question the arbitrary exercise of the Ombudsman's discretion.

The Ombudsman's Comment,[19] filed through the Office of the Solicitor General, maintained that the proper remedy to assail the November 4, 2002 Decision and February 12, 2003 Order was to file a petition for review under Rule 43 as laid down in *Fabian*,[20] and not the petition for *certiorari* that the petitioner filed. The Ombudsman argues further that since no petition for review was filed within the prescribed period (as provided under Section 4, Rule 43),[21] the November 4, 2002 Decision and February 12, 2003 Order had become final and executory. The Ombudsman maintained, too, that its decision holding the petitioner administratively liable is supported by substantial evidence; the petitioner's denial of the verbal assault cannot prevail over the submitted positive testimony. The Ombudsman also asserted that the petitioner was not denied due process as she was given the opportunity to be heard on the affidavits that were belatedly furnished her when she was directed to *"file any pleading as she may consider fit."*

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[19] *Rollo*, pp. 145-169.

[20] *Supra* note 16.

[21] Section 4. *Period of appeal.* — The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*. x x x

The private respondent shared the positions of the Ombudsman in her Comment.[22] Both the Office of the Solicitor General and the private respondent also asserted the doctrine that factual findings of administrative agencies should be given great respect when supported by substantial evidence.

We initially denied the petition in our Resolution dated December 12, 2005 for the petitioner's failure to comply with our Resolutions dated March 30, 2005 and April 25, 2005. However, we reconsidered the denial in a subsequent Resolution (dated February 27, 2006)[23] and reinstated the petition on the petitioner's motion for reconsideration after she complied with our directives. We required the parties to submit their respective memoranda where they reiterated the positions presented in their previous submissions.

THE COURT'S RULING

We deny the Petition.

While we find that the Court of Appeals erred in its ruling on the appropriate mode of review the petitioner should take, we also find that the appellate court effectively ruled on the due process issue raised — the failure to provide the petitioner the affidavits of witnesses — although its ruling was not directly expressed in due process terms. The CA's finding that the petitioner failed to exhaust administrative remedies (when she failed to act on the affidavits that were belatedly furnished her) effectively embodied a ruling on the due process issue at the same time that it determined the propriety of the petition for *certiorari* that the CA assumed *arguendo* to be the correct remedy.

Under this situation, the error in the appellate court's ruling relates to a technical matter — the mode of review that the petitioner correctly took but which the CA thought was erroneous. Despite this erroneous conclusion, the CA nevertheless fully reviewed the petition and, assuming it *arguendo* to be the correct

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[22] *Rollo*, pp. 206-210.

[23] *Id.*, p. 197.

mode of review, also ruled on its merits. Thus, while it erred on the mode of review aspect, it correctly ruled on the exhaustion of administrative remedy issue and on the due process issue that the exhaustion issue implicitly carried. **In these lights, the present petition essentially has no merit so that its denial is in order.**

The Mode of Review Issue

The case of *Fabian v. Desierto*[24] arose from the doubt created in the application of Section 27 of R.A. No. 6770 (The Ombudsman's Act) and Section 7, Rule III of A.O. No. 7 (Rules of Procedure of the Office of the Ombudsman) on the availability of appeal before the Supreme Court to assail a decision or order of the Ombudsman in administrative cases. In *Fabian*, we invalidated Section 27 of R.A. No. 6770 (and Section 7, Rule III of A.O. No. 7 and the other rules implementing the Act) insofar as it provided for appeal by *certiorari* under Rule 45 from the decisions or orders of the Ombudsman in administrative cases. We held that Section 27 of R.A. No. 6770 had the effect, not only of increasing the appellate jurisdiction of this Court without its advice and concurrence in violation of Section 30, Article VI of the Constitution; it was also inconsistent with Section 1, Rule 45 of the Rules of Court which provides that a petition for review on *certiorari* shall apply only to a review of "judgments or final orders of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court, or other *courts* authorized by law."[25] We pointedly said:

As a consequence of our ratiocination that Section 27 of Republic Act No. 6770 should be struck down as unconstitutional, and in line with the regulatory philosophy adopted in appeals from quasi-judicial agencies in the 1997 Revised Rules of Civil Procedure, appeals from decisions of the Office of the

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[24] *Supra* note 16.

[25] Section 1, Rule 45 of the Rules of Court, as amended by A.M. 07-7-12-SC, December 27, 2007.

Ombudsman in administrative disciplinary cases should be taken to the CA under the provisions of Rule 43.[26]

We restated this doctrine in several cases[27] and further elaborated on the recourses from Ombudsman actions in other cases we have decided since then. In *Lapid v. CA*, we explained that an appeal under Rule 43 to the CA only applies to administrative cases where the right to appeal is granted under Section 27 of R.A. No. 6770.[28] In *Lopez v. CA*[29] and *Herrera v. Bohol*,[30] we recognized that no appeal is allowed in administrative cases where the penalty of public censure, reprimand, suspension of not more than one month, or a fine equivalent to one month salary, is imposed. We pointed out that decisions of administrative agencies that are declared by law to be final and unappealable are still subject to judicial review if they fail the test of arbitrariness or upon proof of gross abuse of discretion;[31] the complainant's legal recourse is to file a petition for *certiorari* under Rule 65 of the Rules of Court, applied as rules suppletory to the Rules of Procedure of the Office of the Ombudsman.[32] The use of this recourse should

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[26] *Supra,* note 16, p. 491.

[27] *Tirol v. Sandiganbayan*, G.R. No. 135913, November 4, 1999, 317 SCRA 779, 785; *Lapid v. CA*, G.R. No. 142261, June 29, 2000, 334 SCRA 738, 750; *Macalalag v. Ombudsman*, G.R. No. 147995, March 24, 2004, 424 SCRA 741, 745; *Perez v. Ombudsman*, G.R. No. 131445, May 27, 2004, 429 SCRA 357, 361; *Nava v. NBI*, G.R. No. 134509, April 12, 2005, 455 SCRA 377, 389; *Golangco v. Fung*, G.R. No. 147640, October 16, 2006, 504 SCRA 321; *Cabrera v. Lapid*, G.R. No. 129098, December 6, 2006, 510 SCRA 55.

[28] *Supra* note 27, p. 749.

[29] G.R. No. 144573, September 24, 2002, 389 SCRA 570,575.

[30] G.R. No. 155320, February 5, 2004, 422 SCRA 282, 285.

[31] *De Jesus v. Office of the Ombudsman*, G.R. No. 140240, October 18, 2007, 536 SCRA 547, 553, citing *Republic v. Canastillo*, G.R. No. 172729, June 8, 2007, 524 SCRA 546, 553.

[32] *Barata v. Abalos, Jr.*, G.R. No. 142888, June 6, 2001, 358 SCRA 575, 581, and Paragraph 2, Section 18, Republic Act No. 6770.

take into account the last paragraph of Section 4, Rule 65 of the Rules of Court — *i.e.*, the petition shall be filed in and be cognizable only by the CA if it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or by the Rules.[33]

In the present case, the Ombudsman's decision and order imposing the penalty of reprimand on the petitioner are final and unappealable. Thus, the petitioner availed of the correct remedy when she filed a petition for *certiorari* before the CA to question the Ombudsman's decision to reprimand her.

The Due Process Issue

The CA Decision dismissed the petition for *certiorari* on the ground that the petitioner failed to exhaust all the administrative remedies available to her before the Ombudsman. This ruling is legally correct as exhaustion of administrative remedies is a requisite for the filing of a petition for *certiorari*.[34] Other than this legal significance, however, *the ruling necessarily carries the direct and immediate implication that the petitioner has been granted the opportunity to be heard and has refused to avail of this opportunity*; hence, she cannot claim denial of due process. In the words of the CA ruling itself: *"Petitioner was given the opportunity by public respondent to rebut the affidavits submitted by private respondent. . . and had a speedy and adequate administrative remedy but she failed to avail thereof for reasons only known to her."*

For a fuller appreciation of our above conclusion, we clarify that although they are separate and distinct concepts, exhaustion of administrative remedies and due process embody linked and related principles. The "exhaustion" principle applies when the *ruling court or tribunal* is not given the opportunity to re-examine its findings and conclusions because of an *available opportunity* that a party seeking recourse against the court or

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[33] *Republic v. Canastillo, supra*, note 31, p. 553; *Chan v. Marcelo*, G.R. No. 159298, July 6, 2007, 526 SCRA 627, 635.

[34] See: Section 1, Rule 65, Rules of Court.

the tribunal's ruling omitted to take.[35] Under the concept of "due process," on the other hand, a violation occurs when a court or tribunal rules against *a party* without giving him or her the opportunity to be heard.[36] Thus, the exhaustion principle is based on the perspective of the ruling court or tribunal, while due process is considered from the point of view of the litigating party against whom a ruling was made. The commonality they share is in the same "opportunity" that underlies both. In the context of the present case, the available opportunity to consider and appreciate the petitioner's counter-statement of facts was denied the Ombudsman; hence, the petitioner is barred from seeking recourse at the CA because the ground she would invoke was not considered at all at the Ombudsman level. At the same time, the petitioner — who had the same opportunity to rebut the belatedly-furnished affidavits of the private respondent's witnesses — was not denied and cannot now claim denial of due process because she did not take advantage of the opportunity opened to her at the Ombudsman level.

The records show that the petitioner duly filed a motion for reconsideration on due process grounds (*i.e.*, for the private respondent's failure to furnish her copies of the affidavits of witnesses) and on questions relating to the appreciation of the evidence on record.[37] The Ombudsman acted on this motion by issuing its Order of January 17, 2003 belatedly furnishing her with copies of the private respondent's witnesses, together with the "*directive to file, within ten (10) days from receipt of this Order, such pleading which she may deem fit under the circumstances.*"[38]

Given this opportunity to act on the belatedly-furnished affidavits, the petitioner simply chose to file a "Manifestation"

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[35] *Bayantel, Inc. v. Republic of the Philippines*, G.R. No. 161140, January 31, 2007, 513 SCRA 562, 569.

[36] *Laxina v. Ombudsman*, G.R. No. 153155, September 30, 2005, 471 SCRA 542, 555.

[37] *Rollo*, pp. 68-69.

[38] *Id.*, pp. 70-71.

where she took the position that "The order of the Ombudsman dated 17 January 2003 supplying her with the affidavits of the complainant does not cure the 04 November 2002 order," and on this basis prayed that the Ombudsman's decision "be reconsidered and the complaint dismissed for lack of merit."[39]

For her part, the private respondent filed a Comment/Opposition to Motion for Reconsideration dated 27 January 2003 and prayed for the denial of the petitioner's motion.

In the February 12, 2003 Order, the Ombudsman denied the petitioner's motion for reconsideration after finding no basis to alter or modify its ruling.[40] Significantly, the Ombudsman fully discussed in this Order the due process significance of the petitioner's failure to adequately respond to the belatedly-furnished affidavits. The Ombudsman said:

"Undoubtedly, the respondent herein has been furnished by this Office with copies of the affidavits, which she claims she has not received. Furthermore, the respondent has been given the opportunity to present her side relative thereto, however, she chose not to submit countervailing evidence or argument. The respondent, therefore *(sic)*, cannot claim denial of due process for purposes of assailing the Decision issued in the present case. On this score, the Supreme Court held in the case of *People v. Acot*, 232 SCRA 406, that ***"a party cannot feign denial of due process where he had the opportunity to present his side."*** This becomes all the more important since, as correctly pointed out by the complainant, the decision issued in the present case is deemed final and unappealable pursuant to Section 27 of Republic Act 6770, and Section 7, Rule III of Administrative Order No. 07. ***Despite the clear provisions of the law and the rules, the respondent herein was given the opportunity not normally accorded, to present her side, but she opted not to do so which is evidently fatal to her cause."*** **[emphasis supplied].**

Under these circumstances, we cannot help but recognize that the petitioner's cause is a lost one, not only for her failure to exhaust her available administrative remedy, but also on due

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[39] *Id.*, p. 75.

[40] *Id.*, pp. 76-80.

process grounds. *The law can no longer help one who had been given ample opportunity to be heard but who did not take full advantage of the proffered chance.*

WHEREFORE, premises considered, we hereby *DENY* the petition. This denial has the effect of confirming the finality of the Decision of the Ombudsman dated November 4, 2002 and of its Order dated February 12, 2003.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 172871. September 16, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CLEMENTE CASTA *y* CAROLINO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ASSESSMENT OF THE TRIAL COURT; ACCORDED RESPECT IF NOT CONCLUSIVE EFFECT; EXCEPTION. — An established rule in appellate review is that the trial court's factual findings, including its assessment of the credibility of the witnesses and the probative weight of their testimonies, as well as the conclusions drawn from the factual findings, are accorded respect, if not conclusive effect. These actual findings and conclusions assume greater weight if they are affirmed by the CA. Despite the enhanced persuasive effect of the initial RTC factual ruling and the results of the CA's appellate factual review, we nevertheless fully scrutinized the records of this case as the penalty of *reclusion perpetua* that the lower courts imposed on the accused demands no less than this kind of scrutiny.

2. ID.; ID.; ID.; GIVEN FULL FAITH AND CREDIT IN THE ABSENCE OF EVIDENCE SHOWING ANY REASON OR MOTIVE TO FALSELY TESTIFY. — The established rule, laid down in an already long line of cases, is that in the absence of evidence showing any reason or motive for the prosecution witnesses to falsely testify, their testimony can be given full faith and credit.

3. ID.; ID.; BURDEN OF PROOF; BURDEN OF EVIDENCE SHIFTS WHEN THE ACCUSED PLEADS SELF-DEFENSE. — As a rule, the prosecution bears the burden of establishing the guilt of the accused beyond reasonable doubt. However, when the accused admits the killing and, by way of justification, pleads self-defense, the burden of evidence shifts; he must then show by clear and convincing evidence that he indeed acted in self-defense. For that purpose, he must rely on the strength of his own evidence and not on the weakness of the prosecution's case.

4. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS. — Article 11 (1) of the Revised Penal Code spells out the elements that the accused must establish by clear and convincing evidence to successfully plead self-defense. The Article provides: 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 to prevent or repel it; *Third*. Lack of sufficient provocation on the part of the person defending himself.

5. ID.; ID.; ID.; ID.; UNLAWFUL AGGRESSION, REQUIRED. — There is unlawful aggression when the peril to one's life, limb or right is either actual or imminent. There must be actual physical force or actual use of a weapon. It is a statutory and doctrinal requirement to establish self-defense that unlawful aggression must be present. It is a condition *sine qua non*; t**here can be no self-defense, complete or incomplete, unless the victim commits unlawful aggression against the person defending himself.**

6. ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; DEFINED; ELEMENTS. — Treachery, the qualifying circumstance alleged against the appellant, exists when an offender commits

any of the crimes against persons, employing means, methods or forms which tend directly or especially to ensure its execution, without risk to the offender, arising from the defense that the offended party might make. This definition sets out what must be shown by evidence to conclude that treachery existed, namely: (1) the employment of such means of execution as would give the person attacked no opportunity for self-defense or retaliation; and (2) the deliberate and conscious adoption of the means of execution. To reiterate, the essence of qualifying circumstance is the suddenness, surprise and the lack of expectation that the attack will take place, thus depriving the victim of any real opportunity for self-defense while ensuring the commission of the crime without risk to the aggressor.

7. ID.; ID.; ID.; PRESENT WHEN THE UNSUSPECTING VICTIM WAS HIT AT THE BACK BELOW THE LEFT ARMPIT, PUNCTURING HIS HEART AND LUNGS. — The evidence in the case shows that Danilo was by the roadside when the appellant, wielding a deadly weapon — a double-bladed knife — suddenly appeared from behind and stabbed him. The unsuspecting victim was hit at the back below the left armpit, puncturing his heart and lungs. As the witnesses testified, the attack was sudden and while the victim was in an unguarded position: from his rear so that the unsuspecting victim had practically no chance to defend himself. The location of the thrust — at the left side, below the armpit — shows that the heart was the targeted organ to immediately incapacitate the victim and render him unable to defend against or respond to the attack. As the evidence shows, the victim simply fell immediately after being stabbed, in the way that a raging bull immediately crumbles to its knees, spent and harmless, upon being hit by the matador's sword thrust, delivered from above, between its shoulder blades, targeting the heart. These mode, manner and execution of the attack, to our mind, bespeak of treachery.

8. ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; ELEMENTS. — Voluntary surrender, properly undertaken, is a mitigating circumstance that lowers the imposable penalty. It is present when the following elements concur: a) the offender has not been actually arrested; b) the offender surrenders himself to a person in authority or to the latter's agent; and c) the surrender is voluntary. To be sufficient,

the surrender must be spontaneous and made in a manner clearly indicating the intent of the accused to surrender unconditionally, either because he acknowledges his guilt or wishes to save the authorities the trouble and expense attendant to the efforts of searching for and capturing him.

9. ID.; MURDER; PENALTY. — Prior to its amendment the penalty for the crime of murder under Article 248 of the Revised Penal Code was *reclusion temporal* in its maximum period to death. In light of the greater penalty that attaches under the amendment, the previous penalty of *reclusion temporal* in its maximum period to death will have to be imposed in order not to run afoul of the constitutional prohibition against *ex post facto* laws. Under **Section 22 of Article III of the 1987 Constitution**, no *ex post facto* law or bill of attainder shall be enacted. An *ex post facto* law, among others, is one that changes the penalty and inflicts a greater punishment than what the law annexed to the crime when committed — the situation that would obtain if the amendment under Republic Act No. 7659 would be applied. Considering that the appellant has in his favor the mitigating circumstance of voluntary surrender with no aggravating circumstance to offset it, the imposable penalty should be in the minimum period, *i.e.*, *reclusion temporal* in its **maximum** period. Under the Indeterminate Sentence Law, the maximum sentence shall be *reclusion temporal* in its maximum period (17 years, 4 months and 1 day to 20 years) and the **minimum** shall be taken from the next lower penalty, which is *prision mayor* maximum to *reclusion temporal* medium (10 years and 1 day to 17 years and 4 months).

10. ID.; ID.; CIVIL LIABILITY; MORAL DAMAGES, MANDATORY IN HOMICIDE AND MURDER. — Moral damages are mandatory in cases of murder and homicide without need of allegation and proof other than the death of the victim. We find the award of ₱50,000.00 as moral damages in order in accordance with established jurisprudence.

11. ID.; DAMAGES.; EXEMPLARY DAMAGES; JUSTIFIED BY THE DULY PROVEN QUALIFYING CIRCUMSTANCE OF TREACHERY. — The award of exemplary damages is justified by the duly proven qualifying circumstance of treachery; when a crime is committed with an aggravating circumstance, either qualifying or generic, an award of ₱25,000.00 as exemplary damages is justified under Article 2230 of the New Civil Code.

12. ID.; ID.; LOSS OF EARNING CAPACITY; DOCUMENTARY EVIDENCE; REQUIRED. — As a rule, documentary evidence should be presented to substantiate a claim for damages for loss of earning capacity. While there are exceptions to the rule, these exceptions do not apply as the victim, Danilo, was an employee of the Office of the Register of Deeds of Lingayen, Pangasinan when he died; he was not a worker earning less than the minimum wage under the prevailing labor laws.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

BRION, *J.*:

This is an appeal from the March 10, 2006 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 01217. The CA affirmed the August 18, 1999 Decision[2] of the Regional Trial Court (*RTC*), Branch 55, Alaminos, Pangasinan, finding the appellant Clemente Casta *y* Carolino (*appellant*) guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of *reclusion perpetua*.

ANTECEDENT FACTS

The prosecution charged the appellant before the RTC with the crime of murder under an Information that states:

That on or about the 20th day of August, 1989 in the afternoon, at barangay Goyoden, municipality of Bolinao, province of Pangasinan, New *[sic]*Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and by means of treachery, did, then and there, willfully, unlawfully

[1] Penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justice Fernanda Lampas-Peralta and Associate Justice Arturo G. Tayag; *rollo*, pp. 3-18.

[2] Penned by Judge Lilia C. Español; CA *rollo*, pp. 17-24.

and feloniously, suddenly and without warning attack and stab DANILO CAMBA with a knife, inflicting upon the victim the following injuries to wit:

- stab wound, 3 inches in length, 4 inches in depth, located at the back, left side, 5 inches (level) below the armpit;
- stab wound at the left forearm, 3 cm. length and 1 inch depth.

which caused his instantaneous death to the damage and prejudice of the heirs of Danilo Camba.

CONTRARY to Article 248 of the Revised Penal Code.[3]

The appellant pleaded not guilty to the charge upon arraignment. The prosecution presented the following witnesses in the trial on the merits that followed: Marlyn[4] Cister; Modesto Cardona; Domingo Camba; Dionisia Camba; and Dr. Prudencio C. de Perio. The appellant took the witness stand for the defense.

Marlyn Cister (*Marlyn*) testified that in the afternoon of August 20, 1989, while seated on the steps of the stairs of their house, she saw Danilo Camba (*Danilo*) and Modesto Cardona *(Modesto)* standing by the roadside.[5] Suddenly, the appellant appeared from behind Danilo and stabbed him *(Danilo)*.[6] Danilo fell and died on the spot. Thereafter, the appellant fled.[7]

Modesto narrated that at around 3:00 o'clock in the afternoon of August 20, 1989, he was walking along the road at Sitio Makber, Goyoden, Bolinao, Pangasinan when Danilo emerged from a small road and joined him. Along the way, they met Marcos Gumangan (*Marcos*) and Angel Gatchalian (*Angel*) with whom they exchanged greetings; it was Danilo's first time to visit Goyoden after several years. They all walked towards the west with Marcos and Angel walking behind them. Suddenly, the appellant appeared from behind Danilo and stabbed him

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[3] Records, p. 1.

[4] In some parts of the record, her name is spelled as Marlene.

[5] TSN, November 5, 1991, p. 4.

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

[7] *Id.*, p. 7.

using a double-bladed knife.[8] Danilo turned around and then fell; the appellant fled still holding the knife he used in stabbing Danilo.[9]

On cross-examination, he testified that he was at about "*two (2) arms length*" away from Danilo when he was stabbed, while their other companions were behind them.[10]

Senior Police Officer I Domingo Camba (*SPO1 Camba*), a member of the Bolinao Police Station, narrated that on August 20, 1989, Barangay Captain Igmedio Gatchalian went to the Bolinao Police Station to report the stabbing of Danilo by the appellant; the incident was entered in the police blotter as Entry No. 4300.[11] He and other police officers promptly went to Barangay Goyoden and conducted an on-the-spot investigation at the crime scene.[12] The next day (August 21, 1989), the appellant's uncle came and told him that the appellant was at his (the appellant's) house. He went with the appellant's uncle to the appellant's house where the appellant gave himself up. He forthwith brought the appellant to the police station for investigation.[13]

At the police station, the appellant confessed to the killing of Danilo after being informed of his constitutional rights and in the presence of counsel, a certain Atty. Antonio V. Tiong.[14] The confession was reduced to writing and was signed by the appellant and Atty. Tiong.[15]

Dionisia Camba (*Dionisia*), Danilo's widow, testified that her husband was an employee of the Office of the Register of

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[8] TSN, November 12, 1991, pp. 5-8.

[9] *Id.*, p. 10.

[10] *Id.*, p. 19.

[11] TSN, November 21, 1991, p. 5.

[12] *Id.*, p. 6.

[13] TSN, November 26, 1992, p. 12.

[14] In some parts of the record, his name appears as Atty. Chiong.

[15] TSN, November 21, 1991, pp. 10-

Deeds, Lingayen, Pangasinan at the time of his death, earning more than ₱3,000.00 a month.[16] They have four (4) children and that her husband was the sole breadwinner of the family. According to her, she spent a total of ₱13,500.00 for the funeral and burial expenses of her husband[17] but the receipts for these expenses have all been lost.[18]

Dr. Prudencio C. de Perio (*Dr. de Perio*), the Municipal Health Officer of Bolinao, Pangasinan, narrated that he conducted an autopsy on the remains of Danilo at the request of the police,[19] and made the following findings:

AUTOPSY REPORT

xxx xxx xxx

III. Findings

A male cadaver undergoing rigor mortis, around 5'6" in height, and around 145 lbs. in weight.

- Stab wound, 3 inches in length, 4 inches in depth, located at the back, left side, 5 inches (level) below the armpit.
- Left lung injured and also the heart, causing massive hemorrhages.
- Stab wound at the left forearm, 3 cm. length and 1 inch depth. Wound is horizontal.[20]

According to Dr. de Perio, the victim's cause of death was "shock, due to massive hemorrhage brought about by the stab wounds."[21] He added that the stab wounds were caused by a sharp-pointed instrument such as a dagger.[22]

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[16] TSN, December 3, 1991, p. 11.

[17] *Id.*, pp. 9-12.

[18] *Id.*, p. 14.

[19] TSN, January 7, 1993, p. 8.

[20] Records, p. 11.

[21] TSN, January 7, 1993, p. 11.

[22] *Id.*, p. 24.

The appellant gave a different version of the events which the RTC summarized as follows

x x x that on August 20, 1989 in the afternoon, he went to Sitio Matber, Goyoden, Bolinao, to buy fish; that before reaching the place where he will buy fish, he met a person whom he did not know.[23] This person called him by waving his hand and pointing to him. He responded to the call of this person by approaching him but when he was near him, this person boxed him but he was not hit. They grappled with each other and he did not notice if there were other persons around them; that he then noticed that his knife was already bloody so he ran away; that there was no person around that he noticed when he saw his knife bloody; that at that time, he did not know the identity of the person with whom he grappled; that when he was already detained, he learned that the person was Danilo Camba.[24]

The accused also declared that he was not arrested by the Police, but he surrendered to Pat. Domingo Camba on August 21, 1989 to whom his uncle relayed the information that he wanted to surrender and Pat. Camba fetched him. While under Police custody, he was investigated by Pat. Camba and said investigation was in writing and signed by him (Exhibit D, D-1 and D-2), but he said that the document was not his statement although it bears his signature. [25] He was forced to sign the investigation because he was afraid of the investigator who bears the same family name as the victim but he does not know if they are related; x x x[26]

On cross-examination, he declared that he did not plan to kill the victim and his killing was accidental.[27] He gave his affidavit in the Bolinao dialect in questions and answers (Exhibits D and series); that all the signatures bearing his name are his (Exhibit D-4, D-5, D-6); that this document has an English translation (Exhibit F); x x x that he admitted on direct examination that he stabbed Danilo Camba and he threw the knife into the sea when he rode on a motorboat

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[23] TSN, May 3, 1994, p. 3.

[24] *Id.*, pp. 5-6.

[25] *Id.*, pp. 6-7.

[26] *Id.*, p. 8.

[27] TSN, July 28, 1994, p. 6.

and was confused; that he knew that the date when he stabbed Danilo Camba was August 20, 1989 and in the afternoon but he did no know the time.[28]

On re-direct examination, the accused declared that the reason for his stabbing Danilo Camba was that when they met on the road and Camba was drunk, without any provocation on his part, Camba positioned to box him so he drew his knife and stabbed him; that he did not know the reason why Camba wanted to box him; that at that time, Camba was with one Fedelino Gatchalian; that he had no previous grudge with Camba because he did not know him; that he did not see the victim with any weapon and he did not know if he was armed or not; and that he is bigger than Camba.[29] [*Footnotes referring to the pertinent parts of the record supplied*]

The RTC convicted the appellant of the crime of murder in its decision of August 18, 1999 as follows:

Wherefore, in view of the foregoing considerations, the Court hereby renders judgment, finding the accused Clemente Casta *y* Carolino, of Barangay Goyoden, Bolinao, Pangasinan, guilty beyond reasonable doubt of the crime of Murder for the death of Danilo Camba, of the same place, and hereby sentences him to suffer the penalty of *reclusion perpetua* and to indemnify the heirs of the deceased in the amount of ₱50,000.00 as compensation for the death of the victim, ₱100,000.00 as moral and exemplary damages and ₱13,000.00 as actual damages.

With costs *de oficio*.

SO ORDERED.[30]

The records of this case were originally transmitted to this Court on appeal. Pursuant to our ruling in *People v. Mateo*,[31] we endorsed the case and its records to the CA for appropriate action and disposition.[32]

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[28] TSN, January 18, 1995, pp. 3-5.

[29] *Id.*, p. 5-8.

[30] CA *rollo*, pp. 23-24.

[31] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 656.

[32] Per our Resolution dated September 20, 2004; CA *rollo*, p. 147.

The CA, in a decision dated March 10, 2006, affirmed the RTC decision *in toto*.

In his brief,[33] **the appellant argues that the RTC erred –**

1. in convicting him of the crime of murder; and

2. in imposing upon him the penalty of *reclusion perpetua*.

THE COURT'S RULING

We resolve to deny the appeal but we modify the penalty imposed and the amount of the awarded indemnities.

Sufficiency of Prosecution Evidence

An established rule in appellate review is that the trial court's factual findings, including its assessment of the credibility of the witnesses and the probative weight of their testimonies, as well as the conclusions drawn from the factual findings, are accorded respect, if not conclusive effect. These actual findings and conclusions assume greater weight if they are affirmed by the CA. Despite the enhanced persuasive effect of the initial RTC factual ruling and the results of the CA's appellate factual review, we nevertheless fully scrutinized the records of this case as the penalty of *reclusion perpetua* that the lower courts imposed on the accused demands no less than this kind of scrutiny.[34]

A striking feature of this case is that the appellant **did not deny** that he stabbed Danilo. He expressly made this admission in his testimony of January 18, 1995:

ATTY. ROMIE V. BRAGA:

Q: In your direct-examination, you admitted having **stabbed** the deceased Danilo Camba, will you tell the Court where was that knife which **you used in stabbing Danilo Camba**?

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[33] *Id.*, pp. 35-45.

[34] *People v. Ballesteros*, G.R. No. 172696, August 11, 2008, citing *People v. Garalde*, 521 SCRA 327, 340 (2007).

CLEMENTE CASTA:

A: I left it in the sea, sir.

Q: You mean you threw it into the sea?

A: Yes, sir.

Q: Will you tell the Court why you threw the knife which you **used in stabbing Danilo Camba** into the sea?

A: Because I rode in a motor boat and then I threw it into the sea, sir.

Q: And will you tell the Court why you threw or drop it into the sea?

A: Because I was confused, sir.

Q: Now will you tell us what time was it more or less when you **stabbed** Danilo Camba?

A: I do not know the time, sir.

Q: But it was in the afternoon of August 20, 1989, is that correct?

A: Yes, sir. x x x [35] [Emphasis ours]

This in-court admission confirms the separate admission he made at the Bolinao police station on August 22, 1989 in the presence of counsel, Atty. Antonio V. Tiong.

The petitioner sought to exculpate himself by claiming that the stabbing was an act of self-defense. In his testimony of May 3, 1994, he claimed:

ATTY. TEOFILO A. HUMILDE:

Q: After Gumangan left and you continued walking, were you able to reach the place where you were to buy fish?

CLEMENTE CASTA:

A: No, sir.

Q: Why?

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[35] TSN, January 18, 1995, pp. 4-5.

A: I met the person whom I don't know, sir.

x x x x x x x x x

Q: What did you do when you saw that person by the roadside after you have seen Gumangan?

A: None, sir, he called me.

x x x x x x x x x

Q: Will you tell us what you heard when you said that person called you?

A: He called me by waving his hand and then he pointed me [sic].

Q: After that, did you respond to his hand-waving by getting near?

A: When I got near him, he boxed me, sir.

Q: Were you hit when he boxed you?

A: No, sir.

Q: What happened next after that person boxed you?

A: We fought each other by grappling, sir.

x x x x x x x x x

Q: When you grappled with each other, who was the first who grappled against whom?

A: He, sir.

Q: What happened when he grappled with you and you grappled with him, what happened next?

A: I did not notice that my knife has already blood so I ran away.

x x x x x x x x x

Q: Did you come to know him later, that person whom you grappled with?

A: When I was in prison, sir.

Q: Who was that?

A: Danilo Camba, sir.[36] [Emphasis ours]

Like the RTC, we do not believe that the appellant acted in self-defense.

As a rule, the prosecution bears the burden of establishing the guilt of the accused beyond reasonable doubt. However, when the accused admits the killing and, by way of justification, pleads self-defense, the burden of evidence shifts; he must then show by clear and convincing evidence that he indeed acted in self-defense. For that purpose, he must rely on the strength of his own evidence and not on the weakness of the prosecution's case.[37]

Article 11(1) of the Revised Penal Code spells out the elements that the accused must establish by clear and convincing evidence to successfully plead self-defense. The Article provides:

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 to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.

xxx xxx xxx

There is unlawful aggression when the peril to one's life, limb or right is either actual or imminent. There must be actual physical force or actual use of a weapon. It is a statutory and doctrinal requirement to establish self-defense that unlawful

[36] TSN, May 3, 1994, pp. 5-6.

[37] See *People v. Santillana*, G.R. No. 127815, June 9, 1999, 308 SCRA 104.

aggression must be present. It is a condition *sine qua non*; **there can be no self-defense, complete or incomplete, unless the victim commits unlawful aggression against the person defending himself**.[38]

We find that the appellant miserably failed to prove that he had to defend himself against an unlawful aggression. Aside from his own claim (which we find under the circumstances to be self-serving), the appellant did not present any other evidence to corroborate his claim that the victim boxed him when they met on the road in Sitio Makber, *Barangay* Goyoden, Bolinao, Pangasinan. As against his bald claim, two eye-witnesses— Marlyn and Modesto — saw no unlawful aggression by the victim against the appellant. Marlyn testified that at the time he was stabbed, Danilo was merely standing near the roadside fronting her (Marlyn's) house. Modesto, on the other hand, narrated that, he, Danilo and several others were simply walking slowly along the *Sitio* Makber, Goyoden road towards the west when the appellant suddenly approached from behind and stabbed Danilo.

We find no reason to disbelieve these straightforward narration of the events surrounding the stabbing that led to Danilo's death. Nor do we see anything on the record showing any improper motive that would lead the witnesses to testify as they did. In fact, the appellant never imputed any such motive on Marlyn and Modesto. The established rule, laid down in an already long line of cases, is that in the absence of evidence showing any reason or motive for the prosecution witnesses to falsely testify, their testimony can be given full faith and credit.[39] Thus, no actual or imminent threat to the appellant's life or limb existed when he stabbed Danilo to death.

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[38] *People v. Ansowas*, G.R. No. 140647, December 18, 2002, 394 SCRA 227.

[39] *People v. Rada*, G.R. No. 128181, June 10, 1999, 308 SCRA 227.

The Crime Committed

Article 248 of the Revised Penal Code defines the crime of murder as follows:

> Article 248. *Murder*. — Any person who not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion temporal* in its maximum period to death, if committed with any of the following attendant circumstances:
>
> 1. With treachery x x x[40]

Treachery, the qualifying circumstance alleged against the appellant, exists when an offender commits any of the crimes against persons, employing means, methods or forms which tend directly or especially to ensure its execution, without risk to the offender, arising from the defense that the offended party might make.[41] This definition sets out what must be shown by evidence to conclude that treachery existed, namely: (1) the employment of such means of execution as would give the person attacked no opportunity for self-defense or retaliation; and (2) the deliberate and conscious adoption of the means of execution. To reiterate, the essence of qualifying circumstance is the suddenness, surprise and the lack of expectation that the attack will take place, thus depriving the victim of any real opportunity for self-defense while ensuring the commission of the crime without risk to the aggressor.[42]

The evidence in the case shows that Danilo was by the roadside when the appellant, wielding a deadly weapon — a double-bladed knife — suddenly appeared from behind and stabbed him. The unsuspecting victim was hit at the back below the left armpit, puncturing his heart and lungs. As the witnesses

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[40] Under R.A. 7659 (The Heinous Crimes Law), the penalty for murder is now *reclusion perpetua* to death.

[41] *People v. Batin*, G.R. No. 177223, November 28, 2007, 539 SCRA 272, 288.

[42] *People v. Felipe*, G.R. No. 142505, December 11, 2003, 418 SCRA 146.

testified, the attack was sudden and while the victim was in an unguarded position: from his rear so that the unsuspecting victim had practically no chance to defend himself. The location of the thrust — at the left side, below the armpit — shows that the heart was the targeted organ to immediately incapacitate the victim and render him unable to defend against or respond to the attack. As the evidence shows, the victim simply fell immediately after being stabbed, in the way that a raging bull immediately crumbles to its knees, spent and harmless, upon being hit by the matador's sword thrust, delivered from above, between its shoulder blades, targeting the heart. These mode, manner and execution of the attack, to our mind, bespeak of treachery.

Voluntary Surrender

Voluntary surrender, properly undertaken, is a mitigating circumstance that lowers the imposable penalty. It is present when the following elements concur: a) the offender has not been actually arrested; b) the offender surrenders himself to a person in authority or to the latter's agent; and c) the surrender is voluntary. To be sufficient, the surrender must be spontaneous and made in a manner clearly indicating the intent of the accused to surrender unconditionally, either because he acknowledges his guilt or wishes to save the authorities the trouble and expense attendant to the efforts of searching for and capturing him.[43]

We find all the requisites present in this case. The appellant testified that he had asked his uncle, Ediom Casta, to go to the police to signify his intention to surrender. At around 7:00 o'clock in the morning of August 21, 1989, SPO1 (then Patrolman) Camba came to his house to bring him back to the Bolinao Police Station for investigation. The appellant's testimony that he voluntarily surrendered was corroborated by the November 21, 1991 testimony of SPO1 Camba, which we quote:

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[43] *Ladiana v. People*, G.R. No. 144293, December 4, 2002, 393 SCRA 419.

ATTY. ROMIE V. BRAGA

Q: Now, as police investigator, will you inform the Court if Clemente Casta, the accused herein, ever presented himself to your office?

DOMINGO CAMBA

A: Yes, sir.

Q: And in relation with this incident and that appearance of Clemente Casta in your office, was it reflected and entered in your police blotter?

A: Yes, sir.

Q: Now, will you go over your police blotter and read into the record the fact of the appearance of Clemente in your office in relation with this incident?

A: On entry 4302 21 August, 1989 07 hundred hours Clemente Casta *y* Carolino, 21 years old, single, fisherman, resident of Goyuden Bolinao, Pangasinan was brought into this station for investigation following his **voluntary surrender** to have allegedly killed Danilo Camba on or about 1500 hundred hours 20 August 1989 in Goyuden this municipality.[44]

That the appellant surrendered only in the morning of August 21, 1989 (or a day after the stabbing incident) does not diminish nor affect the voluntariness of his surrender. For voluntary surrender to mitigate an offense, it is not required that the accused surrender at the first opportunity.[45] Here, the appellant went voluntarily went with SPO1 Camba to the police station within a day after the killing to own up to the killing. Thus, the police did not devote time and effort to the investigation of the killing and to the search and capture of the assailant.

Based on these considerations, we hold that the mitigating circumstance of voluntary surrender should be appreciated in appellant's favor.

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[44] TSN, November 21, 1991, p. 7.

[45] *People v. Saul*, G.R. No. 124809, December 19, 2001, 372 SCRA 637.

The Proper Penalty

The Information in this case indicates that the crime of murder was committed by the appellant on August 20, 1989 which was before the effectivity of Republic Act No. 7659 on December 31, 1993 amending Article 248 of the Revised Penal Code on murder, raising the penalty to *reclusion perpetua* to death. Prior to its amendment the penalty for the crime of murder under Article 248 of the Revised Penal Code was *reclusion temporal* in its maximum period to death.

In light of the greater penalty that attaches under the amendment, the previous penalty of *reclusion temporal* in its maximum period to death will have to be imposed in order not to run afoul of the constitutional prohibition against *ex post facto* laws. Under **Section 22 of Article III of the 1987 Constitution**, no *ex post facto* law or bill of attainder shall be enacted. An *ex post facto* law, among others, is one that changes the penalty and inflicts a greater punishment than what the law annexed to the crime when committed[46] — the situation that would obtain if the amendment under Republic Act No. 7659 would be applied.

Considering that the appellant has in his favor the mitigating circumstance of voluntary surrender with no aggravating circumstance to offset it, the imposable penalty should be in the minimum period, *i.e., reclusion temporal* in its maximum period. Under the Indeterminate Sentence Law,[47] the **maximum** sentence shall be *reclusion temporal* in its maximum period (17 years, 4 months and 1 day to 20 years) and the **minimum** shall be taken from the next lower penalty, which is *prision mayor* maximum to *reclusion temporal* medium (10 years and 1 day to 17 years and 4 months).

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[46] See: *People v. Derilo*, G.R. No. 117818, April 18, 1997, 271 SCRA 633, 661-663.

[47] Act No. 4103, as amended by Act No. 4225.

Civil Liability

The RTC awarded the amount of ₱13,000.00 to the victim's heirs as actual damages in light of established jurisprudence that allows only expenses duly supported by receipts as proof of actual damages.[48] This RTC ruling has however been overtaken by our rulings in the landmark cases of *People v. Abrazaldo*[49] and *People v. Villanueva*.[50] In *Abrazaldo*, we ruled that where the amount of the actual damages cannot be determined because of the absence of supporting and duly presented receipts but evidence confirming the heirs' entitlement to actual damages, temperate damages in the amount of ₱25,000.00 may be awarded. This ruling was reiterated, with slight modification in *Villanueva*, where we held that when the actual damages proven by receipts during the trial amount to less than ₱25,000.00, we can nevertheless award temperate damages of ₱25,000.00. Thus, the heirs' entitlement is ₱25,000.00 of temperate damages.

We also modify the award of ₱100,000.00 as moral and exemplary damages which the RTC lumped together. Moral damages are mandatory in cases of murder and homicide without need of allegation and proof other than the death of the victim. We find the award of ₱50,000.00 as moral damages in order in accordance with established jurisprudence.[51]

The award of exemplary damages is justified by the duly proven qualifying circumstance of treachery; when a crime is committed with an aggravating circumstance, either qualifying or generic, an award of ₱25,000.00 as exemplary damages is justified under Article 2230 of the New Civil Code.[52]

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[48] *Pleyto v. Lomboy*, G.R. No. 148737, June 16, 2004, 432 SCRA 329; *People v. Buenavidez*, G.R. No. 141120, September 17, 2003, 411 SCRA 202.

[49] G.R. No. 124392, February 7, 2003, 397 SCRA 137.

[50] G.R. No. 139177, August 11, 2003, 408 SCRA 571.

[51] *People v. Eling*, G.R. No. 178546, April 30, 2008.

[52] See *People v. Tolentino*, G.R. No. 176385, February 26, 2008.

We cannot award loss of earning capacity to the victim's heirs since no documentary evidence was presented to substantiate this claim. As a rule, documentary evidence should be presented to substantiate a claim for damages for loss of earning capacity. While there are exceptions to the rule, these exceptions do not apply as the victim, Danilo, was an employee of the Office of the Register of Deeds of Lingayen, Pangasinan when he died; he was not a worker earning less than the minimum wage under the prevailing labor laws.[53]

We affirm the ₱50,000.00 death indemnity awarded to the victim's heirs, in accordance with prevailing jurisprudence.[54]

WHEREFORE, in light of all the foregoing, we hereby *AFFIRM* the March 10, 2006 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01217 with the following *MODIFICATIONS*:

(1) the appellant is sentenced to suffer the indeterminate penalty of imprisonment for (10) years and one (1) day of *prision mayor* maximum, as minimum, to seventeen (17) years four (4) months and one (1) day of *reclusion temporal* maximum, as maximum;

(2) moral damages is *REDUCED* to ₱50,000.00;

(3) exemplary damages is *REDUCED* to ₱25,000.00;

(4) the award of actual damages is *DELETED*; and

(5) the appellant is *ORDERED* to *PAY* the victim's heirs the amount of ₱25,000.00 as temperate damages.

Costs against the appellant Clemente Casta.

SO ORDERED.

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

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[53] *People v. Ballesteros, supra* note 34.

[54] See *Licyayo v. People,* G.R. No. 169425, March 4, 2008; *People v. Tabuelog,* G.R. No. 178059, January 22, 2008, 542 SCRA 301.

EN BANC

[G.R. Nos. 183806-08. September 16, 2008]

MAYOR ABRAHAM N. TOLENTINO, *petitioner, vs.* **COMMISSION ON ELECTIONS, JOCELYN RICARDO, ARNEL TARUC, MARLENE D. CATAN, MARIA THERESA MENDOZA COSTA, FIDELA ROFOLS CASTILLO, DOMINADOR BASSI, ROBERTO MALABANAN, NERISSA MANZANO, LEONIDEZ MAGLABE HERNANDEZ, TAGUMPAY REYES, ELINA FAJARDO, and MARIA CORAZON MARQUIACAS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; DEFINED AND CONSTRUED. — Grave abuse of discretion means such capricious and whimsical exercise of judgment amounting to excess or lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, or where the power is exercised in an arbitrary and despotic manner by reason of personal hostility.

2. POLITICAL LAW; ELECTIONS LAWS; PROVIDES FOR THE IMMEDIATE RESOLUTION OF ELECTION PROTESTS WHILE AT THE SAME TIME SAFE GUARDING THE INTEGRITY OF THE RECORDS AND THE PROCESS; APPLICATION IN CASE AT BAR. — We find that the parties' alleged agreement is not founded on any specific provision or requirement under our election laws or COMELEC rules and regulations. If any such agreement was entered into with the concurrence of the local COMELEC officials, the continued effectiveness of this agreement had been overridden by the September 7, 2007 Order of the COMELEC which directed in clear and unequivocal terms that the records pertinent to the protest cases be forwarded to Manila. Further, if any such

agreement had been entered, it had long been repudiated by the private respondents. To be sure, the petitioner has no clear specific legal right to have the election documents subject of the protest reproduced and authenticated prior to transmittal to the COMELEC main office. Petitioner Tolentino in fact did not cite any specific provision of any election law, or election rules for that matter, establishing the right he now claims to have been unduly restricted by the COMELEC. If in fact a right to the photocopying and verification processes exists, this right immediately imposes upon the COMELEC the correlative duty, a ministerial one in fact, to respect the right. In such a case, the proper remedy is a petition for *mandamus,* and not *certiorari*, under Rule 65. What exist in fact in our laws are provisions that point to the immediate need to resolve election protests while at the same time safeguarding the integrity of the records and the process. x x x Thus, the COMELEC's order that the relevant materials be brought to Manila is grounded on express legal authority. On the other hand, the photocopying and authentication processes that Atty. Ravanzo, the Election Supervisor, granted are — at best — mere accommodations, made in the exercise of his discretion, but which both the law and the election rules do not specifically provide. To reiterate, what the law demands is ***immediate*** action on the transmittal of pertinent election documents for revision and/or recount, not the delay that has attended this case. To be exact, the election took place 15 months ago and the protest was filed soon after, while the COMELEC's order to transmit the material documents for purposes of revision was dated September 7, 2007 or almost a year ago counted from the date of this Resolution. Given the local elective officials' three-year term, the one-year delay that has attended the election protest is impermissible and one that the COMELEC has the obligation to address through its assailed orders; this is a delay that this Court is likewise mandated not to allow.

APPEARANCES OF COUNSEL

Maria Cecilia I. Olivas for petitioner.
The Solicitor General for public respondent.
Charles Perfecto A. Mercado for private respondents.

D E C I S I O N

BRION, *J.*:

We resolve the Petition for *Certiorari* filed by proclaimed Tagaytay City Mayor Abraham N. Tolentino (*petitioner Tolentino*) under Rule 64, in relation with Rule 65, of the Revised Rules of Court. The petition seeks to set aside and annul the Orders dated June 12, 2008 and July 21, 2008 by the Second Division of the Commission on Elections (*COMELEC*) in EPC Nos. 2007-07, 2007-08, and 2007-09, and prayed for the issuance of a Temporary Restraining Order *(TRO)* to restrain the COMELEC from enforcing the assailed orders.

EPC Nos. 2007-07, 2007-08, and 2007-09 are the election protests filed by the presumably losing candidates (private respondents herein) in the May 2007 election for the local city officials of Tagaytay City. **EPC No. 2007-07** involves the protest filed by Jocelyn Ricardo against the proclaimed mayor (petitioner Tolentino). **EPC No. 2007-08**, on the other hand, relates to the protest of Arnel Taruc against the proclaimed vice mayor. Finally, **EPC No. 2007-09** involves the protest of Marlene Catan, Maria Theresa Mendoza Costa, Fidela Rafols Castillo, Dominador Bassi, Roberto Malabanan Hernandez, Nerissa Manzano, Leonidez Maglabe Hernandez, Tagumpay Reyes, Maria Corazon Marquiacias, and Elino Fajardo against the proclaimed city councilors or members of the Sangguniang Panlungsod of Tagaytay City.

On June 12, 2007, roughly a month after the May elections, COMELEC Commissioner Florentino Tuason, Jr. directed Alicia Timbol, OIC-Election Officer for Tagaytay City (*Timbol*) – *via* a Memorandum-letter – to seal, within twenty-four (24) hours from receipt of the Memorandum, all the election documents and paraphernalia involved in the protested election in the presence of the representative of all parties concerned, taking all precautionary measures in protecting the integrity of the documents and forthwith deliver the documents to the Commission. Three days later and after information from Timbol

that the parties were already notified of the scheduled sealing of the documents, Commissioner Tuason reiterated his June 12, 2007 directive.

On June 15, 2007, counsel for Doroteo Marasigan, Jr., one of the proclaimed councilors, reacting to the Tuason directive, wrote the COMELEC a letter, essentially questioning, among other things: (1) the authority of Commissioner Tuason to issue the directive; and (2) the alleged lack of prescribed precautionary measures or safeguards in going through the document-sealing process; counsel also asserted the right of all concerned parties, including his client, to be notified of, and to participate in, the process. He asked for the provisional cancellation of the June 12, 2007 directive and for an order directing Timbol to desist from pursuing the scheduled proceedings.

Timbol decided to reset the scheduled June 15, 2007 hearing to June 19, 2007 to allow all the concerned parties to be properly notified. At the June 19, 2007 sealing, Atty. Juanito Ravanzo, Jr., Election Supervisor, granted petitioner Tolentino's party's request for the photocopying of the book of voters, Election Day Computerized Voters' List (EDCVL) and Posted Computerized Voters' List (PCVL), and the signing by all the representatives of the parties, as well as the Election Officer, of the photocopied documents upon verification that these represent the reproduced original documents. Atty. Ravanzo asked the private respondents whether they would also avail themselves of these processes; they answered in the affirmative. Atty. Ravanzo informed the parties, though, that the expenses for photocopying, as well as the provision of the materials, shall be borne by the requesting party/ies. At one o'clock in the afternoon (1:00 p.m.), the sealing process (including the photocopying and verification of photocopied documents) commenced. At three o'clock in the afternoon (3:00 p.m.), the photocopying machine of petitioner Tolentino's political party bogged down; at that point, the parties agreed that the private respondents' party will just finish the photocopying of the Book of Voters and all the documents including the original and photocopies would be temporarily sealed and then reopened

upon resumption of the proceedings. At five o'clock, the temporary sealing of the unfinished documents for the first precinct was done in the presence of all the party representatives. The proceeding adjourned for the day to continue the next day at nine o'clock in the morning.

Two and a half months after the sealing process commenced or on September 7, 2007, the COMELEC issued an Order finding the protests sufficient in form and substance and issued the following orders and directives:

> In view of the foregoing disquisition, the COMELEC (Second Division) hereby:
>
> xxx xxx xxx
>
> 2. ORDERS the City Treasurer of Tagaytay City, Cavite to make an inventory of the aforesaid 116 protested ballot boxes, the list of which are hereto attached and forming an integral part of this Order, within ten (10) days from receipt hereof with prior notice to herein parties who may wish to sent their respective duly authorized representatives to observe the same;
>
> Immediately thereafter, the said ballot boxes together with the copy of the CEF No. 14 (Certificate of Receipt of Official Ballots, other Forms and Supplies by the BEIs) shall be turned over to the Election Officer of Tagaytay City, Cavite for delivery and submission to the Electoral Contests Adjudication Department (ECAD), Comelec Main Office, Intramuros, Manila;
>
> 3. DIRECTS the Election Officer of Tagaytay City, Cavite to gather and collect the subject contested ballot boxes containing ballots, their keys from the City Treasure after the inventory thereof and to deliver the same to ECAD, Comelec, Intramuros, Manila, within ten (10) days from receipt of the said ballot boxes from the City Treasurer and likewise with prior notice to herein parties who may wish to send their respective duly authorized representatives to accompany the same, observing strict measures to protect their safety and integrity such as sealing of the lid of each ballot box with masking takes [*sic*, should be tapes] with the parties or their representatives affixing their initials on said masking tapes.

The Election Officer, however, shall not cause the transmittal of the subject ballot boxes unless the protestant has paid the above-required cash deposits. x x x

The said transmittal shall be done simultaneously with those involved in EPC No. 2007-08 and EPC 2007-09.

xxx xxx xxx

*[We shall refer to this order as the **September 7, 2007 Order**. Based on private respondents' submissions, the COMELEC en banc upheld this order when petitioner Tolentino moved for its reconsideration.]*

On September 21, 2007, the photocopying and verification process was discontinued after the representatives of the private respondents' party no longer attended the proceedings.

On March 3, 2008 or almost six (6) months since private respondents' representatives started absenting themselves from the proceedings, counsel for petitioner Tolentino asked Timbol to take immediate action on the discontinued sealing proceedings. His counsel called Timbol's attention to the agreement that the authentication of photocopied documents shall be done by *all* the representative of the parties.

Meanwhile or on March 6, 2008, the COMELEC ordered the City Treasurer and the Election Officer of Tagaytay City (Timbol) to implement the September 7, 2007 Order directing the inventory, retrieval, and collection of the contested ballot boxes within the period therein given.

On March 14, 2008, Timbol notified the parties that the sealing proceedings shall resume on March 26, 2007. On March 19, 2008, however, the private respondents notified Timbol of their decision to drop the approval of the continuation of the photocopying process, given that it was long and tedious and that they now opted to follow the COMELEC's decision on the matter [obviously referring to the September 7, 2007 Order].

Thus, the private respondents did not attend the scheduled resumption of the photocopying process on March 26, 2007. Timbol at the proceedings informed petitioner Tolentino's party

that she already called, *via* a letter, the private respondents' attention to the fact that the photocopying and verification process was agreed upon by the parties. In the meantime, Timbol suggested that the proceedings be suspended until the private respondents' shall have replied to her letter. The next setting was on April 3, 2008.

On April 1, 2008, petitioner Tolentino filed with the COMELEC a motion to defer the implementation of the September 7, 2007 Order. A similar motion was filed by one of the proclaimed councilors.

On April 3, 2008, no representative of the private respondents again came to the scheduled sealing proceedings, prompting petitioner Tolentino's counsel to move for the continuation of the photocopying and verification process; Timbol however said that it would be best if a representative from either the NAMFREL[1] or the PPCRV,[2] in lieu of private respondents' representative, would be present to authenticate the photocopied documents. The proceeding was reset anew to April 14, 2008.

Asked to comment on the motion to defer filed by petitioner Tolentino and a similar motion of one of the proclaimed councilors, the private respondents jointly opposed the motion to defer – stating that it would result only in delay – and asked the COMELEC to direct the City Treasurer and the Election Officer to comply with the earlier directive to immediately transmit the ballot boxes and election paraphernalia to the COMELEC head office.

On May 6, 2008, the COMELEC granted petitioner Tolentino's motion to defer (effectively acting also on one of the proclaimed councilor's similar motion) for a period of twenty (20) days to allow the completion of the authentication of the photocopied documents.

Not satisfied, petitioner Tolentino filed anew, on June 6, 2008, a motion for additional time (60 to 80 days) to reproduce and

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[1] National Movement for Free Elections.

[2] Parish Pastoral Council for Responsible Voting.

authenticate documents and/or to defer the implementation of the September 7, 2007 Order until completion of the photocopying and authentication of documents. **The COMELEC granted in an Order dated June 21, 2008 petitioner Tolentino's motion*, but only for a period of thirty (30) days.*** **This June 21 Order is the first order assailed in the present petition.**

Undaunted, petitioner Tolentino filed a motion for reconsideration of the June 21, 2008 Order, which **the COMELEC denied – in the second order now assailed in this petition** – for lack of merit, *as the parties were already given more than enough time to complete the requested undertaking.* Hence, the present petition on the following **GROUNDS**:

I.

WHETHER OR NOT PUBLIC RESPONDENT THE HONORABLE COMMISSION ON ELECTIONS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED ORDERS WHICH UNDULY, UNLAWFULLY, AND ILLEGALLY LIMITED THE RIGHT OF PETITIONER TOLENTINO TO PRESERVE THE INTEGRITY OF THE SUBJECT DOCUMENTS.

II.

WHETHER OR NOT PUBLIC RESPONDENT, THE HONORABLE COMMISSION ON ELECTIONS, COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED ORDERS WHICH UNDULY, UNLAWFULLY, AND ILLEGALLY LIMITED HIS RIGHT TO FINISH AND COMPLETE THE REPRODUCTION AND AUTHENTICATION OF THE SUBJECT DOCUMENTS FOR ONLY THIRTY WORKING DAYS FROM RECEIPT OF THE 12 JUNE 2008 ORDER.

In support of these grounds, the petitioner contends that the non-extendible period of thirty (30) working days for the parties to effectively complete the requested photocopying and verification, unduly, unlawfully, and illegally deprived him of his right to safeguard, secure, and preserve the integrity of the subject election documents and his vested right under the

agreement which were freely and voluntarily agreed upon by the parties on June 19, 2007.

First, the COMELEC arbitrarily and whimsically failed to consider the circumstances that justified the requested extension for the reproduction and authentication of the subject documents – there was an agreement for the reproduction and authentication of the documents as integral processes of the sealing proceedings freely and voluntarily agreed upon by the parties; and the respondents unilaterally withdrew their participation in the proceedings without informing all the parties, leading to the suspension and disruption of the proceedings; the disruption is thus clearly imputable to the respondents. The petitioner cites as proof of the COMELEC's disregard of these important circumstances the order denying the motion for reconsideration which merely cited as ground for denial the motion's lack of merit.

Second, the COMELEC, whimsically and arbitrarily, did not consider the fact that the reproduction and photocopying processes would not violate in any case the right of private respondents to the immediate implementation of the September 7, 2007 Order as there are cases already scheduled for revision, then and now. Given, too, the total number of ballot boxes/ precincts involved in the protest, the additional time the petitioner asks is but reasonable and would not cause any delay.

Third, the COMELEC set aside the fact that processes of reproduction and authentication of the subject documents are tedious, complicated and lengthy, and that petitioner Tolentino exhausted and is still exhausting all means to complete the same within the period previously given him; and

Fourth, the COMELEC unlawfully and illegally denied the right of petitioner Tolentino under the agreement entered into by the parties on 19 June 2007.

On August 12, 2008, we issued the TRO prayed for, for a limited period of 15 days expiring on August 27, 2008, and required the private respondents to comment. The private respondents complied by filing their comment on August 22, 2008. The

petitioner, on the other hand, filed a Motion to Extend the Fifteen-Day Period of the Temporary Restraining Order issued on August 12, 2008 and Motion to File a Reply, dated August 22, 2008. For its part, the Office of the Solicitor General asked to be excused from filing a Comment for the public respondents. Our ruling below will effectively resolve these motions.

THE COURT'S RULING

We find the petition devoid of merit.

As the present petition is for a writ of *certiorari* under Rule 65 of the Revised Rules of Court, our review of the petition and the assailed orders is limited to the determination of whether they were issued with lack or excess of jurisdiction or were tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. In the present case, petitioner Tolentino imputes grave abuse of discretion to the COMELEC's issuance of the assailed orders. Grave abuse of discretion means such capricious and whimsical exercise of judgment amounting to excess or lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, or where the power is exercised in an arbitrary and despotic manner by reason of personal hostility.[3]

The petitioner asserts a right – allegedly derived from the parties' agreement – to have the election documents relevant to the protest reproduced and authenticated prior to transmittal to the COMELEC main office. This is the right that petitioner Tolentino claims to have been arbitrarily limited and restricted by the issuance of the assailed orders.

We find that the parties' alleged agreement is not founded on any specific provision or requirement under our election laws or COMELEC rules and regulations. If any such agreement

[3] See: ***Flaminiano v. Hon. Adriano, et al.***, G.R. No. 165258, Feb. 4, 2008; ***Intestate Estate of Carmen de Luna v. Intermediate Appellate Court***, G.R. No. 72424, February 13, 1989, 170 SCRA 246; ***Lalican v. Vergara***, G.R. No. 108619, July 31, 1997, 276 SCRA 518.

was entered into with the concurrence of the local COMELEC officials, the continued effectiveness of this agreement had been overridden by the September 7, 2007 Order of the COMELEC which directed in clear and unequivocal terms that the records pertinent to the protest cases be forwarded to Manila. Further, if any such agreement had been entered, it had long been repudiated by the private respondents.

To be sure, the petitioner has no clear specific legal right to have the election documents subject of the protest reproduced and authenticated prior to transmittal to the COMELEC main office. Petitioner Tolentino in fact did not cite any specific provision of any election law, or election rules for that matter, establishing the right he now claims to have been unduly restricted by the COMELEC. If in fact a right to the photocopying and verification processes exists, this right immediately imposes upon the COMELEC the correlative duty, a ministerial one in fact, to respect the right. In such a case, the proper remedy is a petition for *mandamus*, and not *certiorari*, under Rule 65.[4]

What exist in fact in our laws are provisions that point to the immediate need to resolve election protests while at the same time safeguarding the integrity of the records and the process. Sections 254 and 255 of the Omnibus Election Code provide that:

SECTION 254. Procedure in election contests. — The Commission shall prescribe the rules to govern the procedure and other matters relating to election contests pertaining to all national, regional, provincial, and city offices not later than thirty days before such elections. Such rules shall provide a simple and inexpensive procedure

[4] Section 3, Rule 65 of the Revised Rules of Court provides:

Section 3. *Petition for mandamus*. — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered

for the **expeditious disposition of election contests** and shall be published in at least two newspapers of general circulation. (Art. XVIII, Sec. 192, 1978 EC; Art. XIV, Sec. 62, BP 697)

SECTION 255. Judicial counting of votes in election contest. — Where allegations in a protest or counter-protest so warrant, or whenever in the opinion of the court the interests of justice so require, it shall ***immediately*** order the book of voters, ballot boxes and their keys, ballots and other documents used in the election be brought before it and that the ballots be examined and the votes recounted. (Sec. 221, 1971 EC)

Pursuant to and in the spirit of the above authority, Section 6 of Rule 20 of the Rules of the COMELEC has been promulgated and it reads:

SECTION 6. Revision of Ballots. — When the allegations in a protest or counter-protest so warrant, or whenever in the opinion of the Commission or Division the interest of justice so demands, it shall ***immediately*** order the ballot boxes containing ballots and their keys, list of voters with voting records, book of voters, and other documents used in the election to **be brought before the Commission**, and shall order the revision of the ballots.

Thus, the COMELEC's order that the relevant materials be brought to Manila is grounded on express legal authority. On the other hand, the photocopying and authentication processes that Atty. Ravanzo, the Election Supervisor, granted are – at best – mere accommodations, made in the exercise of his discretion, but which both the law and the election rules do not specifically provide. – To reiterate, what the law demands is ***immediate*** action on the transmittal of pertinent election documents for revision and/or recount, not the delay that has attended this case. – To be exact, the election took place 15 months ago and the protest was filed soon after, while the COMELEC's order to transmit the material documents for purposes of revision was dated September 7, 2007 or almost

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commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

a year ago counted from the date of this Resolution. Given the local elective officials' three-year term, the one-year delay that has attended the election protest is impermissible and one that the COMELEC has the obligation to address through its assailed orders; this is a delay that this Court is likewise mandated not to allow.[5]

We believe and hold too that the photocopying and authentication processes are not at all necessary under the circumstances of the present case for the preservation and protection of the integrity of the election documents and paraphernalia. The local election officers, who are presumed to be in the regular performance of their functions,[6] are under strict orders or directives to maintain the integrity of these documents. Petitioner Tolentino has not pointed to any evidence or indicator that the integrity of the documents and the paraphernalia have been compromised in any manner. The September 7, 2007 Order amply provides the protection petitioner Tolentino seeks in asking us to affirm his claimed right to the photocopying and verification processes.

For want of a valid right to the photocopying and authentication processes, the issue boils down to one of discretion – *i.e.*, the authority of the COMELEC, before whom the election contest is pending, to control *as it sees fit* the processes or incidents of the protest. This discretion is of course derived from the

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[5] See: Section 258 of the Omnibus Election Code, B.P. 881, as amended, which provides: Preferential disposition of contests in courts. — The courts, in their respective cases, shall give preference to election contests over all other cases, except those of *habeas corpus*, and shall without delay, hear and, within thirty days from the date of their submission for decision, but in every case within six months after filing, decide the same.

[6] Section 3 [m] of Rule 131 of the Revised Rules of Court provides:

> Section 3. *Disputable presumptions*. — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
>
> x x x x x x x x x
>
> (m) That official duty has been regularly performed;
>
> x x x x x x x x x

COMELEC's power to hear and decide election contests. To be sure, petitioner Tolentino impliedly recognized this, as he filed a petition for *certiorari* and imputed grave abuse of discretion to the COMELEC.

We hold – on the basis of the petition, the private respondents' comment, and their annexes – that the COMELEC did not abuse its discretion when it granted a period for the completion of the photocopying and authentication of the relevant documents lesser than what petitioner Tolentino requested. In fact, the COMELEC properly acted in its September 7, 2007 Order to transmit the material records of the protest cases to Manila and continued to so act when it issued the assailed orders.

We fully agree with the COMELEC that petitioner Tolentino was given more than enough time to complete the photocopying and authentication processes – the accommodation initially given by the election officers of Tagaytay City. This accommodation was given on June 19, 2007 and we find no credible reason or justification why– for a period of three [3] months (from June 19, 2007 to September 21, 2007) – the photocopying and authentication processes were not completed. Likewise inexplicable is petitioner Tolentino's inaction on the disruption of the proceedings; he did not lift a finger, for a long period of six (6) months, to have the proceedings continued. As the private respondents had openly manifested disinterest in the photocopying and authentication processes through their non-appearance, Tolentino could have immediately moved, within this long hiatus, for the continuation of the proceedings, *with or without private respondents' participation*. For six (6) months, he slept on an alleged right he now asks us, interestingly enough, to affirm. To our mind, the aggregate period of nine (9) months is more than enough to complete the photocopying and authentication processes. All these indicate that the COMELEC, especially the local election officers, have been more than lenient to petitioner Tolentino. To be sure, there are many unasked and unanswered questions on what transpired at the local COMELEC level (as the private respondents strongly implied in their

Comment), but these of course need not be asked or answered in detail for purposes of the present petition. What is important is that we understand that they all point to one sure consequence – past and *even future delay* in the protest cases that underlie the present petition unless the concerned authorities act. We find that the COMELEC has properly acted to address this concern through its assailed orders and we solidly stand behind its action.

As our final point, we see no merit too in petitioner Tolentino's argument that there is no resulting prejudice to the private respondents if the September 7, 2007 Order will not immediately be implemented, given that the COMELEC has calendared more than enough cases for revision, and private respondents' protests may not actually be calendared soonest. What has actually prevented the inclusion of private respondents' election protests in the schedule of cases for revision is the non-implementation of the September 7, 2007 Order, at the instance of petitioner Tolentino and his party mates. Significantly, a day's delay in the resolution of the election contest unduly prejudices the private respondents' right to occupy the office – given the short three-year term – and does violence to the electorate's will, if indeed the protests are meritorious; similarly, any such delay unduly burdens petitioner Tolentino's rightful claim to the office and affects the legitimacy of his administration, if indeed he won the election and is the electorate's choice. These are concerns that the immediate revision or recount required by law seek to address and, to our mind, are the unspoken considerations in the assailed COMELEC orders. We expressly reiterate them here as they are considerations that should not be lost, forgotten, or left unsaid.

WHEREFORE, we *DISMISS* the petition for lack of merit. Consistent with this dismissal, we likewise *DENY* the request for extension of the Temporary Restraining Order of August 12, 2008 which, by its own terms, expired on August 27, 2008. We declare that there is no further legal bar to the full implementation of the COMELEC's September 7, 2007 Order and the assailed orders.

SO ORDERED.

Puno, C.J., Quisumbing, Corona, Carpio Morales, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, and *Leonardo-de Castro, JJ.,* concur.

Ynares-Santiago, Carpio, Austria-Martinez, and *Azcuna, JJ.,* on official leave.

FIRST DIVISION

[G.R. No. 138823. September 17, 2008]

CARIDAD MAGKALAS, *petitioner, vs.* **NATIONAL HOUSING AUTHORITY,** *respondent.*

SYLLABUS

1. POLITICAL LAW; NATIONAL HOUSING AUTHORITY; MANDATED BY PRESIDENTIAL DECREE (P.D.) NO. 1315 TO TAKE POSSESSION, CONTROL AND DISPOSITION OF EXPROPRIATED PROPERTIES WITH POWER TO DEMOLISH STRUCTURES THEREIN; PRESENT IN CASE AT BAR. — The NHA's authority to order the relocation of petitioner and the demolition of her property is mandated by Presidential Decree (P.D.) No. 1315. Under this Decree, the entire Bagong Barrio in Caloocan City was identified as a blighted area and was thereby declared expropriated. The properties covered under P.D. No. 1315 included petitioner's property. The NHA, as the decree's designated administrator for the national government, was empowered to take possession, control and disposition of the expropriated properties with the power of demolition of their improvements. x x x Pursuant to Section 2 of P.D. No. 1315, the NHA identified Area 1 where petitioner's property was located as part of the Area Center reserved for open space, after studies have shown that the development of the area will affect only three (3) structures compared to six

(6) or more structures in the other areas. A stage and recreation center was expected to be constructed at the Area Center. As a result, petitioner was informed by the NHA that she would be relocated to Lot 77, Block 2, Barangay 132. However, petitioner adamantly refused to vacate the property claiming she had acquired a vested right over the same. Her refusal to vacate and relocate to her assigned lot had hampered the development of the entire area. It should be noted that to date, only petitioner had refused to comply with the NHA directive as the other occupants in Area 1 had already vacated the premises. To stress, P.D. No. 1315 explicitly vests the NHA the power to immediately take possession, control and disposition of the expropriated properties with the power of demolition. Clearly, the NHA, by force of law, has the authority to order the relocation of petitioner, and the demolition of her structure in case of her refusal as this is the only way through which the NHA can effectively carry out the implementation of P.D. No. 1315.

2. ID.; ID.; ID.; FURTHER SUSTAINED BY P.D. NO. 1472. — The NHA's authority to demolish squatters and illegal occupants was further reinforced by P.D. No. 1472 which specifically provides as follows: SEC. 2. The National Housing Authority shall have the **power to summarily eject, without the necessity of judicial order**, any and all squatters' colonies on government resettlement projects, as well as any illegal occupants in any homelot, apartment or dwelling unit owned or administered by it. In the exercise of such power, the National Housing Authority shall have the right and authority to request the help of the *Barangay* Chairman and any peace officer in the locality x x x. Inasmuch as petitioner's property was located in the area identified as an open space by the NHA, her continued refusal to vacate has rendered illegal her occupancy thereat. Thus, in accordance with P.D. No. 1472, petitioner could lawfully be ejected even without a judicial order.

3. CIVIL LAW; PROPERTY; POSSESSION; VESTED RIGHT, DEFINED AND CONSTRUED. — A vested right is one that is absolute, complete and unconditional and no obstacle exists to its exercise. It is immediate and perfect in itself and not dependent upon any contingency. To be vested, a right must have become a title — legal or equitable — to the present or future enjoyment of property.

4. POLITICAL LAW; CONSTITUTIONAL LAW; SOCIAL JUSTICE; CONSTRUED; APPLICATION IN CASE AT BAR. — Social Justice, as the term suggests, should be used only to correct an injustice. As the eminent Justice Jose P. Laurel observed, social justice must be founded on the recognition of the necessity of interdependence among diverse units of a society and of the protection that should be equally and evenly extended to all groups as a combined force in our social and economic life, consistent with the fundamental and paramount objective of the State of promoting the health, comfort, and quiet of all persons, and of bringing about "the greatest good to the greatest number." x x x For sure, the NHA's order of relocating petitioner to her assigned lot and demolishing her property on account of her refusal to vacate was consistent with the law's fundamental objective of promoting social justice in the manner that will inure to the common good. The petitioner cannot disregard the lawful action of the NHA which was merely implementing P.D. No. 1315. It is also worth noting that petitioner's continued refusal to leave the subject property has hindered the development of the entire area. Indeed, petitioner cannot invoke the social justice clause at the expense of the common welfare.

5. ID.; STATUTES; REPEAL BY IMPLICATION ARE NOT FAVORED; RATIONALE. — It is a well-settled rule of statutory construction that repeals by implication are not favored. The rationale behind the rule is explained as follows: Repeal of laws should be made clear and expressed. Repeals by implication are not favored as laws are presumed to be passed with deliberation and full knowledge of all laws existing on the subject. Such repeals are not favored for a law cannot be deemed repealed unless it is clearly manifest that the legislature so intended it. The failure to add a specific repealing clause indicates that the intent was not to repeal any existing law, unless an irreconcilable inconsistency and repugnancy exist in the terms of the new and old laws. Likewise, in another case, it was held: Well-settled is the rule that repeals of laws by implication are not favored, and that courts must generally assume their congruent application. The two laws must be absolutely incompatible, and a clear finding thereof must surface, before the inference of implied repeal may be drawn. The rule is expressed in the maxim, *interpretare et concordare leqibus*

est optimus interpretendi, i.e., every statute must be so interpreted and brought into accord with other laws as to form a uniform system of jurisprudence. The fundament is that the legislature should be presumed to have known the existing laws on the subject and not have enacted conflicting statutes. Hence, all doubts must be resolved against any implied repeal, and all efforts should be exerted in order to harmonize and give effect to all laws on the subject.

6. ID.; ID.; ID.; AS A RULE, STATUTES SHOULD BE CONSTRUED IN LIGHT OF THE OBJECTIVE TO BE ACHIEVED AND THE EVIL OR MISCHIEF TO BE SUPPRESSED BY THE SAID LAWS; APPLICATION IN CASE AT BAR. — We find, as the trial court has found, no irreconcilable conflict or repugnancy between Section 28 of R.A. No. 7279 and P.D. No. 1315 and No. 1472, rather, they can be read together and harmonized to give effect to their provisions. It should be stressed that Section 28 of R.A. No. 7279 does not totally and absolutely prohibit eviction and demolition without a judicial order as in fact it provides for exceptions. Pursuant to established doctrine, the three (3) statutes should be construed in light of the objective to be achieved and the evil or mischief to be suppressed by the said laws, and they should be given such construction as will advance the object, suppress the mischief, and secure the benefits intended. It is worthy to note that the three laws (P.D. No. 1315, P.D. No. 1472 and R.A. No. 7279) have a common objective — to address the housing problems of the country by establishing a comprehensive urban development and housing program for the homeless. For this reason, the need to harmonize these laws all the more becomes imperative. Hence, in construing the three laws together, we arrive at a conclusion that demolition and eviction may be validly carried out even without a judicial order in certain instances, to wit: (1) when the property involved is an expropriated property in Bagong Barrio, Caloocan City pursuant to Section 1 of P.D. No. 1315; (2) when there are squatters on government resettlement projects and illegal occupants in any homelot, apartment or dwelling unit owned or administered by the NHA pursuant to Section 2 of P.D. No. 1472; (3) when persons or entities occupy danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways and other public places such as sidewalks, roads, parks and playgrounds, pursuant to

Section 28(a) of R.A. No. 7279; (4) when government infrastructure projects with available funding are about to be implemented pursuant to Section 28(b) of R.A. No. 7279.

APPEARANCES OF COUNSEL

Rodrigo D. Sta. Ana for petitioner.
Legal Department (NHA) for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

In this petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, petitioner seeks to set aside and annul the Decision[1] dated March 10, 1999 as well as the Order[2] dated May 14, 1999 rendered by the Regional Trial Court (RTC) of Caloocan City, Branch 124, in *Civil Case No. C-16464*.

The RTC decision dismissed the complaint for damages with prayer for temporary restraining order/writ of preliminary injunction filed by herein petitioner against the National Housing Authority (NHA). The RTC also ordered the NHA to proceed with the demolition of petitioner's structure.

The undisputed facts, as found by the RTC, are quoted hereunder:

x x x plaintiff and her predecessors-in-interest have been occupying a lot designated as TAG-77-0063, Block 1, Barangay 132, located at the corner of 109 Gen. Concepcion and Adelfa Streets, Bagong Barrio, Caloocan City, for the past 39 years.

On March 26, 1978, P.D. No. 1315 was issued expropriating certain lots at Bagong Barrio, Caloocan City. In the same Decree, the National Housing Authority (NHA) was named Administrator of the Bagong

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[1] Decided by Judge Victoria Isabel A. Paredes; *rollo*, pp. 37-46.

[2] *Id.*, at 47-48.

Barrio Uban Bliss Project with the former to take possession, contol (sic) and disposition of the expropriated properties with the power of demolition. During the Census survey of the area, the structure built by the plaintiff was assigned TAG No. 0063. After conducting studies of the area, the NHA determined that the area where plaintiff's structure is located should be classified as an area center (open space). The Area Center was determined in compliance with the requirement to reserve 30% open space in all types of residential development.

Plaintiff, together with Mr. & Mrs. Josefino Valenton and Mr. & Mrs. Rey Pangilinan, through counsel, filed an appeal from the decision to designate the area where the plaintiff and the two other spouses have erected structures, as an Area Center. On January 25, 1985, the NHA, through its General Manager, sent a letter to the counsel of the plaintiff and the two other previously named spouses explaining why the area where their structures were erected was designated as the area center (open space). The said appeal was denied by the NHA. In a letter, dated August 6, 1985, the NHA sent a Notice of Lot Assignment to plaintiff recognizing the latter as a Censused Owner of a structure with TAG No. 0063-04 which was identified for relocation.

In the same Notice, the NHA informed plaintiff that per Development Program of Bagong Barrio, she was being assigned to Lot 77, Block 2, Barangay 132.

On August 23, 1985, plaintiff filed a Complaint for Damages with prayer for the issuance of a restraining order and writ of Preliminary Injunction against the NHA with the Regional Trial Court of Caloocan City. This was docketed as Civil Case No. C-12102. The civil case was filed after the NHA, through Henry Camayo, sent a letter to the plaintiff earlier in the month of August, 1985 directing said plaintiff to vacate the premises and dismantle her structure. In an Order, dated July 23, 1981, this civil case docketed as C-12102 was dismissed with the instruction that the parties exhaust the administrative remedies available to the plaintiff.

Sometime in March, 1994, plaintiff received a letter, dated March 8, 1994 from Ines Gonzales, the Office-in-charge (sic) of District II-NCR. In said letter, plaintiff was advised that her previous request to stay put in her house which is located within the area designated as Area Center, was previously denied per resolution of the NHA which was signed as early as February 21, 1990 by the former manager of the NHA, Monico Jacob. The plaintiff was told to remove the

structure she erected on the area within 30 days and to transfer her residence to Lot 77, Block 2. It was stressed in said letter that no Judicial Order was required to remove the plaintiff's structure pursuant to P.D. No. 1472.

Plaintiff prays that, aside from the issuance of a temporary restraining order/writ of preliminary injunction, defendants be enjoined from transferring plaintiff's residential house from its present location to another lot and/or demolishing the same without judicial order; payment of moral damages, in the amount of ₱50,000.00, for the malicious and illegal acts of defendants; and payment of ₱50,000.00 as attorney's fees.

At this juncture, it may not be remiss to state that the two other homeowners, Mr. & Mrs. Josefino Valenton, and Mr. & Mrs. Rey Pangilinan had already transferred to their allocated lots at Lot 2, Block 1, and Lot 78, Block 2, respectively.

On March 25, 1994, the Court issued a Temporary Restraining Order (TRO) against defendants. After hearing and submission of memoranda, plaintiff's prayer for issuance of a writ of preliminary injunction was denied in an Order dated April 14, 1994.

The Order denying plaintiff's prayer for issuance of a writ of preliminary injunction was appealed, by way of Petition for *Certiorari*, to the Court of Appeals (docketed therein as CA-G.R. No. 33833). On May 31, 1994, the Court of Appeals, Seventeenth Division, promulgated a Decision denying the Petition. Plaintiff's (petitioner herein) motion for reconsideration having been denied in a Resolution dated July 29, 1994, she appealed to the Supreme Court by way of Petition for Review on *Certiorari*. The Supreme Court, through the First Division, issued a Resolution dated October 5, 1994, denying the Petition. An Entry of Judgment on the aforesaid Resolution was made on December 22, 1994.

Thereafter, pre-trial conference was scheduled on January 9, January 23, February 16, March 22 and finally on April 25, all in 1996 (an Order dated May 16, 1996 was issued declaring the pre-trial terminated). During the pre-trial, counsel for plaintiff proposed that the case be decided based on the memoranda to be submitted by the parties, to which counsel for defendants agreed. Hence, a Motion for Leave of Court to allow parties to submit memoranda in lieu of trial was filed by the defendants. Plaintiff filed her comment thereto. After submission of NHA's Reply and plaintiff's rejoinder, reiterating their

respective stands, the Court resolved to grant the Motion for Leave. In the same Order, the parties were directed to submit their respective memoranda within thirty (30) days from receipt, on the sole issue of whether or not the NHA can lawfully relocate the plaintiff and demolish plaintiff's structure.[3]

On March 10, 1999, the trial court promulgated its assailed decision dismissing petitioner's complaint. Petitioner's subsequent motion for reconsideration was likewise denied by the trial court in its Order dated May 14, 1999. Hence, this petition for review of the said decision and order of the RTC.

In the instant petition for review, petitioner raises the following issues:

A. WHETHER OR NOT THE DEMOLITION OR RELOCATION OF THE PETITIONER'S STRUCTURE WILL VIOLATE THE VESTED RIGHTS OF THE PETITIONER OVER THE ACQUIRED PROPERTY UNDER THE SOCIAL JUSTICE CLAUSE OF THE CONSTITUTION.

B. WHETHER OR NOT R.A. 7279 IMPLIEDLY REPEALED P.D. 1472 AND P.D. 1315.[4]

As to the first issue, petitioner maintains that she had acquired a vested right over the property subject of this case on the ground that she had been in possession of it for forty (40) years already. Thus, to order her relocation and the demolition of her house will infringe the social justice clause guaranteed under the Constitution.

Petitioner's contentions must necessarily fail. The NHA's authority to order the relocation of petitioner and the demolition of her property is mandated by Presidential Decree (P.D.) No. 1315.[5] Under this Decree, the entire Bagong Barrio in

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[3] *Id.*, at 37-40.

[4] *Id.*, at 9.

[5] Entitled, "Providing for the Expropriation of a Landed Estate Registered under TCT No. 70298, 78960, Portion of 71357, 2017 and 2018 and All Transfer Certificates of Title Derived Therefrom, in Bagong Barrio, Caloocan City for the Upgrading and the Disposal of Lots Therein to their Present Bonafide Occupants and Other Qualified Squatter Families and Authorizing the Appropriation of Funds for the Purpose." Approved on March 26, 1978.

Caloocan City was identified as a blighted area and was thereby declared expropriated. The properties covered under P.D. No. 1315 included petitioner's property. The NHA, as the decree's designated administrator for the national government, was empowered to take possession, control and disposition of the expropriated properties with the power of demolition of their improvements.[6] Section 2 of P.D. No. 1315 further states:

> Section 2. The comprehensive development plan shall consider the upgrading of existing dwelling units, the relocation of qualified squatter families to a resettlement area nearby; and the re-blocking, re-arrangement and re-alignment of existing dwelling and other structures to allow for the introduction of basic facilities and services, all in accordance with the provision of national SIR [Slum Improvement Resettlement] and Metro Manila ZIP [Zonal Improvement Program] Programs. The Authority [NHA] shall maximize the land use of the area and shall provide for a controlled, orderly and structured growth of dwellings in an environment provided with adequate sanitary and other physical facilities. (Words in bracket ours)

Pursuant to Section 2 of P.D. No. 1315, the NHA identified Area 1 where petitioner's property was located as part of the Area Center reserved for open space, after studies have shown that the development of the area will affect only three (3) structures compared to six (6) or more structures in the other areas. A stage and recreation center was expected to be constructed at the Area Center. As a result, petitioner was informed by the NHA that she would be relocated to Lot 77, Block 2, Barangay 132. However, petitioner adamantly refused to vacate the property claiming she had acquired a vested right over the same. Her refusal to vacate and relocate to her assigned lot had hampered the development of the entire area. It should be noted that to date, only petitioner had refused to comply with the NHA directive as the other occupants in Area 1 had already vacated the premises.

To stress, P.D. No. 1315 explicitly vests the NHA the power to immediately take possession, control and disposition of the

[6] Section 1, P.D. No. 1315.

expropriated properties with the power of demolition. Clearly, the NHA, by force of law, has the authority to order the relocation of petitioner, and the demolition of her structure in case of her refusal as this is the only way through which the NHA can effectively carry out the implementation of P.D. No. 1315.

The NHA's authority to demolish squatters and illegal occupants was further reinforced by P.D. No. 1472[7] which specifically provides as follows:

> SEC. 2. The National Housing Authority shall have the **power to summarily eject, without the necessity of judicial order**, any and all squatters' colonies on government resettlement projects, as well as any illegal occupants in any homelot, apartment or dwelling unit owned or administered by it. In the exercise of such power, the National Housing Authority shall have the right and authority to request the help of the *Barangay* Chairman and any peace officer in the locality. xxx.(Emphasis ours)

Inasmuch as petitioner's property was located in the area identified as an open space by the NHA, her continued refusal to vacate has rendered illegal her occupancy thereat. Thus, in accordance with P.D. No. 1472, petitioner could lawfully be ejected even without a judicial order.

Neither can it be successfully argued that petitioner had already acquired a vested right over the subject property when the NHA recognized her as the censused owner by assigning to her a tag number (TAG No. 77-0063). We quote with approval the trial court's pertinent findings on the matter:

> Plaintiff's structure was one of those found existing during the census/survey of the area, and her structure was assigned TAG No. 77-0063. While it is true that NHA recognizes plaintiff as the censused owner of the structure built on the lot, the issuance of the tag number is not a guarantee for lot allocation. Plaintiff had petitioned the NHA

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[7] Entitled, "Amending Republic Act Nos. 4852 and 6026 by Providing Additional Guidelines in the Utilization, Disposition and Administration of All Government Housing and Resettlement Projects." Approved on June 11, 1978.

for the award to her of the lot she is occupying. However, the census, tagging, and plaintiff's petition, did not vest upon her a legal title to the lot she was occupying, but a mere expectancy that the lot will be awarded to her. The expectancy did not ripen into a legal title when the NHA, through Ms. Ines Gonzales, sent a letter dated March 8, 1994 informing her that her petition for the award of the lot was denied. Moreover, the NHA, after the conduct of studies and consultation with residents, had designated Area 1, where the lot petitioned by plaintiff is located, as an Area Center.[8]

A vested right is one that is absolute, complete and unconditional and no obstacle exists to its exercise. It is immediate and perfect in itself and not dependent upon any contingency. To be vested, a right must have become a title — legal or equitable — to the present or future enjoyment of property.[9]

Contrary to petitioner's position, the issuance of a tag number in her favor did not grant her irrefutable rights to the subject property. The "tagging of structures" in the Bagong Barrio area was conducted merely to determine the qualified beneficiaries and *bona fide* residents within the area. It did not necessarily signify an assurance that the tagged structure would be awarded to its occupant as there were locational and physical considerations that must be taken into account, as in fact, the area where petitioner's property was located had been classified as Area Center (open space). The assignment of a tag number was a mere expectant or contingent right and could not have ripened into a vested right in favor of petitioner. Her possession and occupancy of the said property could not be characterized as fixed and absolute. As such, petitioner cannot claim that she was deprived of her vested right when the NHA ordered her relocation to another area.

Petitioner invokes the Social Justice Clause of the Constitution, asserting that a poor and unlettered urban dweller like her has

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[8] *Rollo*, p. 41.

[9] *Boncodin v. National Power Corporation Employees Consolidated Union (NECU)*, G.R. No. 162716, September 27, 2006, 503 SCRA 611, 626-627.

a right to her property and to a decent living. Thus, her relocation and the demolition of her house would be violative of her right embodied under Article XIII of the Constitution, to wit:

> Sec. 9. The State shall, by law, and for the common good, undertake, in cooperation with the private sector, a continuing program of urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centers and resettlement areas. It shall also promote adequate employment opportunities to such citizens. In the implementation of such program the State shall respect the rights of small property owners. (Underscoring supplied)
>
> Sec. 10. Urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner. (Underscoring supplied)
>
> No resettlement of urban or rural dwellers shall be undertaken without adequate consultation with them and the communities where they are to be relocated.

Petitioner cannot find solace in the aforequoted Constitutional provisions. Social Justice, as the term suggests, should be used only to correct an injustice. As the eminent Justice Jose P. Laurel observed, social justice must be founded on the recognition of the necessity of interdependence among diverse units of a society and of the protection that should be equally and evenly extended to all groups as a combined force in our social and economic life, consistent with the fundamental and paramount objective of the State of promoting the health, comfort, and quiet of all persons, and of bringing about "the greatest good to the greatest number."[10]

Moreover, jurisprudence stresses the need to dispense justice with an even hand in every case:

> This Court has stressed more than once that social justice – or any justice for that matter – is for the deserving, whether he be a millionaire in his mansion or a pauper in his hovel. It is true that, in

[10] *Calalang v. Williams*, 70 Phil. 726, 735 (1940).

case of reasonable doubt, we are called upon to tilt the balance in favor of the poor to whom the Constitution fittingly extends its sympathy and compassion. But never is it justified to give preference to the poor simply because they are poor, or to reject the rich simply because they are rich, for justice must always be served for poor and rich alike, according to the mandate of the law.[11] (Underscoring supplied)

Hence, there is a need to weigh and balance the rights and welfare of both contending parties in every case in accordance with the applicable law, regardless of their situation in life.

In the instant case, the relocation of petitioner and the demolition of her structure were in accordance with the mandate of P.D. No. 1315 which was enacted primarily to address the housing problems of the country and to adopt an effective strategy for dealing with slums, squatter areas and other blighted communities in urban areas. Significantly, the "whereas clause" of P.D. No. 1315 states:

WHEREAS, the Constitution of the Philippines mandates that the "State shall establish, maintain and ensure adequate social services in the field of housing, to guarantee the enjoyment of the people of a decent standard of living" and directs that "The State shall promote social justice to ensure the dignity, welfare and security of all the people" xxx.

For sure, the NHA's order of relocating petitioner to her assigned lot and demolishing her property on account of her refusal to vacate was consistent with the law's fundamental objective of promoting social justice in the manner that will inure to the common good. The petitioner cannot disregard the lawful action of the NHA which was merely implementing P.D. No. 1315. It is also worth noting that petitioner's continued refusal to leave the subject property has hindered the development

[11] *Gelos v. Court of Appeals*, G.R. No. 86186, May 8, 1992, 208 SCRA 608, 616.

of the entire area. Indeed, petitioner cannot invoke the social justice clause at the expense of the common welfare.

Anent the second issue, petitioner avers that P.D. No. 1315 and P.D. No. 1472 were impliedly repealed by R.A. No. 7279, otherwise known as the *Urban Development and Housing Act of 1992*.[12] She contends that while P.D. No. 1315 and P.D. No. 1472 authorized the NHA to eject without the necessity of a judicial order all squatter colonies in government resettlement projects, R.A. No. 7279 discouraged such eviction and demolition without a court order. According to petitioner, R.A. No. 7279, being the later law, impliedly repealed the former laws, *i.e.* P.D. No. 1315 and P.D. No. 1472, following the legal axiom that when a later law is passed with provisions contrary to the former law, an implied repeal of the former law takes effect. In particular, petitioner cites Section 28 of R.A. No. 7279 which provides:

> Sec. 28. Eviction and Demolition – Eviction or demolition as a practice shall be discouraged. Eviction or demolition, however, may be allowed under the following situations:
>
> (a) When persons or entities occupy danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways and other public places such as sidewalks, roads, parks and playgrounds;
>
> (b) When government infrastructure projects with available funding are about to be implemented; or
>
> (c) When there is a court order for eviction and demolition.

Petitioner asserts that the afore-quoted provision of R.A. No. 7279 is inconsistent with Section 1 of P.D. No. 1315 and Section 2 of P.D. No. 1472, which state as follows:

> Sec. 1 (P.D. No. 1315) – xxx. The National Housing Authority hereinafter referred to as the "Authority" is designated administrator for the national government and is authorized to immediately take

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[12] Approved on March 24, 1992.

possession, control and disposition of the expropriated properties with the power of demolition of their improvements. xxx.

Sec. 2 (P.D. No. 1472) - The National Housing Authority shall have the power to summarily eject, without the necessity of judicial order, any and all squatters' colonies on government resettlement projects, as well as any illegal occupants in any homelot, apartment or dwelling unit owned or administered by it. xxx.

From a careful reading of the foregoing provisions, we hold that R.A. No. 7279 does not necessarily repeal P.D. No. 1315 and P.D. No. 1472 as it does not contain any provision which categorically and expressly repeals the provisions of P.D. No. 1315 and P.D. No. 1472. Neither could there be an implied repeal. It is a well-settled rule of statutory construction that repeals by implication are not favored. The rationale behind the rule is explained as follows:

Repeal of laws should be made clear and expressed. Repeals by implication are not favored as laws are presumed to be passed with deliberation and full knowledge of all laws existing on the subject. Such repeals are not favored for a law cannot be deemed repealed unless it is clearly manifest that the legislature so intended it. The failure to add a specific repealing clause indicates that the intent was not to repeal any existing law, unless an irreconcilable inconsistency and repugnancy exist in the terms of the new and old laws.[13]

Likewise, in another case, it was held:

Well-settled is the rule that repeals of laws by implication are not favored, and that courts must generally assume their congruent application. The two laws must be absolutely incompatible, and a clear finding thereof must surface, before the inference of implied repeal may be drawn. The rule is expressed in the maxim, *interpretare et concordare leqibus est optimus interpretendi*, *i.e.*, every statute must be so interpreted and brought into accord with other laws as to form a uniform system of jurisprudence. The fundament is that the legislature should be presumed to have known the existing laws

[13] *Secretary of Finance v. Ilarde*, G.R. No. 121782, May 9, 2005, 458 SCRA 218, 233.

on the subject and not have enacted conflicting statutes. Hence, all doubts must be resolved against any implied repeal, and all efforts should be exerted in order to harmonize and give effect to all laws on the subject.[14]

We find, as the trial court has found, no irreconcilable conflict or repugnancy between Section 28 of R.A. No. 7279 and P.D. No. 1315 and No. 1472, rather, they can be read together and harmonized to give effect to their provisions. It should be stressed that Section 28 of R.A. No. 7279 does not totally and absolutely prohibit eviction and demolition without a judicial order as in fact it provides for exceptions. Pursuant to established doctrine, the three (3) statutes should be construed in light of the objective to be achieved and the evil or mischief to be suppressed by the said laws, and they should be given such construction as will advance the object, suppress the mischief, and secure the benefits intended.[15] It is worthy to note that the three laws (P.D. No. 1315, P.D. No. 1472 and R.A. No. 7279) have a common objective — address the housing problems of the country by establishing a comprehensive urban development and housing program for the homeless. For this reason, the need to harmonize these laws all the more becomes imperative. Hence, in construing the three laws together, we arrive at a conclusion that demolition and eviction may be validly carried out even without a judicial order in certain instances, to wit:

(1) when the property involved is an expropriated property in Bagong Barrio, Caloocan City pursuant to Section 1 of P.D. No. 1315,

(2) when there are squatters on government resettlement projects and illegal occupants in any homelot, apartment or dwelling unit owned or administered by the NHA pursuant to Section 2 of P.D. No. 1472,

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[14] *Hagad v. Gozo-Dadole*, G.R. No. 108072, December 12, 1995, 251 SCRA 242, 252.

[15] *Intia, Jr. v. Commission on Audit*, G.R. No. 131529, April 30, 1999, 306 SCRA 593, 609.

(3) when persons or entities occupy danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways and other public places such as sidewalks, roads, parks and playgrounds, pursuant to Section 28(a) of R.A. No. 7279;

(4) when government infrastructure projects with available funding are about to be implemented pursuant to Section 28(b) of R.A. No. 7279.

It readily appears that R.A. No. 7279 does not foreclose the NHA's authority to dismantle the house of petitioner. Besides, under Section 28(b) of R.A. No. 7279, demolition may be carried out when government infrastructure projects with available funding are about to be implemented. Under P.D. No. 1315, the government has set aside the amount of ₱40 million for the establishment and upgrading of housing facilities and services in Bagong Barrio.[16] Thus, on the ground of a much-delayed government infrastructure project about to be implemented, the NHA has the authority to carry out the summary eviction and demolition of petitioner's structure on the subject lot.

WHEREFORE, the petition for review is hereby *DENIED*. The assailed decision of the Regional Trial Court in *Civil Case No. C-16464* is hereby *AFFIRMED*.

SO ORDERED.

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

[16] Section 6, P.D. No. 1315.

FIRST DIVISION

[G.R. No. 150536. September 17, 2008]

BIENVENIDO GOMBA, *petitioner, vs.* **THE PEOPLE OF THE PHILIPPINES,**[1] *respondent.*

SYLLABUS

1. CRIMINAL LAW; ESTAFA; ABUSE OF CONFIDENCE THROUGH MISAPPROPRIATION; ELEMENTS. — Gomba was convicted of estafa with abuse of confidence through misappropriation under Article 315, paragraph 1 (b) of the RPC. Its elements are: 1. That money, goods, or other personal property be 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; 2. That there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt; 3. That such misappropriation or conversion or denial is to the prejudice of another; and 4. That there is a demand made by the offended party to the offender.

2. ID.; ID.; ID.; MISAPPROPRIATION; DEFINED AND CONSTRUED. — Misappropriation is defined as: [A]n act of using or disposing of another's property as if it were one's own or of devoting it to a purpose or use different from that agreed upon. To "misappropriate" a thing of value for one's own use or benefit [includes] not only conversion to one's personal advantage but also every attempt to dispose of the property of another without a right. The demand for the return of the thing delivered in trust and the failure of the accused to account for it are circumstantial evidence of misappropriation. In this case, Gomba, as common area administrator, received the collections in trust for the association. The association made a demand upon Gomba to remit his collections. He failed to do so, despite several opportunities given to him. This was evidence that he misappropriated the money, bolstered by the fact that he merely submitted reports without the corresponding remittances on various occasions.

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

3. ID.; ID.; ID.; THE ACCUSED'S OUTRIGHT DENIAL OF MISAPPROPRIATION IS NOT SUFFICIENT TO PROVE HIS INNOCENCE; RATIONALE. — Denial is the weakest form of defense. Gomba's outright denial of misappropriation was not sufficient to prove his innocence because unsubstantiated denial carries no evidentiary weight. It is negative and self-serving evidence. In *People v. Magbanua*, we held: It is elementary that denial, if unsubstantiated by clear and convincing evidence, is a negative and self-serving evidence which has far less evidentiary value than the testimony of credible witnesses who testify on affirmative matters.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT THEREON IS ENTITLED TO GREAT WEIGHT AND RESPECT. — 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, specially when affirmed by the CA. Without any cogent or compelling proof that the lower courts committed reversible error in their decisions, we shall not deviate from the rule. We therefore affirm the findings of both the RTC and the CA that Gomba committed estafa punishable under Article 315, paragraph 1 (b) of the RPC.

APPEARANCES OF COUNSEL

U.P. Office of Legal Aid for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

CORONA, *J.*:

In this petition for review on *certiorari* under Rule 45 of the Rules of Court, petitioner Bienvenido Gomba assails the October 15, 2001 decision[2] of the Court of Appeals (CA)

[2] Penned by Associate Justice (now Associate Justice of the Supreme Court) Ruben T. Reyes and concurred in by Associate Justices Mercedes Gozo-Dadole (retired) and Juan O. Enriquez, Jr. of the Special Eleventh Division of the Court of Appeals. *Rollo*, pp. 49-66.

convicting him of estafa through misappropriation under Article 315, paragraph 1 (b) of the Revised Penal Code (RPC).

Gomba was the common area administrator of MRB-NGCP Phase 1 homeowners association (association) from April 16 to December 18, 1998.[3] His primary task was to see to it that the residents of MRB-NGCP Phase 1 had clean surroundings and a constant water supply. His other tasks included the collection of association dues and water bills and the remittance of these collections on a daily basis to the association.[4]

Gomba allegedly failed to remit his collections for the months of July, September and October 1998. This matter was reported by the association's treasurer to its board of directors. The association, through external auditors, performed audits to investigate the alleged anomaly. In two separate memoranda,[5] Gomba was ordered to produce and turn over various documents in his possession. He was likewise required to explain why he failed to remit his water bill collections. Gomba, for unexplained reasons, refused to receive these memoranda prompting the association to take further action. Ultimately, it was reported that Gomba's unremitted collections amounted to ₱237,996.44.

The association filed a complaint before the *Lupong Tagapamayapa* of Barangay Commonwealth. In the proceedings before the *Lupon*, Gomba offered to settle his unremitted collections.[6] However, he reneged on his promise.

A criminal complaint was therefore filed against Gomba. After preliminary investigation, an Information for estafa under Article 315, paragraph 1 (b) of the RPC was lodged against him in the Regional Trial Court (RTC), Branch 95, Quezon City.

Gomba pleaded not guilty when arraigned. During trial, he denied the allegations that he failed to remit the amounts he collected.

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[3] *Rollo*, p. 76.

[4] TSN, 16 November 1999, p. 4.

[5] Dated November 30, 1998 and December 14, 1998.

[6] By way of a *Kasunduang Tagapamayapa*. RTC Records, p. 11.

He claimed to have faithfully performed his duties as administrator by receiving daily collections and remitting them to the administration treasurer, less expenses incurred every month.[7]

After trial on the merits, Gomba was found guilty beyond reasonable doubt of the crime charged. He was sentenced to suffer an indeterminate penalty of six years, eight months and 21 days of *prision mayor* to twenty years of *reclusion temporal*. He was also ordered to return or pay the amount of ₱237,996.44 to the association with legal interest computed from June 16, 1999 until fully paid.

On appeal, the CA affirmed the RTC decision.

In this petition for review on *certiorari*, Gomba contests the findings of the RTC and the CA that there was misappropriation. He also questions the appreciation of various pieces of evidence against him.[8]

We deny the petition.

Gomba was convicted of estafa with abuse of confidence through misappropriation under Article 315, paragraph 1 (b) of the RPC.[9] Its elements are:

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[7] These expenses include honoraria, office supplies, MERALCO bills, borrowings of other directors and other miscellaneous expenses.

[8] The other issues raised by Gomba were: (a) whether or not the refusal of the petitioner to submit to the investigation and finding of the Audit Committee was an implied objection to the admissibility and competency of its audit report; (b) whether or not a mere cursory inspection of the document is enough to determine the authenticity of the handwriting of petitioner; and (c) whether or not the vouchers/promissory notes presented by petitioner were valid deductions to the amount he was supposed to remit.

[9] Article 315, paragraph 1 (b) provides: 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.

1. That money, goods, or other personal property be 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;
2. That there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt;
3. That such misappropriation or conversion or denial is to the prejudice of another; and
4. That there is a demand made by the offended party to the offender.[10]

Gomba asserts that misappropriation, the second element, is absent.

Misappropriation is defined as:

> [A]n act of using or disposing of another's property as if it were one's own or of devoting it to a purpose or use different from that agreed upon. To "misappropriate" a thing of value for one's own use or benefit [includes] not only conversion to one's personal advantage but also every attempt to dispose of the property of another without a right.[11]

The demand for the return of the thing delivered in trust and the failure of the accused to account for it are circumstantial evidence of misappropriation.[12] In this case, Gomba, as common area administrator, received the collections in trust for the association. The association made a demand upon Gomba to remit his collections. He failed to do so, despite several opportunities given to him. This was evidence that he misappropriated the money, bolstered by the fact that he merely submitted reports without the corresponding remittances on various occasions.[13]

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[10] Reyes, Luis B., *THE REVISED PENAL CODE, BOOK TWO, ARTICLES* 114-367, Sixteenth Edition (2006), Rex Book Store, Inc., p. 742.

[11] *Lee v. People of the Philippines*, G.R. No. 157781, 11 April 2005, 455 SCRA 256, 267.

[12] *Filadams Pharma, Inc. v. CA*, G.R. No. 132422, 30 March 2004, 426 SCRA 460, 468.

[13] TSN, 7 April 2000, p. 4.

In the face of positive evidence to the contrary, Gomba's claim that he incurred no shortages (without submitting a detailed accounting of the collections and alleged expenses[14]) deserves scant consideration. Although Gomba enjoyed the presumption of innocence and that the duty to prove misappropriation belonged to the prosecution, the latter was able to effectively discharge that burden, as already discussed.

Denial is the weakest form of defense. Gomba's outright denial of misappropriation was not sufficient to prove his innocence because unsubstantiated denial carries no evidentiary weight. It is negative and self-serving evidence. In *People v. Magbanua*,[15] we held:

> It is elementary that denial, if unsubstantiated by clear and convincing evidence, is a negative and self-serving evidence which has far less evidentiary value than the testimony of credible witnesses who testify on affirmative matters.

With respect to the issue of whether the RTC, as affirmed by the CA, erred in appreciating certain evidence against Gomba, we rule in the negative. 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, specially when affirmed by the CA.[16] Without any cogent or compelling proof that the lower courts committed reversible error in their decisions, we shall not deviate from the rule.[17] We therefore affirm the findings of both the RTC and the CA that Gomba committed estafa punishable under Article 315, paragraph 1 (b) of the RPC.

WHEREFORE, the petition is hereby *DENIED***.** The October 15, 2001 decision of the Court of Appeals is *AFFIRMED*. Petitioner Bienvenido Gomba is hereby found *GUILTY* beyond reasonable

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[14] *Rollo*, p. 84.

[15] G.R. No. 133004, 20 May 2004, 428 SCRA 617, 630.

[16] *Perez v. People of the Philippines*, G.R. No. 150443, 20 January 2006, 479 SCRA 209, 219-220.

[17] *Pascual v. People of the Philippines*, G.R. No. 160540, 22 March 2007.

doubt of estafa defined in and penalized by Article 315, paragraph 1 (b) of the Revised Penal Code and sentenced to suffer the indeterminate penalty of imprisonment from six years, eight months and 21 days of *prision mayor* to 20 years of *reclusion temporal*.

He is further ordered to return or pay the amount of ₱237,996.44 to MRB-NGCP Phase 1 homeowners association, represented by Natividad Martinez, at the legal rate of interest computed from June 16, 1999 until fully paid.

Costs against petitioner.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 156076. September 17, 2008]

SPS. JESUS CHING and LEE POE TIN, *petitioners, vs.* **SPS. ADOLFO and ARSENIA ENRILE,** *respondents.*

SYLLABUS

1. CIVIL LAW; PROPERTY; LAND REGISTRATION; KNOWLEDGE OF AN UNREGISTERED SALE IS EQUIVALENT TO REGISTRATION. — The Court has invariably ruled that in case of conflict between a vendee and an attaching creditor, an attaching creditor who registers the order of attachment and the sale of the property to him as the highest bidder acquires a valid title to the property as against a vendee who had previously bought the same property from the same owner but who failed to register his deed of sale. This is because

[*] As replacement of Justice Antonio T. Carpio who is on official leave per Special Order No. 515.

registration is the operative act that binds or affects the land insofar as third persons are concerned. It is upon registration that there is notice to the whole world. But where a party has knowledge of a prior existing interest, as here, which is unregistered at the time he acquired a right to the same land, his knowledge of that prior unregistered interest has the effect of registration as to him. Knowledge of an unregistered sale is equivalent to registration.

2. ID.; SALES; DOUBLE SALES; INNOCENT PURCHASER FOR VALUE; CONSTRUED. — Article 1544 of the Civil Code governs in cases of double sale. It provides: Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property. Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith. An "innocent purchaser for value" or any equivalent phrase shall be deemed to include, under the Torrens System, the innocent lessee, mortgagee, and other encumbrancer for value. In *Bautista v. Court of Appeals*, we held that where the thing sold twice is an immovable, the one who acquires it and first registers it in the Registry of Property, in good faith, shall be the owner. Who then can be considered a purchaser in good faith? In the early case of *Leung Yee v. F.L. Strong Machinery Co. and Williamson*, the Court explained good faith in this wise: One who purchases real estate with knowledge of a defect or lack of title in his vendor cannot claim that he has acquired title thereto in good faith as against the true owner of the land or of an interest therein; and the same rule must be applied to one who has knowledge of facts which should have put him upon such inquiry and investigation as might be necessary to acquaint him with the defects in the title of his vendor. Good faith, or the want of it, is capable of being ascertained only from the acts of one claiming its presence, for it is a condition of the mind which can only be judged by actual or fancied token or signs.

3. ID.; ID.; A PURCHASER CANNOT CLOSE HIS EYES TO FACTS WHICH SHOULD PUT A REASONABLE MAN UPON HIS GUARD AND THEN CLAIM THAT HE HAS ACTED IN GOOD FAITH; PRESENT IN CASE AT BAR. — The law does not

require a person dealing with the owner of registered land to go beyond the certificate of title as he may rely on the notices of the encumbrances on the property annotated on the certificate of title or absence of any annotation. Here, petitioners' adverse claim is annotated at the back of the title coupled with the fact that they are in possession of the disputed property. To us, these circumstances should have put respondents on guard and required them to ascertain the property being offered to them has already been sold to another to prevent injury to prior innocent buyers. A person who deliberately ignores a significant fact which would create suspicion in an otherwise reasonable man is not an innocent purchaser for value. It is a well-settled rule that a purchaser cannot close his eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor. As aptly observed by the RTC, regardless of the non-registration of the Deed of Absolute Sale to petitioners, nor the 30-day effectivity of the adverse claim under Section 70 of PD 1529, respondents were constructively notified of petitioners' prior purchase of the disputed property.

APPEARANCES OF COUNSEL

Jose A. Dizon for petitioners.
Gatmaytan Law Office for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Assailed in the instant petition for review on *certiorari* are the Decision[1] of the Court of Appeals (CA) dated August 29, 2002 in CA-G. R. CV No. 42985 and the Resolution[2] dated November 21, 2002 denying petitioners' motion for reconsideration.

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[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Romeo J. Callejo, Sr. (now retired Supreme Court Associate Justice) and Danilo B. Pine (ret.), concurring; *rollo*, pp. 7-21.

[2] *Id.*, p. 26.

The assailed CA decision reversed the decision of the Regional Trial Court (RTC) of Makati City, Branch 135, in Civil Case No. 90-064, an action for quieting of title thereat commenced by petitioner spouses Jesus Ching and Lee Poe Tin against respondent spouses Adolfo and Arsenia Enrile.

The antecedent facts follow.

On September 5, 1985, petitioners purchased from a certain Raymunda La Fuente a 370-square meter lot located at Barrio Tungtong, Las Piñas and covered by TCT No. 83618. La Fuente delivered to petitioners a duly notarized Deed of Absolute Sale[3] with the Owner's Duplicate Certificate of Title and thereafter, petitioners took physical possession of the subject property.

For reasons known only to petitioners, the conveyance was not registered in the Register of Deeds as prescribed by Section 51 of PD 1529[4]. Instead, on November 20, 1986, petitioners executed an Affidavit of Adverse Claim which was recorded and annotated at the back of TCT No. 83618 reflected in the Memorandum of Encumbrances under Entry No. 86-62262.[5]

In the meantime, petitioners peacefully and continuously possessed the subject property.

On August 19, 1988 — three years after they purchased the disputed property, petitioners received a *Notice of Levy on Attachment* and *Writ of Execution* issued by the Regional Trial Court (RTC) of Pasig in favor of respondents, in Civil Case No. 54617 entitled *Sps. Adolfo Enrile and Arsenia Enrile v. Raymunda La Fuente*.

The Notice of Levy on Attachment was recorded at the dorsal portion of TCT No. 83618 under Entry No. 3433-2 while the Writ of Execution was inscribed under Entry No. 3434-2.

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[3] *Id.*, p. 42

[4] The Property Registration Decree.

[5] *Rollo*, p. 41.

Also inscribed in the TCT is the Certificate of Sale dated January 26, 1989 covering the disputed property in favor of respondents.

On January 8, 1990, petitioners filed a *Petition to Remove Cloud on or Quiet Title to Real Property* asserting ownership of the disputed property.

On May 11, 1993, the RTC rendered judgment in favor of petitioners upholding the latter's superior right over the disputed property in view of the registration of the Affidavit of Adverse Claim prior to the Certificate of Sale annotated in favor of respondents. Dispositively the decision reads:

> WHEREFORE, premises, the above-entitled petition is granted for being preponderantly meritorious. Judgment is hereby rendered ordering:
>
> 1) The Register of Deeds of Las Piñas, Metro Manila to cancel all the annotations of encumbrances in favor of defendants [respondents] in Transfer Certificate of Title No. 83618 issued by the Register of Deeds of Pasay City, Metro Manila, District IV;
>
> 2) Defendants [respondents] to pay plaintiffs [petitioners] in the sum of ₱ 10,000.00 as compensatory damages by way of litigation expenses;
>
> 3) To pay to plaintiffs [petitioners] the sum of ₱ 10,000.00 as attorney's fees; and,
>
> 4) To pay the cost of the proceedings.
>
> SO ORDERED.

In time, respondents appealed to the CA, principally arguing that the RTC committed reversible error in ruling that petitioners had a better right over the disputed property. Respondents theorized that the prior conveyance of the disputed property made by La Fuente to petitioners being a voluntary dealing with a registered land, mere registration of their adverse claim was insufficient. To respondents, in order to have petitioners' interest protected, they should have registered the Deed of Absolute Sale with the Register of Deeds pursuant to Section 51 of PD 1529 and not merely register an adverse

claim under Section 70 of the same law. Citing the second paragraph of Section 70 which provides that *an adverse claim shall be effective for a period of thirty days from the date of registration*, respondents insisted that the annotated Adverse Claim of petitioners had already expired, hence, it offered no protection when respondents acquired the disputed property through execution sale.

On August 29, 2002, the CA rendered the herein challenged decision reversing that of the RTC. Even as the CA viewed the prior sale of the disputed lot in favor of petitioners as perfected and consummated, it nonetheless upheld respondents' preferential right over the disputed property. Finding merit in respondents' arguments, the CA ruled:

> This Court, also believes that there is truth in defendants-appellants' assertion that while the sale is perfected and consummated, plaintiffs-appellees failed to diligently protect their interests by failing to register the conveyance or transaction in the office of Register of Deeds. An owner of a registered land is vested by law with rights and obligations and thus exercises all attributes of ownership. These attributes include among others the right to dispose the real property itself. The owner of the land may convey, mortgage, lease or otherwise deal with the same in accordance with existing laws. He may use such forms of deeds, mortgages, leases or other voluntary instrument as are sufficient in law. However, as clearly provided by Section 51 of Presidential Decree 1529, no deed, mortgage, lease or other voluntary instrument, except a will purporting to convey or affect registered land shall take effect as a conveyance or bind the land, until the same has been registered in the office of the Register of Deeds. It shall operate only as a contract between the parties and as evidence of authority to the Register of Deeds to effect registration. The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned, and in all cases under this Decree, the registration shall be made in the Office of the Register of Deeds of the province or city where the land lies. Unless and until the subject transaction has been filed or registered in the office of the Register of Deeds, the transaction shall only be binding on the parties to the contract but not on the third person. The instrument is not thereby rendered void by failure to register. Section 51 of PD 1529 states:

> Section 51. Conveyance and other dealings by registered owner – An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing laws. He may use such forms of deeds, mortgages, leases or other voluntary instruments as are sufficient in law. But no deed, mortgage, lease or other voluntary instrument, except a will purporting to convey or affect registered land shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the Register of Deeds to make registration.
>
> The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned, and in all cases under this Decree, the registration shall be made in the office of the Register of Deeds for the province or city where the land lies.

Laying the blame on petitioners, the CA added:

> The law provides protection to third person, who believing in good faith and relying on the sweet representations of some evil minded persons, may be unjustifiably inveigled to enter into a contract or transaction not knowing that the subject real property has been encumbered or sold. It is the duty of the buyer or vendee to register the transaction before the Register of Deeds of the province or city where the property lies. The registration is intended to inform any minded individual that the property has been subjected to a prior transaction and that entering into any further contract involving the same property shall be at his own risk. In the event that any third person was *bona fide* tricked to enter into any transaction involving the same property because the transferee or vendee failed to register the same as required by law, the latter's interests should be subordinated to that of the third party. Axiomatic is the rule in this jurisdiction that when loss or damage was caused to two individuals who both acted in good faith but one is negligent, the loss or damage shall fall upon the one who acted negligently.

Citing a myriad of jurisprudence,[6] the CA declared that respondents, as attaching creditors who registered the order

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[6] *Worcester v. Ocampo*, 34 Phil. 646 (1916); *Laxamana v. Carlos*, 57 Phil. 722 (1932); *Anderson v. Garcia*, 64 Phil. 506 (1937); *Vargas v. Francisco*, 67 Phil. 308 (1939); *Reynes v. Barrera*, 68 Phil. 656 (1939).

of attachment and the sale of the property to them as the highest bidders, acquired a valid title to the disputed property as against petitioners who had previously bought the same property from the registered owner but failed to register their deed of sale.

The CA further declared respondents as purchasers in good faith. On the premise that petitioners' filing of the Affidavit of Adverse Claim was procedurally flawed and that the annotated adverse claim had already prescribed on December 20, 1986 after the lapse of 30 days from its registration which was November 20, 1986, the CA ruled that it cannot be considered sufficient notice to third person like the respondents who were not aware of the sale of the disputed lot to petitioners prior to the levy on attachment.

As stated at the threshold hereof, the CA, in its decision[7] of August 29, 2002, reversed and set aside that of the RTC, thus:

> WHEREFORE, in view of the foregoing, the Decision dated May 11, 1993 of the Regional Trial Court, National Capital Judicial Region, Branch 135, Makati City in Civil Case No. 90-064 is hereby REVERSED.
>
> The Register of Deeds of Las Piñas, Metro Manila is hereby mandated not to cancel any annotations of encumbrances in favor of defendants-appellants in Transfer Certificate of Title No. 83618 issued by the Register of Deeds of Pasay City, Metro Manila, Dist. IV.
>
> Who among the parties has a preferential right over the disputed property.
>
> SO ORDERED.

Their motion for reconsideration having been denied by the CA in its challenged Resolution of November 21, 2002, petitioners are now before this Court, faulting the CA as follows:

> WITH DUE RESPECT, THE COURT *A QUO* GRAVELY ERRED AND ABUSED ITS DISCRETION WHEN IT RENDERED SUBJECT DECISION AND RESOLUTION IN A WAY PROBABLY NOT IN ACCORD WITH LAW OR RULES WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT; Specifically, the Court *a quo* erred;

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[7] *Supra* note 1.

a. When it held that the levy on attachment LATER annotated shall prevail over the Adverse Claim EARLIER annotated at the back of the title by the mere lapse of 30 days and even without any petition in court for its cancellation;

b. When it did not dismiss the appeal considering that the question raised were questions of law and NO question of fact.[8]

The petition is impressed with merit.

At the outset, the Court finds that the CA committed reversible error when it ruled that the annotated adverse claim had already prescribed by the mere lapse of 30 days from its registration. The issue is no longer of first impression. In the 1996 case of *Sajonas v. Court of Appeals*,[9] we explained that a notice of adverse claim remains valid even after the lapse of the 30-day period provided by Section 70 of PD 1529. Section 70 provides:

> Whoever claims any part or interest in registered land adverse to the registered owner, arising subsequent to the date of the original registration, may, if no other provision is made in this Decree for registering the same, make a statement in writing, setting forth fully his alleged right or interest, and how or under whom acquired, a reference to the number of the certificate of title of the registered owner, and a description of the land in which the right or interest is claimed.
>
> The statement shall be signed and sworn to, and shall state the adverse claimant's residence, and a place at which all notices may be served upon him. This statement shall be entitled to registration as an adverse claim on the certificate of title. The adverse claim shall be effective for a period of thirty days from the date of registration. After the lapse of said period, the annotation of adverse claim may be cancelled upon filing of a verified petition therefor by the party in interest. Provided, however that after cancellation, no second adverse claim based on the same ground shall be registered by the same claimant.

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[8] *Id.*, p. 32.

[9] G.R. No. 102377, July 5, 1996, 258 SCRA 79, 94.

In the same case, we held that for as long as there is yet no petition for its cancellation, the notice of adverse claim remains subsisting: Thus:

> At first blush, the provision in question would seem to restrict the effectivity of the adverse claim to thirty days. But the above provision cannot and should not be treated separately, but should be read in relation to the sentence following, which reads:
>
> > After the lapse of said period, the annotation of the adverse claim may be cancelled upon filing of a verified petition therefor by the party in interest.
> >
> > If the rationale of the law was for the adverse claim to *ipso facto* lose force and effect after the lapse of thirty days, then it would not have been necessary to include the foregoing caveat to clarify and complete the rule. For then, no adverse claim need be cancelled. If it has been automatically terminated by mere lapse of time, the law would not have required the party in interest to do a useless act.[10]

In a petition for cancellation of adverse claim, a hearing must first be conducted. The hearing will afford the parties an opportunity to prove the propriety or impropriety of the adverse claim.[11]

Now, as we see it, the recourse will either rise or fall on the decisive question of whether or not respondents were purchasers in good faith when they acquired the disputed lot despite the annotated adverse claim on their title.

We rule and so hold that they were not.

The Court has invariably ruled that in case of conflict between a vendee and an attaching creditor, an attaching creditor who registers the order of attachment and the sale of the property to him as the highest bidder acquires a valid title to the property as against a vendee who had previously bought the same property

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[10] *Id.*, pp 95-96.

[11] *Rolando Y. Tan v. The Court of Appeals*, G.R. No. 135038, November 16, 2001, 369 SCRA 255, 264.

from the same owner but who failed to register his deed of sale. This is because registration is the operative act that binds or affects the land insofar as third persons are concerned. It is upon registration that there is notice to the whole world. But where a party has knowledge of a prior existing interest, as here, which is unregistered at the time he acquired a right to the same land, his knowledge of that prior unregistered interest has the effect of registration as to him.[12] Knowledge of an unregistered sale is equivalent to registration.[13]

The general rule is that a person dealing with registered land is not required to go behind the register to determine the condition of the property. In that case, such person is charged with notice of the burden on the property which is noted on the face of the register or certificate of title.[14]

Article 1544 of the Civil Code governs in cases of double sale. It provides:

> Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.
>
> Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith.

An "innocent purchaser for value" or any equivalent phrase shall be deemed to include, under the Torrens System, the innocent lessee, mortgagee, and other encumbrancer for value.[15]

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[12] *Ruiz, Sr. v. Court of Appeals,* G.R. No. 121298, July 31, 2001, 362 SCRA 40, 50, citing *Egao v. Court of Appeals*, G.R. No. 79787, June 29, 1989, 174 SCRA 484.

[13] *Winkleman v. Veluz,* 43 Phil. 604, 608 (1922).

[14] *Navotas Industrial Corporation v. German D. Cruz, et al.,* G.R. No. 159212, September 12, 2005, 469 SCRA 530, 553.

[15] *Express Credit Financing Corporation v. Sps. Morton and Juanita Velasco*, G.R. No. 156033, October 20, 2005, 473 SCRA 570, 577.

In *Bautista v. Court of Appeals*,[16] we held that where the thing sold twice is an immovable, the one who acquires it and first registers it in the Registry of Property, in good faith, shall be the owner.

Who then can be considered a purchaser in good faith?

In the early case of *Leung Yee v. F.L. Strong Machinery Co. and Williamson*,[17] the Court explained good faith in this wise:

> One who purchases real estate with knowledge of a defect or lack of title in his vendor cannot claim that he has acquired title thereto in good faith as against the true owner of the land or of an interest therein; and the same rule must be applied to one who has knowledge of facts which should have put him upon such inquiry and investigation as might be necessary to acquaint him with the defects in the title of his vendor.[18]

Good faith, or the want of it, is capable of being ascertained only from the acts of one claiming its presence, for it is a condition of the mind which can only be judged by actual or fancied token or signs.[19]

It is beyond dispute that the property in question had already been sold by La Fuente to petitioners on September 5, 1985. Petitioners immediately took possession thereof. When the Notice of Levy on Attachment was recorded at the dorsal portion of TCT No. 83618 and when the Writ of Execution and Certificate of Sale were inscribed under Entry No. 3434-2 in favor of respondents, on January 26, 1989, petitioners have been, since September 5, 1985, in actual, physical, continuous and uninterrupted possession.

The law does not require a person dealing with the owner of registered land to go beyond the certificate of title as he

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[16] G.R. No. 106042, 28 February 1994, 230 SCRA 446, 454.

[17] No. 11658, 37 Phil. 644, 651 (1918).

[18] *Id.* at 651.

[19] *Id.* at 652.

may rely on the notices of the encumbrances on the property annotated on the certificate of title or absence of any annotation. Here, petitioners' adverse claim is annotated at the back of the title coupled with the fact that they are in possession of the disputed property. To us, these circumstances should have put respondents on guard and required them to ascertain the property being offered to them has already been sold to another to prevent injury to prior innocent buyers. A person who deliberately ignores a significant fact which would create suspicion in an otherwise reasonable man is not an innocent purchaser for value. It is a well-settled rule that a purchaser cannot close his eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor.[20]

As aptly observed by the RTC, regardless of the non-registration of the Deed of Absolute Sale to petitioners, nor the 30-day effectivity of the adverse claim under Section 70 of PD 1529, respondents were constructively notified of petitioners' prior purchase of the disputed property. We quote with approval the RTC's observation on this matter, thus:

xxx In derogation to defendants claim that they have a better right over the questioned property superior over that of the plaintiffs, the Court has only to carefully examine the face of TCT No. 83618 and its dorsal part on Memorandum of Encumbrances for entries and inscriptions in their chronological order of dates of annotation of documents in the Office of the Register of Deeds. On the title itself it is readily perceived and palpable that Entry No. 86-62262/T-83618 in reference to the Adverse Claim executed by plaintiff Jesus Ching was registered way ahead on November 20, 1986 compared to Entries Nos. 3433-2, 3434-2 and 736-3, respectively the Notice of Levy, Writ of Execution and Certificate of Sale in favor of spouses defendants Enrile which were duly registered on August 19, 1988 (for the first two documents) and on March 21, 1989 (for the last document). Perforce, before the registrations of the three documents purporting to be the rights and interests of defendants in the property in question, the defendants more particularly and the whole world in general were

[20] *Amancio Sarmiento v. CA, Rodeanna Realty Corporation, et al.,* G.R. No. 152627, September 16, 2005, 470 SCRA 99, 123.

given constructive notice that Raymunda La Fuente, the judgment debtor in Civil Case No. 54617 of the Regional Trial Court of Pasig, has no more interest and rights to the property subject of litigation. Defendants should have at the first instance been duly warned and notified that the property involved in litigation subject to attachment and levy, execution and sale from actual registration of the defendants' documents referred herein. The annotation of inscription to Entry No. 86-622/T-83618 is obviously and indeed very clear indicating that the plaintiffs' registered adverse claim in reference to the sale of the same property sought by defendants to be levied on attachment, final execution and sale came ahead.[21]

Hence, the particular circumstances of this case constrain us to rule that respondents were not purchasers in good faith and, as such, could not acquire good title to the property as against the former transferee.

WHEREFORE, the petition is *GRANTED*. The decision of the Court of Appeals promulgated on August 29, 2002, in CA-G. R. CV No. 42985, and the Resolution dated November 21, 2002 are hereby *REVERSED* and *SET ASIDE*. In lieu thereof, the decision of the Regional Trial Court, of Makati City Branch 135, dated May 11, 1993, in Civil Case No. 90-064 is *REVIVED* and *AFFIRMED in toto*.

No costs.

SO ORDERED.

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

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[21] *Rollo,* pp. 61-62.

[*] Additional Member as per Special Order No. 515.

FIRST DIVISION

[G.R. No. 156208. September 17, 2008]

NPC DRIVERS AND MECHANICS ASSOCIATION (NPC DAMA), represented by Its President ROGER S. SAN JUAN, SR., NPC EMPLOYEES & WORKERS UNION (NEWU) — NORTHERN LUZON REGIONAL CENTER, represented by its Regional President JIMMY D. SALMAN, in their own individual capacities and in behalf of the members of the associations and all affected officers and employees of National Power Corporation (NPC), ZOL D. MEDINA, NARCISO M. MAGANTE, VICENTE B. CIRIO, JR., NECITAS B. CAMAMA, in their individual capacities as employees of National Power Corporation, *petitioners, vs.* **THE NATIONAL POWER CORPORATION (NPC), NATIONAL POWER BOARD OF DIRECTORS (NPB), JOSE ISIDRO N. CAMACHO as Chairman of the National Power Board of Directors (NPB), ROLANDO S. QUILALA, as President — Officer-in-charge/CEO of National Power Corporation and Member of National Power Board, and VINCENT S. PEREZ, JR., EMILIA T. BONCODIN, MARIUS P. CORPUS, RUBEN S. REINOSO, JR., GREGORY L. DOMINGO, and NIEVES L. OSORIO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; DISMISSAL; THE NATIONAL POWER CORPORATION CANNOT IMPLEMENT ITS REORGANIZATION BY TERMINATING PETITIONERS' EMPLOYMENT PURSUANT TO NATIONAL POWER BOARD RESOLUTION NO. 2002-124 AND NO. 2002-125 WHICH WERE PASSED WITH FATAL DEFECTS. — We stress that neither the EPIRA Law mandating the reorganization of the NPC nor NPB Resolution No. 2002-53 approving the new NPC Table

of Organization was made subject of the instant Petition; and, resultantly, neither was affected by the injunction we granted in our Decision dated 26 September 2006. Our 26 September 2006 Decision declared void and without legal effect NPB Resolutions No. 2002-124 and No. 2002-125. Hence, we granted the Petition at bar and enjoined the implementation of these two NPB Resolutions. To recall, NPB Resolution No. 2002-124 approved the Guidelines on the Separation Program of the NPC and the Selection and Placement of Personnel in the NPC Table of Organization. It terminated the employment of all NPC personnel on 31 January 2003, and provided for their separation benefits. NPB Resolution No. 2002-125 constituted a Transition Team to implement the Separation Program of the NPC. Simply put, the NPC can still pursue its reorganization in accordance with its new Table of Organization; but it cannot implement the same by terminating petitioners' employment on 31 January 2003 pursuant to NPB Resolutions No. 2002-124 and No. 2002-125, which were passed with fatal defects. To validly implement the reorganization of NPC, the NPB is not precluded by our Decision of 26 September 2006 from passing another resolution, in accord with law and jurisprudence, approving a new separation program for its employees.

2. ID.; ID.; ID.; BEING ILLEGALLY DISMISSED FROM SERVICE, PETITIONERS ARE ENTITLED TO REINSTATEMENT TO THEIR FORMER POSITIONS OR TO EQUAL POSITIONS.— We have to sustain petitioners' position in their Motion for Clarification and/or Amplification that our declaration of nullity of NPB Resolutions No. 2002-124 and No. 2002-125 and our injunction on the implementation of the same logically and necessarily meant that the termination of the employment of petitioners on 31 January 2003 was illegal. As a general rule, being illegally dismissed from service, petitioners are entitled to reinstatement to their former positions or to equal positions. Nonetheless, we must consider the fact that absent a TRO and/or a preliminary injunction, the NPC was still able to proceed with its reorganization prior to the promulgation of our Decision on 26 September 2006. We cannot simply ignore the effects of such reorganization which has been implemented and in place for over five years now and issue, as the petitioners pray for, a status *quo ante* order.

3. CIVIL LAW; EFFECT AND APPLICATION OF LAWS; EFFECT OF A DECISION ADJUDGING AN EXECUTIVE OR A LEGISLATIVE ACT VOID.— We refer by way of analogy to the effect of a decision adjudging an executive or a legislative act void: The decision now on appeal reflects the orthodox view that an unconstitutional act, for that matter an executive order or a municipal ordinance likewise suffering from that infirmity, cannot be the source of any legal rights or duties. Nor can it justify any official act taken under it. Its repugnancy to the fundamental law once judicially declared results in its being to all intents and purposes a mere scrap of paper. As the new Civil Code puts it: "When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution." It is understandable why it should be so, the Constitution being supreme and paramount. Any legislative or executive act contrary to its terms cannot survive. Such a view has support in logic and possesses the merit of simplicity. It may not however be sufficiently realistic. It does not admit of doubt that prior to the declaration of nullity such challenged legislative or executive act must have been in force and had to be complied with. This is so as until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect. Parties may have acted under it and may have changed their positions. What could be more fitting than that in a subsequent litigation regard be had to what has been done while such legislative or executive act was in operation and presumed to be valid in all respects. It is now accepted as a doctrine that prior to its being nullified, its existence as a fact must be reckoned with. This is merely to reflect awareness that precisely because the judiciary is the governmental organ which has the final say on whether or not a legislative or executive measure is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication. In the language of an American Supreme Court decision: "The actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored. The past cannot

always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects, — with respect to particular relations, individual and corporate, and particular conduct, private and official." This language has been quoted with approval in a resolution in *Araneta v. Hill* [93 Phil. 1002 (1953)] and the decision in *Manila Motor Co., Inc. v. Flores* [99 Phil. 738 (1956)]. An even more recent instance is the opinion of Justice Zaldivar speaking for the Court in *Fernandez v. Cuerva and Co.* [G.R. No. L-21114, 28 November 1967, 21 SCRA 1095].

4. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; DISMISSAL; WHERE THE FORMER POSITIONS OR ANY EQUIVALENT POSITIONS ARE NO LONGER AVAILABLE AFTER REORGANIZATION, PETITIONERS' MAY BE ACCORDINGLY AWARDED SEPARATION PAY IN LIEU OF REINSTATEMENT, BASED ON A VALIDLY APPROVED SEPARATION PROGRAM; PETITIONERS ARE ALSO ENTITLED TO BACKWAGES TOGETHER WITH WAGE ADJUSTMENTS AND ALL OTHER BENEFITS WHICH THEY WOULD HAVE RECEIVED IF THEY HAD NOT BEEN ILLEGALLY TERMINATED UNTIL THEY ARE ACTUALLY REINSTATED OR PAID THEIR SEPARATION PAY.— Since we cannot discount the impossibility of petitioners' reinstatement, as their former positions or any equivalent positions may no longer be available after the reorganization, petitioners may be accordingly awarded separation pay in lieu of reinstatement, based on a validly approved separation program of the NPC. Petitioners are further entitled to backwages together with wage adjustments and all other benefits which they would have received if they had not been illegally terminated from employment, from 31 January 2003 until they are actually reinstated or paid their separation pay. We also take note that petitioners have already received separation benefits under NPB Resolutions No. 2002-124 and No. 2002-125. The amount thereof shall then be taken into account and offset against the amount they are entitled to receive as backwages and separation pay (in lieu of reinstatement) under a validly approved separation program of the NPC.

5. LEGAL ETHICS; ATTORNEYS; ATTORNEYS LIEN OR CHARGING OR SPECIAL LIEN; EXPOUNDED.— A charging or special lien is an attorney's specific lien for compensation

on the fund or judgment which he has recovered by means of his professional services for his client in a particular case. Such charging lien covers only the services rendered by an attorney in the action in which the judgment was obtained and takes effect after the attorney shall have caused a statement of his claim of such lien to be entered into the records of the particular action with written notice thereof to his client and to the adverse party. It presupposes that the attorney has secured a favorable money judgment for his client and grants the attorney "the same right and power over such judgments and executions as his client would have to enforce his lien and secure the payment of his just fees and disbursements." Called upon at all times to exert utmost zeal with unstinted fidelity in upholding his client's cause and subject to appropriate disciplinary action if he should fail to live up to such exacting standard, the attorney in return is given the assurance through his liens — retaining and charging — that the collection of his lawful fees and disbursements is not rendered difficult, if not altogether thwarted, by an unappreciative client. He is thereby given an effective hold on his client to assure payment of his services in keeping with his dignity as an officer of the court.

6. ID.; ID.; ATTORNEY'S FEES; A CLIENT CANNOT, IN THE ABSENCE OF THE LAWYER'S FAULT, CONSENT OR WAIVER, DEPRIVE THE LAWYER OF HIS JUST FEES ALREADY EARNED; THE DUTY OF THE COURT IS NOT ONLY TO SEE THAT LAWYERS ACT IN A PROPER AND LAWFUL MANNER, BUT ALSO TO SEE THAT LAWYERS ARE PAID THEIR JUST AND LAWFUL FEES.— A client cannot, in the absence of the lawyer's fault, consent or waiver, deprive the lawyer of his just fees already earned. While a client has the right to discharge his lawyer at any time, dismiss or settle his action or even waive the whole of his interest in favor of the adverse party, he cannot by taking any such step deprive the lawyer of what is justly due him as attorney's fees unless the lawyer, by his action, waives or forfeits his right thereto. We have in the past disapproved of any and every effort of clients benefited by counsel's services to deprive them of their hard-earned honorarium and condemned such attitude. Lawyers are as much entitled to judicial protection against injustice on the part of their clients as the clients are against abuses on the part of counsel. The duty of the court is not only to see

that lawyers act in a proper and lawful manner, but also to see that lawyers are paid their just and lawful fees. Thus, in *J.K. Mercado and Sons Agricultural Enterprises, Inc. v. De Vera*, citing *Albano v. Coloma*, we stressed: While, indeed, the practice of law is not a business venture, a lawyer, nevertheless, is entitled to be duly compensated for professional services rendered. So, also, he must be protected against clients who wrongly refuse to give him his just due. In *Albano vs. Coloma*, this Court has said: "Counsel, any counsel, who is worthy of his hire, is entitled to be fully recompensed for his services. With his capital consisting solely of his brains and with his skill, acquired at tremendous cost not only in money but in the expenditure of time and energy, he is entitled to the protection of any judicial tribunal against any attempt on the part of a client to escape payment of his fees. It is indeed ironic if after putting forth the best that is in him to secure justice for the party he represents, he himself would not get his due. Such an eventuality this Court is determined to avoid. It views with disapproval any and every effort of those benefited by counsel's services to deprive him of his hard-earned honorarium. Such an attitude deserves condemnation."

7. ID.; ID.; ID.; FACTS JUSTIFYING PAYMENT OF ATTORNEYS' JUST AND LAWFUL FEES.— We take note that according to their legal retainer agreement, Atty. Aldon and Atty. Orocio received no acceptance fee when they took on petitioners' case. The only other amount that they were to receive by virtue of said agreement was the ₱25,000.00 out-of-pocket expense. Their attorney's fees thereunder were absolutely contingent on their winning the case, which they, in fact, did. The allegation of Salman, *et al.*, that the contingency on which Atty. Aldon may collect his attorney's fees was the granting of the TRO deserves scant consideration in light of the clear and simple wording of the legal retainer agreement that the said fees were "contingent on the success of the case." Even though Atty. Aldon and Atty. Orocio failed to secure the provisional remedy of a TRO, they were able to win for petitioners a perpetual injunction against the implementation of NPB Resolutions No. 2002-124 and No. 2001-125. Atty. Aldon and Atty. Orocio may have lost the battle (for the TRO), but they ultimately won the war (for the injunction) for petitioners. Equally without merit was the assertion of Salman, *et al.*, that they never authorized Atty.

Orocio to appear as their counsel. Both Atty. Aldon and Atty. Orocio signed the legal retainer agreement. Atty. Orocio appeared as co-counsel of Atty. Aldon upon the filing of the Memorandum for petitioners. And even though Atty. Orocio did not sign the other pleadings for petitioners previous to their Memorandum, it did not discount the possibility that he still rendered legal services to petitioners for the prosecution of their case other than the preparation and filing of the pleadings, such as the conduct of the necessary research and other legwork. Finally, Atty. Aldon and Atty. Orocio jointly filed their Motion for Approval of Charging (Attorney's) Lien, which only shows that Atty. Aldon himself recognizes the equal participation of Atty. Orocio in the present case as co-counsel of petitioners.

8. ID.; ID.; ID.; AMOUNT OF ATTORNEY'S FEES REDUCED TO 10% OF THE AMOUNTS RECOVERABLE BY PETITIONERS; REASONS.— While we duly recognize the right of Atty. Aldon and Atty. Orocio to a charging lien on the amounts recoverable by petitioners pursuant to our 26 September 2006 Decision, nevertheless, we deem it proper to reduce the same. Under Section 24, Rule 138 of the Rules of Court, a written contract for services shall control the amount to be paid therefor unless found by the court to be unconscionable or unreasonable. The amounts which petitioners may recover as the logical and necessary consequence of our Decision of 26 September 2006, *i.e.*, backwages and separation pay (in lieu of reinstatement), are essentially the same awards which we grant to illegally dismissed employees in the private sector. In such cases, our Labor Code explicitly limits attorney's fees to a maximum of 10% of the recovered amount. Considering by analogy the said limit on attorney's fees in this case of illegal dismissal of petitioners by respondent NPC, a government-owned and controlled corporation; plus the facts that petitioners have suffered deprivation of their means of livelihood for the last five years; and the fact that this case was originally filed before us, without any judicial or administrative proceedings below; as well as the fundamental ethical principle that the practice of law is a profession and not a commercial enterprise, we approve in favor of Atty. Aldon and Atty. Orocio a charging lien of 10% (instead of 25%) on the amounts recoverable by petitioners from NPC pursuant to our Decision dated 26 September 2006.

9. ID.; ID.; ATTORNEY'S LIEN OR CHARGING OR SPECIAL LIEN.; THE COURT ALLOWED THE RECORDING OF THE CHARGING LIEN EVEN PRIOR TO THE DETERMINATION OF THE EXACT AMOUNTS TO BE PAID TO PETITIONERS BY RESPONDENT NATIONAL POWER CORPORATION; CONSEQUENCES OF THE RECORDING OF THE CHARGING LIEN.— We leave the computation of the actual amounts due the petitioners and the enforcement of payment thereof by execution to the proper forum in appropriate proceedings, for this Court is not a trier of facts. It is not equipped to receive evidence and determine the truth of the factual allegations of the parties on this matter. But even prior to the determination of the exact amounts to be paid to petitioners by respondent NPC pursuant to our Decision dated 26 September 2006, we may already allow herein the recording of the charging lien of Atty. Aldon and Atty. Orocio to establish their right to 10% of such awards. With the recording of their charging lien, Atty. Aldon and Atty. Orocio shall have the same right and power over such judgments and executions as their clients, petitioners, would have, to enforce their lien and secure the payment of their attorney's fees. The lien shall attach to the proceeds of the judgment and the client who receives the same, without paying his attorney who was responsible for its recovery, shall hold said proceeds in trust for his lawyer to the extent of the value of the lawyer's recorded lien. After the charging lien has attached, the attorney is, to the extent of said lien, to be regarded as an equitable assignee of the judgment or funds produced by his efforts. And the judgment debtor who, in disregard of the charging lien, satisfies the judgment debt without reserving so much thereof as may be sufficient to pay the attorney's fees and advances may be held liable for the full value of the lien, which may be enforced by execution.

APPEARANCES OF COUNSEL

Casan B. Macabanding and *Ariel V. Villanueva* for petitioners.

The Solicitor General for public respondent.

R E S O L U T I O N

CHICO-NAZARIO, *J.*:

For our resolution are several incidents in the above-entitled case that arose and were submitted to us after the promulgation of our Decision[1] on 26 September 2006.

The factual antecedents of the case at bar are briefly recounted below:

Petitioners originally filed before us the present special civil action for Injunction to enjoin respondents from implementing National Power Board (NPB) Resolutions No. 2002-124 and No. 2002-125, both dated 18 November 2002, directing, among other things, the termination of all employees of the National Power Corporation (NPC) on 31 January 2003 in line with the restructuring of the NPC.

The assailed NPB Resolutions were issued in compliance with the provisions of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA Law), which took effect on 26 June 2001. The EPIRA Law provided a framework for the restructuring of the electric power industry, including the privatization of the assets of the NPC and its transition to the desired competitive structure.

Pursuant to the EPIRA Law, a new NPB was constituted, composed of the Secretary of Finance as Chairman, with the Secretary of Energy, the Secretary of Budget and Management, the Secretary of Agriculture, the Director-General of the National Economic and Development Authority, the Secretary of Environment and Natural Resources, the Secretary of Interior and Local Government, the Secretary of the Department of Trade and Industry, and the President of the NPC as members.

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[1] Penned by Associate Justice Minita V. Chico-Nazario with then Chief Justice Artemio V. Panganiban and Associate Justices Consuelo Ynares-Santiago, Ma. Alicia Austria-Martinez, and Romeo J. Callejo, Sr., concurring; *rollo*, pp. 296-308.

Also in accordance with the EPIRA Law, the Department of Energy (DOE) created the Energy Restructuring Steering Committee (Restructuring Committee) to manage the privatization and restructuring of the NPC, the National Transmission Corporation (TRANSCO), and the Power Sector Assets and Liabilities Management Corporation (PSALM). The Restructuring Committee proposed a new NPC Table of Organization to serve as the overall organizational framework for the realigned functions of the NPC mandated under the EPIRA Law, which was approved by the NPB in **NPB Resolution No. 2002-53** dated 11 April 2002.

After reviewing the proposed 2002 NPC Restructuring Plan and assisting in the implementation of its Phase I (Realignment), the Restructuring Committee recommended to the NPB the adoption of measures pertaining to the separation and hiring of NPC personnel. The NPB agreed in the recommendation of the Restructuring Committee and found the need to accordingly amend or refine its Restructuring Plan. The NPB passed **NPB Resolution No. 2002-124** on 18 November 2002, providing for the Guidelines on the Separation Program of the NPC and the Selection and Placement of Personnel in the NPC Table of Organization. Under said Resolution, all NPC personnel shall be legally terminated on 31 January 2003, and shall be entitled to separation benefits. The NPB approved on the same day **NPB Resolution No. 2002-125**, constituting a Transition Team to manage and implement the Separation Program of NPC.

Petitioners, then employed by the NPC, opposed NPB Resolutions No. 2002-124 and No. 2002-125 on the ground that these were not passed by a majority of the NPB. Only three NPB members were actually present during the 18 November 2002 meeting and personally signed the Resolutions in question. Four other NPB members merely sent their representatives or alternates to attend the said meeting, who signed the assailed Resolutions on their behalf.

In their Petition before us, petitioners prayed for the following:

1. A TEMPORARY RESTRAINING ORDER (TRO) to be issued immediately *ex parte* upon the filing of this petition enjoining, prohibiting and restraining respondents from implementing the questioned [NPB] Resolutions and, thus, maintain and pressure the *status quo* pending resolution of the prayer for issuance of a writ of preliminary injunction;

2. Upon notice and hearing, a writ of preliminary injunction be issued enjoining, prohibiting and restraining respondents from implementing the questioned [NPB] Resolutions pending the final resolution and decision of the present petition[; and]

3. After hearing on the merits[,] to grant the petition and declare the writ of preliminary injunction perpetual and permanent.

Other reliefs and remedies as may be just and equitable are also prayed for.[2]

We did not issue a TRO or a preliminary injunction, the NPC proceeded with the termination of the employment of petitioners on 31 January 2003 pursuant to the assailed Resolutions.

In our Decision dated 26 September 2006, we sustained the position of the petitioners. We found that there was undue delegation of what was already a delegated power by certain NPB members when they sent their representatives to attend board meetings, and pass and sign board resolutions. The Court reasoned that:

In enumerating under Section 48 those who shall compose the National Power Board of Directors, the legislature has vested upon these persons the power to exercise their judgment and discretion in running the affairs of the NPC. Discretion may be defined as "the act or the liberty to decide according to the principles of justice and one's ideas of what is right and proper under the circumstances, without willfulness or favor.["] Discretion, when applied to public functionaries, means a power or right conferred upon them by law of acting officially in certain circumstances, according to the dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others. It is to be presumed that in naming the respective department heads as members of the board of directors, the legislature chose

[2] *Rollo*, pp. 19-20.

these secretaries of the various executive departments on the basis of their personal qualifications and acumen which made them eligible to occupy their present positions as department heads. Thus, the department secretaries cannot delegate their duties as members of the NPB, much less their power to vote and approve board resolutions, because it is their personal judgment that must be exercised in the fulfillment of such responsibility.

There is no question that the enactment of the assailed Resolutions involves the exercise of discretion and not merely a ministerial act that could be validly performed by a delegate, thus, the rule enunciated in the case of *Binamira v. Garrucho* is relevant in the present controversy, to wit:

> An officer to whom a discretion is entrusted cannot delegate it to another, the presumption being that he was chosen because he was deemed fit and competent to exercise that judgment and discretion, and unless the power to substitute another in his place has been given to him, he cannot delegate his duties to another.
>
> In those cases in which the proper execution of the office requires, on the part of the officer, the exercise of judgment or discretion, the presumption is that he was chosen because he was deemed fit and competent to exercise that judgment and discretion, and, unless power to substitute another in his place has been given to him, he cannot delegate his duties to another.
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> xxx xxx xxx

In the case at bar, it is not difficult to comprehend that in approving NPB Resolutions No. 2002-124 and No. 2002-125, it is the representatives of the secretaries of the different executive departments and not the secretaries themselves who exercised judgment in passing the assailed Resolution, as shown by the fact that it is the signatures of the respective representatives that are affixed to the questioned Resolutions. This, to our mind, violates the duty imposed upon the specifically enumerated department heads to employ their own sound discretion in exercising the corporate powers of the NPC. Evidently, the votes cast by these mere representatives in favor of the adoption of the said Resolutions must not be considered in determining whether or not the necessary number of votes was garnered in order that the assailed Resolutions may be validly enacted. Hence, there being only three valid votes cast out

of the nine board members, namely those of [Department of Energy] Secretary Vincent S. Perez, Jr.; Department of Budget and Management Secretary Emilia T. Boncodin; and NPC OIC-President Rolando S. Quilala, NPB Resolutions No. 2002-124 and No. 2002-125 are void and are of no legal effect.[3]

Hence, we ultimately decreed –

WHEREFORE, premises considered, National Power Board Resolutions No. 2002-124 and No. 2002-125 are hereby declared VOID and **WITHOUT LEGAL EFFECT**. The Petition for Injunction is hereby **GRANTED** and respondents are hereby [**ENJOINED**] from implementing said NPB Resolutions No. 2002-124 and No. 2002-125.[4]

Respondent NPC filed a Motion for Reconsideration (Of Decision dated 26 September 2006),[5] which we denied with finality in a Resolution[6] dated 24 January 2007. Respondent NPC subsequently filed a Motion for Leave to File 2nd Motion for Reconsideration (Of Decision dated 26 September 2006) with Motion to Refer Case *En Consulta* to the Court *En Banc*,[7] attaching thereto its Second Motion for Reconsideration.[8] However, in a Resolution [9] dated 4 June 2007, we denied both motions of respondent NPC.

Several more pleadings were filed following the promulgation of our Decision of 26 September 2006.

Petitioners filed a Motion for Clarification and/or Amplification,[10] with the following averments:

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[3] *Id.* at 305-307.

[4] *Id.* at 307.

[5] *Id.* at 310-324.

[6] *Id.* at 330.

[7] *Id.* at 339-352.

[8] *Id.* at 353-377.

[9] *Id.* at 397-398.

[10] *Id.* at 334-337.

3. It appears that the assailed NPB resolutions were implemented by respondents after this petition was filed and pending resolution thereof effected, among others, the reorganization of the National Power Corporation (NPC), and termination of all NPC personnel as of January 31, 2003;

4. As this Honorable Court has ruled in its Decision that [NPB] Resolutions No. 2002-124 and No. 2002-125 are **VOID** and **WITHOUT LEGAL EFFECT**, it is petitioners' considered position that its logical implications/consequences are, as follows:

1. The reorganization of NPC is null and void, which means that NPC must revert to its organizational structure prior to the implementation of [NPB] Resolution Nos. 2002-124 and 2002-125 *(status quo ante*);

2. The termination of all NPC personnel on January 31, 2003 is void and illegal, which entitles them to reinstatement to their previous positions and payment of back wages and other benefits and wage adjustments reckoned from January 31, 2003 until their actual reinstatement.

5. This motion is being made in order to clarify and/or amplify the Decision in this case as to its logical and necessary implications/consequences when the same will be eventually executed.

Petitioners, thus, pray that we clarify and/or amplify our Decision of 26 September 2006 by confirming their afore-quoted position as regards their reinstatement and payment of backwages/salaries, *etc*., as the logical and necessary implications/consequences of the said Decision rendered in their favor.

Shortly thereafter, counsels for petitioner, namely, Atty. Cornelio P. Aldon (Atty. Aldon) of the Cornelio P. Aldon Law Office and Atty. Victoriano V. Orocio (Atty. Orocio) of V.V. Orocio and Associates Law Offices, filed, on their own behalf, a Motion for Approval of Charging (Attorney's) Lien.[11] Their Motion alleged that on 7 December 2002, a Mr. Zol D. Medina (Medina), in his own individual capacity and on behalf of all similarly affected/situated NPC personnel, entered into a legal

[11] *Id.* at 380-386.

retainer agreement with Atty. Aldon and Atty. Orocio for the urgent and immediate filing with the Supreme Court of a petition for injunction with prayer for TRO and/or preliminary injunction, in order to enjoin the implementation of NPB Resolutions No. 2002-124 and No. 2002-125. The agreement contains the following terms and conditions:

1. No Acceptance Fee;
2. Miscellaneous/out-of-pocket expenses in the amount of ₱25,000.00;
3. Twenty - Five Percent (25%) of whatever amounts/monies are recovered in favor of said NPC personnel contingent on the success of the case.[12]

Pursuant to the foregoing agreement, Atty. Aldon and Atty. Orocio filed before us, on behalf of petitioners, the instant Petition for Injunction, Reply to the respondents' Comment, and petitioners' Memorandum. With the promulgation of our Decision dated 26 September 2006 enjoining the implementation of NPB Resolutions No. 2002-124 and No. 2002-125, and issuance of our Resolution dated 24 January 2007 denying with finality respondents' Motion for Reconsideration, Atty. Aldon and Atty. Orocio assert their right to attorney's fees and pray that we issue a resolution to the following effect:

1. Declaring that movants (Atty. Cornelio P. Aldon and Atty. Victoriano V. Orocio) are entitled to charge and collect the aforementioned attorney's fees of Twenty- Five Percent (25%) of the amounts/monies recovered in favor of all personnel of the National Power Corporation who were terminated effective as of January 31, 2003 pursuant to [NPB] Resolutions Nos. 2002-124 and 2002-125;
2. Directing the entry into the records of the instant case the aforementioned attorney's fee.

Other remedies just and equitable under the premises are also prayed for.[13]

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[12] Annex "A" of the Motion, *id*. at 387-388.

[13] *Id.* at 385.

Atty. Aldon and Atty. Orocio sent copies of their Notice of Attorney's Lien dated 11 April 2007 to Medina,[14] the Office of the Solicitor General (OSG),[15] and the Clerk of Court of the Supreme Court Third Division.[16]

Atty. Aldon and Atty. Orocio would later follow up by filing an *Ex Parte* Manifestation and Motion seeking the favorable resolution of their pending Motion for Clarification and/or Amplification and Motion for Approval of Charging (Attorney's) Lien.

In the meantime, pleadings were filed by some of the petitioners, by themselves or by counsels other than Atty. Aldon and Atty. Orocio, to wit:

(1) A Manifestation[17] was filed by petitioners Jimmy D. Salman (Salman),[18] Vicente B. Cirio, Jr., and Necitas B. Gama, on their behalf and on behalf of the NPC employees they represent, alleging that in a letter[19] dated 10 April 2007, they already terminated the services of Atty. Aldon; and in a letter[20] dated 19 April 2007, they directed Atty. Orocio to refrain from acting as their lawyer for they never authorized him or his law firm to represent them in the present case. Consequently, they requested that all Court notices and processes in this case be forwarded and sent instead to the persons and address indicated in the Manifestation. In a Resolution[21] dated 8 October 2007, we noted the Manifestation of Salman, *et al*., and granted their prayer that they be sent Court notices and processes regarding this case;

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[14] Annex "B" of the Motion, *id.* at 389-390.

[15] Annex "C" of the Motion, *id.* at 391-392.

[16] Annex "D" of the Motion, *id.* at 393-394.

[17] *Id.* at 403-404.

[18] Regional President of NPC Employees and Workers Union (NEWU)-Northern Luzon Regional Center.

[19] Annex "A" of the Manifestation, *rollo*, p. 405.

[20] Annex "B" of the Manifestation, *id.* at 406.

[21] *Id.* at 496-A.

(2) A Request for the Issuance of an Entry of Judgment[22] to implement our 26 September 2006 Decision was filed by Atty. Casan B. Macabanding (Atty. Macabanding), as collaborating counsel for petitioners, which we granted in our Resolution dated 4 June 2007. However, taking into account the filing of the succeeding pleadings, the entry of judgment has not been made;

(3) A Request for the Issuance of an Entry of Final Judgment[23] was filed by Atty. Ariel V. Villanueva (Atty. Villanueva), as collaborating counsel for the petitioners, in view of the finality of our Decision dated 26 September 2006; and

(4) A Manifestation and Motion[24] filed by Atty. Macabanding for the petitioners, praying that judgment already be entered in the case in accordance with our Resolution of 4 June 2007, since all the new pleadings filed by the parties were meant only to delay the proceedings.

Also submitted to us and made part of the records of the Petition at bar are the following:

(1) Copies of the letters written by Eriberto P. dela Peña and other NPC employees dismissed by virtue of NPB Resolutions No. 2002-124 and No. 2002-125, addressed to NPC President Cyril C. del Carr (Del Carr),[25] seeking their reinstatement; to Salman,[26] asking for unity and reconciliation; and to Vice President Noli De Castro[27] and Pampanga Governor Reverend Father Eduardo Panlilio,[28] calling attention to their plight and requesting assistance in the immediate resolution of their case;

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[22] *Id.* at 338.

[23] *Id.* at 495-496.

[24] *Id.* at 508-509.

[25] Dated 18 October 2007, *id.* at 411-413.

[26] Dated 27 October 2007, *id.* at 414-415.

[27] Dated 17 November 2007, *id.* at 416-423.

[28] Dated 7 October 2007, *id.* at 424-428; and dated 7 November 2007, *id.* at 429.

(2) A copy of the letter[29] dated 14 January 2008 written by Atty. Reynaldo A. Vitorillo (Atty. Vitorillo), as counsel for Porfirio C. Batalia, Jr., Victor B. Racaza, Jr., Fred B. Sadlucap, Allan J. Baguio, Sagrado D. Galacio, Valentin C. Bacalso, Reynaldo W. Hinaloc, Scribner D. Tamiroy, Teodolfo Sabejon, Rudy Lopez, Nestor Paderanga, Loreto Areliano, Jr., Casino Roa, Servillano B. Payusan, and other regular employees of NPC who were dismissed pursuant to NPB Resolutions No. 2002-124 and No. 2002-125, addressed to NPC President Del Callar. According to Atty. Vitorillo, following the promulgation of our Decision dated 26 September 2006 declaring said NPB Resolutions null and void, "*a fortiori*, and by operation of law, our clients deserve forthwith reinstatement with full backwages"; and

(3) A letter[30] dated 3 March 2008 written by Yolanda M. Hernandez addressed to Justice Consuelo Ynares-Santiago imploring for help in attaining a final judgment in the instant case, which we noted in a Resolution dated 10 March 2008.

The two incidents which we will principally address in this Resolution are the Motion for Clarification and/or Amplification filed by petitioners and a Motion for Approval of Charging (Attorney's) Lien filed by Atty. Aldon and Atty. Orocio.

Motion for Clarification and/or Amplification

We stress that neither the EPIRA Law mandating the reorganization of the NPC nor NPB Resolution No. 2002-53 approving the new NPC Table of Organization was made subject of the instant Petition; and, resultantly, neither was affected by the injunction we granted in our Decision dated 26 September 2006.

Our 26 September 2006 Decision declared void and without legal effect NPB Resolutions No. 2002-124 and No. 2002-125. Hence, we granted the Petition at bar and enjoined the implementation of these two NPB Resolutions. To recall, NPB Resolution No. 2002-124 approved the Guidelines on the Separation Program of

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[29] *Id.* at 498-499.

[30] *Id.* at 507-A.

the NPC and the Selection and Placement of Personnel in the NPC Table of Organization. It terminated the employment of all NPC personnel on 31 January 2003, and provided for their separation benefits. NPB Resolution No. 2002-125 constituted a Transition Team to implement the Separation Program of the NPC.

Simply put, the NPC can still pursue its reorganization in accordance with its new Table of Organization; but it cannot implement the same by terminating petitioners' employment on 31 January 2003 pursuant to NPB Resolutions No. 2002-124 and No. 2002-125, which were passed with fatal defects. To validly implement the reorganization of NPC, the NPB is not precluded by our Decision of 26 September 2006 from passing another resolution, in accord with law and jurisprudence, approving a new separation program for its employees.

We, however, have to sustain petitioners' position in their Motion for Clarification and/or Amplification that our declaration of nullity of NPB Resolutions No. 2002-124 and No. 2002-125 and our injunction on the implementation of the same logically and necessarily meant that the termination of the employment of petitioners on 31 January 2003 was illegal.

As a general rule, being illegally dismissed from service, petitioners are entitled to reinstatement to their former positions or to equal positions. Nonetheless, we must consider the fact that absent a TRO and/or a preliminary injunction, the NPC was still able to proceed with its reorganization prior to the promulgation of our Decision on 26 September 2006. We cannot simply ignore the effects of such reorganization which has been implemented and in place for over five years now and issue, as the petitioners pray for, a status *quo ante* order. We refer by way of analogy to the effect of a decision adjudging an executive or a legislative act void:

> The decision now on appeal reflects the orthodox view that an unconstitutional act, for that matter an executive order or a municipal ordinance likewise suffering from that infirmity, cannot be the source of any legal rights or duties. Nor can it justify any official act taken under it. Its repugnancy to the fundamental law once judicially declared results in its being to all intents and purposes a mere scrap of paper.

As the new Civil Code puts it: "When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution." It is understandable why it should be so, the Constitution being supreme and paramount. Any legislative or executive act contrary to its terms cannot survive.

Such a view has support in logic and possesses the merit of simplicity. It may not however be sufficiently realistic. It does not admit of doubt that prior to the declaration of nullity such challenged legislative or executive act must have been in force and had to be complied with. This is so as until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect. Parties may have acted under it and may have changed their positions. What could be more fitting than that in a subsequent litigation regard be had to what has been done while such legislative or executive act was in operation and presumed to be valid in all respects. It is now accepted as a doctrine that prior to its being nullified, its existence as a fact must be reckoned with. This is merely to reflect awareness that precisely because the judiciary is the governmental organ which has the final say on whether or not a legislative or executive measure is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication.

In the language of an American Supreme Court decision: "The actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects, — with respect to particular relations, individual and corporate, and particular conduct, private and official." This language has been quoted with approval in a resolution in *Araneta v. Hill* [93 Phil. 1002 (1953)] and the decision in *Manila Motor Co., Inc. v. Flores* [99 Phil. 738 (1956)]. An even more recent instance is the opinion of Justice Zaldivar speaking for the Court in *Fernandez v. Cuerva and Co.* [G.R. No. L-21114, 28 November 1967, 21 SCRA 1095].[31]

[31] *De Agbayani v. Philippine National Bank*, 148 Phil. 443, 447-448 (1971).

Since we cannot discount the impossibility of petitioners' reinstatement, as their former positions or any equivalent positions may no longer be available after the reorganization, petitioners may be accordingly awarded separation pay in lieu of reinstatement, based on a validly approved separation program of the NPC.[32]

Petitioners are further entitled to backwages together with wage adjustments and all other benefits which they would have received if they had not been illegally terminated from employment, from 31 January 2003 until they are actually reinstated or paid their separation pay.

We also take note that petitioners have already received separation benefits under NPB Resolutions No. 2002-124 and No. 2002-125. The amount thereof shall then be taken into account and offset against the amount they are entitled to receive as backwages and separation pay (in lieu of reinstatement) under a validly approved separation program of the NPC.

Motion for Approval of Charging (Attorney's) Lien

Atty. Aldon and Atty. Orocio move for the approval of their charging lien pursuant to the provisions of Section 37, Rule 138[33] of the Rules of Court and their legal retainer agreement.[34]

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[32] See *Caliguia v. National Labor Relations Commission*, 332 Phil. 128, 142 (1996).

[33] Rule 138, Section 37. *Attorneys' liens.* – An attorney shall have a lien upon the funds, documents and papers of his client which have lawfully come into his possession and may retain the same until his lawful fees and disbursements have been paid, and may apply such funds to the satisfaction thereof. He shall also have a lien to the same extent upon all judgments for the payment of money, and executions issued in pursuance of such judgments, which he has secured in a litigation of his client, from and after the time when he shall have caused a statement of his claim of such lien to be entered upon the records of the court rendering such judgment, or issuing such execution, and shall have caused written notice thereof to be delivered to his client and to the adverse party; and he shall have the same right and power over such judgments and executions as his client would have to enforce his lien and secure the payment of his just fees and disbursements.

[34] In which it was agreed among other terms and conditions that Atty. Aldon and Atty. Orocio shall be entitled to 25% of whatever amounts/

A charging or special lien is an attorney's specific lien for compensation on the fund or judgment which he has recovered by means of his professional services for his client in a particular case. Such charging lien covers only the services rendered by an attorney in the action in which the judgment was obtained and takes effect after the attorney shall have caused a statement of his claim of such lien to be entered into the records of the particular action with written notice thereof to his client and to the adverse party. It presupposes that the attorney has secured a favorable money judgment for his client and grants the attorney "the same right and power over such judgments and executions as his client would have to enforce his lien and secure the payment of his just fees and disbursements." Called upon at all times to exert utmost zeal with unstinted fidelity in upholding his client's cause and subject to appropriate disciplinary action if he should fail to live up to such exacting standard, the attorney in return is given the assurance through his liens – retaining and charging – that the collection of his lawful fees and disbursements is not rendered difficult, if not altogether thwarted, by an unappreciative client. He is thereby given an effective hold on his client to assure payment of his services in keeping with his dignity as an officer of the court.[35]

In the case before us, Atty. Aldon and Atty. Orocio represented all the NPC employees terminated from employment by virtue of NPB Resolutions No. 2002-124 and No. 2002-125 as petitioners in what they referred to as a class suit, with nary a resistance from any of the petitioners. They were petitioners' counsels-of-record from the time the Petition for Injunction was instituted until we rendered our Decision on 26 September 2006, granting the Petition and enjoining the implementation of the challenged NPB Resolutions. Again, by virtue of the efforts of Atty. Aldon and Atty. Orocio who filed the Motion for Clarification and/or Amplification on behalf of petitioners, we have recognized herein petitioners' rights to backwages and reinstatement or separation pay (in lieu of reintstatement). Evidently, Atty. Aldon and Atty.

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monies were recovered in favor of the NPC personnel, contingent on the success of the case, *supra* note 12.

[35] *Ampil v. Hon. Agrava,* 145 Phil. 297, 307-308 (1970).

Orocio faithfully accomplished their duty to promote and protect their clients' rights.

It was only after the promulgation of our Decision dated 26 September 2006 granting the Petition, and during the pendency of the Motion for Clarification and/or Amplification filed by Atty. Aldon and Atty. Orocio on behalf of petitioners, that Salman, *et al*., filed a Manifestation before us on 2 May 2007, to which they attached their letter dated 10 April 2007 to Atty. Aldon terminating his services; and another letter dated 19 April 2007 to Atty. Orocio, directing him to refrain from acting as their lawyer. The timing alone of the Manifestation and letters of Salman, *et al*., is already highly suspicious and divulges the obvious motive of Salman, *et al*., to evade their obligation to pay Atty. Aldon and Atty. Orocio their attorney's fees for the legal services they had rendered and which resulted in a ruling by this Court favorable to petitioners.

During the same period, several other pleadings were filed and letters submitted to us by "collaborating counsels" for petitioners who never previously appeared or participated in this case.

It was these apparent attempts of several petitioners to suddenly end and/or denounce their attorney-client relationship with Atty. Aldon and Atty. Orocio which prompted the latter two to send Notices of Attorney's Liens dated 11 April 2007 to the parties and to file before us on 12 April 2007 their Motion for Approval of Charging (Attorney's) Lien, to protect their right to collect their attorney's fees.

A client cannot, in the absence of the lawyer's fault, consent or waiver, deprive the lawyer of his just fees already earned. While a client has the right to discharge his lawyer at any time, dismiss or settle his action or even waive the whole of his interest in favor of the adverse party, he cannot by taking any such step deprive the lawyer of what is justly due him as attorney's fees unless the lawyer, by his action, waives or forfeits his right thereto.[36]

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[36] Ruben E. Agpalo, *LEGAL ETHICS* (6th ed. 1997), p. 306, citing *Aro v. Nañawa*, 137 Phil. 745, 761 (1969); *Rustia v. CFI of Batangas*, 44 Phil. 62, 65 (1922); *Cabildo v. Navarro*, 153 Phil. 310, 314 (1973); *Valencia v. Jimenez*, 11 Phil. 492, 496 (1908); *Recto v. Harden*, 100 Phil. 427, 446 (1956).

We have in the past disapproved of any and every effort of clients benefited by counsel's services to deprive them of their hard-earned honorarium and condemned such attitude. Lawyers are as much entitled to judicial protection against injustice on the part of their clients as the clients are against abuses on the part of counsel. The duty of the court is not only to see that lawyers act in a proper and lawful manner, but also to see that lawyers are paid their just and lawful fees. Thus, in *J.K. Mercado and Sons Agricultural Enterprises, Inc. v. De Vera*,[37] citing *Albano v. Coloma*,[38] we stressed:

> While, indeed, the practice of law is not a business venture, a lawyer, nevertheless, is entitled to be duly compensated for professional services rendered. So, also, he must be protected against clients who wrongly refuse to give him his just due. In *Albano vs. Coloma*, this Court has said:
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> > "Counsel, any counsel, who is worthy of his hire, is entitled to be fully recompensed for his services. With his capital consisting solely of his brains and with his skill, acquired at tremendous cost not only in money but in the expenditure of time and energy, he is entitled to the protection of any judicial tribunal against any attempt on the part of a client to escape payment of his fees. It is indeed ironic if after putting forth the best that is in him to secure justice for the party he represents, he himself would not get his due. Such an eventuality this Court is determined to avoid. It views with disapproval any and every effort of those benefited by counsel's services to deprive him of his hard-earned honorarium. Such an attitude deserves condemnation."[39]

We take note that according to their legal retainer agreement, Atty. Aldon and Atty. Orocio received no acceptance fee when they took on petitioners' case. The only other amount that they were to receive by virtue of said agreement was the ₱25,000.00

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[37] 375 Phil. 766, 772 (1999).

[38] 128 Phil. 433, 442 (1967).

[39] *Toledo v. Kallos*, A.M. No. RTJ-05-1900, 28 January 2005, 449 SCRA 446, 456; *Bach v. Ongkiko Manhit & Acorda Law Offices*, G.R. No. 160334, 11 September 2006, 501 SCRA 419, 433-434.

out-of-pocket expense. Their attorney's fees thereunder were absolutely contingent on their winning the case, which they, in fact, did.

The allegation of Salman, *et al.*, that the contingency on which Atty. Aldon may collect his attorney's fees was the granting of the TRO deserves scant consideration in light of the clear and simple wording of the legal retainer agreement that the said fees were "contingent on the success of the case." Even though Atty. Aldon and Atty. Orocio failed to secure the provisional remedy of a TRO, they were able to win for petitioners a perpetual injunction against the implementation of NPB Resolutions No. 2002-124 and No. 2001-125. Atty. Aldon and Atty. Orocio may have lost the battle (for the TRO), but they ultimately won the war (for the injunction) for petitioners. Equally without merit was the assertion of Salman, *et al*., that they never authorized Atty. Orocio to appear as their counsel. Both Atty. Aldon and Atty. Orocio signed the legal retainer agreement. Atty. Orocio appeared as co-counsel of Atty. Aldon upon the filing of the Memorandum for petitioners. And even though Atty. Orocio did not sign the other pleadings for petitioners previous to their Memorandum, it did not discount the possibility that he still rendered legal services to petitioners for the prosecution of their case other than the preparation and filing of the pleadings, such as the conduct of the necessary research and other legwork. Finally, Atty. Aldon and Atty. Orocio jointly filed their Motion for Approval of Charging (Attorney's) Lien, which only shows that Atty. Aldon himself recognizes the equal participation of Atty. Orocio in the present case as co-counsel of petitioners.

While we duly recognize the right of Atty. Aldon and Atty. Orocio to a charging lien on the amounts recoverable by petitioners pursuant to our 26 September 2006 Decision, nevertheless, we deem it proper to reduce the same. Under Section 24, Rule 138 of the Rules of Court, a written contract for services shall control the amount to be paid therefor unless found by the court to be unconscionable or unreasonable. The amounts which petitioners may recover as the logical and necessary

consequence of our Decision of 26 September 2006, *i.e.*, backwages and separation pay (in lieu of reinstatement), are essentially the same awards which we grant to illegally dismissed employees in the private sector. In such cases, our Labor Code explicitly limits attorney's fees to a maximum of 10% of the recovered amount.[40] Considering by analogy the said limit on attorney's fees in this case of illegal dismissal of petitioners by respondent NPC, a government-owned and controlled corporation; plus the facts that petitioners have suffered deprivation of their means of livelihood for the last five years; and the fact that this case was originally filed before us, without any judicial or administrative proceedings below; as well as the fundamental ethical principle that the practice of law is a profession and not a commercial enterprise,[41] we approve in favor of Atty. Aldon and Atty. Orocio a charging lien of 10% (instead of 25%) on the amounts recoverable by petitioners from NPC pursuant to our Decision dated 26 September 2006.

We leave the computation of the actual amounts due the petitioners and the enforcement of payment thereof by execution to the proper forum in appropriate proceedings, for this Court is not a trier of facts. It is not equipped to receive evidence and determine the truth of the factual allegations of the parties on this matter.[42] But even prior to the determination of the exact amounts to be paid to petitioners by respondent NPC

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[40] Article 111 of the Labor Code provides:

ART. 111. Attorney's fees. — (a) In cases of unlawful withholding of wages the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.

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(b) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of the wages, attorney's fees, which exceed ten percent of the amount of wages recovered.

[41] *Canlas v. Court of Appeals*, G.R. No. 77691, 8 August 1988, 164 SCRA 160, 174; *Licudan v. Court of Appeals*, G.R. No. 91958, 24 January 1991, 193 SCRA 293, 302.

[42] *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*, 412 Phil. 308, 31 (2001).

pursuant to our Decision dated 26 September 2006, we may already allow herein the recording of the charging lien of Atty. Aldon and Atty. Orocio to establish their right to 10% of such awards.[43]

With the recording of their charging lien, Atty. Aldon and Atty. Orocio shall have the same right and power over such judgments and executions as their clients, petitioners, would have, to enforce their lien and secure the payment of their attorney's fees.[44] The lien shall attach to the proceeds of the judgment and the client who receives the same, without paying his attorney who was responsible for its recovery, shall hold said proceeds in trust for his lawyer to the extent of the value of the lawyer's recorded lien. After the charging lien has attached, the attorney is, to the extent of said lien, to be regarded as an equitable assignee of the judgment or funds produced by his efforts.[45] And the judgment debtor who, in disregard of the charging lien, satisfies the judgment debt without reserving so much thereof as may be sufficient to pay the attorney's fees and advances may be held liable for the full value of the lien, which may be enforced by execution.[46]

IN VIEW OF THE FOREGOING, we hereby *RESOLVE* to:

(1) *PARTIALLY GRANT* the Motion for Clarification and/or Amplification of petitioners by affirming that, as a logical and necessary consequence of our Decision dated 26 September 2006 declaring null and without effect NPB Resolutions No. 2002-124 and No. 2002-125 and enjoining the implementation of the same, petitioners have the right to reinstatement, or separation pay in lieu of reinstatement, pursuant to a validly

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[43] See *Palanca v. Pecson*, 94 Phil. 419, 423 (1954).

[44] Rule 137, Section 38.

[45] See *Bacolod Murcia Milling Co., Inc. v. Henares*, 107 Phil. 560, 567-568 (1960).

[46] Ruben E. Agpalo, *LEGAL ETHICS* (6th ed. 1997), p. 306, citing *Calalang v. De Borja*, 160 Phil. 1040, 1045-1046 (1975).

approved Separation Program; plus backwages, wage adjustments, and other benefits accruing from 31 January 2003 to the date of their reinstatement or payment of separation pay; but deducting therefrom the amount of separation benefits which they previously received under the null NPB Resolutions;

(2) *PARTIALLY GRANT* the Motion for Approval of Charging (Attorney's) Lien of Atty. Aldon and Atty. Orocio and *ORDER* the entry in the records of this case of their ten percent (10%) charging lien on the amounts recoverable by petitioners from respondent NPC by virtue of our Decision dated 26 September 2006; and

(3) *ORDER* that Entry of Judgment be finally made in due course in the case at bar.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 156482. September 17, 2008]

PEDRO GABRIEL, FERNANDO JAMIAS, ALFREDO NIEDO, MABINI JAMIAS, BRAULIO TANGO, MARIANO ECHAVARI, ISIDRO RECITES, BERNARDO BAQUIRIN, FERMIN JAMIAS, FRANCISCO NIEDO, GAVINO JAMIAS, JULIANO ORBILLO, ROSENDO NIEDO, PACITA A. QUIÑO, JESUS CACHO, REICARDO TAGANAS, BERNARDO PECIO, CELESTINO NIEDO, FRANCISCO TUBERA, JUAN NIEDO,

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[*] Justices Adolfo S. Azcuna and Dante O. Tinga were designated to sit as additional members replacing Justices Antonio Eduardo B. Nachura and Ruben T. Reyes per Raffle dated 8 September 2008.

CONSOLACIO DINGAL, SOFRONIO NIEDO, ROSALINDA JAMIAS, & DOMINGO PARSASO, *petitioners, vs.* **MURMURAY JAMIAS, INANAMA JAMIAS DE LARA, LIWAWA JAMIAS DE LOS REYES, LANGIT JAMIAS, DALISAY JAMIAS, & ISAGANI JAMIAS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE RIGHT TO APPEAL IS NEITHER A NATURAL RIGHT NOR PART OF DUE PROCESS AS IT IS MERELY A STATUTORY PRIVILEGE AND MAY BE EXERCISED ONLY IN THE MANNER AND IN ACCORDANCE WITH THE PROVISIONS OF LAW; ONE WHO SEEKS TO AVAIL OF THE RIGHT TO APPEAL MUST COMPLY WITH THE REQUIREMENTS AND FAILURE TO DO SO OFTEN LEADS TO THE LOSS OF THE RIGHT TO APPEAL. — Under Rule 43, Section 6 (c) of the 1997 Rules of Civil Procedure, a petition for review shall be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers. Failure of the petitioner to comply with any of the requirements of a petition for review is sufficient ground for the dismissal of the petition pursuant to Section 7 of the same Rule. Here, it is not disputed that the petitioners failed to attach to their petition filed with the CA copies of the documents and/or pleadings referred to therein. Petitioners' assertion in their motion for reconsideration of the dismissal of their petition that (a) the foregoing documents/pleadings were not material to the issues they raised and (b) anyway, the records of the case may be ordered elevated by the CA, cannot excuse them from failing to comply with a requirement of a petition for review under Rule 43. We reiterate here that the right to appeal is neither a natural right nor a part of due process as it is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. Save for the most persuasive of reasons, strict compliance with procedural rules is enjoined to facilitate the orderly administration of justice. Thus, one who seeks to avail of the

right to appeal must comply with the requirements of the Rules. Failure to do so often leads to the loss of the right to appeal. But even if such procedural infirmity was to be disregarded, the petition must still fail for lack of merit.

2. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB); HAS PRIMARY AND EXCLUSIVE JURISDICTION TO DETERMINE AND ADJUDICATE ALL AGRARIAN DISPUTES INVOLVING THE IMPLEMENTATION OF THE COMPREHENSIVE AGRARIAN REFORM PROGRAM AND RELATED LAWS; JURISDICTION EXTEND TO CASES INVOLVING THE ISSUANCE, CORRECTION AND CANCELLATION OF CERTIFICATES OF LAND OWNERSHIP AWARD (CLOAs) AND EMANCIPATION PATENTS WHICH ARE REGISTERED WITH THE LAND REGISTRATION AUTHORITY. — Arguing that the cancellation of certificates of title is civil in nature and not agrarian, the petitioners insist that proceedings must be with the regular courts and not with the DARAB. We are not persuaded. It is well-settled that the DAR, through its adjudication arm, *i.e.*, the DARAB and its regional and provincial adjudication boards, exercises quasi-judicial functions and jurisdiction on all matters pertaining to an agrarian dispute or controversy and the implementation of agrarian reform laws. Pertinently, it is provided in the DARAB Revised Rules of Procedure that the DARAB has primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate all agrarian disputes involving the implementation of the Comprehensive Agrarian Reform Program (CARP) and related agrarian reform laws. Such jurisdiction shall extend to cases involving the issuance, correction and **cancellation** of Certificates of Land Ownership Award (CLOAs) and Emancipation Patents which are registered with the Land Registration Authority. This Court has had the occasion to rule that the mere issuance of an emancipation patent does not put the ownership of the agrarian reform beneficiary beyond attack and scrutiny. Emancipation patents may be cancelled for violations of agrarian laws, rules and regulations. Section 12 (g) of P.D. No. 946 (issued on June 17, 1976) vested the then Court of Agrarian Relations with jurisdiction over cases involving the cancellation of emancipation patents issued under P.D. No. 266. Exclusive jurisdiction over such cases was later lodged

with the DARAB under Section 1 of Rule II of the DARAB Rules of Procedure.

3. ID.; ID.; ID.; ID.; CASE AT BAR SQUARELY FALLS WITHIN THE JURISDICTION OF THE DARAB CONSIDERING THE FACT THAT THE ACTION FILED BY RESPONDENTS WAS PRECISELY TO ANNUL THE EMANCIPATION PATENTS ISSUED TO PETITIONERS. — The jurisdiction of the DARAB cannot be deemed to disappear the moment a certificate of title is issued, for, such certificates are not modes of transfer of property but merely evidence of such transfer, and there can be no valid transfer of title should the CLOA, on which it was grounded, be void. The same holds true in the case of a certificate of title issued by virtue of a void emancipation patent. From the foregoing, it is therefore undeniable that it is the DARAB and not the regular courts which has jurisdiction herein, this notwithstanding the issuance of Torrens titles in the names of the petitioners. For, it is a fact that the petitioners' Torrens titles emanated from the emancipation patents previously issued to them by virtue of being the farmer-beneficiaries identified by the DAR under the OLT of the government. The DAR ruling that the said emancipation patents were erroneously issued for failing to consider the valid retention rights of respondents had already attained finality. Considering that the action filed by respondents with the DARAB was precisely to annul the emancipation patents issued to the petitioners, the case squarely, therefore, falls within the jurisdiction of the DARAB. As likewise correctly held by the DARAB in its decision: x x x the present case for cancellation of the EPs is a mere off-shoot of the administrative petition for retention filed by the petitioners as early as 1981. That previous case culminated in a decision upholding petitioners' right of retention. The case at bar is for cancellation of the EPs. Hence, the present case is an incident flowing from the earlier decision of the administrative agency and affirmed judicially involving the same parties and relating to the same lands.

4. ID.; ID.; ID.; ID.; THE COURT LOOKS WITH DISFAVOR UPON THE PRESENT ATTEMPT OF PETITIONERS TO AVOID EXECUTION OF THE DEPARTMENT OF AGRARIAN REFORM (DAR) ORDERS BY LITIGATING ANEW MATTERS ALREADY PREVIOUSLY PASSED UPON WITH FINALITY BY THE DAR AND THE APPELLATE COURTS, INCLUDING THE COURT.—

As for petitioners' arguments regarding respondents' retention rights and the validity of the DAR's orders directing the filing of an action for cancellation of petitioners' emancipation patents, suffice it to state that these issues were already subject of the proceedings on the petition for retention filed by respondents in 1981. The DAR Orders of March 17, 1986 and May 20, 1991 which declared respondents' entitlement to retention rights over the subject land and directing the filing of the appropriate action for the cancellation of petitioners' emancipation patents have attained finality as shown by this Court's Entry of Judgment dated February 5, 1996. Indeed, the proceedings before the DARAB now being assailed here (*i.e*. respondents' petitions to cancel petitioners' emancipation patents) were merely in execution or implementation of the DAR Orders of March 17, 1986 and May 20, 1991 which have long since become final and executory. Indeed, this Court looks with disfavor upon the present attempt of petitioners to avoid execution of the said DAR Orders by litigating anew in this petition matters already previously passed upon with finality by the DAR and the appellate courts, including this Court. Under DAR Administrative Order No. 02, Series of 1994, that the subject land is found to be exempt/excluded from P.D. No. 27/E.O. No. 228 or CARP coverage or to be part of the landowner's retained area as determined by the DAR Secretary or his authorized representative is a ground for cancellation of an emancipation patent. Thus, this Court finds no reason to disturb the DARAB's order directing the cancellation of petitioners' emancipation patents.

APPEARANCES OF COUNSEL

Monte P. Ignacio for petitioners.
Cabrera Tamayo & Cabrera for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

In this petition for review on *certiorari* under Rule 45 of the Rules of Court, petitioners seek the reversal and setting

aside of the following issuances of the Court of Appeals (CA) in CA-G.R. SP No. 73197, to wit:

1) **Resolution dated October 18, 2002,**[1] dismissing their petition for review of the decision dated September 12, 2002 of the Department of Agrarian Reform Adjudication Board (DARAB), Diliman, Quezon City;[2] and

2) **Resolution dated December 17, 2002,**[3] denying petitioners' motion for reconsideration.

The root of the controversy in this case is a large tract of rice land known as the Jamias Estate, with a total area of 36.5794 hectares situated in Bantog, Asingan, Pangasinan and originally covered by Original Certificate of Title No. 23299 in the names of the now deceased spouses Martin and Delfina Jamias.

Upon Martin Jamias' death in 1958, his wife, Delfina, and six (6) children, who are the respondents herein, namely Inanama, Murmuray, Langit, Dalisay, Liwawa and Isagani, all surnamed Jamias, inherited the Jamias Estate. Immediately thereafter, said heirs partitioned among themselves the whole property at 1/7 each for which Transfer Certificate of Title No. 36192 was issued in their names on June 20, 1961. Eventually, on November 7, 1972, the heirs were issued their separate and individual titles corresponding to their respective portions of the estate, which, as found by the DARAB, were as follows:

NAMES	AREA/HAS.	TCT NO.	LOCATION/PANGASINAN
Inanama	5.1826	T-5920	Bantog, Asingan
Murmuray	5.1826	T-5919	do
	1.0210	T-5955	do
	6.2036		
Langit	5.1826	T-5923	do

[1] *Rollo*, pp. 17-19.

[2] The DARAB decision dated September 12, 2002 affirmed the Regional Adjudicator's decision declaring the cancellation of the Emancipation Patents issued in the names of the petitioners.

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

	0.9169	T-5958	do
	6.0995		
Dalisay	5.1826	T-5922	do
	1.5809	T-5954	do
	6.7635		
Liwawa	5.1826	T-5925	do
	2.2529	T-5956	do
	7.4355		
Isagani	5.1826	T-5921	do
	1.2381	T-5935	Libertad, Tayug
	7.6707		
Delfina	5.1826	T-5924	Bantog, Asingan
	1.6532	T-1874/T-18703	Amestad
	2.4521	TD 15743-TD15744	San Roque, San Nicolas
	1.5298	TD 16442	Legaspi, Tayug
	10.8177		

On November 29, 1980, Delfina Jamias died. However, on May 15, 1981, the whole Jamias Estate was covered by Operation Land Transfer (OLT) pursuant to Presidential Decree (P.D.) No. 27.[4] Having been identified by the Department of Agrarian Reform (DAR) as farmer-beneficiaries, herein petitioners (tenants on the said land) were issued Certificates of Land Transfer (CLTs).

Claiming that their landholdings were erroneously covered by OLT since they already have individual Torrens titles covering the same, respondents filed, with the DAR on July 12, 1981, a petition/application for exemption/retention of seven (7) hectares each of the Jamias Estate and for the cancellation of the CLTs issued to the petitioners covering portions thereof. During the pendency of the said petition, or on September 21, 1983, emancipation patents were issued and distributed by the DAR to the petitioners.

Eventually, on March 17, 1986,[5] then DAR Minister Conrado Estrella granted the respondents' petition/application, thus:

WHEREFORE, PREMISES CONSIDERED, Order is hereby issued:

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[4] P.D. No. 27 decreed the emancipation of tenants from the bondage of the soil and transferred to them the ownership of the land they till. It was promulgated on October 21, 1972.

[5] Record, pp. 27-31.

1. Granting and giving due course to the petition of Inanama, Murmuray, Langit, Dalisay, Liwawa and Isagani, all surnamed Jamias, to retain not more that seven (7) hectares each of their tenanted Riceland situated at Bant[o]g, Asingan, Pangasinan;

2. Recalling and/or canceling the Certificates of Land Transfer covering portions of the retained areas issued to the tenants;

3. The landowner shall maintain the tenants in the peaceful possession and cultivation of the landholding under leasehold;

4. Directing the DAR District Officer of Urdaneta, Pangasinan to prepare and issue the Certificates of Agricultural Leasehold (CAL) in favor of the herein tenants;

5. Authorizing the [respondents] to withdraw the lease rentals deposited by the tenants with the Land Bank, in his favor if there are any.

SO ORDERED.

The petitioners filed an Omnibus Motion for Reconsideration[6] of the aforesaid Order on the ground that the same was unsupported by the law and the facts and has been rendered moot and academic by the issuance of CLTs and, then later, of emancipation patents in their names.

Meanwhile, sometime in 1987, Torrens titles covering the landholdings subject of the emancipation patents earlier issued to the petitioners were personally distributed to the latter by the then President of the Philippines, Corazon C. Aquino.

On May 20, 1991, then DAR Secretary Benjamin Leong issued an Order[7] affirming with modification the assailed Order of March 17, 1986. Among others, it was declared in his Order that the cancellation/revocation of the emancipation patents which were issued to the tenants within the retained areas should be made before a proper court. The dispositive portion of the said Order reads:

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[6] *Rollo*, pp. 48-53.

[7] *Rollo*, pp. 48-54.

WHEREFORE, premises considered, this Order is hereby issued denying the instant Omnibus Motion for lack of merit and affirming the Order dated March 17, 1986 of this Department with the following modifications:

1. The landholdings of Inanama, Murmuray, Langit and Dalisay all surnamed Jamias being less than seven (7) hectares each, are exempted from the coverage of Operation Land Transfer, while Delfina, Isagani and Liwawa, all surnamed Jamias, are entitled to retain not more than seven (7) hectares of their landholdings and the excess areas thereof should be covered under OLT.

2. Directing the issuance of Certificates of Land Transfer, if none has yet been issued, to the tenants within the excess areas of the landholdings of Delfina, Isagani and Liwawa.

3. This Order shall serve as a basis for the cancellation/ revocation before the proper court of the Emancipation Patents (EPs) issued to the tenants within the exempt/retained areas and which are already registered.

SO ORDERED.

Seeking the nullification of the two (2) aforementioned Orders of the DAR for allegedly having been executed with grave abuse of discretion considering that titles were already issued to them, the petitioners filed a petition for *certiorari*[8] before the CA. In its decision dated April 21, 1992,[9] the CA, ruling that the distribution of land titles to the petitioners was improper considering that the same was made during the pendency of respondents' petition/application for exemption/retention with the DAR, dismissed for lack of merit the petition for *certiorari* declaring that:

The mere distribution of land titles to petitioners consequently posed no legal impediment to the ultimate resolution of the pending petition of respondents for retention of portions of lands already previously distributed.

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[8] Docketed as CA-G.R. SP No. 25399 entitled *Mariano Echavaria, et al. v. Benjamin T. Leong as Secretary of DAR and Inanama Jamias.*

[9] *Rollo*, pp. 78-90.

Petitioners appealed the CA's April 21, 1992 Decision to this Court. However, in a Resolution dated September 20, 1995, the Court denied the petition for failure to sufficiently show that the CA had committed any reversible error in the questioned judgment. The Court's resolution subsequently became final and executory as shown in the Entry of Judgment dated February 5, 1996[10] issued by the Supreme Court Judicial Records Office.

Thereafter, respondents filed a motion for the issuance of a writ of execution of the DAR Order dated May 20, 1991 with the DAR Regional Office in San Fernando, La Union. On September 11, 1997, the DAR Regional Director issued a Resolution[11] granting the motion but pertinently directed the respondents to file with the DARAB an action for the cancellation or recall of the emancipation patents covering the retained areas. To quote from the Resolution:

WHEREFORE, by virtue of the authority vested in me by law and the Implementing guidelines thereof, Order is hereby issued:

1) Directing the Provincial Agrarian Reform Office (PARO) of Pangasinan or his duly authorized representatives to implement the Order dated March 17, 1986 as affirmed by the Order dated May 20, 1991 as to the segregation of the retention area and the documentation of the coverage relative to the excess on the landholdings of Delfina, Isagani and Liwawa, all surnamed Jamias;

2) Directing the Municipal Agrarian Reform Office (MARO) of Asingan, Pangasinan to cause the execution of leasehold contracts between the [respondents] and the tenants within the retention area;

3) Directing the tenants within the retained areas to pay the lease rentals due to the [respondents], respectively;

4) Directing the [respondents] to file an action to (sic) the Department of Agrarian Reform Adjudication Board (DARAB)

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[10] Record, p. 182.

[11] *Id.*, pp.172-175.

for the cancellation or recall of the Emancipation Patents covering the retained areas.

SO ORDERED. [Emphasis supplied]

Pursuant to the aforecited Resolution, respondents separately filed on June 5, 1998 with the DARAB, Region I, Urdaneta City, Pangasinan, their respective petitions[12] for cancellation and recall of the emancipation patents covering the exempt/ retained areas.

The petitioners forthwith moved for a dismissal of the petitions on the main ground of lack of jurisdiction of the DARAB Regional Office. Petitioners' motion, however, as well as their subsequent motion for reconsideration, were denied as per Orders dated November 16, 1998 and January 7, 1999,[13] respectively.

In their Position Paper before the DARAB,[14] respondents averred that the jurisdiction of the DARAB to hear and decide the issue as to the cancellation of the subject emancipation patents has already become a foregone conclusion and the same is true with respect to their exercise of retention rights as the issue was already decided with finality by this Court. The petitioners, on the other hand, alleged in their Position Paper[15] the following: lack of jurisdiction of the DARAB over the action; no erroneous coverage of the subject land under OLT since it was the President of the Philippines who personally distributed the land titles; and respondents' lack of entitlement to retention rights because they did not signify any intention to cultivate the land.

In a consolidated decision dated June 21, 1999,[16] the DARAB Regional Office, through the Regional Adjudicator, ruled in favor of the respondents and rendered judgment, as follows:

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[12] Docketed as DARAB Case Nos. 01-1661 to 01-1667 EP 99; Record, Folders DCN 9368-9374.

[13] Record, pp. 116-117 and pp. 121-129.

[14] *Rollo*, pp. 64-66.

[15] *Id.*, pp. 56-62.

[16] Record, pp. 312-329.

WHEREFORE, premises duly considered, judgment is hereby rendered as follows:

1. Declaring the emancipation patents issued in the name of the [petitioners] in these seven (7) cases to be cancelled or null and void on the ground that the landholding is the retained area of the [respondents];

2. Directing the Register of Deeds of Pangasinan and the DAR Chief of Operations to effect the cancellation of the Emancipation Patent issued to the [petitioners], the numbers of which are as follows:

xxx xxx xxx

3. Ordering the Register of Deeds to reinstate or restore the titles of the [respondents] which are TCT Nos. 5919, 5955, 5924, 5920, 5925, 5956, 5923, 5922, 5954, 5921, and 5953 if the same have been cancelled; and

4. Directing the tenants in the retained areas and the respective owners thereof to execute an Agricultural Leasehold Contract with the assistance of the MARO of Asingan, Pangasinan.

SO ORDERED.

Reiterating the same arguments they earlier made with the DARAB Regional Office, the petitioners appealed to the DARAB, Central Office in Diliman, Quezon City.[17]

In its Decision dated September 12, 2002,[18] however, the DARAB, Central Office affirmed the decision of the Regional Adjudicator and accordingly dismissed petitioners' appeal.

In time, petitioners went to the CA on a petition for review under Rule 43 of the 1997 Rules of Civil Procedure, docketed as CA-G.R. SP No. 73197.

Eventually, in its **Resolution dated October 18, 2002**,[19] which is subject of the present petition, the CA dismissed outright petitioners' petition for review due to deficiency in form and

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[17] The appeal was docketed as DARAB Case Nos. 9368-9374; Records, pp. 348-355.

[18] *Rollo*, pp. 34-44.

[19] *Supra* note 1.

substance for failure to incorporate and/or attach, as annexes thereto, documents/pleadings materially referred to therein in violation of Paragraph [c],[20] Section 6, Rule 43 in relation to Section 7, Rule 43 of the 1997 Rules of Civil Procedure.

The petitioners moved for reconsideration of the aforesaid Resolution, pointing out that the pleadings enumerated by the CA which they did not attach to their petition were not material to the legal issues they raised therein which were (a) lack of jurisdiction of the DARAB and (2) lack/denial of due process.[21]

The CA, in its **Resolution of December 17, 2002**,[22] denied petitioners' motion for reconsideration.

Hence, the instant petition before the Court.

Petitioners raise as grounds for the present petition for review on *certiorari* that: (a) the DARAB has no jurisdiction to cancel and recall emancipation patents and the land titles issued consequent thereto; (b) respondents have no retention rights over the subject land; and (c) petitioners' emancipation patents which were given to them by the President cannot be cancelled by the orders of any subordinate.

The petition must fail.

At the outset, we note that the two (2) CA Resolutions assailed herein dismissed petitioners' appeal from the DARAB issuances on purely technical grounds. Yet, the petition before this Court neither mentions nor presents arguments with regard to the CA's dismissal on procedural grounds. Nonetheless, whether petitioners' omission was done intentionally or inadvertently, this Court sees fit to address the procedural issues if only to underscore the correctness of the dismissal of said petition.

Under Rule 43, Section 6(c) of the 1997 Rules of Civil Procedure, a petition for review shall be accompanied by a clearly legible duplicate original or a certified true copy of the

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[20] Erroneously indicated as Paragraph (b) of Section 6 in the CA Resolution.

[21] *Rollo,* pp. 20-21.

[22] *Supra* note 2.

award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers. Failure of the petitioner to comply with any of the requirements of a petition for review is sufficient ground for the dismissal of the petition pursuant to Section 7 of the same Rule.[23]

Here, it is not disputed that the petitioners failed to attach to their petition filed with the CA copies of the following documents and/or pleadings referred to therein.

(a) Petition for the recall and cancellation of emancipation patents;
(b) Appeal memorandum dated October 1, 1999 filed by Barolo Pablo, *et. al*;
(c) Petition to retain 7 hectares;
(d) Order dated March 17, 1986 of then Minister Estella;
(e) Omnibus motion for reconsideration filed on April 17, 1986;
(f) Petition for *certiorari* filed with the Court of Appeals docketed as SP 25399;
(g) Decision of the Court of Appeals dated April 21, 1992;
(h) Petition filed with the Supreme Court docketed as G.R. No. 107043;
(i) Resolution dated September 20, 1995 of the Supreme Court in G.R. No. 107043;
(j) Motion for the issuance of writ of execution;
(k) Order dated November 16, 1998;
(l) Motion to dismiss;
(m) Order dated November 16, 1998;
(n) Motion for reconsideration;
(o) Order dated January 7, 1999;
(p) Decision dated June 21, 1999; and
(q) Appeal memorandum filed with DARAB.[24]

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[23] In full, this section reads:

Sec. 7. Effect of failure to comply with requirements. — The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

[24] *Supra* note 1.

Petitioners' assertion in their motion for reconsideration of the dismissal of their petition that (a) the foregoing documents/pleadings were not material to the issues they raised and (b) anyway, the records of the case may be ordered elevated by the CA, cannot excuse them from failing to comply with a requirement of a petition for review under Rule 43. We reiterate here that the right to appeal is neither a natural right nor a part of due process as it is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law.[25] Save for the most persuasive of reasons, strict compliance with procedural rules is enjoined to facilitate the orderly administration of justice.[26] Thus, one who seeks to avail of the right to appeal must comply with the requirements of the Rules. Failure to do so often leads to the loss of the right to appeal.[27]

But even if such procedural infirmity was to be disregarded, the petition must still fail for lack of merit.

Arguing that the cancellation of certificates of title is civil in nature and not agrarian, the petitioners insist that proceedings must be with the regular courts and not with the DARAB.

We are not persuaded.

It is well-settled that the DAR, through its adjudication arm, *i.e.*, the DARAB and its regional and provincial adjudication boards, exercises quasi-judicial functions and jurisdiction on all matters pertaining to an agrarian dispute or controversy and the implementation of agrarian reform laws.[28] Pertinently, it is provided in the DARAB Revised Rules of Procedure that the DARAB has primary and exclusive jurisdiction, both original

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[25] *Marison C. Basuel v. Fact-Finding and Intelligence Bureau (FFIB)*, G.R. No. 143664, June 30, 2006, 494 SCRA 118, 123.

[26] *Id.*, p. 126.

[27] *Neypes v. Court of Appeals*, G.R. No. 141524, September 14, 2005, 469 SCRA 633, 638.

[28] *Hermoso v. C.L. Realty Corporation*, G.R. No. 140319, May 5, 2006, 489 SCRA 556, 562.

and appellate, to determine and adjudicate all agrarian disputes involving the implementation of the Comprehensive Agrarian Reform Program (CARP) and related agrarian reform laws. Such jurisdiction shall extend to cases involving the issuance, correction and **cancellation** of Certificates of Land Ownership Award (CLOAs) and Emancipation Patents which are registered with the Land Registration Authority.[29]

This Court has had the occasion to rule that the mere issuance of an emancipation patent does not put the ownership of the agrarian reform beneficiary beyond attack and scrutiny. Emancipation patents may be cancelled for violations of agrarian laws, rules and regulations. Section 12(g) of P.D. No. 946 (issued on June 17, 1976) vested the then Court of Agrarian Relations with jurisdiction over cases involving the cancellation of emancipation patents issued under P.D. No. 266. Exclusive jurisdiction over such cases was later lodged with the DARAB under Section 1 of Rule II of the DARAB Rules of Procedure.[30]

For sure, the jurisdiction of the DARAB cannot be deemed to disappear the moment a certificate of title is issued, for, such certificates are not modes of transfer of property but merely evidence of such transfer, and there can be no valid transfer of title should the CLOA, on which it was grounded, be void.[31] The same holds true in the case of a certificate of title issued by virtue of a void emancipation patent.

From the foregoing, it is therefore undeniable that it is the DARAB and not the regular courts which has jurisdiction herein, this notwithstanding the issuance of Torrens titles in the names of the petitioners. For, it is a fact that the petitioners' Torrens titles emanated from the emancipation patents previously issued to them by virtue of being the farmer-beneficiaries identified by the DAR under the OLT of the government. The DAR ruling that the said emancipation patents were erroneously issued

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[29] Section 1(f), Rule II of DARAB Revised Rules of Procedure.

[30] *Ayo-Alburo v. Matobato*, G.R. No. 155181, April 15, 2005, 456 SCRA 399, 409.

[31] *Supra* note 28, p. 563.

for failing to consider the valid retention rights of respondents had already attained finality. Considering that the action filed by respondents with the DARAB was precisely to annul the emancipation patents issued to the petitioners, the case squarely, therefore, falls within the jurisdiction of the DARAB. As likewise correctly held by the DARAB in its decision:[32]

> x x x the present case for cancellation of the EPs is a mere offshoot of the administrative petition for retention filed by the petitioners as early as 1981. That previous case culminated in a decision upholding petitioners' right of retention. The case at bar is for cancellation of the EPs. Hence, the present case is an incident flowing from the earlier decision of the administrative agency and affirmed judicially involving the same parties and relating to the same lands.

As for petitioners' arguments regarding respondents' retention rights and the validity of the DAR's orders directing the filing of an action for cancellation of petitioners' emancipation patents, suffice it to state that these issues were already subject of the proceedings on the petition for retention filed by respondents in 1981. The DAR Orders of March 17, 1986 and May 20, 1991 which declared respondents' entitlement to retention rights over the subject land and directing the filing of the appropriate action for the cancellation of petitioners' emancipation patents have attained finality as shown by this Court's Entry of Judgment dated February 5, 1996. Indeed, the proceedings before the DARAB now being assailed here (*i.e.* respondents' petitions to cancel petitioners' emancipation patents) were merely in execution or implementation of the DAR Orders of March 17, 1986 and May 20, 1991 which have long since become final and executory. Indeed, this Court looks with disfavor upon the present attempt of petitioners to avoid execution of the said DAR Orders by litigating anew in this petition matters already previously passed upon with finality by the DAR and the appellate courts, including this Court.

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[32] *Supra* note 17.

Under DAR Administrative Order No. 02, Series of 1994,[33] that the subject land is found to be exempt/excluded from P.D. No. 27/E.O. No. 228 or CARP coverage or to be part of the landowner's retained area as determined by the DAR Secretary or his authorized representative is a ground for cancellation of an emancipation patent. Thus, this Court finds no reason to disturb the DARAB's order directing the cancellation of petitioners' emancipation patents.

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[33] Grounds for the cancellation of registered EPs or CLOAs may include but not be limited to the following:

1. Misuse or diversion of financial and support services extended to the ARB (Section 37 of R.A. No. 6657);

2. Misuse of the land (Section 22 of R.A. No. 6657);

3. Material misrepresentation of the ARB's basic qualification as provided under Section 22 of R.A. No. 6657, P.D. No. 27 and other agrarian laws;

4. Illegal conversion by the ARB (Cf. Section 73, Paragraph C and E of R.A. No. 6657);

5. Sale, transfer, lease or other forms of conveyance by a beneficiary of the right to use or any other usufructuary right over the land acquired by virtue of being a beneficiary. In order to circumvent the provisions of Section 73 of R.A. No. 6657, P.D. No. 27 and other agrarian laws. However, if the land has been acquired under P.D. No. 27/E.O. No. 228, ownership may be transferred after full payment of amortization by the beneficiary (Sec. 6 of E.O. No. 228);

6. Default in the obligation to pay an aggregate of three (3) consecutive amortizations in case of voluntary land transfer/direct payment scheme except in cases of fortuitous events and force *majeure*;

7. Failure of the ARBs to pay for at least three (3) annual amortizations to the LBP, except in cases of fortuitous events and force *majeure* (Section 26 of RA 6657);

8. Neglect or abandonment of the awarded land continuously for a period of two (2) calendar years as determined by the Secretary or his authority represented (Section 22 0f RA 6657);

9. The land is found to be expect/excluded from P.D. No. 27/ E.O. No. 228 or CARP coverage or to be part of the landowner's retained area as determined by the Secretary or his authorized representative; and

10. Other grounds that will circumvent laws related to the implementation of agrarian reform program. (Emphasis supplied)

WHEREFORE, the instant petition is *DENIED* and the Resolutions dated October 18, 2002 and December 17, 2003 of the Court of Appeals are hereby *AFFIRMED*.

Costs against the petitioners.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 167560. September 17, 2008]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **DOMINADOR MENGUITO,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; FACTUAL FINDINGS OF THE COURT OF TAX APPEALS, WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE, WILL NOT BE DISTURBED ON APPEAL UNLESS IT IS SHOWN THAT THE TAX COURT COMMITTED GROSS ERROR IN ITS APPRECIATION OF FACTS.— As a general rule, the Court does not venture into a trial of facts in proceedings under Rule 45 of the Rules of Courts, for its only function is to review errors of law. The Court declines to inquire into errors in the factual assessment of the CA, for the latter's findings are conclusive, especially when these are synonymous to those of the CTA. But when the CA contradicts the factual findings of the CTA, the Court deems it necessary to determine whether the CA was justified in doing so, for one basic rule in taxation is that the factual findings of the CTA, when supported by substantial evidence,

[*] Additonal Member as per Special Order No. 515.

will not be disturbed on appeal unless it is shown that the CTA committed gross error in its appreciation of facts.

2. MERCANTILE LAW; CORPORATIONS; THE VEIL OF CORPORATE ENTITY MAY BE SHREDDED WHERE A CORPORATION PRACTICED FRAUD ON INTERNAL REVENUE LAWS; OVERWHELMING EVIDENCE SUPPORTS THE COURT OF TAX APPEALS IN DISREGARDING THE SEPARATE IDENTITY OF *COPPER KETTLE CATERING SERVICES INC.* (CKCS, INC.) AND *COPPER KETTLE CAFETERIA SPECIALIST* (CKCS) AND IN TREATING THEM AS ONE TAXABLE ENTITY.— The Court finds that the CA gravely erred when it ignored the substantial evidence on record and reversed the CTA. In a number of cases, the Court has shredded the veil of corporate identity and ruled that where a corporation is merely an adjunct, business conduit or alter ego of another corporation or when they practice fraud on our internal revenue laws, the fiction of their separate and distinct corporate identities shall be disregarded, and both entities treated as one taxable person, subject to assessment for the same taxable transaction. The Court considers the presence of the following circumstances, to wit: when the owner of one directs and controls the operations of the other, and the payments effected or received by one are for the accounts due from or payable to the other; or when the properties or products of one are all sold to the other, which in turn immediately sells them to the public, as substantial evidence in support of the finding that the two are actually one juridical taxable personality. In the present case, overwhelming evidence supports the CTA in disregarding the separate identity of CKCS, Inc. from CKCS and in treating them as one taxable entity.

3. ID.; ID.; THE ARTICLES OF INCORPORATION OF CKCS, INC. CANNOT INSULATE RESPONDENT FROM SCRUTINY OF ITS REAL IDENTITY IN RELATION TO CKCS.— The Articles of Incorporation of CKCS, Inc. — a certified true copy of which respondent attached only to his Reply filed with the CA — cannot insulate it from scrutiny of its real identity in relation to CKCS. It is noted that said Articles of Incorporation of CKCS, Inc. was issued in 1989, but documentary evidence indicate that after said date, CKCS, Inc. has also assumed the name CKCS, and vice-versa. The most concrete indication of this

practice is the 1991 Quarterly Percentage Tax Returns covering the business name/trade "19th Tee Camp John Hay." In said returns, the taxpayer is identified as "Copper Kettle Cafeteria Specialist" or CKCS, not CKCS, Inc. Yet, in several documents already cited, the purported owner of 19th Tee Bar at Club John Hay is CKCS, Inc. All these pieces of evidence buttress the finding of the CTA that in 1991, 1992 and 1993, respondent, together with his spouse Jeanne Menguito, owned and operated outlets in Club John Hay and Texas Instruments under the names Copper Kettle Cafeteria Specialist or CKCS and Copper Kettle Catering Services or Copper Kettle Catering Services, Inc.

4. TAXATION; COMPLIANCE REQUIREMENTS; EXCEPTIONS AS TO PERIOD OF LIMITATION OF ASSESSMENT AND COLLECTION OF TAXES; PRESCRIPTIVE PERIOD FOR THE ISSUANCE OF ASSESSMENT NOTICES BASED ON FRAUD IS 10 YEARS.— The CTA correctly upheld the validity of the assessment notices. Citing Section 223 of the Tax Code which provides that the prescriptive period for the issuance of assessment notices based on fraud is 10 years, the CTA ruled that the assessment notices issued against respondent on September 2, 1997 were timely because petitioner discovered the falsity in respondent's tax returns for 1991, 1992 and 1993 only on February 19, 1997. Moreover, in accordance with Section 2 of Revenue Regulation No. 12-85, which requires that assessment notices be sent to the address indicated in the taxpayer's return, unless the latter gives a notice of change of address, the assessment notices in the present case were sent by petitioner to Camp John Hay, for this was the address respondent indicated in his tax returns. As to whether said assessment notices were actually received, the CTA correctly held that since respondent did not testify that he did not receive said notices, it can be presumed that the same were actually sent to and received by the latter. The Court agrees with the CTA in considering as hearsay the testimony of Nalda that respondent did not receive the notices, because Nalda was not competent to testify on the matter, as she was employed by respondent only in June 1998, whereas the assessment notices were sent on September 2, 1997.

5. ID.; ID.; RESPONDENT IS ESTOPPED FROM DENYING ACTUAL RECEIPT OF THE SEPTEMBER 2, 1997 ASSESSMENT NOTICES, NOTWITHSTANDING THE DENIAL OF HIS

WITNESS; RESPONDENT'S FAILURE TO GIVE WRITTEN NOTICE OF CHANGE OF ADDRESS BOUND HIM TO WHATEVER COMMUNICATIONS WERE SENT TO THE ADDRESS APPEARING IN THE TAX RETURNS FOR THE PERIOD INVOLVED IN THE INVESTIGATION UNDER SECTION 11 OF REVENUE REGULATION NO. 12-85.— In their Petition for Review with the CTA, respondent expressly stated that "[s]ometime in September 1997, petitioner [respondent herein] ***received*** various assessment notices, all dated 02 September 1997, issued by BIR-Baguio for alleged deficiency income and percentage taxes for taxable years ending 31 December 1991, 1992 and 1993 x x x." In their September 28, 1997 protest to the September 2, 1997 assessment notices, respondent, through his spouses Jeanne Menguito, acknowledged that "[they] are ***in receipt*** of the assessment notice you have sent us, dated September 2, 1997 x x x." Respondent is therefore estopped from denying actual receipt of the September 2, 1997 assessment notices, notwithstanding the denial of his witness Nalda. As to the address indicated on the assessment notices, respondent cannot question the same for it is the said address which appears in its percentage tax returns. While respondent claims that he had earlier notified petitioner of a change in his business address, no evidence of such written notice was presented. Under Section 11 of Revenue Regulation No. 12-85, respondent's failure to give written notice of change of address bound him to whatever communications were sent to the address appearing in the tax returns for the period involved in the investigation.

6. ID.; ID.; THE STRINGENT REQUIREMENT THAT AN ASSESSMENT NOTICE BE SATISFACTORILY PROVEN TO HAVE BEEN ISSUED AND RELEASED OR IF RECEIPT THEREOF IS DENIED, THAT SAID ASSESSMENT NOTICE HAVE BEEN SERVED ON THE TAXPAYER APPLIES ONLY TO FORMAL ASSESSMENTS PRESCRIBED UNDER SECTION 228 OF THE NATIONAL INTERNAL REVENUE CODE AND NOT TO POST-REPORTING NOTICES OR PRE-ASSESSMENT NOTICES; A POST-REPORTING NOTICE AND PRE-ASSESSMENT NOTICE DO NOT BEAR THE GRAVITY OF A FORMAL ASSESSMENT NOTICE.— While the lack of a post-reporting notice and pre-assessment notice is a deviation from the requirements under Section 1 and Section 2 of Revenue

Regulation No. 12-85, the same cannot detract from the fact that formal assessments were issued to and actually received by respondents in accordance with Section 228 of the National Internal Revenue Code which was in effect at the time of assessment. It should be emphasized that the stringent requirement that an assessment notice be satisfactorily proven to have been issued and released or, if receipt thereof is denied, that said assessment notice have been served on the taxpayer, applies only to formal assessments prescribed under Section 228 of the National Internal Revenue Code, but not to post-reporting notices or pre-assessment notices. The issuance of a valid formal assessment is a substantive prerequisite to tax collection, for it contains not only a computation of tax liabilities but also a demand for payment within a prescribed period, thereby signaling the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies therefor. Due process requires that it must be served on and received by the taxpayer. A post-reporting notice and pre-assessment notice do not bear the gravity of a formal assessment notice. The post-reporting notice and pre-assessment notice merely hint at the initial findings of the BIR against a taxpayer and invites the latter to an "informal" conference or clarificatory meeting. Neither notice contains a declaration of the tax liability of the taxpayer or a demand for payment thereof. Hence, the lack of such notices inflicts no prejudice on the taxpayer for as long as the latter is properly served a formal assessment notice. In the case of respondent, a formal assessment notice was received by him as acknowledged in his Petition for Review and Joint Stipulation; and, on the basis thereof, he filed a protest with the BIR, Baguio City and eventually a petition with the CTA.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Cayetano Sebastian Ata Dado & Cruz for respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the March 31, 2005 Decision[1] of the Court of Appeals (CA) which reversed and set aside the Court of Tax Appeals (CTA) April 2, 2002 Decision[2] and October 10, 2002 Resolution[3] ordering Dominador Menguito (respondent) to pay the Commissioner of Internal Revenue (petitioner) deficiency income and percentage taxes and delinquency interest.

Based on the Joint Stipulation of Facts and Admissions[4] of the parties, the CTA summarized the factual and procedural antecedents of the case, the relevant portions of which read:

> Petitioner Dominador Menguito [herein respondent] is a Filipino citizen, of legal age, married to Jeanne Menguito and is engaged in the restaurant and/or cafeteria business. For the years 1991, 1992 and 1993, its principal place of business was at Gloriamaris, CCP Complex, Pasay City and later transferred to Kalayaan Bar (Copper Kettle Cafeteria Specialist or CKCS), Departure Area, Ninoy Aquino International Airport, Pasay City. During the same years, he also operated a branch at Club John Hay, Baguio City carrying the business name of Copper Kettle Cafeteria Specialist (Joint Stipulation of Facts and Admissions, p. 133, CTA records).
>
> x x x x x x x x x
>
> ***Subsequently, BIR Baguio received information that Petitioner [herein respondent] has undeclared income from Texas Instruments and Club John Hay, prompting the BIR to conduct another investigation. Through a letter dated July 28, 1997, Spouses***

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[1] Penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Roberto A. Barrios and Amelita G. Tolentino; *rollo*, p. 10.

[2] *Id.* at 82.

[3] *Id.* at 101.

[4] CA *rollo*, pp. 143-145.

Dominador Menguito and Jeanne Menguito (Spouses Menguito) were informed by the Assessment Division of the said office that they have underdeclared sales totaling ₱48,721,555.96 (Exhibit 11, p. 83, BIR records). This was followed by a Preliminary Ten (10) Day Letter dated August 11, 1997, informing Petitioner [herein respondent] that in the investigation of his 1991, 1992 and 1993 income, business and withholding tax case, it was found out that there is still due from him the total sum of ₱34,193,041.55 as deficiency income and percentage tax.

On September 2, 1997, the assessment notices subject of the instant petition were issued. These were protested by Ms. Jeanne Menguito, through a letter dated September 28, 1997 (Exhibit 14, p. 112, BIR Records), on the ground that the 40% deduction allowed on their computed gross revenue, is unrealistic. Ms. Jeanne Menguito requested for a period of thirty (30) days within which to coordinate with the BIR regarding the contested assessment.

On October 10, 1997, BIR Baguio replied, informing the Spouses Menguito that the source of assessment was not through the disallowance of claimed expenses but on data received from Club John Hay and Texas Instruments Phils., Inc. Said letter gave the spouses ten (10) days to present evidence (Exhibit 15, p. 110, BIR Records).

In an effort to clear an alleged confusion regarding Copper Kettle Cafeteria Specialist (CKCS) being a sole proprietorship owned by the Spouses, and Copper Kettle Catering Services, Inc. (CKCS, Inc.) being a corporation with whom Texas Instruments and Club John Hay entered into a contract, Petitioner [respondent] submitted to BIR Baguio a photocopy of the SEC Registration of Copper Kettle Catering Services, Inc. on March 23, 1999 (pp. 134-141, BIR Records).

On April 12, 1999, BIR Baguio wrote a letter to Spouses Menguito, informing the latter that a reinvestigation or reconsideration cannot be given due course by the mere submission of an uncertified photocopy of the Certificate of Incorporation. Thus, it avers that the amendment issued is still valid and enforceable.

On May 26, 1999, Petitioner [respondent] filed the present case, praying for the cancellation and withdrawal of the deficiency income tax and percentage tax assessments on account of prescription, whimsical factual findings, violation of procedural due process on

the issuance of assessment notices, erroneous address of notices and multiple credit/ investigation by the Respondent [petitioner] of Petitioner's [respondent's] books of accounts and other related records for the same tax year.

Instead of filing an Answer, Respondent [herein petitioner] moved to dismiss the instant petition on July 1, 1999, on the ground of lack of jurisdiction. According to Respondent [petitioner], the assessment had long become final and executory when Petitioner [respondent] failed to comply with the letter dated October 10, 1997.

Petitioner opposed said motion on July 21, 1999, claiming that the final decision on Petitioner's [respondent's] protest is the April 12, 1999 letter of the Baguio Regional Office; therefore, the filing of the action within thirty (30) days from receipt of the said letter was seasonably filed. Moreover, Petitioner [respondent] asserted that granting that the April 12, 1999 letter in question could not be construed to mean as a denial or final decision of the protest, still Petitioner's [respondent's] appeal was timely filed since Respondent [petitioner] issued a Warrant of Distraint and/or Levy against the Petitioner [respondent] on May 3, 1999, which warrant constituted a final decision of the Respondent [petitioner] on the protest of the taxpayer.

On September 3, 1999, this Court denied Respondent's [petitioner's] 'Motion to Dismiss' for lack of merit.

Respondent [petitioner] filed his Answer on September 24, 1999, raising the following Special and Affirmative Defenses:

xxx xxx xxx

5. Investigation disclosed that for taxable years 1991, 1992 and 1993, petitioner [respondent] filed false or fraudulent income and percentage tax returns with intent to evade tax by under declaring his sales.

6. The alleged duplication of investigation of petitioner [respondent] by the BIR Regional Office in Baguio City and by the Revenue District Office in Pasay City is justified by the finding of fraud on the part of the petitioner [respondent], which is an exception to the provision in the Tax Code that the examination and inspection of books and records shall be made only once in a taxable year (Section 235, Tax Code). At any

rate, petitioner [respondent], in a letter dated July 18, 1994, waived his right to the consolidation of said investigation.

7. The aforementioned falsity or fraud was discovered on August 5, 1997. The assessments were issued on September 2, 1997, or within ten (10) years from the discovery of such falsity or fraud (Section 223, Tax Code). Hence, the assessments have not prescribed.

8. Petitioner's [respondent's] allegation that the assessments were not properly addressed is rendered moot and academic by his acknowledgment in his protest letter dated September 28, 1997 that he received the assessments.

9. Respondent [petitioner] complied with the provisions of Revenue Regulations No. 12-85 by informing petitioner [respondent] of the findings of the investigation in letters dated July 28, 1997 and August 11, 1997 prior to the issuance of the assessments.

10. Petitioner [respondent] did not allege in his administrative protest that there was a duplication of investigation, that the assessments have prescribed, that they were not properly addressed, or that the provisions of Revenue Regulations No. 12-85 were not observed. Not having raised them in the administrative level, petitioner [respondent] cannot raise the same for the first time on appeal (Aguinaldo Industries Corp. vs. Commissioner of Internal Revenue, 112 SCRA 136).

11. The assessments were issued in accordance with law and regulations.

12. All presumptions are in favor of the correctness of tax assessments (*CIR vs. Construction Resources of Asia, Inc*., 145 SCRA 67), and the burden to prove otherwise is upon petitioner [respondent]. [5] (Emphasis supplied)

On April 2, 2002, the CTA rendered a Decision, the dispositive portion of which reads:

Accordingly, Petitioner [herein respondent] is **ORDERED** to **PAY** the Respondent [herein petitioner] the amount of ₱11,333,233.94 and

[5] CTA Decision, *rollo*, pp. 82, 84-87.

₱2,573,655.82 as deficiency income and percentage tax liabilities, respectively for taxable years 1991, 1992 and 1993 plus 20% delinquency interest from October 2, 1997 until full payment thereof.

SO ORDERED.[6]

Respondent filed a motion for reconsideration but the CTA denied the same in its Resolution of October 10, 2002.[7]

Through a Petition for Review[8] filed with the CA, respondent questioned the CTA Decision and Resolution mainly on the ground that Copper Kettle Catering Services, Inc. (CKCS, Inc.) was a separate and distinct entity from Copper Kettle Cafeteria Specialist (CKCS); the sales and revenues of CKCS, Inc. could not be ascribed to CKCS; neither may the taxes due from one, charged to the other; nor the notices to be served on the former, coursed through the latter. [9] Respondent cited the Joint Stipulation in which petitioner acknowledged that its (respondent's) business was called Copper Kettle Cafeteria Specialist, not Copper Kettle Catering Services, Inc.[10]

Based on the unrefuted[11] CTA summary, the CA rendered the Decision assailed herein, the dispositive portion of which reads:

WHEREFORE, the instant petition is GRANTED. Reversing the assailed Decision dated April 2, 2002 and Resolution dated October 10, 2002, the deficiency income tax and percentage income tax assessments against petitioner in the amounts of ₱11,333,233.94 and ₱2,573,655.82 for taxable years 1991, 1992 and 1993 plus the 20% delinquency interest thereon are annulled.

SO ORDERED.[12]

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[6] *Id.* at 100.

[7] CA *rollo*, p. 106.

[8] *Id.* at 107.

[9] Petition for Review with the CA, *rollo*, pp. 115-1127.

[10] Petition, CA *rollo*, pp. 48-50.

[11] See Petition, *rollo*, pp. 4-12; respondent did not appeal from the CA Decision.

[12] *Id.* at 80-81.

Petitioner filed a motion for reconsideration but the CA denied the same in its October 10, 2002 Resolution.[13]

Hence, herein recourse to the Court for the reversal of the CA decision and resolution on the following grounds:

I

The Court of Appeals erred in reversing the decision of the Court of Tax Appeals and in holding that Copper Kettle Cafeteria Specialist owned by respondent and Copper Kettle Catering Services, Inc. owned and managed by respondent's wife are not one and the same.

II

The Court of Appeals erred in holding that respondent was denied due process for failure of petitioner to validly serve respondent with the post-reporting and pre-assessment notices as required by law.

On the first issue, the CTA has ruled that CKCS, Inc. and CKCS are one and the same corporation because "[t]he contract between Texas Instruments and Copper Kettle was signed by petitioner's [respondent's] wife, Jeanne Menguito as proprietress."[14]

However, the CA reversed the CTA on these grounds:

Respondent's [herein petitioner's] allegation that Copper Kettle Catering Services, Inc. and Copper Kettle Cafeteria Specialists are not distinct entities and that the under-declared sales/revenues of Copper Kettle Catering Services, Inc. pertain to Copper Kettle Cafeteria Specialist are belied by the evidence on record. In the Joint Stipulation of Facts submitted before the tax court, respondent [petitioner] admitted "that petitioner's [herein respondent's] business name is Copper Kettle Cafeteria Specialist."

Also, the Certification of Club John Hay and Letter dated July 9, 1997 of Texas Instruments both addressed to respondent indicate that these companies transacted with Copper Kettle Catering Services, Inc., owned and managed by JEANNE G. MENGUITO, NOT petitioner Dominador Menguito. The alleged under-declared sales income subject of the present assessments were shown to have been earned by Copper

[13] *Supra* note 3.

[14] CTA Decision, *rollo*, p. 93.

Kettle Catering Services, Inc. in its commercial transaction with Texas Instruments and Camp John Hay; NOT by petitioner's dealing with these companies. In fact, there is nothing on record which shows that Texas Instruments and Camp John Hay conducted business relations with Copper Kettle Cafeteria Specialist, owned by herein petitioner Dominador Menguito**.** In the absence, therefore, of clear and convincing evidence showing that Copper Kettle Cafeteria Specialist and Copper Kettle Catering Services, Inc. are one and the same, respondent can NOT validly impute alleged underdeclared sales income earned by Copper Kettle Catering Services, Inc. as sales income of Copper Kettle Cafeteria Specialist.[15] (Emphasis supplied)

Respondent is adamant that the CA is correct. Many times in the past, the BIR had treated CKCS separately from CKCS, Inc.: from May 1994 to June 1995, the BIR sent audit teams to examine the books of account and other accounting records of CKCS, and based on said audits, respondent was held liable for deficiency taxes, all of which he had paid.[16] Moreover, the certifications[17] issued by Club John Hay and Texas Instruments identify the concessionaire operating therein as CKCS, Inc., owned and managed by his spouse Jeanne Menguito, and not CKCS.[18]

Petitioner impugns the findings of the CA, claiming that these are contradicted by evidence on record consisting of a reply to the September 2, 1997 assessment notice of BIR Baguio which Jeanne Menguito wrote on September 28, 1997, to wit:

We are in receipt of the assessment notice you have sent us, dated September 2, 1997. Having taken hold of the same only now following ***our travel overseas, we were not able to respond immediately and manifest our protest***. Also, with the impending termination of ***our businesses at 19th Tee, Club John Hay and at Texas Instruments, Loakan, Baguio City***, ***we have already started the transfer of our records and books in Baguio City to Manila*** that we will need more time to review

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[15] CA Decision, *id*. at 24-26.

[16] Memorandum for respondent, *id.* at 274-276.

[17] Exhibits "10" and "11", *id.* at 170-171.

[18] *Rollo*, pp. 270-272.

and sort the records that may have to be presented relative to the assessment x x x.[19] (Emphasis supplied)

Petitioner insists that said reply confirms that the assessment notice is directed against the businesses which she and her husband, respondent herein, own and operate at Club John Hay and Texas Instruments, and establishes that she is protesting said notice not just for herself but also for respondent.[20]

Moreover, petitioner argues that if it were true that CKCS, Inc. and CKCS are separate and distinct entities, respondent could have easily produced the articles of incorporation of CKCS, Inc.; instead, what respondent presented was merely a photocopy of the incorporation articles.[21] Worse, petitioner adds, said document was not offered in evidence before the CTA, but was presented only before the CA.[22]

Petitioner further insists that CKCS, Inc. and CKCS are merely employing the fiction of their separate corporate existence to evade payment of proper taxes; that the CTA saw through their ploy and rightly disregarded their corporate individuality, treating them instead as one taxable entity with the same tax base and liability;[23] and that the CA should have sustained the CTA.[24]

In effect, petitioner would have the Court resolve a purely factual issue[25] of whether or not there is substantial evidence that CKCS, Inc. and CKCS are one and the same taxable entity.

As a general rule, the Court does not venture into a trial of facts in proceedings under Rule 45 of the Rules of Courts, for

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[19] Exhibit "14", BIR records, p. 112,

[20] Petition, *rollo*, pp. 49-50.

[21] *Id.* at 50-51.

[22] *Id.* at 51-52; Memorandum for petitioner, *id.* at 243-245.

[23] *Rollo*, pp. 245-246.

[24] Petition, *id.* at 57-58.

[25] *ASJ Corporation v. Sps. Evangelista*, G.R. No. 158086, February 14, 2008.

its only function is to review errors of law.[26] The Court declines to inquire into errors in the factual assessment of the CA, for the latter's findings are conclusive, especially when these are synonymous to those of the CTA.[27] But when the CA contradicts the factual findings of the CTA, the Court deems it necessary to determine whether the CA was justified in doing so, for one basic rule in taxation is that the factual findings of the CTA, when supported by substantial evidence, will not be disturbed on appeal unless it is shown that the CTA committed gross error in its appreciation of facts.[28]

The Court finds that the CA gravely erred when it ignored the substantial evidence on record and reversed the CTA.

In a number of cases, the Court has shredded the veil of corporate identity and ruled that where a corporation is merely an adjunct, business conduit or alter ego of another corporation or when they practice fraud on our internal revenue laws,[29] the fiction of their separate and distinct corporate identities shall be disregarded, and both entities treated as one taxable person, subject to assessment for the same taxable transaction.

The Court considers the presence of the following circumstances, to wit: when the owner of one directs and controls the operations of the other, and the payments effected or received by one are for the accounts due from or payable to the other;[30] or when the properties or products of one are all sold to the

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[26] *Twin Towers Condominium Corporation v. Court of Appeals*, 446 Phil. 280 (2003).

[27] *Commissioner of Internal Revenue v. Sekisui Jushi Philippines, Inc.*, G.R. No. 149671, July 21, 2006, 496 SCRA 206.

[28] *Commissioner of Internal Revenue v. Manila Electric Co.*, G.R. No. 121666, October 10, 2007, 535 SCRA 399; *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 134062, April 17, 2007; 521 SCRA 373.

[29] *Commissioner of Internal Revenue v. Norton and Harrison Company*, No. L-17618, August 31, 1964, 11 SCRA 714.

[30] *Commissioner of Internal Revenue v. Norton and Harrison Company, supra* note 29.

other, which in turn immediately sells them to the public,[31] as substantial evidence in support of the finding that the two are actually one juridical taxable personality.

In the present case, overwhelming evidence supports the CTA in disregarding the separate identity of CKCS, Inc. from CKCS and in treating them as one taxable entity.

First, in respondent's Petition for Review before the CTA, he expressly admitted that he "is engaged in restaurant and/or cafeteria business" and that "[***i]n 1991, 1992 and 1993, he also operated a branch at Club John Hay, Baguio City with a business name of Copper Kettle Cafeteria Specialist***."[32] Respondent repeated such admission in the Joint Stipulation.[33] And then in Exhibit "1"[34] for petitioner, a July 18, 1994 letter sent by Jeanne Menguito to BIR, Baguio City, she stated thus:

"in connection with the investigation of ***Copper Kettle Cafeteria Specialist*** which is located at 19th Tee Club John Hay, Baguio City under letter of authority nos. 0392897, 0392898, and 0392690 dated May 16, 1994, investigating **my** income, business, and withholding taxes for the years 1991, 1992, and 1993."[35] (Emphasis supplied)

Jeanne Menguito signed the letter as proprietor of Copper Kettle Cafeteria Specialist.[36]

Related to Exhibit "1" is petitioner's Exhibit "14", which is another letter dated September 28, 1997, in which Jeanne Menguito protested the September 2, 1997 assessment notices directed at Copper Kettle Cafeteria Specialist and referred to the latter as "our business at 19th Tee Club John Hay and at

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[31] *Liddell & Co., Inc. v. Commissioner of Internal Revenue*, 112 Phil. 524 (1961). See also *Commissioner of Internal Revenue v. Toda*, G.R. No. 147188, September 14, 2004, 438 SCRA 290.

[32] CTA records, p. 1.

[33] CA *rollo*, p. 143.

[34] BIR records, p. 180.

[35] Petitioner's Formal Officer of Evidence, CA *rollo*, p. 217.

[36] *Rollo*, p. 170.

Texas Instruments."[37] Taken along with the Joint Stipulation, Exhibits "A" through "C" and the August 3, 1993 Certification of Camp John Hay, Exhibits "1" and "14", confirm that respondent, together with his spouse Jeanne Menguito, own, operate and manage a branch of Copper Kettle Cafeteria Specialist, also called Copper Kettle Catering Services at Camp John Hay.

Moreover, in Exhibits "A" to "A-1",[38] Exhibits "B" to "B-1"[39] and Exhibits "C" to "C-1"[40] which are lists of concessionaires that operated in Club John Hay in 1991, 1992 and 1993, respectively,[41] it appears that there is no outlet with the name "Copper Kettle Cafeteria Specialist" as claimed by respondent. The name that appears in the lists is "19th TEE CAFETERIA (Copper Kettle, Inc.)." However, in the light of the express admission of respondent that in 1991, 1992 and 1993, he operated a branch called Copper Kettle Cafeteria Specialist in Club John Hay, the entries in Exhibits "A" through "C" could only mean that said branch refers to "19th Tee Cafeteria (Copper Kettle, Inc.)." There is no evidence presented by respondent that contradicts this conclusion.

In addition, the August 9, 1993 Certification issued by Club John Hay that "COPPER KETTLE CATERING SERVICES owned and managed by MS. JEANNE G. MENGUITO is a concessionaire in John Hay since July 1991 up to the present and is operating the outlet 19TH TEE CAFETERIA AND THE TEE BAR"[42] convincingly establishes that respondent's branch which he refers to as Copper Kettle Cafeteria Specialist at Club John Hay also appears in the latter's records as "Copper Kettle Catering Services" with an outlet called "19th Tee Cafeteria and The Tee Bar."

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[37] Petition, *rollo*, pp. 49-50.

[38] CA *rollo*, p. 212.

[39] *Id.* at 211.

[40] *Id.* at 210.

[41] Respondent's Formal Officer of Evidence, *id.* at 206.

[42] *Rollo*, p. 170.

Second, in Exhibit "8"[43] and Exhibit "E",[44] Texas Instruments identified the concessionaire operating its canteen as "Copper Kettle Catering Services, Inc."[45] and/or "COPPER KETTLE CAFETERIA SPECIALIST SVCS."[46] It being settled that respondent's "Copper Kettle Cafeteria Specialist" is also known as "Copper Kettle Catering Services," and that respondent and Jeanne Menguito both own, manage and act as proprietors of the business, Exhibit "8" and Exhibit "E" further establish that, through said business, respondent also had taxable transactions with Texas Instruments.

In view of the foregoing facts and circumstances, the Articles of Incorporation of CKCS, Inc. — a certified true copy of which respondent attached only to his Reply filed with the CA[47] — cannot insulate it from scrutiny of its real identity in relation to CKCS. It is noted that said Articles of Incorporation of CKCS, Inc. was issued in 1989, but documentary evidence indicate that after said date, CKCS, Inc. has also assumed the name CKCS, and vice-versa. The most concrete indication of this practice is the 1991 Quarterly Percentage Tax Returns covering the business name/trade "19th Tee Camp John Hay." In said returns, the taxpayer is identified as "Copper Kettle Cafeteria Specialist"[48] or CKCS, not CKCS, Inc. Yet, in several documents already cited, the purported owner of 19th Tee Bar at Club John Hay is CKCS, Inc.

All these pieces of evidence buttress the finding of the CTA that in 1991, 1992 and 1993, respondent, together with his spouse Jeanne Menguito, owned and operated outlets in Club John Hay and Texas Instruments under the names Copper Kettle

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[43] *Rollo*, p. 171.

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

[45] *Supra* note 34.

[46] *Supra* note 35.

[47] CA *rollo*, pp. 358-367.

[48] BIR Records, pp. 0004-0007.

Cafeteria Specialist or CKCS and Copper Kettle Catering Services or Copper Kettle Catering Services, Inc.

Turning now to the second issue.

In respondent's Petition for Review with the CTA, he questioned the validity of the Assessment Notices, [49] all dated September 2, 1997, issued by BIR, Baguio City against him on the following grounds:

1. The assessment notices, based on income and percentage tax returns filed for 1991, 1992 and 1993, were issued beyond the three-year prescriptive period under Section 203 of the Tax Code;[50]

2. The assessment notices were addressed to Copper Kettle Specialist, Club John Hay, Baguio City, despite notice to petitioner that respondent's principal place of business was at the CCP Complex, Pasay City.[51]

3. The assessment notices were issued in violation of the requirement of Revenue Regulations No. 12-85, dated November 27, 1985, that the taxpayer be issued a post-reporting notice and pre-assessment notice before the preliminary findings of deficiency may ripen into a formal assessment;[52] and

4. The assessment notices did not give respondent a 15-day period to reply to the findings of deficiency.[53]

The Court notes that nowhere in his Petition for Review did respondent deny that he received the September 2, 1997 assessment notices. Instead, during the trial, respondent's witness, Ma. Theresa Nalda (Nalda), testified that she informed the BIR, Baguio City "that there was no Notice or letter,

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[49] Annexes "G", "H", "I", "J", "K" and "L", CTA records, pp. 13-18.

[50] Petition for Review, *id.* at 4.

[51] *Id.*

[52] *Id.* at 4-5.

[53] *Id.* at 5.

that we did not receive, perhaps, because they were not addressed to Mr. Menguito's head office."[54]

The CTA correctly upheld the validity of the assessment notices. Citing Section 223 of the Tax Code which provides that the prescriptive period for the issuance of assessment notices based on fraud is 10 years, the CTA ruled that the assessment notices issued against respondent on September 2, 1997 were timely because petitioner discovered the falsity in respondent's tax returns for 1991, 1992 and 1993 only on February 19, 1997.[55] Moreover, in accordance with Section 2 of Revenue Regulation No. 12-85, which requires that assessment notices be sent to the address indicated in the taxpayer's return, unless the latter gives a notice of change of address, the assessment notices in the present case were sent by petitioner to Camp John Hay, for this was the address respondent indicated in his tax returns.[56] As to whether said assessment notices were actually received, the CTA correctly held that since respondent did not testify that he did not receive said notices, it can be presumed that the same were actually sent to and received by the latter. The Court agrees with the CTA in considering as hearsay the testimony of Nalda that respondent did not receive the notices, because Nalda was not competent to testify on the matter, as she was employed by respondent only in June 1998, whereas the assessment notices were sent on September 2, 1997.[57]

Anent compliance with the requirements of Revenue Regulation No. 12-85, the CTA held:

> BIR records show that on July 28, 1997, a letter was issued by BIR Baguio to Spouses Menguito, informing the latter of their supposed underdeclaration of sales totaling ₱48,721,555.96 and giving them 5 days to communicate any objection to the results of the investigation (Exhibit 11, p. 83, BIR Records). Records likewise reveal the issuance of a Preliminary Ten (10) Day Letter on August 11, 1997, informing

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[54] TSN, January 5, 2000, pp. 9-10.

[55] CTA Decision, *rollo*, pp. 94-95.

[56] *Id.* at 89-90.

[57] *Id.* at 90.

Petitioner [respondent herein] that the sum of ₱34,193,041.55 is due from him as deficiency income and percentage tax (Exhibit 13, p. 173, BIR Records). Said letter gave the Petitioner [respondent herein] a period of ten (10) days to submit his objection to the proposed assessment, either personally or in writing, together with any evidence he may want to present.

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As to Petitioner's allegation that he was given only ten (10) days to reply to the findings of deficiency instead of fifteen (15) days granted to a taxpayer under Revenue Regulations No. 12-85, this Court believes that when Respondent [petitioner herein] gave the Petitioner [respondent herein] on October 10, 1997 an additional period of ten (10) days to present documentary evidence or a total of twenty (20) days, there was compliance with Revenue Regulations No. 12-85 and the latter was amply given opportunity to present his side x x x.[58]

The CTA further held that respondent was estopped from raising procedural issues against the assessment notices, because these were not cited in the September 28, 1997 letter-protest which his spouse Jeanne Menguito filed with petitioner. [59]

On appeal by respondent, [60] the CA resolved the issue, thus:

Moreover, if the taxpayer denies ever having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. Here, respondent [petitioner herein] merely alleged that it "forwarded" the assessment notices to petitioner [respondent herein]. The respondent did not show any proof of mailing, registry receipt or acknowledgment receipt signed by the petitioner [respondent herein]. ***Since respondent [petitioner herein] has not adduced sufficient evidence that petitioner [respondent herein] had in fact received the pre-assessment notice and post-reporting notice required by law, it cannot be assumed that petitioner [respondent herein] had been served said notices***.[61]

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[58] CTA Decision, *rollo,* pp. 88 and 91.

[59] CTA Resolution, *id.* at 104-105.

[60] Petition for Review, CA *rollo,* p. 47.

[61] CA Decision, *rollo,* p. 26.

No other ground was cited by the CA for the reversal of the finding of the CTA on the issue.

The CA is gravely mistaken.

In their Petition for Review with the CTA, respondent expressly stated that "[s]ometime in September 1997, petitioner [respondent herein] ***received*** various assessment notices, all dated 02 September 1997, issued by BIR-Baguio for alleged deficiency income and percentage taxes for taxable years ending 31 December 1991, 1992 and 1993 x x x."[62] In their September 28, 1997 protest to the September 2, 1997 assessment notices, respondent, through his spouses Jeanne Menguito, acknowledged that "[they] are ***in receipt*** of the assessment notice you have sent us, dated September 2, 1997 x x x."[63]

Respondent is therefore estopped from denying actual receipt of the September 2, 1997 assessment notices, notwithstanding the denial of his witness Nalda.

As to the address indicated on the assessment notices, respondent cannot question the same for it is the said address which appears in its percentage tax returns.[64] While respondent claims that he had earlier notified petitioner of a change in his business address, no evidence of such written notice was presented. Under Section 11 of Revenue Regulation No. 12-85, respondent's failure to give written notice of change of address bound him to whatever communications were sent to the address appearing in the tax returns for the period involved in the investigation.[65]

Thus, what remain in question now are: whether petitioner issued and mailed a post-reporting notice and a pre-assessment notice; and whether respondent actually received them.

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[62] CA *rollo*, p. 44.

[63] *Supra* note 21.

[64] BIR records, pp. 0004-0007.

[65] See *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, 458 Phil. 332 (2003).

There is no doubt that petitioner failed to prove that it served on respondent a post-reporting notice and a pre-assessment notice. Exhibit "11"[66] of petitioner is a mere photocopy of a July 28, 1997 letter it sent to respondent, informing him of the initial outcome of the investigation into his sales, and the release of a preliminary assessment upon completion of the investigation, with notice for the latter to file any objection within five days from receipt of the letter. "Exhibit "13" [67] of petitioner is also a mere photocopy of an August 11, 1997 Preliminary Ten (10) Day Letter to respondent, informing him that he had been found to be liable for deficiency income and percentage tax and inviting him to submit a written objection to the proposed assessment within 10 days from receipt of notice. But nowhere on the face of said documents can be found evidence that these were sent to and received by respondent. Nor is there separate evidence, such as a registry receipt of the notices or a certification from the Bureau of Posts, that petitioner actually mailed said notices.

However, while the lack of a post-reporting notice and pre-assessment notice is a deviation from the requirements under Section 1[68] and Section 2[69] of Revenue Regulation No. 12-85, the same cannot detract from the fact that formal assessments

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[66] BIR records pp. 0082-0083.

[67] *Id.* at 0173.

[68] Sec. 1. *Post-reporting notice*. — Upon receipt of the report of findings, the Division Chief, Revenue District Officer or Chief, Office Audit Section, as the case maybe, shall send to the taxpayer a notice of an informal conference before forwarding the report to higher authorities for approval. The notice which is Annex "A" hereof shall be accompanied with a summary of findings as basis for the informal conference.

In cases where the taxpayer has agreed in writing to the proposed assessment, or where such proposed assessment has been paid, the required notice maybe dispensed with.

[69] Sec. 2. *Notice of proposed assessment*. — When the commissioner or his duly authorized representative finds that taxes should be assessed, he shall first notify the taxpayer of the findings in the attached prescribed form as Annex "B" hereof. The notice shall be made in writing and sent to the taxpayer at the address indicated in his return or at his last known address as stated in his notice of change of address.

were issued to and actually received by respondents in accordance with Section 228 of the National Internal Revenue Code which was in effect at the time of assessment.

It should be emphasized that the stringent requirement that an assessment notice be satisfactorily proven to have been issued and released or, if receipt thereof is denied, that said assessment notice have been served on the taxpayer,[70] applies only to formal assessments prescribed under Section 228 of the National Internal Revenue Code, but not to post-reporting notices or pre-assessment notices. The issuance of a valid formal assessment is a substantive prerequisite to tax collection,[71] for it contains not only a computation of tax liabilities but also a demand for payment within a prescribed period, thereby signaling the time when penalties and interests begin to accrue against the taxpayer and enabling the latter to determine his remedies therefor. Due process requires that it must be served on and received by the taxpayer.[72]

A post-reporting notice and pre-assessment notice do not bear the gravity of a formal assessment notice. The post-reporting notice and pre-assessment notice merely hint at the initial findings of the BIR against a taxpayer and invites the latter to an "informal" conference or clarificatory meeting. Neither notice contains a declaration of the tax liability of the taxpayer or a demand for payment thereof. Hence, the lack of such notices inflicts no prejudice on the taxpayer for as long as the latter is properly served a formal assessment notice. In the case of respondent, a formal assessment notice was received

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In cases where the taxpayer has agreed in writing to the proposed assessment, or where such proposed assessment has been paid, the required notice maybe dispensed with.

[70] *Diez Vda. de Gabriel v. Commissioner of Internal Revenue*, 465 Phil. 986 (2004).

[71] *Commissioner of Internal Revenue v. Reyes*, G.R. No. 159694, January 27, 2006, 480 SCRA 382.

[72] *Roxas Securities, Inc. v. Commissioner of Internal Revenue*, G.R. No. 157064, August 7, 2006, 498 SCRA 126. See also *Commissioner of Internal Revenue v. Pascor Realty & Devt. Corp.*, 368 Phil. 714 (1999).

by him as acknowledged in his Petition for Review and Joint Stipulation; and, on the basis thereof, he filed a protest with the BIR, Baguio City and eventually a petition with the CTA.

WHEREFORE, the petition is *GRANTED*. The March 31, 2005 Decision of the Court of Appeals is *REVERSED* and *SET ASIDE* and the April 2, 2002 Decision and October 10, 2002 Resolution of the Court of Tax Appeals are *REINSTATED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 169444. September 17, 2008]

PABLITO T. VILLARIN and P.R. BUILDERS DEVELOPERS & MANAGERS, INC., *petitioners, vs.* **CORONADO P. MUNASQUE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; EXECUTION OF JUDGMENTS FOR MONEY; HOW ENFORCED; LEVY AS A MODE OF SATISFYING THE JUDGMENT MAY BE DONE ONLY IF THE JUDGMENT OBLIGOR CANNOT PAY ALL OR PART OF THE OBLIGATION IN CASH, CERTIFIED BANK CHECK, OR OTHER MODE OF PAYMENT ACCEPTABLE TO THE JUDGMENT OBLIGEE. — Section 9, Rule 39 of the Rules of Court provides the procedure in the enforcement of a money judgment. Based on the said provision, the sheriff is required to first demand of the judgment obligor the immediate payment of the full amount stated in the writ of execution before a levy can be made. The sheriff shall demand such payment either in

cash, certified bank check or any other mode of payment acceptable to the judgment obligee. If the judgment obligor cannot pay by these methods immediately or at once, he can exercise his option to choose which of his properties can be levied upon. If he does not exercise this option immediately or when he is absent or cannot be located, he waives such right, and the sheriff can now first levy his personal properties, if any, and then the real properties if the personal properties are insufficient t o answer for the judgment. Subsection (a) of Section 9, Rule 39 was taken from Section 15, Rule 39 of the 1964 Rules of Court which provided that execution of money judgments is enforced by "levying on all the property, real and personal of every name and nature whatsoever, and which may be disposed of for value, of the judgment debtor not exempt from execution, or on a sufficient amount of such property, if there be sufficient, and selling the same, and paying to the judgment creditor, or his attorney, so much of the proceeds as will satisfy the judgment." The former rule directed the execution of a money judgment against the property of the judgment debtor. The present rule now requires the sheriff to first make a demand for payment, and it prescribes the procedure for and the manner of payment as well as the immediate turnover of the payment by the sheriff to the clerk of court. Levy as a mode of satisfying the judgment may be done only if the judgment obligor cannot pay all or part of the obligation in cash, certified bank check, or other mode of payment acceptable to the judgment obligee.

2. ID.; ID.; ID.; ID.; ID.; SHERIFF'S FAILURE TO DEMAND IMMEDIATE PAYMENT IN CASH DID NOT NULLIFY THE LEVY ON PETITIONER'S REAL PROPERTIES; BY THEIR ACTS, PETITIONERS MAY BE SAID TO HAVE OVERLOOKED THE PROCEDURAL LAPSES, ACCEDED TO THE EXECUTION BY LEVY, AND EFFECTIVELY EXERCISED THEIR RIGHT TO CHOOSE WHICH OF THEIR PROPERTIES MAY BE LEVIED ON. — While petitioners, in their 13 November 2002 letter, complained of procedural defects in the enforcement of the writ, they at the same time also actually "exercise[d] their right to choose which properties may be levied upon in satisfaction of their aforesaid obligation." It should be noted that nowhere in the letter did they offer payment of their obligation in cash. They did not even allege any willingness

and ability to do so. They also did not offer personal properties that may be subject of levy. What they offered were 8 parcels of land, the value of which, so they alleged, would satisfy the obligation. With the offer, petitioners then requested that the appropriate corrections in the notice of levy be made, presumably to limit the levy to said parcels of land and to effect cancellation of the levy on the remaining parcels. The request is evidenced by petitioners' subsequent motion to recall the notice of levy, specifically seeking that the notice of levy of Deputy Sheriff Mendoza be cancelled and a new one issued effecting a levy only on the aforementioned 8 parcels of land. By such acts, petitioners may be said to have overlooked the procedural lapses, acceded to the execution by levy, and effectively exercised their right to choose which of their properties may be levied on. That the 13 November 2002 letter is an exercise of this right is shown by this explicit averment in the motion to recall the notice of levy. We thus conclude that Deputy Sheriff Mendoza's failure to demand immediate payment in cash did not nullify the levy on petitioners' real properties.

3. ID.; ID.; ID.; ID.; QUESTION OF OVERLEVY OF PROPERTIES IS ONE THAT IS ESSENTIALLY FACTUAL IN NATURE AS IT GOES INTO THE DETERMINATION OF THE FAIR MARKET VALUE OF THE PROPERTIES LEVIED UPON AND THE CONSIDERATION OF THE AMOUNT OF REAL PROPERTY LEVIED. — The question of whether there was indeed an overlevy of properties is one that is essentially factual in nature, as it goes into the determination of the fair market value of the properties levied upon and the consideration of the amount of real property levied. An exercise like this does not involve the application of discretion as it invites rather an evaluation of the evidentiary record which is not proper in a petition for review on *certiorari*. Matters of proof and evidence are beyond the power of this Court to review under a Rule 45 petition, except in the presence of some meritorious circumstances, none of which is availing in this case.

4. ID.; ID.; ID.; ID.; ID.; THE BURDEN IS ON PETITIONERS TO PROVE THEIR CLAIM OF OVERLEVY BUT THE EVIDENCE THEY PRESENTED IS WOEFULLY INSUFFICIENT. — The records also show that in the compromise agreement subsequently entered into by petitioners, respondent and Intra Strata, the indebtedness of ₱15 million plus all interests due was secured by all the mortgages executed over petitioners' real properties in favor of Intra Strata.

Said real properties allegedly refer to the 8 parcels of land indicated in the 13 November 2002 letter. However, nothing in the record corroborates this claim. There is no proof that the properties referred to in paragraph (c) of the compromise agreement are the same 8 parcels of land mentioned in the letter. Proof of these mortgages and other relevant documents was not even offered. The burden is on petitioners to prove their claim of overlevy but the evidence they presented is woefully insufficient. Consequently, they failed to overcome the burden of proof.

5. ID.; EVIDENCE; ADMISSIBILITY; PHOTOCOPIES ARE SECONDARY EVIDENCE WHICH ARE ADMISSIBLE ONLY WHEN THE ORIGINAL DOCUMENTS ARE UNAVAILABLE, AS WHEN THEY HAD BEEN LOST OR DESTROYED OR CANNOT BE PRODUCED IN COURT. — The allegation of overlevy was first raised in petitioners' motion to recall the notice of levy and to cancel the scheduled auction sale of the levied properties. Under Section 3, Rule 15 of the Rules of Court, a motion should state the relief sought to be obtained and the grounds upon which it is based, and if required by the Rules or necessary to prove the facts alleged therein, must be accompanied by supporting affidavits and other papers. In the motion to recall the notice of levy, the claim of overlevy was not backed up by any supporting papers. The only papers submitted to the trial court consisted of attachments or annexes of petitioners' reply to respondent's opposition, not of the motion to recall the notice of levy itself. Even then, said papers consisted of mere **photocopies** of the following: two appraisal reports by a property consultant firm, a Maybank memorandum dated 17 June 2002 and a safekeeping agreement which showed that the properties were used by petitioners as collateral for loan transactions. Where the subject of inquiry is the contents of the photocopies submitted by petitioners, the original documents themselves should be presented. The photocopies are secondary evidence which are admissible only when the original documents are unavailable, as when they had been lost or destroyed or cannot otherwise be produced in court. As mere photocopies and not originals, and where it had not been demonstrated that the originals are no longer available, they are not admissible to prove the true market value of the properties.

6. ID.; ID.; THE LEGAL PRESUMPTION THAT OFFICIAL DUTY HAS BEEN REGULARLY PERFORMED APPLIES ESPECIALLY WHEN PETITIONERS WHO WERE DULY

REPRESENTED DURING THE AUCTION SALE NEITHER OBJECTED TO THE SALE NOR CLAIMED IMMEDIATELY THEREAFTER THAT THE PROPERTIES WERE SOLD IN BULK.— As to petitioners' allegation that the Court of Appeals erred in not finding that the 44 parcels of land were sold in bulk and not separately or individually as required by law, the minutes of auction sale and certificate of sale on execution would show otherwise. These official documents indicate that the properties were sold individually. We agree with the Court of Appeals that the legal presumption that official duty has been regularly performed applies especially when petitioners who were duly represented during the auction sale neither objected to the sale nor claimed immediately thereafter that the properties were sold in bulk. To stress anew, following the review yardstick in a Rule 45 petition which is reversible error, the Court of Appeals emerges faultless in disregarding petitioners' evidence. Even if the measure of review is "grave abuse of discretion" as petitioners unknowingly insist, the appellate court should be sustained still.

APPEARANCES OF COUNSEL

Oben Ventura & Associates for petitioners.
Jesus P. Desini for respondent.

D E C I S I O N

TINGA, *J.*:

The Decision dated 31 March 2005 and Resolution dated 11 August 2005 of the Court of Appeals[1] are assailed in this petition for review under Rule 45.[2]

The facts as culled from the assailed decision and the records follow.

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[1] *Rollo*, pp. 57-69. Penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Elvi John S. Asuncion and Estela M. Perlas-Bernabe of the Sixteenth Division.

[2] *Id.* at 13-56.

This case stemmed from a Complaint[3] for collection of sum of money filed on 10 July 2002 by respondent Coronado P. Munasque against petitioners Pablito T. Villarin and P.R. Builders Developers and Managers, Inc., and their co-defendant Intra Strata Assurance Corp. (Intra Strata) before the Regional Trial Court (RTC) of Makati City, Branch 58.

On 20 July 2002, before the answer could be filed, the parties entered into a compromise agreement[4] wherein petitioners acknowledged their joint and solidary obligation to respondent in the amount of ₱15 million, with a monthly interest of ₱450,000.00 from 18 October 2001 until full payment, and promised to pay the whole amount within ninety (90) days from the date of the said agreement. To guarantee payment of the obligation, all the real estate mortgages executed by petitioners in favor of Intra Strata were assigned to respondent. Consequently, Intra Strata was released from its obligation to respondent and the complaint against it dismissed.

On even date, the parties jointly filed before the RTC a motion for the approval of the compromise agreement.[5] Judge Winlove M. Dumayas (Judge Dumayas), pairing judge of the RTC, granted the motion on 2 August 2002.[6]

Petitioners managed to pay only ₱250,000.00 of their total obligation. Thus, on 23 October 2002, respondent filed a motion for execution.[7]

The motion was granted[8] and the writ of execution issued on 29 October 2002.[9] The following day, 30 October 2002, deputy sheriff of Makati, Antonio Q. Mendoza (Deputy Sheriff

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[3] Records, pp. 1-6.

[4] *Id.* at 50-51.

[5] *Id.* at 50-52.

[6] *Id.* at 53-56.

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

[8] *Id.* at 60; Order dated 28 October 2002.

[9] *Id.* at 62-64.

Mendoza), issued a notice of levy[10] and had the same annotated at the back of thirty-four (34) transfer certificates of title (TCTs) issued by the Register of Deeds of Tanauan City in the name of petitioners. On the same day, another notice of levy[11] was issued against all rights and interests of petitioners on a piece of land covered by a tax declaration in petitioner Villarin's name, directing that the corresponding recording and annotation be made in the books of the city assessor of Tagaytay City. On 5 November 2002, still another notice of levy[12] with the same directive to the Register of Deeds of Tanauan City, Batangas was issued against eleven (11) pieces of property covered by TCTs issued in the name of petitioners.

On 8 November 2002, Deputy Sheriff Mendoza issued "Notice of Deputy Sheriff's Sale on Execution"[13] relative to the levied properties, caused its registration in the Office of the City Assessor of Tagaytay and the Register of Deeds of Tanauan City, and had it posted for twenty days in three public places each in the cities of Tanauan, Tagaytay and Makati. After the raffle was conducted by the clerk of court (*ex officio* deputy sheriff) of the RTC of Makati City, the notice of sale on execution was published in a newspaper of national circulation on 20 and 27 November 2002.[14]

On 14 November 2002, the law firm of Oben Ventura Abola entered its appearance as collaborating counsel with petitioners' counsel of record, Atty. Jufraida F. Salamero (Atty. Salamero).[15] The firm sent via registered mail to respondent's counsel and Deputy Sheriff Mendoza a letter[16] dated 13 November 2002, complaining of procedural lapses in the enforcement of the

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[10] *Id.* at 66-73.

[11] *Id.* at 94-95.

[12] *Id.* at 82-93.

[13] *Id.* at 104-112.

[14] *Id.* at 195-196.

[15] *Id.* at 110-117.

[16] *Id.* at 118- 120.

writ of execution. The firm claimed that the deputy sheriff did not comply with Section 9, Rule 39 of the 1997 Rules of Civil Procedure which, according to it, requires first a personal demand for payment of the full amount of the obligation before levy on the properties could be made; that when levy was made, petitioners were not given the option to choose what property should be levied; and that levy should have been made first on petitioners' personal properties. Petitioners then identified eight (8) parcels of land registered with the Register of Deeds of Tanauan City which they claimed should be the subject of levy since the combined value of the said properties was sufficient to cover the ₱15 million claim. On that basis, they requested that the appropriate correction be made in the notice of levy.

On 19 November 2002, petitioners filed a motion to recall the notice of levy and cancel the scheduled deputy sheriff's sale, alleging the same grounds raised in the letter of 13 November 2002.[17]

Respondent opposed the motion, contending that the day before the levy, petitioners' counsel, Atty. Salamero, informed respondent's counsel that petitioners did not have the money to pay even one month's interest at the time. It was also averred that Atty. Salamero also agreed to the immediate levy of the real properties of petitioners provided that the auction sale be scheduled earlier than 20 November 2002 because by then, according to her, petitioners shall have already had the funds needed to pay their obligation. Petitioners' accountant, Florita B. Santos (Santos), allegedly made similar representations to respondent. Respondent also alleged that petitioners' specification of the 8 parcels of land to be levied upon constituted a waiver and/or confirmation of their previous waiver of the need to require the sheriff to first personally demand full payment of the judgment debt or levy on their personal properties.[18]

On 13 December 2002, the RTC reset the scheduled auction sale from 16 December 2002 to 16 January 2003.[19]

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[17] *Id.* at 126-130.

[18] *Id.* at 134-137.

[19] *Id.* at 197.

On 7 January 2003, the RTC issued an Order [20] denying for lack of merit petitioners' motion to recall the levy and to cancel the scheduled sale on execution. Thus, on 16 January 2003, Deputy Sheriff Mendoza conducted an auction sale of the levied properties at the main entrance lobby of the Makati City Hall. The minutes of auction sale[21] would show that counsels for both parties, who had affixed their signatures therein, were present at the sale and that only respondent's representative participated in the bidding. As found by the Court of Appeals, the said minutes would also show that all the real properties had been sold one after another with separate price for each bid and that the individual bid prices for the fourty-four (44) lots totaled ₱19,546,000.00. Respondent paid the deputy sheriff's fees and thereafter was issued a certificate of sale on execution.

On 30 January 2003, petitioners filed an omnibus motion to reconsider the Order dated 7 January 2003; to declare null and void and recall the Notice of Levy dated 30 October 2002, the Notice of Deputy Sheriff's Sale on Execution dated 8 November 2002, and the auction sale proceedings held on 16 January 2003; and to inhibit the presiding judge.[22] Petitioners alleged that the 7 January 2003 Order did not have any factual or legal basis, and that they had lost faith in the presiding judge whose acts were tainted with irregularity and malice.

On 20 February 2003, Judge Dumayas inhibited himself from the case without resolving petitioners' omnibus motion. The case was re-raffled to Branch 148, presided by Judge Oscar B. Pimentel (Judge Pimentel).

On 12 June 2003, Judge Pimentel issued an Order[23] declaring null and void the deputy sheriff's sale on execution of petitioners' real properties and setting aside the 7 January 2003 Order which

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[20] *Id.* at 198-199.

[21] *Id.* at 203-212.

[22] *Id.* at 232-248.

[23] *Id.* at 350-367.

denied petitioners' motion to recall the notice of levy. The dispositive portion of the order reads:

> WHEREFORE, premises considered, the Omnibus Motion is hereby GRANTED, hence, the Order dated 7 January 2003 is hereby set aside, and the notice of levy dated 30 October 2002, notice of Deputy Sheriff's sale on execution dated 8 November 2002 and the auction sale proceedings on 16 January 2003 are hereby declared null and void.
>
> SO ORDERED.[24]

On 3 July 2003, respondent filed a motion for reconsideration of the Order of 12 June 2003, but this was denied in the RTC's Order[25] dated 25 August 2003.

Respondent thus appealed to the Court of Appeals which, on 31 March 2005, ruled favorably to respondent: [26]

> WHEREFORE, the assailed Orders dated 12 June 2003 and [25 August 2003] of Judge Pimentel are REVERSED and SET ASIDE. The Order dated 7 January 2003 of Judge Dumayas is AFFIRMED and REINSTATED, and the validity of the auction sale conducted by Deputy Sheriff Mendoza on 16 January 2003, UPHELD.
>
> SO ORDERED.[27]

The Court of Appeals noted that in the RTC's Order of 7 January 2003, some pertinent facts were not denied or disputed by petitioners, namely, that Atty. Salamero and Santos admitted to respondent's counsel that petitioners had no sufficient funds to pay even one month's interest, and that petitioners agreed that the levy may proceed as long as the auction sale would not be scheduled earlier than 20 November 2002. The Court of Appeals also held that all the alleged procedural defects committed by Deputy Sheriff Mendoza had been corrected when petitioners wrote the letter dated 13 November 2002,[28] as follows:

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[24] *Id.* at 367.

[25] *Id.* at 396.

[26] *Rollo*, pp. 57-69.

[27] *Id.* at 68.

[28] *Rollo*, p. 64.

In violation of the above requirements, no demand for the immediate payment for the full amount of the obligation was made upon the [petitioners] by the [Deputy Sheriff] concerned prior to the issuance of the levy.

As a consequence, [petitioners] had been thereby effectively and unduly deprived of the opportunity to exercise his "option" or right under the Writ "to immediately choose which properties may be levied upon" in the event he fails to pay the judgment debt upon such demand.

As a further consequence, levy has been indiscriminately and arbitrarily made on properties of [petitioners] whose value is well in excess of [respondent's] claim.

We note that the aforesaid Notice of Levy was issued with precipitate haste on 30 October 2002, just a day after the issuance of the Writ of Execution on 29 October 2002, barring sufficient opportunity for a demand for payment to be made upon [petitioners] nor for any opportunity to exercise [petitioners'] right to choose which properties may be levied upon, indicative of a premeditated plan of over levying on [petitioners'] properties.

Notwithstanding the above, [petitioners] hereby exercise their right to choose which properties may be levied upon in satisfaction of their aforesaid obligation pursuant to the Writ of Execution issued by Honorable Winlove M. Dumayas of the [RTC] of Makati, Branch 58, to wit:

Real Property	**Area**
TCT No. T-89829	47,241 sq. meters
TCT No. T-93840	4,184 sq. meters
TCT No. T-93843	4,408 sq. meters
TCT No. T-93845	4,406 sq. meters
TCT No. T-93847	4,406 sq. meters
TCT No. T-93848	4,406 sq. meters
TCT No. T-93849	4,406 sq. meters
TCT No. T-93850	4,406 sq. meters[29]

The Court of Appeals found that the foregoing acts amounted to petitioners' exercise of their right "to immediately choose which property or part thereof may be levied upon sufficient to satisfy the judgment" and a waiver of their right to require

[29] Records, pp. 119-120.

the officer to first levy on their personal properties. The appellate court opined that it would be an exercise in futility to require the officer to first make a personal demand when the judgment debtors (petitioners) had already given the go-signal to proceed with the levy of real properties. It noted that waiver of personal demand for immediate payment is allowed by Article 6 of the New Civil Code and such waivers and automatic correction of the procedural defects thus rendered moot the challenge against the validity of the levy.[30]

The appellate court ruled further that petitioners' 44 parcels of land were sold separately as required by law and not in bulk. It found erroneous the RTC's conclusion that the sale was made in bulk since nowhere was it stated in the deputy sheriff's report that the sale of all the parcels of land was done *en masse*, and the minutes of the auction sale, prepared by the deputy sheriff and signed by the representatives of both parties, clearly indicate the individual description and TCT numbers of the properties sold, the individual bid price for each parcel of land, and the total bid price for all 44 parcels. The certificate of sale on execution dated 16 January 2003 also specifies the TCT number, the technical description, and selling price of each parcel of land sold. Thus, bearing in mind the legal presumption of regular performance of official duty and the fact that the parties never made any objection during the auction sale or immediately thereafter, the Court of Appeals ruled that the properties were sold separately.[31]

In the present petition, petitioners contend that Deputy Sheriff Mendoza failed to comply with the provisions of Section 9, Rule 39 of the Rules of Court in implementing the writ of execution. In levying on the 44 parcels of land, he allegedly failed to (a) first make a personal demand on petitioners for the immediate payment of the full amount stated in the writ of execution and all lawful fees and (b) give petitioners the option to immediately choose which property or part thereof sufficient to satisfy the

[30] *Rollo*, pp. 65-66.

[31] *Id.* at 66-67.

judgment may be levied upon.[32] They argue that the admissions made by Atty. Salamero and Santos do not amount to a waiver of their right to prior demand for payment of the full amount of the judgment, noting that Deputy Sheriff Mendoza should have made the demand for payment on petitioners themselves in order to verify the admissions made by said persons.[33]

Petitioners add that the letter of 13 November 2002 also does not constitute a waiver or an automatic correction of the procedural defects in the execution of the writ since petitioners wrote the letter precisely to exercise their right to choose the properties to be levied upon. They merely sought to save whatever rights they still had, they explain.[34]

Petitioners also question the Court of Appeals' finding that the 44 parcels of land were sold separately as required by law, on the ground that it has no factual or evidentiary basis. The minutes of the auction sale on which the Court of Appeals based its finding do not even contain the individual description of the properties sold but only an enumeration of the titles covering each property, with the bid price for each parcel of land left blank but later filled in by handwriting only, indicating that the 44 parcels were sold in bulk and not separately.[35]

Finally, petitioners allege that the Court of Appeals erred in disregarding the documents they presented which show the fair market value of the properties levied by Deputy Sheriff Mendoza. The documents supposedly show that the fair market value of the properties levied upon is ₱1,187,212,000.00 or far greater than the judgment debt of ₱15 million. Thus, they claim that an overlevy was perpetrated by failure to comply with the provisions of Section 9, Rule 39.[36]

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[32] *Id.* at 28.

[33] *Id.* at 33.

[34] *Id.* at 34-37.

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

[36] *Id.* at 44-46.

In his comment, respondent agrees with the Court of Appeals that in assenting, through their counsel, to the auction sale scheduled after 20 November 2002, petitioners waived the requirement of demand for immediate payment, and that through their letter of 13 November 2002, they indicated their choice of the specific properties to be levied upon and this also unwittingly cured the procedural lapses in the enforcement of the writ.[37]

As to petitioners' allegations that the levied properties were sold in bulk, not individually, and that the appellate court disregarded evidence proving the market value of the properties levied upon, respondent asserts that such allegations are primarily questions of fact which are improper in such a petition as the present one; besides, official documents such as the minutes of auction sale and the certificate of sale on execution, show that the properties were sold individually. Moreover, the market value of the properties was indicated by the RTC in the Order of 7 January 2003, based on tax declarations he submitted for evaluation, respondent adds.

On 25 January 2006, petitioners filed their Reply[38] essentially reiterating the arguments in their petition.

The validity of both the levy made by Deputy Sheriff Mendoza on petitioners' 44 parcels of land and the subsequent auction sale proceedings is put in question in this case. The main issue may be couched as follows: whether the failure of the deputy sheriff to first demand of the judgment obligor payment of the judgment debt before levying the judgment obligor's real properties without allowing him to exercise his option to choose which of his properties may be levied upon, and without first levying on his personal properties, constitute a fatal procedural defect resulting in the nullity of the levy and the subsequent execution sale. The other issue is whether the Court of Appeals committed "grave abuse of discretion" in failing to consider petitioners' evidence on the fair market value of the levied properties.

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[37] *Id.* at 269-297.

[38] *Id.* at 311-320.

The petition should be denied.

Section 9, Rule 39 of the Rules of Court provides the procedure in the enforcement of a money judgment. It reads:

SEC. 9. *Execution of judgments for money, how enforced.* — (a) *Immediate payment on demand.*—The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in cash, certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt directly to the judgment obligee or his authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ.

xxx xxx xxx

(b) *Satisfaction by levy.*— If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

The sheriff shall sell only a sufficient portion of the personal or real property of the judgment obligor which has been levied upon.

When there is more property of the judgment obligor than is sufficient to satisfy the judgment and lawful fees, he must sell only so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees.

Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied upon in like manner and with like effect as under a writ of attachment.

xxx xxx xxx

Based on the foregoing, the sheriff is required to first demand of the judgment obligor the immediate payment of the full amount stated in the writ of execution before a levy can be made. The sheriff shall demand such payment either in cash, certified bank check or any other mode of payment acceptable to the judgment obligee. If the judgment obligor cannot pay by these methods immediately or at once, he can exercise his option to choose which of his properties can be levied upon. If he does not exercise this option immediately or when he is absent or cannot be located, he waives such right, and the sheriff can now first levy his personal properties, if any, and then the real properties if the personal properties are insufficient to answer for the judgment.[39]

Subsection (a) of Section 9, Rule 39 was taken from Section 15, Rule 39 of the 1964 Rules of Court which provided that execution of money judgments is enforced by "levying on all the property, real and personal of every name and nature whatsoever, and which may be disposed of for value, of the judgment debtor not exempt from execution, or on a sufficient amount of such property, if there be sufficient, and selling the same, and paying to the judgment creditor, or his attorney, so much of the proceeds as will satisfy the judgment." The former rule directed the execution of a money judgment against the property of the judgment debtor.[40]

The present rule now requires the sheriff to first make a demand for payment, and it prescribes the procedure for and the manner of payment as well as the immediate turnover of the payment by the sheriff to the clerk of court. Levy as a mode of satisfying the judgment may be done only if the judgment obligor cannot pay all or part of the obligation in cash, certified

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[39] *Equitable PCI Bank, Inc. v. Bellones*, A.M. No. P-05-1973, 18 March 2005, 453 SCRA 598, 611-612.

[40] M.V. MORAN, *COMMENTS ON THE RULES OF COURT*, Vol. II (1996 ed.), p. 367.

bank check, or other mode of payment acceptable to the judgment obligee.[41]

The issue of improper levy was raised in *Seven Brothers Shipping Corp. v. Oriental Assurance Corp.*[42] In that case, Seven Brothers was ordered to pay Oriental Assurance ₱8 million plus interest at the legal rate from the date of filing of the complaint until full payment. When the sheriff enforced the writ of execution by levying on the vessels of the shipping company, it moved to quash the writ and to lift the levy. The RTC granted the motion. Oriental Assurance assailed the RTC decision through a petition for *certiorari* which the Court of Appeals granted. Thus, the writ of execution and the levy on the vessels were reinstated. Thereafter, Seven Brothers filed with this Court a petition for review contending, among others, that the levy was improper since the sheriff had not demanded payment of the judgment debt in cash before levying on its vessels.

In denying the petition, the Court noted that the decision finding Seven Brothers liable to Oriental Assurance had already become final and executory and that entry of judgment had already issued. It also found untenable Seven Brothers' claim of improper levy, citing *Torres v. Cabling*[43] where the Court held that "a sheriff is not required to give the judgment debtor some time to raise cash [since] if time be given, the property may be placed in danger of being lost or absconded." Based on the evidence presented, Seven Brothers' existing assets were found to be insufficient to satisfy the final judgment against it, and the sheriff was thus deemed justified in recognizing that Seven Brothers was in no position to pay its obligation in cash and in immediately levying on the vessels that would sail beyond the reach of Philippine courts and law enforcers if the levy was not made. In so ruling, the Court recognized that while

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[41] O.M. HERRERA, *REMEDIAL LAW RULES* 23 to 56, Vol. II (2000 ed.), pp. 333-335.

[42] 439 Phil. 663 (2002).

[43] 341 Phil. 325 (1997).

it is desirable that the Rules be conscientiously observed, in meritorious cases they should be interpreted liberally to help secure and not frustrate justice.[44]

In the case at bar, it is not disputed that Deputy Sheriff Mendoza failed to first demand of petitioners the immediate payment in cash of the full amount stated in the writ of execution. However, it is also extant in the records that petitioners never disputed the admissions of their counsel, Atty. Salamero, that they had no funds to pay even a month's interest and that they agreed to the levy so long as the auction sale would not be set earlier than 20 November 2002. The admissions provide reasonable basis for the deputy sheriff to forego prior demand on petitioners for payment in cash and proceed to levy on the properties right away. Atty. Salamero, as petitioners' counsel and representative, is expected to know all the matters related to the case, including the last stage of execution and the state of financial affairs of her clients. Since petitioners had also already agreed to the levy on their real properties, it would be pointless to require the deputy sheriff to demand immediate payment in cash. For the same reason, it would be an empty exercise to expect the deputy sheriff to first levy on their personal properties.

Furthermore, while petitioners, in their 13 November 2002 letter, complained of procedural defects in the enforcement of the writ, they at the same time also actually "exercise[d] their right to choose which properties may be levied upon in satisfaction of their aforesaid obligation."[45] It should be noted that nowhere in the letter did they offer payment of their obligation in cash. They did not even allege any willingness and ability to do so. They also did not offer personal properties that may be subject of levy. What they offered were 8 parcels of land, the value of which, so they alleged, would satisfy the obligation. With the offer, petitioners then requested that the appropriate corrections in the notice of levy be made, presumably to limit the levy to said parcels of land and to effect cancellation of the levy on the remaining

[44] *Supra*, note 34 at 673-674.

[45] Records, p. 119.

parcels. The request is evidenced by petitioners' subsequent motion to recall the notice of levy, specifically seeking that the notice of levy of Deputy Sheriff Mendoza be cancelled and a new one issued effecting a levy only on the aforementioned 8 parcels of land.

By such acts, petitioners may be said to have overlooked the procedural lapses, acceded to the execution by levy, and effectively exercised their right to choose which of their properties may be levied on. That the 13 November 2002 letter is an exercise of this right is shown by this explicit averment in the motion to recall the notice of levy, thus:

> 5. To protect and preserve their rights under the circumstances, on 13 November 2002, [petitioners] wrote a letter x x x formally exercising their right to choose which properties may be levied upon in accordance with the terms of the Writ of Execution issued by this Honorable Court. In the said letter, [petitioners] had identified a pool of assets, consisting of real properties, from which pool of assets, levy may be made upon such properties whose combined total aggregate value would satisfactorily cover and satisfy plaintiff's principal claim of Fifteen Million Pesos x x x. [46] [Emphasis supplied]

We thus conclude that Deputy Sheriff Mendoza's failure to demand immediate payment in cash did not nullify the levy on petitioners' real properties.

We now go to the question of overlevy of the properties.

The 8 parcels of land indicated in the 13 November 2002 letter are actually among the 44 parcels of land levied upon by Deputy Sheriff Mendoza. Petitioners claim that these 8 parcels of land already had a total fair market value of ₱155,726,000.00, enough to satisfy their judgment debt, and that there was an overlevy when all 44 parcels of land were levied upon. Related to the claim of overlevy is the ascribed "grave abuse of discretion"[47] on the part of the Court of Appeals for its failure to consider the evidence presented by petitioners showing the fair market value of the levied properties.

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[46] *Id.* at 127.

[47] *Rollo,* p. 27.

The question of whether there was indeed an overlevy of properties is one that is essentially factual in nature, as it goes into the determination of the fair market value of the properties levied upon and the consideration of the amount of real property levied. An exercise like this does not involve the application of discretion as it invites rather an evaluation of the evidentiary record which is not proper in a petition for review on *certiorari*. Matters of proof and evidence are beyond the power of this Court to review under a Rule 45 petition, except in the presence of some meritorious circumstances,[48] none of which is availing in this case.

The allegation of overlevy was first raised in petitioners' motion to recall the notice of levy and to cancel the scheduled auction sale of the levied properties. Under Section 3, Rule 15 of the Rules of Court, a motion should state the relief sought to be obtained and the grounds upon which it is based, and if required by the Rules or necessary to prove the facts alleged therein, must be accompanied by supporting affidavits and other papers. In the motion to recall the notice of levy, the claim of overlevy was not backed up by any supporting papers. The only papers submitted to the trial court consisted of attachments or annexes of petitioners' reply to respondent's opposition, not of the motion to recall the notice of levy itself. Even then, said papers consisted of mere **photocopies** of the following: two appraisal reports by a property consultant firm,[49] a Maybank memorandum dated 17 June 2002 and a safekeeping agreement which showed that the properties were used by petitioners as collateral for loan transactions.[50]

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[48] As enumerated in *Ramos, et al. v. Pepsi-Cola Bottling Co. of the Phils., et al.*, 125 Phil. 701 (1967): (1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) where there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; and (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee.

[49] Records, pp. 179-180.

[50] *Id.* at 181-184.

Where the subject of inquiry is the contents of the photocopies submitted by petitioners, the original documents themselves should be presented.[51] The photocopies are secondary evidence which are admissible only when the original documents are unavailable, as when they had been lost or destroyed or cannot otherwise be produced in court.[52] As mere photocopies and not originals, and where it had not been demonstrated that the originals are no longer available, they are not admissible to prove the true market value of the properties.

The appraisal reports valued the properties at the total amount of ₱912,428,000.00. However, the appraisal reports do not clearly identify, through lot numbers and TCT numbers, the properties they cover; instead, the properties are broadly described as "land [area in square meters] located at Barangay Quiling, Talisay, Batangas."[53] Thus, the general conclusion that the properties covered by the appraisal reports include the subject properties cannot really be determined from the appraisal reports alone. In fact, in their reply to respondent's opposition, petitioners clarified that the first appraisal report dated 21 February 2001 covers a piece of property that is actually not among the properties levied upon by the deputy sheriff and sold at public auction.[54]

The first appraisal report indicates that the report was based on, among others, a photocopy of the TCT of the property, but the TCT was not appended to the report submitted to the court for evaluation. What was instead attached is the Maybank memorandum which supposedly evidenced approval of an application for a domestic letter of credit secured with a ₱47 million real estate mortgage over the property covered by TCT No. T-89827. Petitioners claim that the first appraisal report described and appraised the property covered by TCT No. T-89827.[55] It should nonetheless be noted that the

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[51] RULES OF COURT, RULE 130, Sec. 3.

[52] RULES OF COURT, RULE 130, Sec. 5.

[53] Records, p. 180.

[54] *Id.* at 172.

[55] *Id*.

property covered by TCT No. T-89827 is not one of the properties levied upon by the deputy sheriff or sold at the auction sale.

The valuation in the first appraisal report is confirmed by the second appraisal report dated 31 May 2002, petitioners claim, since the second report also covers properties located in the same area. However, like the other appraisal report, the identification of the particular properties covered by the second appraisal report cannot be determined. The second report stated that the valuation is premised on the assumption that the property as pinpointed to the appraisers is the one described in the titles and plans furnished them. However, no such titles or plans are attached to the report which even acknowledged that the assumptions arrived at were made in the absence of an updated relocation survey and cadastral map from the assessor's office of Talisay, Batangas.[56]

Furthermore, it was not demonstrated in either appraisal report that the assumptions on which the valuations were premised—*i.e.*, that the *barangay* road fronting the properties would be developed all the way up to Tagaytay-Calamba Road leading to the Palace in the Sky, and that the Tagaytay Highlands Drive actually bounds the property as claimed by Villarin—were substantiated.

The safekeeping agreement dated 6 March 2001 provided that 16 of petitioner Villarin's properties in Barangay Quiling, Talisay, Batangas, which are among those levied upon by the deputy sheriff, would be used as security and collateral for the loan of US$75 million obtained from an international financing corporation. The 16 properties supposedly have an appraised value of ₱745,615,000.00, equivalent to twenty percent (20%) of the loan value, or US$15 million. However, aside from the declared values in the document, no other supporting document to establish the fair market value of these properties was given. It is not even certain if the loan agreement subject of the safekeeping agreement pushed through.

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[56] *Id.* at 180.

Moreover, the records show that the original loan of ₱15 million was secured by a real estate mortgage[57] over a 47,241-square meter parcel of land and improvements thereon in Barangay San Jose, Tagaytay City covered by TCT No. T-89829, as well as a guarantee payment bond[58] of ₱15 million issued by Intra Strata and a mortgage redemption insurance for ₱16 million.[59] For one thing, the real estate mortgage securing the ₱15 million loan does not indicate the value of the property mortgaged. And for another, it appears that the parties themselves did not deem the mortgage as sufficient security. There were additional securities provided by the guarantee payment bond and mortgage redemption insurance.

The records also show that in the compromise agreement subsequently entered into by petitioners, respondent and Intra Strata, the indebtedness of ₱15 million plus all interests due was secured by all the mortgages executed over petitioners' real properties in favor of Intra Strata.[60] Said real properties allegedly refer to the 8 parcels of land indicated in the 13 November 2002 letter.[61] However, nothing in the record corroborates this claim. There is no proof that the properties referred to in paragraph (c) of the compromise agreement are the same 8 parcels of land mentioned in the letter. Proof of these mortgages and other relevant documents was not even offered.

The burden is on petitioners to prove their claim of overlevy but the evidence they presented is woefully insufficient. Consequently, they failed to overcome the burden of proof.

As to petitioners' allegation that the Court of Appeals erred in not finding that the 44 parcels of land were sold in bulk and not separately or individually as required by law, the minutes

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[57] *Id.* at 28-30.

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

[59] *Id.* at 26.

[60] *Id.* at 51.

[61] *Id.* at 120. See also note 28.

of auction sale and certificate of sale on execution would show otherwise. These official documents indicate that the properties were sold individually. We agree with the Court of Appeals that the legal presumption that official duty has been regularly performed applies especially when petitioners who were duly represented during the auction sale neither objected to the sale nor claimed immediately thereafter that the properties were sold in bulk.

To stress anew, following the review yardstick in a Rule 45 petition which is reversible error, the Court of Appeals emerges faultless in disregarding petitioners' evidence. Even if the measure of review is "grave abuse of discretion" as petitioners unknowingly insist, the appellate court should be sustained still.

WHEREFORE, in view of the foregoing, the petition is *DENIED*. The Decision dated 31 March 2005 and Resolution dated 11 August 2005 of the Court of Appeals are *AFFIRMED*. Costs against petitioners.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 170247. September 17, 2008]

HEIRS OF BENJAMIN MENDOZA, NAMELY: PACITA MENDOZA, VICTOR MENDOZA, JOSE MENDOZA, CESAR MENDOZA, EFREN MENDOZA, EDWARDO MENDOZA, EDNA MENDOZA, and BEVERLY MENDOZA, *petitioners, vs.* **THE HON. COURT OF APPEALS and J.A. DEVELOPMENT CORP.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SERVICE OF PLEADINGS; IF ANY PARTY HAS APPEARED BY COUNSEL, SERVICE UPON HIM SHALL BE MADE UPON HIS COUNSEL UNLESS SERVICE UPON THE PARTY HIMSELF IS ORDERED BY THE COURT; NOTICE TO THE CLIENT AND NOT TO HIS COUNSEL OF RECORD IS NOT NOTICE IN LAW; CASE AT BAR. — The records of this case disclose that Benjamin Mendoza had indeed been consistently represented by the same counsel, Atty. Sergio F. Angeles (Atty. Angeles), in the proceedings before the MTCC and the RTC. It is therefore odd that respondent neglected to serve on Atty. Angeles a copy of its petition for review with the Court of Appeals and instead thought it more appropriate to serve its petition on Benjamin Mendoza himself. As the appellate court itself acknowledged, the registry receipt attached to the petition for review shows that a copy of the same was served not on Atty. Angeles but on Benjamin Mendoza. The return card attached to the Notice of Resolution dated 28 February 2003, as well as that attached to the Notice of Judgment dated 26 January 2004, also shows that service was made upon Benjamin Mendoza only. Section 2, Rule 13 of the 1997 Rules of Civil Procedure provides that if any party has appeared by counsel, service upon him shall be made upon his counsel unless service upon the party himself is ordered by the court. Notice or service made upon a party who is represented by counsel is a nullity. Notice to the client and not to his counsel of record is not notice in law. While this rule admits of exceptions, such as when the court or tribunal orders service upon the party or when the technical defect is waived, none applies in this case.

2. ID.; ID.; ID.; THE PROCEEDINGS IN THE APPELLATE COURT, WHICH CULMINATED IN THE PROMULGATION OF THE ASSAILED DECISION WERE OBVIOUSLY FLAWED; THE CONCLUSION THAT PETITIONERS WERE DEPRIVED OF DUE PROCESS IS INESCAPABLE JUSTIFYING REMAND TO THE APPELLATE COURT FOR FURTHER PROCEEDINGS AND TO GIVE THE PARTIES THE OPPORTUNITY TO VENTILATE THEIR RESPECTIVE CLAIMS. — The conclusion that petitioners were deprived of due process is inescapable.

The proceedings in the appellate court, which culminated in the promulgation of the assailed decision, were obviously flawed. Despite the Entry of Judgment dated 13 February 2004, the assailed decision could not have become final and executory on that date. In fact, in an apparent suspension of its own rules, the Court of Appeals entertained petitioners' motion for reconsideration although it ultimately denied the same. Be that as it may, we find that the disposition of this case on the merits will best serve the ends of justice. The lack of notice to petitioners' counsel deprived them of the opportunity to participate in the proceedings before the Court of Appeals particularly on the issue of whether the MTCC has jurisdiction over the unlawful detainer case filed by respondent. A remand to the Court of Appeals for further proceedings, giving the parties the opportunity to ventilate their claims on this issue, is therefore appropriate.

APPEARANCES OF COUNSEL

Felino M. Ganal for petitioners.
Martinez & Mendoza for private respondent.

D E C I S I O N

TINGA, *J.*:

Petitioners assail the Decision[1] of the Court of Appeals in CA-G.R. SP No. 75607 dated 23 January 2004, and its Resolution[2] dated 27 October 2005, for want of jurisdiction. The assailed decision reversed and set aside the Decision[3] dated 13 December 2002 of the Regional Trial Court (RTC) of Tagaytay City, Branch 18 which in turn affirmed the Decision[4] dated 18 December

[1] *Rollo*, pp. 37-44; penned by Associate Justice Buenaventura J. Guerrero and concurred in by Associate Justices Andres B. Reyes, Jr. and Regalado E. Maambong.

[2] *Id.* at 46-47.

[3] *Id.* at 83-92.

[4] *Id.* at 64-66.

2001 of the Municipal Trial Court in Cities (MTCC) of Tagaytay City, Branch 1 dismissing the complaint for unlawful detainer[5] filed by respondent J.A. Development Corp.

The Court of Appeals culled the following facts from the records:

On August 20, 2001, petitioner J.A. Development Corporation, (hereafter referred to as petitioner), filed a complaint against Benjamin Mendoza, John Does and Jane Does (hereafter referred to as respondents) for unlawful detainer with the Municipal Trial Court, Tagaytay City. The complaint states that petitioner, by reason of the purchase of the property in litigation in 1992, is the valid, lawful, and registered owner of Lot Nos. 1993A-2; 1993-B-2; 1993-B-7; 1993-B-12; and 1993-B-13 covered by Transfer Certificate of Title (TCT) Nos. T-26609; T-26610; T-26611; T-26612; and T-26613, respectively; that petitioner is also the owner of Lot 1993-B-14 covered by TCT No. T-16586 still in the name of petitioner's predecessor-in-interest; that all of the lots are located in Barangay Dapdap and Barangay Calabuso, Tagaytay City; that sometime after the purchase, petitioner noted the occupation thereof by respondents on the subject property which was previously tolerated by petitioner's predecessor-in-interest; that petitioner informed respondents it now owns the subject property and that respondents do not have any right to occupy the same; that petitioner offered respondents, through respondent Benjamin Mendoza, the amount of Fifty Thousand Pesos (₱50,000.00) to facilitate their departure from the property; that despite receipt of the amount, respondents refused to vacate the same; that respondent Benjamin Mendoza executed for and in behalf of the respondents, a *kasunduan* dated August 26, 1994 acknowledging petitioner's ownership of the property; that despite the execution of the *kasunduan*, respondents did not vacate the subject property and requested they be allowed to stay until petitioner needed the property; that in 1999, petitioner demanded the turnover of the property for development of the same; that respondents refused to do so and declared they are no longer honoring the *kasunduan;* that respondents allowed several strangers to occupy the property; that petitioner sent two demand letters dated October 29, 1999 and December 2, 2000, respectively, ordering them

[5] *Id.* at 48-55.

to vacate the property; and that despite receipt thereof, respondents refused to vacate and surrender the same.

Respondent Benjamin Mendoza filed his answer with special defenses and counterclaim dated August 28, 2001. Respondent posited that he is the owner of the subject property, being the heir of one of the equitable owners thereof by virtue of the Friar Land Act or Act No. 1120 as evidenced by Sales Certificate No. 2933 executed by the Bureau of Lands; that the Transfer Certificates of Title under petitioner's name are null and void, being derived from TCT No. 2079 (1216) which was spuriously borne out of a fictitiously reconstituted TCT No. 1858 (21877) in violation of Act No. 1120 and PD No.1529.

Further, respondent and his ancestors have been in actual possession of the subject property since 1914 as shown in the Order dated January 11, 2000 of Branch 18, Regional Trial Court, Tagaytay City in Civil Case No. TG-1904 (Quieting of Title and Cancellation of Certificates of Title and Damages); that the Partial Decision dated February 18, 2000 issued by the same court particularly placed the respondent as heir of the equitable owner of the subject property; that the issue of possession is inextricably intertwined with the issue of ownership since petitioner derived its alleged ownership through the TCTs issued in its name; that the case is dismissible on the ground of *litis pendentia* since the right of possession and issue of ownership have already been established in Civil Case No. TG-1904 before the Regional Trial Court; that the petitioner never alleged prior physical possession of the subject property; that there is a pending motion for writ of preliminary injunction dated July 25, 2001 praying for petitioner to refrain from harassing respondents to give up possession, from cultivating, planting, harvesting crops, and residing in the subject property; and damages.

On October 21, 2001, petitioner filed its pre-trial brief adding that respondents, by virtue of the *kasunduan,* expressly recognized absolute ownership over the property; that respondents never mentioned any claim of ownership at the time of the execution of the *kasunduan;* and that the Court of Appeals, in CA G.R. SP No. 60770 entitled *J.A. Development Corp. vs. Hon. Alfonso S. Garcia, et al.*, in its Decision dated August 29, 2001 set aside the Partial Decision dated February 18, 2000 for being issued with grave abuse of discretion.

The Municipal Trial Court issued a Decision dated December 18, 2001, dismissing the complaint for lack of jurisdiction on the ground

that the issue of possession cannot be determined without dwelling into the issue of ownership. The dispositive portion reads:

> *WHEREFORE,* in view of the foregoing, this complaint must perforce be *DISMISSED* for lack of jurisdiction of this court for the reasons already afore-discussed. The counterclaim is likewise dismissed.

The MTC's *ratio decidendi* in arriving at the dispositive portion, reads:

> It largely appears from the evidence so far submitted by the defendant in this case that the issue of ownership is yet to be resolved in the Regional Trial Court of Tagaytay City. While it may be true and jurisprudence are already legion that the issue of ownership if closely interrelated and intertwined with the issue of possession in an ejectment case, the first level court can pass upon such issue of ownership if only to determine the issue of possession.
>
> But it cannot find any application in this case where the issue of ownership is generally in issue, and the issue of possession cannot be determined without dwelling into the issue of ownership; thus, it is beyond the jurisdiction of this court to do so.

Petitioner appealed the decision to the Regional Trial Court which affirmed *in toto* the decision rendered by the lower court. In its Decision dated December 13, 2002, the decretal portion states:

> WHEREFORE, finding no error in the judgment appealed from, the decision rendered by the Municipal Trial Court in Cities, Branch 1, Tagaytay City on December 18, 2001 in Civil Case No. 442-2002 is hereby **affirmed *en toto*** (*sic*), with costs against herein Plaintiff-Appellant. (Citations Omitted) (Emphasis supplied) [6]

The Court of Appeals reversed the decision of the RTC and remanded the case to the MTCC for proper disposition principally on the ground that the prior action instituted in another court involving the subject property—*i.e.*, Civil Case No. TG-1904

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[6] *Id.* at 37-40.

lodged with the RTC, Branch 18, Tagaytay City, the partial decision which had already been set aside—could not abate the present action for ejectment.

Petitioners (respondents in CA-G.R. SP No. 75607) filed a Motion for Reconsideration[7] on the ground that they were not furnished a copy of the petition for review nor of the appellate court's decision. The motion was denied in the Resolution[8] dated 27 October 2005, with the Court of Appeals stating that the registry receipt (attached to the petition for review filed by respondent herein) indicates petitioners' receipt of the petition for review. Likewise, the return cards show that petitioners received their copy of the 27 February 2003 Resolution requiring them to comment on the petition as well as of the 23 January 2004 Decision on 10 March 2003 and 28 January 2004, respectively.

The issue presented by petitioners in this Petition for Review,[9] dated 7 December 2005 is essentially the same as that they posed in their motion for reconsideration. They contend that despite the fact that their predecessor-in-interest, Benjamin Mendoza, was represented by the same counsel throughout the proceedings in the MTCC and the RTC, said counsel was not duly served by respondent with a copy of the petition for review which it filed with the Court of Appeals in CA- G.R. SP No. 75607. It was allegedly Benjamin Mendoza himself, and not his counsel of record, who had been served with the notices of the appellate court and the decision which petitioners now question.

In its Comment/Opposition[10] dated 4 April 2006, respondent avers that grave abuse of discretion is not a ground for a petition for review such as the one filed in this case. Moreover, the

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[7] *Id.* at 7-9.

[8] *Supra* note 2.

[9] *Id.* at 25-36.

[10] *Id.* at 122-131.

assailed decision is allegedly already final and executory as evidenced by the Entry of Judgment dated 13 February 2004. As such, it is already immutable. At any rate, the appellate court allegedly correctly ruled that the MTCC has jurisdiction to hear the unlawful detainer case filed before it.

The records of this case disclose that Benjamin Mendoza had indeed been consistently represented by the same counsel, Atty. Sergio F. Angeles (Atty. Angeles), in the proceedings before the MTCC and the RTC. It is therefore odd that respondent neglected to serve on Atty. Angeles a copy of its petition for review with the Court of Appeals and instead thought it more appropriate to serve its petition on Benjamin Mendoza himself. As the appellate court itself acknowledged, the registry receipt[11] attached to the petition for review shows that a copy of the same was served not on Atty. Angeles but on Benjamin Mendoza. The return card attached to the Notice of Resolution[12] dated 28 February 2003, as well as that attached to the Notice of Judgment[13] dated 26 January 2004, also shows that service was made upon Benjamin Mendoza only.

Section 2, Rule 13 of the 1997 Rules of Civil Procedure provides that if any party has appeared by counsel, service upon him shall be made upon his counsel unless service upon the party himself is ordered by the court. Notice or service made upon a party who is represented by counsel is a nullity. Notice to the client and not to his counsel of record is not notice in law. While this rule admits of exceptions, such as when the court or tribunal orders service upon the party or when the technical defect is waived, none applies in this case.[14]

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

[12] *Id.* at 143.

[13] *Id.* at 148.

[14] *Garrucho v. Court of Appeals*, G.R. No. 143791, 14 January 2005, 448 SCRA 165, 171-172; *De Leon v. Court of Appeals*, 432 Phil. 774 (2002).

The conclusion that petitioners were deprived of due process is inescapable. The proceedings in the appellate court, which culminated in the promulgation of the assailed decision, were obviously flawed. Despite the Entry of Judgment dated 13 February 2004, the assailed decision could not have become final and executory on that date. In fact, in an apparent suspension of its own rules, the Court of Appeals entertained petitioners' motion for reconsideration although it ultimately denied the same.

Be that as it may, we find that the disposition of this case on the merits will best serve the ends of justice. The lack of notice to petitioners' counsel deprived them of the opportunity to participate in the proceedings before the Court of Appeals particularly on the issue of whether the MTCC has jurisdiction over the unlawful detainer case filed by respondent. A remand to the Court of Appeals for further proceedings, giving the parties the opportunity to ventilate their claims on this issue, is therefore appropriate.

ACCORDINGLY, in the interest of due process, the Decision of the Court of Appeals in CA-G.R. SP No. 75607 dated 23 January 2004 and its Resolution dated 27 October 2005 are *REVERSED* and *SET ASIDE*. The case is *REMANDED* to the Court of Appeals for further proceedings. No pronouncement as to costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 171827. September 17, 2008]

TERESITA MONZON, *petitioner, vs.* **SPS. JAMES & MARIA ROSA NIEVES RELOVA and SPS. BIENVENIDO & EUFRACIA PEREZ,** *respondents, vs.* **ADDIO PROPERTIES, INC.,** *intervenor.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; EFFECT OF FAILURE TO PLEAD; DEFAULT; FAILURE TO APPEAR IN HEARINGS IS NOT A GROUND FOR DECLARATION OF A DEFENDANT IN DEFAULT. — The Order by the trial court which allowed respondents to present their evidence *ex parte* states: In view of the absence of [Monzon] as well as her counsel despite due notice, as prayed for by counsel for by [respondents herein], let the reception of [respondent's] evidence in this case be held *ex-parte* before a commissioner who is the clerk of court of this Court, with orders upon her to submit her report immediately upon completion thereof. It can be seen that despite the fact that Monzon was not declared in default by the RTC, the RTC nevertheless applied the effects of a default order upon petitioner under Section 3, Rule 9 of the Rules of Court. In his book on remedial law, former Justice Florenz D. Regalado writes that failure to appear in hearings is not a ground for the declaration of a defendant in default: Failure to file a responsive pleading within the reglementary period, **and not failure to appear at the hearing**, is the sole ground for an order of default *(Rosario, et al. vs. Alonzo, et al., L-17320, June 29, 1963),* **except the failure to appear at a pre-trial conference wherein the effects of a default on the part of the defendant are followed,** that is, the plaintiff shall be allowed to present evidence *ex parte* and a judgment based thereon may be rendered against the defendant (Section 5, Rule 18). Also, a default judgment may be rendered, even if the defendant had filed his answer, under the circumstance in Sec. 3(c), Rule 29. Hence, according to Justice Regalado, the effects of default are followed only in three instances: (1) when there is an actual default for failure to file a responsive pleading; (2) failure to appear in the pre-

trial conference; and (3) refusal to comply with modes of discovery under the circumstance in Sec. 3 (c), Rule 29.

2. ID.; ID.; ID.; ID.; MERE NON-APPEARANCE OF DEFENDANTS AT AN ORDINARY HEARING AND TO ADDUCE EVIDENCE DOES NOT CONSTITUTE DEFAULT WHEN THEY HAVE ALREADY FILED THEIR ANSWER TO THE COMPLAINT WITHIN THE REGLEMENTARY PERIOD.— In *Philippine National Bank v. De Leon*, we held: We have in the past admonished trial judges against issuing precipitate orders of default as these have the effect of denying a litigant the chance to be heard, and increase the burden of needless litigations in the appellate courts where time is needed for more important or complicated cases. While there are instances when a party may be properly defaulted, **these should be the exception rather than the rule, and should be allowed only in clear cases of obstinate refusal or inordinate neglect to comply with the orders of the court** (*Leyte vs. Cusi, Jr.*, 152 SCRA 496; *Tropical Homes, Inc. vs. Hon. Villaluz, et al.*, G.R. No. L-40628, February 24, 1989). It is even worse when the court issues an order not denominated as an order of default, but provides for the application of effects of default. Such amounts to the circumvention of the rigid requirements of a default order, to wit: (1) the court must have validly acquired jurisdiction over the person of the defendant either by service of summons or voluntary appearance; (2) the defendant failed to file his answer within the time allowed therefor; and (3) there must be a motion to declare the defendant in default with notice to the latter. In the case at bar, petitioner had not failed to file her answer. Neither was notice sent to petitioner that she would be defaulted, or that the effects of default shall be imposed upon her. "Mere non-appearance of defendants at an ordinary hearing and to adduce evidence does not constitute default, when they have already filed their answer to the complaint within the reglementary period. It is error to default a defendant after the answer had already been filed. It should be borne in mind that the policy of the law is to have every litigant's case tried on the merits as much as possible; it is for this reason that judgments by default are frowned upon."

3. ID.; ID.; ID.; ID.; RESPONDENT'S FAILURE TO ATTEND DURING THE HEARING DATES FOR THE COMPLAINANT'S EVIDENCE WOULD NOT AMOUNT TO A WAIVER OF ITS

RIGHT TO PRESENT EVIDENCE DURING THE TRIAL DATES SCHEDULED FOR THE RECEPTION OF THE EVIDENCE FOR THE DEFENSE.— Does this mean that defendants can get away with failing to attend hearings despite due notice? No, it will not. We agree with petitioner that such failure to attend, when committed during hearing dates for the presentation of the complainant's evidence, would amount to the waiver of such defendant's right to object to the evidence presented during such hearing, and to cross-examine the witnesses presented therein. However, it would not amount to a waiver of the defendant's right to present evidence during the trial dates scheduled for the reception of evidence for the defense. It would be an entirely different issue if the failure to attend of the defendant was on a hearing date set for the presentation of the evidence of the defense, but such did not occur in the case at bar. In view of the foregoing, we are, therefore, inclined to remand the case to the trial court for reception of evidence for the defense.

4. ID.; SPECIAL CIVIL ACTIONS; FORECLOSURE OF REAL ESTATE MORTGAGE; RULE 68 OF THE RULES OF COURT GOVERNS THE JUDICIAL FORECLOSURE OF MORTGAGES; EXTRA-JUDICIAL FORECLOSURE OF MORTGAGES UNDER ACT NO. 3135, AS AMENDED, IS THE APPLICABLE LAW IN CASE AT BAR. — Section 4, Rule 68 of the Rules of Court, which is the basis of respondent's alleged cause of action entitling them to the residue of the amount paid in the foreclosure sale. However, Rule 68 governs the judicial foreclosure of mortgages. Extra-judicial foreclosure of mortgages, which was what transpired in the case at bar, is governed by Act No. 3135, as amended by Act No. 4118, Section 6 of Republic Act No. 7353, Section 18 of Republic Act No. 7906, and Section 47 of Republic Act No. 8791. A.M. No. 99-10-05-0, issued on 14 December 1999, provides for the procedure to be observed in the conduct of an extrajudicial foreclosure sale. Thus, we clarified the different types of sales in *Supena v. dela Rosa*, to wit: Any judge, worthy of the robe he dons, or any lawyer, for that matter, worth his salt, ought to know that different laws apply to different kinds of sales under our jurisdiction. We have three different types of sales, namely: an ordinary execution sale, a judicial foreclosure sale, and an extrajudicial foreclosure sale. An ordinary execution sale is governed by the pertinent

provisions of Rule 39 of the Rules of Court on Execution, Satisfaction and Effect of Judgments. Rule 68 of the Rules, captioned Foreclosure of Mortgage, governs judicial foreclosure sales. On the other hand, Act No. 3135, as amended by Act No. 4118, otherwise known as "An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgages," applies in cases of extrajudicial foreclosure sales of real estate mortgages.

5. ID.; ID.; ID.; EVEN IF, FOR THE SAKE OF ARGUMENT, RULE 68 IS TO BE APPLIED TO EXTRAJUDICIAL FORECLOSURE OF MORTGAGES, SUCH RIGHT CAN ONLY BE GIVEN TO SECOND MORTGAGEES WHO ARE MADE PARTIES TO THE JUDICIAL FORECLOSURE.— Unlike Rule 68, which governs judicial foreclosure sales, neither Act No. 3135 as amended, nor A.M. No. 99-10-05-0 grants to junior encumbrancers the right to receive the balance of the purchase price. The only right given to second mortgagees in said issuances is the right to redeem the foreclosed property pursuant to Section 6 of Act No. 3135, as amended by Act No. 4118. Even if, for the sake of argument, Rule 68 is to be applied to extrajudicial foreclosure of mortgages, such right can only be given to second mortgagees who are made parties to the (judicial) foreclosure. While a second mortgagee is a proper and in a sense even a necessary party to a proceeding to foreclose a first mortgage on real property, he is not an indispensable party, because a valid decree may be made, as between the mortgagor and the first mortgagee, without regard to the second mortgage; but **the consequence of a failure to make the second mortgagee a party to the proceeding is that the lien of the second mortgagee on the equity of redemption is not affected by the decree of foreclosure**.

6. ID.; ID.; ID.; RESPONDENTS DOES NOT HAVE A CAUSE OF ACTION AGAINST THE CLERK OF COURT FOR THE DELIVERY OF THE SUBJECT AMOUNTS ON THE BASIS OF SECTION 4, RULE 68 OF THE RULES OF COURT, FOR THE REASON THAT THE FOREGOING RULE DOES NOT APPLY TO EXTRAJUDICIAL FORECLOSURE OF MORTGAGES; RESPONDENT'S PRAYER THAT THE AMOUNT DUE THEM BE DELIVERED TO THEM MAY CONSTITUTE A CAUSE OF ACTION FOR COLLECTION OF SUM OF MONEY AGAINST PETITIONER.— A cause of action

is the act or omission by which a party violates the right of another. A cause of action exists if the following elements are present: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of plaintiff or constituting a breach of the obligation of defendant to the plaintiff for which the latter may maintain an action for recovery of damages. In view of the foregoing discussions, we find that respondents do not have a cause of action against Atty. Ana Liza Luna for the delivery of the subject amounts on the basis of Section 4, Rule 68 of the Rules of Court, for the reason that the foregoing Rule does not apply to extrajudicial foreclosure of mortgages. In *Katon v. Palanca, Jr.*, we held that where prescription, lack of jurisdiction or failure to state a cause of action clearly appears from the complaint filed with the trial court, the action may be dismissed *motu proprio*, even if the case has been elevated for review on different grounds. However, while the case should indeed be dismissed insofar as Atty. Luna is concerned, the same is not necessarily true with respect to Monzon. Other than respondents' prayer that the amount due to respondents be delivered by Atty. Luna to them, they also pray for a judgment declaring Monzon liable for such amounts. Said prayer, as argued by Monzon herself, may constitute a cause of action for collection of sum of money against Monzon.

7. ID.; ID.; ID.; INSTANT CASE REMANDED TO TRIAL COURT FOR RESPONDENTS TO MANIFEST WHETHER THEIR PETITION FOR INJUNCTION SHOULD BE TREATED AS A COMPLAINT FOR COLLECTION OF A SUM OF MONEY; LEGAL CONSEQUENCES IF RESPONDENTS OPT TO TREAT THE PETITION AS A COMPLAINT FOR COLLECTION OF A SUM OF MONEY OR AS A PETITION FOR INJUNCTION.— The rule is now settled that a mortgage creditor may elect to waive his security and bring, instead, an ordinary action to recover the indebtedness with the right to execute a judgment thereon on all the properties of the debtor including the subject matter of the mortgage, subject to the qualification that if he fails in the remedy elected by him, he cannot pursue further the remedy he has waived. However, due to the fact that construing respondents' Petition for Injunction to be one for

a collection of sum of money would entail a waiver by the respondents of the mortgage executed over the subject properties, we should proceed with caution before making such construction. We, therefore, resolve that upon the remand of this case to the trial court, respondents should be ordered to manifest whether the Petition for Injunction should be treated as a complaint for the collection of a sum of money. If respondents answer in the affirmative, then the case shall proceed with the presentation of the evidence for the defense. If Monzon would be successful in proving her defense of *dacion en pago*, there would, in effect, be a double sale of the mortgaged properties: the same properties were sold to both respondents and to herein intervenor Addio Properties, Inc. If, pursuant to the rules on double sales, respondents are entitled to the properties, their remedy is to file the proper action to recover possession. If, pursuant to said rules, Addio Properties, Inc. is entitled to the properties, respondents' remedy is to file an action for damages against Monzon. If respondents answer in the negative, the case shall be dismissed, without prejudice to the exercise of respondents' rights as mortgage creditors. If respondents' mortgage contract was executed before the execution of the mortgage contract with Addio Properties, Inc., respondents would be the first mortgagors. Pursuant to Article 2126 of the Civil Code, they would be entitled to foreclose the property as against any subsequent possessor thereof. If respondents' mortgage contract was executed after the execution of the mortgage contract with Addio Properties, Inc., respondents would be the second mortgagors. As such, they are entitled to a right of redemption pursuant to Section 6 of Act No. 3135, as amended by Act No. 4118.

APPEARANCES OF COUNSEL

Sebrio De las Manalili and Batacan for petitioner.
Laysa Aceron-Papa & Sayarot Law Office for respondents.
Edgardo A. Aranda for intervenor.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review on *Certiorari* assailing the Decision[1] of the Court of Appeals dated 27 September 2005 and its Resolution dated 7 March 2006 in CA-G.R. CV No. 83507 affirming the Decision of the Regional Trial Court (RTC) of Tagaytay City, Branch 18.

The factual and procedural antecedents of this case are as follows:

On 18 October 2000, the spouses James and Maria Rosa Nieves Relova and the spouses Bienvenido and Eufracia Perez, respondents before this Court, filed against Atty. Ana Liza Luna, Clerk of Court of Branch 18 of the RTC of Tagaytay City, and herein petitioner Teresita Monzon an initiatory pleading captioned as a Petition for Injunction. The case, which was filed before the same Branch 18 of the RTC of Tagaytay City, was docketed as Civil Case No. TG-2069.

In their Petition for Injunction, respondents alleged that on 28 December 1998, Monzon executed a promissory note in favor of the spouses Perez for the amount of ₱600,000.00, with interest of five percent per month, payable on or before 28 December 1999. This was secured by a 300-square meter lot in Barangay Kaybagal, Tagaytay City. Denominated as Lot No. 2A, this lot is a portion of Psu-232001, covered by Tax Declaration No. 98-008-1793. On 31 December 1998, Monzon executed a Deed of Absolute Sale over the said parcel of land in favor of the spouses Perez.

Respondents also claim in their Petition for Injunction that on 29 March 1999, Monzon executed another promissory note, this time in favor of the spouses Relova for the amount of ₱200,000.00 with interest of five percent per month payable on or before 31 December 1999. This loan was secured by a

[1] Penned by Associate Justice Roberto A. Barrios with Associate Justices Mario L. Guariña III and Santiago Javier Ranada concurring; *rollo*, pp. 17-23.

200 square meter lot, denominated as Lot No. 2B, another portion of the aforementioned Psu-232001 covered by Tax Declaration No. 98-008-1793. On 27 December 1999, Monzon executed a Deed of Conditional Sale over said parcel of land in favor of the spouses Relova.

On 23 October 1999, the Coastal Lending Corporation extrajudicially foreclosed the entire 9,967-square meter property covered by Psu-232001, including the portions mortgaged and subsequently sold to respondents. According to the Petition for Injunction, Monzon was indebted to the Coastal Lending Corporation in the total amount of ₱3,398,832.35. The winning bidder in the extrajudicial foreclosure, Addio Properties Inc., paid the amount of ₱5,001,127.00, thus leaving a ₱1,602,393.65 residue. According to respondents, this residue amount, which is in the custody of Atty. Luna as Branch Clerk of Court, should be turned over to them pursuant to Section 4, Rule 68 of the Revised Rules of Civil Procedure. Thus, respondents pray in their Petition for Injunction for a judgment (1) finding Monzon liable to the spouses Perez in the amount of ₱1,215,000.00 and to the spouses Relova in the amount of ₱385,000.00; (2) ordering Atty. Luna to deliver said amounts to respondents; and (3) restraining Atty. Luna from delivering any amount to Monzon pending such delivery in number (2).

Monzon, in her Answer, claimed that the Petition for Injunction should be dismissed for failure to state a cause of action.

Monzon likewise claimed that respondents could no longer ask for the enforcement of the two promissory notes because she had already performed her obligation to them by *dacion en pago* as evidenced by the Deed of Conditional Sale and the Deed of Absolute Sale. She claimed that petitioners could still claim the portions sold to them if they would only file the proper civil cases. As regards the fund in the custody of Atty. Luna, respondents cannot acquire the same without a writ of preliminary attachment or a writ of garnishment in accordance with the provisions of Rule 57 and Section 9(c), Rule 39 of the Revised Rules of Civil Procedure.

On 5 December 2001, the RTC, citing the absence of petitioner and her counsel on said hearing date despite due notice, granted an oral Motion by the respondents by issuing an Order allowing the *ex parte* presentation of evidence by respondents.[2]

On 1 April 2002, the RTC rendered a Decision in favor of respondents. The pertinent portions of the Decision are as follows:

> That [petitioner] Teresita Monzon owes [herein respondents] certain sums of money is indisputable. Even [Monzon] have admitted to this in her Answer. [Respondents] therefore are given every right to get back and collect whatever amount they gave [Monzon] together with the stipulated rate of interest.
>
> Likewise, it has been established that [petitioner] Teresita Monzon has the amount of ₱1,602,393.65 in the possession of the Clerk of Court, Atty. Ana Liza M. Luna. This amount, as is heretofore stated, represented the balance of the foreclosure sale of [Monzon's] properties.
>
> By way of this petition, [respondents] would want to get said amount so that the same can be applied as full payment of [petitioner's] obligation. That the amount should be divided between the [respondents] in the amount they have agreed between themselves; [respondent] spouses Relova to receive the amount of ₱400.00.00, while the spouses Perez shall get the rest.
>
> WHEREFORE, judgment is hereby rendered ordering the x x x Clerk of Court, Atty. Ana Liza M. Luna, to deliver unto [herein respondents] the amount of ₱1,602,393.65 plus whatever interest she may received if and when the said amount has been deposited in any banking institution.[3]

The Decision also mentioned that the Order allowing the *ex parte* presentation of evidence by respondents was due to the continuous and incessant absences of petitioner and counsel.[4]

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[2] *Rollo,* p. 67.

[3] Records p. 71.

[4] *Id.* at 69.

On 25 April 2002, Monzon filed a Notice of Appeal, which was approved by the trial court. Monzon claims that the RTC gravely erred in rendering its Decision immediately after respondents presented their evidence *ex parte* without giving her a chance to present her evidence, thereby violating her right to due process of law.

On 14 June 2002, Addio Properties, Inc. filed before the trial court a Motion for Intervention, which was granted by the same court on 12 July 2002.

On 27 September 2005, the Court of Appeals rendered the assailed Decision dismissing the appeal. According to the Court of Appeals, Monzon showed tepid interest in having the case resolved with dispatch. She, thus, cannot now complain that she was denied due process when she was given ample opportunity to defend and assert her interests in the case. The Court of Appeals reminded Monzon that the essence of due process is reasonable opportunity to be heard and submit evidence in support of one's defense. What the law proscribes is lack of opportunity to be heard. Monzon's Motion for Reconsideration was denied in a Resolution dated 7 March 2006.

On 27 March 2006, Monzon filed the instant Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

Monzon claims anew that it was a violation of her right to due process of law for the RTC to render its Decision immediately after respondents presented their evidence *ex parte* without giving her a chance to present her evidence. Monzon stresses that she was never declared in default by the trial court. The trial court should have, thus, set the case for hearing for the reception of the evidence of the defense. She claims that she never waived her right to present evidence.

Monzon argues that had she been given the opportunity to present her evidence, she would have proven that (1) respondents' Exhibit A (mortgage of land to the spouses Relova) had been novated by respondent's Exhibit B (sale of the mortgage land to the spouses Relova); (2) respondents' Exhibit C (mortgage of land to the spouses Perez) had been novated by respondent's

Exhibit B (sale of the mortgage land to the spouses Perez); and (3) having executed Exhibits "B" and "D", Monzon no longer had any obligation towards respondents.

The Order by the trial court which allowed respondents to present their evidence *ex parte* states:

In view of the absence of [Monzon] as well as her counsel despite due notice, as prayed for by counsel for by [respondents herein], let the reception of [respondent's] evidence in this case be held *ex-parte* before a commissioner who is the clerk of court of this Court, with orders upon her to submit her report immediately upon completion thereof.[5]

It can be seen that despite the fact that Monzon was not declared in default by the RTC, the RTC nevertheless applied the effects of a default order upon petitioner under Section 3, Rule 9 of the Rules of Court:

SEC. 3. *Default; declaration of.*—If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, **the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.**

(a) *Effect of order of default.*—**A party in default shall be entitled to notice of subsequent proceedings but not to take part in the trial**.

In his book on remedial law, former Justice Florenz D. Regalado writes that failure to appear in hearings is not a ground for the declaration of a defendant in default:

Failure to file a responsive pleading within the reglementary period, **and not failure to appear at the hearing**, is the sole ground for an order of default (*Rosario, et al. vs. Alonzo, et al., L-17320, June 29, 1963*), **except the failure to appear at a pre-trial conference wherein the *effects of a default* on the part of the defendant are**

[5] *Id.* at 67.

followed, that is, the plaintiff shall be allowed to present evidence *ex parte* and a judgment based thereon may be rendered against the defendant (Section 5, Rule 18).[6] Also, a default judgment may be rendered, even if the defendant had filed his answer, under the circumstance in Sec. 3(c), Rule 29.[7]

Hence, according to Justice Regalado, the effects of default are followed only in three instances: (1) when there is an actual default for failure to file a responsive pleading; (2) failure to appear in the pre-trial conference; and (3) refusal to comply with modes of discovery under the circumstance in Sec. 3(c), Rule 29.

In *Philippine National Bank v. De Leon*,[8] we held:

> We have in the past admonished trial judges against issuing precipitate orders of default as these have the effect of denying a litigant the chance to be heard, and increase the burden of needless litigations in the appellate courts where time is needed for more important or complicated cases. While there are instances when a party may be properly defaulted, **these should be the exception rather than the rule, and should be allowed only in clear cases of obstinate refusal or inordinate neglect to comply with the orders of the court** (*Leyte vs. Cusi, Jr.*, 152 SCRA 496; *Tropical Homes, Inc. vs. Hon. Villaluz, et al.*, G.R. No. L-40628, February 24, 1989).

It is even worse when the court issues an order not denominated as an order of default, but provides for the application of effects of default. Such amounts to the circumvention of the rigid requirements of a default order, to wit: (1) the court must have validly acquired jurisdiction over the person of the defendant either by service of summons or voluntary appearance; (2) the defendant failed to file his answer within the time allowed therefor; and (3) there must be a motion to declare the defendant in default with notice to the latter.[9] In the case at bar, petitioner had not failed

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[6] Please take note that this Court has issued a new rule governing pre-trials.

[7] Regalado, *REMEDIAL LAW COMPENDIUM*, Volume I (1999 Edition), p. 169.

[8] G.R. No. 62370, 30 January 1990, 181 SCRA 583, 587.

[9] Herrera, *REMEDIAL LAW, RULES* 1-22 (2007 Ed.), pp. 807-808.

to file her answer. Neither was notice sent to petitioner that she would be defaulted, or that the effects of default shall be imposed upon her. "Mere non-appearance of defendants at an ordinary hearing and to adduce evidence does not constitute default, when they have already filed their answer to the complaint within the reglementary period. It is error to default a defendant after the answer had already been filed. It should be borne in mind that the policy of the law is to have every litigant's case tried on the merits as much as possible; it is for this reason that judgments by default are frowned upon."[10]

Does this mean that defendants can get away with failing to attend hearings despite due notice? No, it will not. We agree with petitioner that such failure to attend, when committed during hearing dates for the presentation of the complainant's evidence, would amount to the waiver of such defendant's right to object to the evidence presented during such hearing, and to cross-examine the witnesses presented therein. However, it would not amount to a waiver of the defendant's right to present evidence during the trial dates scheduled for the reception of evidence for the defense. It would be an entirely different issue if the failure to attend of the defendant was on a hearing date set for the presentation of the evidence of the defense, but such did not occur in the case at bar.

In view of the foregoing, we are, therefore, inclined to remand the case to the trial court for reception of evidence for the defense. Before we do so, however, we need to point out that the trial court had committed another error which we should address to put the remand in its proper perspective. We refer to Monzon's argument as early as the Answer stage that respondents' Petition for Injunction had failed to state a cause of action.

Section 4, Rule 68 of the Rules of Court, which is the basis of respondent's alleged cause of action entitling them to the

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[10] *Id.*, citing *Cathay Pacific Airways Ltd. v. Romillo, Jr.*, 225 Phil. 397, 401 (1986); *Consiquien v. Court of Appeals*, G.R. Nos. 56073 & 58819, 20 August 1990, 188 SCRA 619, 627.

residue of the amount paid in the foreclosure sale, provides as follows:

> SEC. 4. *Disposition of proceeds of sale.*—The amount realized from the foreclosure sale of the mortgaged property shall, after deducting the costs of the sale, be paid to the person foreclosing the mortgage, and **when there shall be any balance or residue, after paying off the mortgage debt due, the same shall be paid to junior encumbrancers in the order of their priority**, to be ascertained by the court, or if there be no such encumbrancers or there be a balance or residue after payment to them, then to the mortgagor or his duly authorized agent, or to the person entitled to it.

However, Rule 68 governs the judicial foreclosure of mortgages. Extra-judicial foreclosure of mortgages, which was what transpired in the case at bar, is governed by Act No. 3135,[11] as amended by Act No. 4118,[12] Section 6 of Republic Act No. 7353, Section 18 of Republic Act No. 7906, and Section 47 of Republic Act No. 8791. A.M. No. 99-10-05-0, issued on 14 December 1999, provides for the procedure to be observed in the conduct of an extrajudicial foreclosure sale. Thus, we clarified the different types of sales in *Supena v. Dela Rosa*,[13] to wit:

> Any judge, worthy of the robe he dons, or any lawyer, for that matter, worth his salt, ought to know that different laws apply to different kinds of sales under our jurisdiction. We have three different types of sales, namely: an ordinary execution sale, a judicial foreclosure sale, and an extrajudicial foreclosure sale. An ordinary execution sale is governed by the pertinent provisions of Rule 39 of the Rules of Court on Execution, Satisfaction and Effect of Judgments. Rule 68 of the Rules, captioned Foreclosure of Mortgage, governs

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[11] AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES.

[12] AN ACT TO AMEND ACT NUMBERED THIRTY-ONE HUNDRED AND THIRTY-FIVE, ENTITLED "AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES."

[13] 334 Phil. 671, 675 (1997).

judicial foreclosure sales. On the other hand, Act No. 3135, as amended by Act No. 4118, otherwise known as "An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgages," applies in cases of extrajudicial foreclosure sales of real estate mortgages.

Unlike Rule 68, which governs judicial foreclosure sales, neither Act No. 3135 as amended, nor A.M. No. 99-10-05-0 grants to junior encumbrancers the right to receive the balance of the purchase price. The only right given to second mortgagees in said issuances is the right to redeem the foreclosed property pursuant to Section 6 of Act No. 3135, as amended by Act No. 4118, which provides:

> Sec. 6. *Redemption*. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or **any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale**; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty- six,[14] inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with this Act.

Even if, for the sake of argument, Rule 68 is to be applied to extrajudicial foreclosure of mortgages, such right can only be given to second mortgagees who are made parties to the (judicial) foreclosure. While a second mortgagee is a proper and in a sense even a necessary party to a proceeding to foreclose a first mortgage on real property, he is not an indispensable party, because a valid decree may be made, as between the mortgagor and the first mortgagee, without regard to the second mortgage; but the consequence of a failure to make the second mortgagee a party to the proceeding is that the lien of the second mortgagee on the equity of redemption is not affected by the decree of foreclosure.[15]

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[14] Now Sections 27, 29 and 34 of Rule 39, Rules of Court.

[15] Feria and Noche, *CIVIL PROCEDURE ANNOTATED, Rules* 39-71 (2001 Ed.), p. 569.

A cause of action is the act or omission by which a party violates the right of another.[16] A cause of action exists if the following elements are present: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of plaintiff or constituting a breach of the obligation of defendant to the plaintiff for which the latter may maintain an action for recovery of damages.[17] In view of the foregoing discussions, we find that respondents do not have a cause of action against Atty. Ana Liza Luna for the delivery of the subject amounts on the basis of Section 4, Rule 68 of the Rules of Court, for the reason that the foregoing Rule does not apply to extrajudicial foreclosure of mortgages.

In *Katon v. Palanca, Jr.*,[18] we held that where prescription, lack of jurisdiction or failure to state a cause of action clearly appears from the complaint filed with the trial court, the action may be dismissed *motu proprio*, even if the case has been elevated for review on different grounds. However, while the case should indeed be dismissed insofar as Atty. Luna is concerned, the same is not necessarily true with respect to Monzon. Other than respondents' prayer that the amount due to respondents be delivered by Atty. Luna to them, they also pray for a judgment declaring Monzon liable for such amounts. Said prayer, as argued by Monzon herself, may constitute a cause of action for collection of sum of money against Monzon.

The rule is now settled that a mortgage creditor may elect to waive his security and bring, instead, an ordinary action to recover the indebtedness with the right to execute a judgment thereon on all the properties of the debtor including the subject matter of the mortgage, subject to the qualification that if he

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[16] RULES OF COURT, Rule 2, Section 2.

[17] *Dulay v. Court of Appeals*, 313 Phil. 9, 20 (1995).

[18] G.R. No. 151149, 7 September 2004, 437 SCRA 565.

fails in the remedy elected by him, he cannot pursue further the remedy he has waived.[19]

However, due to the fact that construing respondents' Petition for Injunction to be one for a collection of sum of money would entail a waiver by the respondents of the mortgage executed over the subject properties, we should proceed with caution before making such construction. We, therefore, resolve that upon the remand of this case to the trial court, respondents should be ordered to manifest whether the Petition for Injunction should be treated as a complaint for the collection of a sum of money.

If respondents answer in the affirmative, then the case shall proceed with the presentation of the evidence for the defense. If Monzon would be successful in proving her defense of *dacion en pago*, there would, in effect, be a double sale of the mortgaged properties: the same properties were sold to both respondents and to herein intervenor Addio Properties, Inc. If, pursuant to the rules on double sales, respondents are entitled to the properties, their remedy is to file the proper action to recover possession. If, pursuant to said rules, Addio Properties, Inc. is entitled to the properties, respondents' remedy is to file an action for damages against Monzon.

If respondents answer in the negative, the case shall be dismissed, without prejudice to the exercise of respondents' rights as mortgage creditors. If respondents' mortgage contract was executed before the execution of the mortgage contract with Addio Properties, Inc., respondents would be the first mortgagors. Pursuant to Article 2126[20] of the Civil Code, they would be entitled to foreclose the property as against any subsequent possessor thereof. If respondents' mortgage contract was executed after the execution of the mortgage contract

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[19] *Korea Exhange Bank v. Filkor Business Integrated, Inc.*, 430 Phil. 170, 175 (2002).

[20] Art. 2126. The mortgage directly and immediately subjects the property upon which it is imposed, whoever the possessor may be, to the fulfillment of the obligation for whose security it was constituted.

with Addio Properties, Inc., respondents would be the second mortgagors. As such, they are entitled to a right of redemption pursuant to Section 6 of Act No. 3135, as amended by Act No. 4118.

WHEREFORE, the Decision of the Court of Appeals dated 27 September 2005 and its Resolution dated 7 March 2006 are *REVERSED* and *SET ASIDE*. The Petition for Injunction in Civil Case No. TG-2069 is hereby ordered *DISMISSED* insofar as Atty. Ana Liza Luna is concerned. The Petition for Injunction in Civil Case No. TG-2069, insofar as petitioner Teresita Monzon is concerned, is ordered *REMANDED* to the Regional Trial Court of Tagaytay City for further proceedings. Upon such remand, the Regional Trial Court of Tagaytay City shall issue an Order to respondents, the spouses James and Maria Rosa Nieves Relova and the spouses Bienvenido and Eufracia Perez, to manifest whether the Petition for Injunction should be treated as a complaint for the collection of a sum of money.

If respondents answer in the affirmative, the Regional Trial Court shall set the case for hearing for the presentation of the evidence for the defense. If respondents answer in the negative, the case shall be dismissed, without prejudice to the exercise of respondents' rights as mortgage creditors. No costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 172238. September 17, 2008]

MA. LIZA FRANCO-CRUZ, *petitioner, vs.* **THE COURT OF APPEALS, VICTORY LINER, INC., MARITES M. GANELO, CATHERINE C. SANTOS, and MA. THERESA Q. FABIAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITIONER'S REMEDY IS APPEAL NOT *CERTIORARI*; PERFECTION OF AN APPEAL IN THE MANNER AND WITH THE PERIOD PERMITTED BY LAW IS NOT ONLY MANDATORY BUT ALSO JURISDICTIONAL. — One of the requirements for *certiorari* to lie is that there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law. Any judgment which finally disposes of a case, leaving nothing more for the court to do in respect thereto — such as the judgment of the Court of Appeals dismissing petitioner's appeal as she had lost the right thereto — is appealable. Petitioner's remedy is, therefore, appeal, not *certiorari.* As a general rule, the requirements for perfecting an appeal within the reglementary period specified in law must be strictly followed, appeal not being a constitutional right but a mere statutory privilege. The perfection of an appeal in the manner and within the period permitted by law is thus not only mandatory, but also jurisdictional.

2. ID.; ID.; ID.; THE FILING OF A MOTION FOR RECONSIDERATION BY RESPONDENT WITHIN THE REGLEMENTARY PERIOD PREVENTED, WITH RESPECT TO HER, THE DECISION FROM BECOMING FINAL, BUT NOT WITH RESPECT TO PETITIONER; SINCE EACH PARTY HAS A DIFFERENT PERIOD WITHIN WHICH TO APPEAL, THE TIMELY FILING OF A MOTION FOR RECONSIDERATION BY ONE PARTY DOES NOT INTERRUPT THE OTHER OR ANOTHER PARTY'S PERIOD OF APPEAL. — In the case at bar, the records show that petitioner's counsel indeed received notice of the trial court's decision on April 29, 1999. Following

Rule 37, Section 1 *vis-à-vis* Rule 41, Section 3 of the Rules of Court, petitioner had 15 days or until May 14, 1999 to file a motion for reconsideration or notice of appeal. She filed a motion for reconsideration on May 17, 1999, thus rendering the trial court's decision as to her final and executory. *Testate Estate of Manuel v. Biascan* so teaches: "It is well-settled that judgments or orders become final and executory by operation of law and not by judicial declaration. Thus, finality of a judgment becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected or [no] motion for reconsideration or new trial is filed. The trial court need not even pronounce the finality of the order as the same becomes final by operation of law. In fact, the trial court could not even validly entertain a motion for reconsideration after the lapse of the period for taking an appeal. x x x **The subsequent filing of a motion for reconsideration cannot disturb the finality of the judgment or order.** The filing of a motion for reconsideration by respondent Ma. Theresa within the reglementary period prevented, *with respect to her,* the decision from becoming final, but not with respect to petitioner. In *Bank of the Philippine Islands v. Far East Molasses Corporation,* this Court, passing on Section 3, Rule 41 of the Rules of Court which provides that "[t]he appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from" (underscoring supplied), held: "x x x the commencement of the period to appeal x x x should x x x be reckoned x x x from the respective dates each of the parties received a copy of the decision. Therefore**, each party has a different period within which to appeal**, unless, of course, all of them received their copies on the same date and none filed a motion for reconsideration. (Emphasis and underscoring supplied) Since each party has a different period within which to appeal, the *timely* filing of a motion for reconsideration by one party does not interrupt the other or another party's period of appeal.

3. LEGAL ETHICS; ATTORNEYS; ATTORNEY-CLIENT RELATIONSHIP; NEGLIGENCE OF COUNSEL BINDS THE CLIENT RULE; NOT APPLICABLE IN CASE AT BAR; APPLYING THE RULE WOULD RESULT IN PETITIONER'S BEING HELD LIABLE FOR DAMAGES SUFFERED BY RESPONDENTS EVEN WITHOUT THEM HAVING ESTABLISHED THE BASIS OF THEIR LIABILITY,

DEPRIVING HER OF DUE PROCESS. — In petitioner's case, her Motion for Reconsideration of the trial court's decision was filed three days after the expiration of the reglementary period for the purpose, hence, the Court of Appeals' dismissal of her appeal was in order. The *faux pas* or negligence of petitioner's counsel, however, in failing to file a timely motion for reconsideration should not be taken against her. Ordinarily, the negligence of counsel binds the client. However, this Court has recognized the following exceptions to this rule: (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 or property; or (3) where the interests of justice require. In the case at bar, the application of the rule would result in petitioner being held liable for the damages suffered by respondents even without them having established the basis of her liability, thus depriving her of due process of law.

4. REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; AN AFFIDAVIT OF MERIT IS NOT REQUIRED TO SUPPORT A MOTION FOR RECONSIDERATION OF AN ORDER ALLOWING THE *EX-PARTE* PRESENTATION OF EVIDENCE BY THE PLAINTIFF, THE DEFENSES HAVING ALREADY BEEN LAID IN THE ANSWER. — Compounding petitioner's plight is the trial court's procedural error which precluded petitioner from presenting evidence in her behalf. The trial court denied her motion for reconsideration of its order declaring her "as in default" on the ground that she failed to submit an affidavit of merit respecting her claim that she had meritorious defenses. This *ratio* is, of course, erroneous, for an affidavit of merit is not required to support a motion for reconsideration of an order allowing the *ex-parte* presentation of evidence by the plaintiff, the defenses having already been laid down in the answer as in petitioner's case. Petitioner, early on in the Affirmative Defenses segment of her Answer, already disclaimed the allegation in respondents' complaint that she is the registered owner of the bus, hence, not a real party-in-interest-ground to dismiss the complaint for lack of cause of action. She raised it again in her Motion for Reconsideration from the order declaring her "as in default," to which motion she in fact attached the Certificate of Registration showing that the bus was registered

in the name of Felicisima R. Franco. Thus, petitioner had alleged and shown her meritorious defense by submitting the Certificate of Registration of the bus, which is evidence that she is not the registered owner of the bus, or that something would be gained by setting aside the order declaring her "as in default."

5. ID.; EVIDENCE; ADMISSIBILITY; ENTRIES IN OFFICIAL RECORDS; CONDITIONS IN ORDER TO QUALIFY AS *PRIMA FACIE* EVIDENCE OF THE FACTS THEREIN STATED; NOT PRESENT IN CASE AT BAR. — Respondents, in maintaining their cause of action against petitioner, relied on the January 4, 1998 Traffic Accident Report of Balajadia, who conducted a spot investigation after the occurrence of the accident, wherein he stated that the Franco Transit bus was "**[r]egistered under the name of Marializa Franco-Cruz of Batac, Ilocos Norte**." How Balajadia arrived at such statement, he did not indicate in his Report. Neither did he pass on it when he took the witness stand on February 11, 1999. Rule 130, Section 44 of the Rules of Court, provides: 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. For the entries in Balajadia's Report to qualify as *prima facie* evidence of the facts therein stated, the following conditions must be present: x x x (a) that the entry was made by a public officer, or by another person specially enjoined by the law to do so; (b) that it was made by the public officer in the performance of his duties or by such other person in the performance of a duty enjoined by law; and (c) that the public officer or other person had sufficient knowledge of the facts by him stated, which must have been acquired by him personally or through official information. Balajadia's statement that the Franco Transit bus was "[r]egistered under the name of Marializa Franco-Cruz of Batac, Ilocos Norte" was not shown, however, to have been based on his personal knowledge or that he had sufficient knowledge thereof acquired by him personally or officially. It bears emphasis that the presentation by respondents of evidence *ex-parte* did not relieve them of the burden of proving their claims against petitioner. As in other civil cases, the burden of proof rests upon the party who, as determined by the pleadings or nature of the case, asserts an

affirmative issue. Contentions must be proved by competent evidence and reliance must be had on the strength of the party's own evidence and not upon the weakness of the opponent's defense. **This applies with more vigor where, as in the instant case, the plaintiff was allowed to present evidence *ex parte*.** The plaintiff is not automatically entitled to the relief prayed for. The law gives the defendant some measure of protection as the plaintiff must still prove the allegations in the complaint. Favorable relief can be granted only after the court is convinced that the facts proven by the plaintiff warrant such relief. Indeed, the party alleging a fact has the burden of proving it and a mere allegation is not evidence. Respondents having failed to discharge the *onus* of proving that petitioner was, at the time of the accident, the registered owner of the bus, it was error for the trial court to credit respondents' evidence.

6. ID.; ID.; ID.; IN THE INTEREST OF JUSTICE, CASE REMANDED TO THE TRIAL COURT TO AFFORD PETITIONER HER RIGHT TO DUE PROCESS. — Just as it was error for it to hold that "the defendant [-herein petitioner] failed 1) to rebut" the evidence showing the accident was the result of the negligence of the Franco Transit bus driver and 2) to present evidence to overthrow the presumption of negligence against her pursuant to Article 2180 of the Civil Code in light of its order allowing respondents to present evidence ***ex-parte*** and denying petitioner's pleas to be allowed to participate in the proceedings and present evidence on her affirmative defenses. The trial court's decision in favor of respondents must thus be set aside. Given the attendant facts and circumstances, in the interest of justice, this Court resolves to remand the case to the trial court to afford petitioner her right to due process.

APPEARANCES OF COUNSEL

Renato R. Sarmiento for petitioner.
Atilano Huaben B. Lim for private respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

On January 4, 1998, a Franco Transit bus bearing license plate number AVC 228 collided with the rear portions of a bus and truck wrecker both owned by respondent Victory Liner, Inc. (Victory Liner) which were stalled "along kilometer 63, North Expressway, San Felipe, San Fernando, Pampanga." The collision damaged both vehicles of Victory Liner and killed Manuel Fabian, Rodel Ganelo, Caesar Santos, and Michael Figueroa. The driver of the Franco Transit bus likewise died in the accident.

On February 11, 1998, Victory Liner and respondents Marites M. Ganelo, Catherine C. Santos, and Ma. Theresa Q. Fabian (Ma. Theresa) – the surviving spouses of Rodel Ganelo, Caesar Santos, and Manuel Fabian, respectively – filed before the Regional Trial Court (RTC) of Caloocan City a complaint (Civil Case No. C-18212),[1] for damages against Maria[2] Liza Franco-Cruz (petitioner), alleged to be "the registered owner and operator of public transportation utilities and whose bus is known as and by the name of FRANCO TRANSIT and which she has been operating prior to January 4, 1998."[3]

Respondents claimed that petitioner failed to exercise the diligence of a good father of a family in the selection and supervision of the driver of the Franco Transit bus.[4]

In her **Answer**,[5] petitioner, after denying the material allegations of the Complaint, alleged as among her Affirmative Defenses that she is not the real party-in-interest and, therefore, the complaint stated no cause of action against her, hence, must be dismissed; that the owner and the management of the

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[1] Records, pp. 1-5.

[2] Sometimes spelled as "Ma."

[3] Records, p. 1.

[4] *Id.* at 4.

[5] *Id.* at 11-15.

bus involved in the case have always exercised the due diligence of a good father of a family in the selection and supervision of their employees; and that the proximate cause of the collision was the negligence and recklessness of a third party, the driver of a Philippine Rabbit bus.[6]

Petitioner and her counsel failed to appear during the pre-trial scheduled on June 5, 1998 despite due notice thereof, albeit her counsel filed on even date an urgent motion to postpone. The motion was denied, however, and petitioner was declared "as in default" [*sic*]. Respondents at once started presenting evidence *ex-parte*.[7]

On June 23, 1998, petitioner filed a **Motion for Reconsideration**[8] of the June 5, 1998 order declaring her "as in default," alleging that, *inter alia*, she had meritorious defenses that included her not being the real party-in-interest as she is **not** the registered owner of the Franco Transit bus[9] but Felicisima R. Franco, in support of which she attached a Certificate of Registration issued on October 28, 1988 in the name of Felicisima R. Franco.[10]

Petitioner's Motion for Reconsideration was denied by the trial court by Order[11] of July 20, 1998 in this wise:

> Indeed, a cursory examination of the instant motion will readily show that it was filed in patent violation of the provision of the rules.
>
> While the movant alleged that [she] has a meritorious defense which would justify the granting of [her] motion, [she] nevertheless **failed to submit an Affidavit of Merit**. Worst, the motion was not even verified.[12] (Emphasis and underscoring supplied)

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[6] *Id.* at 12.

[7] *Id.* at 28.

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

[9] *Id.* at 30-A.

[10] *Id.* at 40.

[11] *Id.* at 51-52.

[12] *Id.* at 51.

Petitioner thereafter filed an Omnibus Motion[13] alleging that it was error to declare her "as in default" for the declaration "as in default" of a defendant who fails to attend pre-trial had been eliminated in the 1997 Rules of Civil Procedure. She thus prayed that she be allowed to participate in the proceedings and to **present evidence on her affirmative defenses**. The Omnibus Motion was denied for failure of petitioner's counsel to appear at the hearing thereon.[14]

After respondents rested their case, Branch 121 of the Caloocan City RTC, by Decision[15] dated March 30, 1999, found that, *inter alia*, the negligence of the driver of the Franco Transit bus resulted in the accident which "the defendant [-herein petitioner] failed to rebut" and that, moreover, "the defendant [-herein petitioner] totally failed to present evidence to overthrow the presumption of negligence against her pursuant to Article 2180 of the Civil Code."[16] It thus rendered judgment in favor of respondents, disposing as follows:

WHEREFORE, premises considered, judgment is hereby rendered against MARIA LIZA FRANCO-CRUZ, operator of FRANCO TRANSIT, ordering her:

1) To pay ₱50,000.00 each by way of actual damages and lost income to plaintiffs Marites M. Ganelo, Catherine C. Santos and Ma. Theresa Q. Fabian;

2) To pay moral damages to the above-named plaintiffs in the amount of ₱100,000.00;

3) To pay actual damages in the amount of ₱515,631.00 to plaintiff Victory Liner, Inc., and lost income in the amount of ₱50,000.00;

4) To pay attorney's fees of ₱50,000.00 and the costs of the suit.

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[13] *Id.* at 69-72.

[14] *Id.* at 80.

[15] *Id.* at 146-151.

[16] *Id.* at 151.

SO ORDERED.[17]

Respondent Ma. Theresa filed a Motion for Partial Reconsideration and Clarification.[18] Petitioner filed a Motion for Reconsideration[19] of the trial court's decision reiterating her plea that she is not the real party-in-interest against whom the action should be brought, she again submitting the Certification of Registration of the bus in the name of Felicisima R. Franco, together with an Official Receipt of payment as Annex "A" to the motion.

By Order[20] dated June 25, 1999, the trial court denied Ma. Theresa's partial motion for reconsideration but clarified that the attorney's fees "should be divided according to the following proportion: three-fourths (3/4) for Atty. Atilano Huaben B. Lim who represented three of the plaintiffs and one-fourth (1/4) for Atty. Roberto A. Unciano who represented plaintiff Ma. Theresa Q. Fabian."[21]

Respecting petitioner's Motion for Reconsideration of the decision, the trial court denied the same for having been **filed beyond the 15-day reglementary period**, it having been filed only on the 18th day (May 17, 1999) following the receipt by petitioner's counsel of a copy of the decision on April 29, 1999.[22]

On petitioner's appeal,[23] the Court of Appeals, by Decision[24] of September 22, 2005, dismissed the same after noting that her motion for reconsideration of the trial court's decision was filed only on the 18th day following receipt by her counsel of a copy of

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[17] *Ibid.*

[18] *Id.* at 157-162.

[19] *Id.* at 153-154.

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

[21] *Id.* at 166.

[22] *Id.* at 165.

[23] *Id.* at 169-170.

[24] Penned by Justice Santiago Javier Ranada and concurred in by Justices Roberto A. Barrios and Mario L. Guariña III; CA *rollo*, pp. 73-77.

the decision. The appellate court thus held that the trial court's decision had become final and executory.[25]

Her Motion for Reconsideration[26] of the appellate court's Decision having been denied,[27] petitioner filed the present Petition for *Certiorari*.[28]

One of the requirements for *certiorari* to lie is that there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.[29] Any judgment which finally disposes of a case, leaving nothing more for the court to do in respect thereto – such as the judgment of the Court of Appeals dismissing petitioner's appeal as she had lost the right thereto – is appealable.[30] Petitioner's remedy is, therefore, appeal, not *certiorari*.

As a general rule, the requirements for perfecting an appeal within the reglementary period specified in law must be strictly followed,[31] appeal not being a constitutional right but a mere statutory privilege.[32] The perfection of an appeal in the manner and within the period permitted by law is thus not only mandatory, but also jurisdictional.[33]

Petitioner argues, however, that:

The ruling of the respondent Court of Appeals contained in its questioned Decision dated March 30, 1999 that the Petitioner had lost her right to appeal is a patent nullity. What the respondent Court

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[25] *Id.* at 75-76.

[26] *Id.* at 78-82.

[27] *Id.* at 91.

[28] *Rollo*, pp. 3-13.

[29] RULES OF COURT, Rule 65, Section 1.

[30] *Vide Intramuros Tennis Club, Inc. v. Phil. Tourism Authority*, 395 Phil. 278, 293-294 (2000).

[31] *Vide Cuevas v. Bais Steel Corporation*, 439 Phil. 793, 805 (2002).

[32] *Vide ibid.*

[33] *Vide ibid.*

of Appeals missed is the fact that before the period to appeal or file a Motion for Reconsideration expire[d], respondent Ma. Theresa Q. Fabian filed a Partial Motion for Reconsideration of the Decision of the lower court dated March 30, 1999, which motion asserted that the lower court erred in not awarding indemnity for the death of each victims [*sic*] to the plaintiffs and that it failed to clarify the award of attorney's fees of ₱50,000.00 as to its awardees and its division. With the filing of such Partial Motion for Reconsideration by respondent Ma. Theresa Q. Fabian which prayed for the modification and clarification of the Decision dated March 30, 1999, then, the said decision did not become final.[34] (Underscoring supplied)

In the case at bar, the records show that petitioner's counsel indeed received notice of the trial court's decision on April 29, 1999.[35] Following Rule 37, Section 1 *vis-à-vis* Rule 41, Section 3 of the Rules of Court, petitioner had 15 days or until May 14, 1999 to file a motion for reconsideration or notice of appeal. She filed a motion for reconsideration on May 17, 1999, thus rendering the trial court's decision as to her final and executory. *Testate Estate of Manuel v. Biascan*[36] so teaches:

> It is well-settled that judgments or orders become final and executory by operation of law and not by judicial declaration. Thus, finality of a judgment becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected or [no] motion for reconsideration or new trial is filed. The trial court need not even pronounce the finality of the order as the same becomes final by operation of law. In fact, the trial court could not even validly entertain a motion for reconsideration after the lapse of the period for taking an appeal. x x x **The subsequent filing of a motion for reconsideration cannot disturb the finality of the judgment or order**.[37] (Emphasis and underscoring supplied)

The filing of a motion for reconsideration by respondent Ma. Theresa within the reglementary period prevented, *with respect*

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[34] *Rollo*, p. 9.

[35] *Vide* records, p. 152.

[36] 401 Phil. 49 (2000).

[37] *Id.* at 59 (citations omitted).

to her, the decision from becoming final, but not with respect to petitioner.

In *Bank of the Philippine Islands v. Far East Molasses Corporation,*[38] this Court, passing on Section 3, Rule 41 of the Rules of Court which provides that "[t]he appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from" (underscoring supplied), held:

> x x x the commencement of the period to appeal x x x should x x x be reckoned x x x from the respective dates each of the parties received a copy of the decision. Therefore, **each party has a different period within which to appeal**, unless, of course, all of them received their copies on the same date and none filed a motion for reconsideration.[39] (Emphasis and underscoring supplied)

Since each party has a different period within which to appeal, the *timely* filing of a motion for reconsideration by one party does not interrupt the other or another party's period of appeal.

In petitioner's case, her Motion for Reconsideration of the trial court's decision was filed three days after the expiration of the reglementary period for the purpose, hence, the Court of Appeals' dismissal of her appeal was in order.

The *faux pas* or negligence of petitioner's counsel, however, in failing to file a timely motion for reconsideration should not be taken against her. Ordinarily, the negligence of counsel binds the client.[40] However, this Court has recognized the following exceptions to this rule: (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 or property; or (3) where the interests of justice require.[41] In the case at bar, the application of the rule would result in petitioner being held liable for the damages suffered by

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[38] G.R. No. 89125, July 2, 1991, 198 SCRA 689.

[39] *Id.* at 703-704.

[40] *Vide Sarraga, Sr. v. Banco Filipino Savings and Mortgage Bank,* 442 Phil. 55, 63 (2002).

[41] *Vide id.* at 64.

respondents even without them having established the basis of her liability, thus depriving her of due process of law.

Compounding petitioner's plight is the trial court's procedural error which precluded petitioner from presenting evidence in her behalf.[42] The trial court denied her motion for reconsideration of its order declaring her "as in default" on the ground that she failed to submit an affidavit of merit respecting her claim that she had meritorious defenses. This *ratio* is, of course, erroneous, for an affidavit of merit is not required to support a motion for reconsideration of an order allowing the *ex-parte* presentation of evidence by the plaintiff, the defenses having already been laid down in the answer[43] as in petitioner's case.

Petitioner, early on in the Affirmative Defenses segment of her Answer, already disclaimed the allegation in respondents' complaint that she is the registered owner of the bus, hence, not a real party-in-interest-ground to dismiss the complaint for lack of cause of action. She raised it again in her Motion for Reconsideration from the order declaring her "as in default," to which motion she in fact attached the Certificate of Registration showing that the bus was registered in the name of Felicisima R. Franco. Thus, petitioner had alleged and shown her meritorious defense by submitting the Certificate of Registration of the bus, which is evidence that she is not the registered owner of the bus, or that something would be gained by setting aside the order declaring her "as in default."[44]

On the merits of the case, a review of the evidence for respondents shows that individual respondents took the witness stand to testify on the damages they suffered.[45] And they presented the Victory Liner bus inspector;[46] SPO2 Edgardo F. Balajadia (Balajadia) who investigated the site of the accident

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[42] *Vide Lorbes v. Court of Appeals*, 404 Phil. 567, 580 (2001).

[43] *Jonathan Landoil Int'l. Co., Inc. v. Mangudadatu*, G.R. No. 155010, August 16, 2004, 436 SCRA 559, 570-571.

[44] *Vide ibid*; *Villareal v. Court of Appeals*, 356 Phil. 826, 846 (1998).

[45] TSN, June 5, 1998, pp. 2-15; TSN, September 17, 1998, pp. 2-7.

[46] TSN, December 16, 1998, pp. 2-13.

right after it happened;[47] the Victory Liner maintenance foreman regarding the damage sustained by the Victory Liner vehicles;[48] the death certificates of Rodel Ganelo and Caesar Santos;[49] the marriage certificate of respondent Marites Ganelo;[50] Balajadia's Traffic Accident Report;[51] photographs of the damaged vehicles;[52] and the damage report showing the expenses incurred in repairing both damaged vehicles.[53]

There was no attempt, however, on the part of any of the witnesses for respondents, to controvert petitioner's affirmative defense that there is no cause of action against her, she not being the registered owner of the Franco Transit bus, even despite her submission of the bus' Certificate of Registration in the name of **Felicisima R. Franco** which is conclusive proof of ownership.

Respondents, in maintaining their cause of action against petitioner, relied on the January 4, 1998 Traffic Accident Report[54] of Balajadia, who conducted a spot investigation after the occurrence of the accident,[55] wherein he stated that the Franco Transit bus was "**[r]egistered under the name of Marializa Franco-Cruz of Batac, Ilocos Norte**." (Emphasis supplied) How Balajadia arrived at such statement, he did not indicate in his Report. Neither did he pass on it when he took the witness stand on February 11, 1999.[56]

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[47] TSN, February 11, 1999, pp. 2-10.

[48] TSN, February 26, 1999, pp. 2-8.

[49] Exhibits "B" and "C", folder of exhibits.

[50] Exhibit "A", *id.*

[51] Exhibit "D", *id.*

[52] Exhibit "E", *id.*

[53] Exhibits "F" and "G", *id.*

[54] Exhibit "D", Traffic Accident Report, *id.*

[55] *Vide* TSN, February 11, 1999, pp. 2-10.

[56] *Ibid.*

Rule 130, Section 44 of the Rules of Court, provides:

> 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. (Italics in the original)

For the entries in Balajadia's Report to qualify as *prima facie* evidence of the facts therein stated, the following conditions must be present:

> x x x (a) that the entry was made by a public officer, or by another person specially enjoined by the law to do so; (b) that it was made by the public officer in the performance of his duties or by such other person in the performance of a duty enjoined by law; and (c) that the public officer or other person had sufficient knowledge of the facts by him stated, which must have been acquired by him personally or through official information.[57] (Underscoring supplied)

Balajadia's statement that the Franco Transit bus was "[r]egistered under the name of Marializa Franco-Cruz of Batac, Ilocos Norte" was not shown, however, to have been based on his personal knowledge or that he had sufficient knowledge thereof acquired by him personally or officially.

It bears emphasis that the presentation by respondents of evidence *ex-parte* did not relieve them of the burden of proving their claims against petitioner.

> As in other civil cases, the burden of proof rests upon the party who, as determined by the pleadings or nature of the case, asserts an affirmative issue. Contentions must be proved by competent evidence and reliance must be had on the strength of the party's own evidence and not upon the weakness of the opponent's defense. **This applies with more vigor where, as in the instant case, the plaintiff was allowed to present evidence *ex parte***. The plaintiff is not automatically entitled to the relief prayed for. The law gives the defendant some measure of protection as the plaintiff must still prove the allegations in the complaint. Favorable relief can be granted only after the court is convinced that the facts proven by the plaintiff warrant such relief.

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[57] *Africa, et al. v. Caltex (Phil.), Inc., et al.,* 123 Phil. 272, 277 (1966).

Indeed, the party alleging a fact has the burden of proving it and a mere allegation is not evidence.[58] (Emphasis and underscoring supplied)

Respondents having failed to discharge the *onus* of proving that petitioner was, at the time of the accident, the registered owner of the bus, it was error for the trial court to credit respondents' evidence.

Just as it was error for it to hold that "the defendant [-herein petitioner] failed 1) to rebut" the evidence showing the accident was the result of the negligence of the Franco Transit bus driver and 2) to present evidence to overthrow the presumption of negligence against her pursuant to Article 2180 of the Civil Code in light of its order allowing respondents to present evidence ***ex-parte*** and denying petitioner's pleas to be allowed to participate in the proceedings and present evidence on her affirmative defenses.

The trial court's decision in favor of respondents must thus be set aside.

Given the attendant facts and circumstances, in the interest of justice, this Court resolves to remand the case to the trial court to afford petitioner her right to due process.

WHEREFORE, the petition is *GRANTED*. The decision of the Court of Appeals dated September 22, 2005 dismissing petitioner's appeal from the decision of Branch 121 of the Caloocan City Regional Trial Court is *SET ASIDE*. The *decision* of the trial court is vacated. Civil Case No. C-18212 is *REMANDED* to Branch 121 of the Regional Trial Court of Caloocan City which is hereby directed to allow petitioner to present evidence on her affirmative defenses and/or rebut respondents' evidence and to allow respondents to submit additional evidence if necessary and/or they so desire.

SO ORDERED.

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

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[58] *Saguid v. Court of Appeals*, 451 Phil. 825, 837 (2003). (Citations omitted)

FIRST DIVISION

[G.R. No. 172248. September 17, 2008]

DEVELOPMENT BANK OF THE PHILIPPINES, *petitioner, vs.* **ELLA GAGARANI, ISAGANI, ADRIAN, NATHANIEL, NIEVA, JONATHAN, DIONESIO, FLORENCE and JEREMIAS, all surnamed ASOK,** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; COMMONWEALTH ACT NO. 141 (PUBLIC LAND ACT); FACT THAT THE LAND HAD BEEN INHERITED BY THE PATENTEES' SON DOES NOT BRING IT OUTSIDE THE PURVIEW OF SECTION 19 OF CA 141; THE PLAIN INTENT OF SECTION 119 IS TO GIVE THE HOMESTEADER OR PATENTEE EVERY CHANCE TO PRESERVE AND KEEP IN THE FAMILY THE LAND THAT THE STATE HAS GRATUITOUSLY GIVEN TO THEM. — The plain intent of Sec. 119 is to give the homesteader or patentee every chance to preserve and keep in the family the land that the State has gratuitously given him as a reward for his labor in cleaning, developing and cultivating it. Hence, the fact that the land had been inherited by the patentees' son (and a new title in his name issued) does not bring it outside the purview of Sec. 119. In fact, the policy behind the law is fulfilled because the land remains in the family of the patentee. As we explained in *Ferrer v. Mangente*: The applicant for a homestead is to be given all the inducement that the law offers and is entitled to its full protection. Its blessings, however, do not stop with him. This is particularly so in this case as the appellee is the son of the deceased. There is no question then as to his status of being a legal heir. The policy of the law is not difficult to understand. The incentive for a pioneer to venture into developing virgin land becomes more attractive if he is assured that his effort will not go for naught should perchance his life be cut short. This is merely a recognition of how closely bound parents and children are in a Filipino family. Logic, the sense of fitness and of right, as well as pragmatic considerations thus call for continued adherence to the policy that not the individual

applicant alone but those so closely related to him as are entitled to legal succession may take full advantage of the benefits the law confers.

2. ID.; ID.; ID.; RESPONDENT, AS A DAUGHTER-IN-LAW OF THE PATENTEES, CAN BE CONSIDERED AS AMONG THE LEGAL HEIRS WHO CAN REPURCHASE THE LAND IN LINE WITH THE RATIONALE BEHIND SECTION 19 OF CA 141. — In line with the rationale behind Sec. 119, we reject a restricted definition of legal heirs. It is used in a broad sense and the law makes no distinctions. In *Madarcos v. de la Merced*, we held that: The term "legal heirs" is used in Section 119 in a generic sense. It is broad enough to cover any person who is called to the succession either by provision of a will or by operation of law. Thus, legal heirs include both testate and intestate heirs depending upon whether succession is by the will of the testator or by law. Legal heirs are not necessarily compulsory heirs but they may be so if the law reserves a legitime for them. xxx xxx xxx Verily, petitioners *are* legal heirs. Having been decreed under the rules on intestacy as entitled to succeed to the estate of the Catain spouses due to the absence of compulsory heirs, they now step into the shoes of the decedents. They should be considered as among the legal heirs contemplated by Section 119 as entitled to redeem the homestead. The above interpretation of "legal heirs" as contra-distinguished from the restrictive construction given it by the lower court is more in keeping with the salutary purpose behind the enactment of Section 119 and the jurisprudence laid down on the matter. Indeed, it is not far-fetched to arrive at a more liberal conclusion if the section is analyzed in accordance with its purpose x x x Respondents inherited the property from Asok, their husband and father, who in turn inherited it from his parents. Respondent Ella Gagarani Asok, as daughter-in-law of the patentees, can be considered as among the legal heirs who can repurchase the land in accordance with *Salenillas v. CA*. In that case, we allowed the daughter and son-in-law of the patentees to repurchase the property because this would be "more in keeping with the spirit of the law. We have time and again said that between two statutory interpretations, that which better serves the purpose of the law should prevail." Furthermore, the law must be liberally construed in order to carry out its purpose.

3. ID.; ID.; ID.; RESPONDENT HEIRS' RIGHT OF REDEMPTION HAS NOT YET PRESCRIBED IN CASE AT BAR; THE FIVE-YEAR PERIOD FIXED IN SECTION 119 BEGINS ONLY TO RUN FROM THE EXPIRATION OF THE ONE-YEAR REDEMPTION PERIOD. — Finally, petitioner asserts that even if respondents could be considered as being entitled to the right under Sec. 119, this had already prescribed because the period should be counted from the date of conveyance which means the date of sale and not the date of registration of the certificate of sale. This argument lacks merit. This is far from a novel issue. It was already resolved in *Rural Bank of Davao City, Inc. v. CA*: Thus, the rules on redemption in the case of an extrajudicial foreclosure of land acquired under free patent or homestead statutes may be summarized as follows: x x x If the land is mortgaged to parties other than rural banks, the mortgagor may redeem the property within one (1) year from the **registration of the certificate of sale** pursuant to Act No. 3135. If he fails to do so, he or his heirs may repurchase the property within five (5) years from the expiration of the redemption period also pursuant to Section 119 of the Public Land Act. There is no dispute that in extrajudicial foreclosures under Act 3135, the debtor or his or her successors-in-interest may redeem the property within one year. This redemption period should be reckoned from the date of registration of the certificate of sale. The five-year period fixed in Sec. 119 begins to run from the expiration of the one-year redemption period. Here, the certificate of sale was registered on December 24, 1992 and the one-year redemption period expired on December 24, 1993. Reckoned from that day, respondents had a five-year period, or until December 24, 1998, to exercise their right to repurchase under Sec. 119 of CA 141. Consequently, the CA was correct in holding that the complaint filed on May 15, 1998 was on time.

APPEARANCES OF COUNSEL

Eriosa & Cavalida Law Offices for petitioner.
Elpedio N. Cabasan for respondents.

R E S O L U T I O N

CORONA, *J.*:

This is a petition for review on *certiorari*[1] of the December 14, 2005 decision[2] and March 28, 2006 resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 64259.

The spouses Dionesio and Matea S. Asok owned several parcels of land. Upon their death on September 14, 1973 and February 22, 1982, respectively, their eleven children inherited the properties. One of the lands inherited was a lot covered by Original Certificate of Title (OCT) No. P-4272, a free patent issued on July 19, 1967, located at Pagawan, Manticao, Misamis Oriental with an area of 39,552 sq. m.[4]

Pursuant to the extrajudicial settlement of the estate with quitclaim executed by the spouses' children, the subject property was inherited by Denison Asok (Asok). As a result, OCT No. P-4272 was cancelled and Transfer Certificate of Title (TCT) No. T-9626 was issued and registered in his name on November 17, 1987.[5]

On August 31, 1989, Asok and his wife, respondent Ella Gagarani Asok, borrowed ₱100,000 from petitioner Development Bank of the Philippines, a government financial institution created and operating under EO 81,[6] as amended by RA 8523. They mortgaged the subject lot as collateral to guarantee payment

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

[2] Penned by Associate Justice Myrna Dimaranan-Vidal and concurred in by Associate Justices Romula V. Borja and Ricardo R. Rosario of the Twenty-Second Division, Mindanao Station in Cagayan de Oro City of the Court of Appeals; *rollo*, pp. 53-62.

[3] *Id.*, pp. 64-65.

[4] *Id.*, pp. 54, 69 and 172.

[5] *Id.*, pp. 43 and 55.

[6] The Revised Charter of the Development Bank of the Philippines dated December 3, 1986.

of the loan. On due date, however, they failed to pay the loan and the mortgage was extrajudicially foreclosed pursuant to Act 3135.[7] Petitioner emerged as the highest bidder with a bid of ₱163,297.[8]

On November 28, 1991, a certificate of sale was issued in favor of petitioner. This was registered on December 24, 1992.[9] On March 25, 1998, petitioner's ownership over the property was consolidated and TCT No. T-27172 was issued in its name.[10]

Meanwhile, Asok died on October 24, 1993 and was succeeded by his surviving spouse and children (respondents).[11]

On May 15, 1998, respondents filed a complaint for repurchase against petitioner in the Regional Trial Court (RTC) of Initao, Misamis Oriental, Branch 44, docketed as Civil Case No. 98-68. On July 3, 1998, they filed an amended complaint on learning that TCT No. T-9626 had been cancelled by TCT No. T-27172 issued in the name of petitioner. They invoked their right to repurchase the property under Sec. 119 of CA 141, as amended:[12]

> Sec. 119. Every conveyance of land acquired under the free patent or homestead provisions, when proper, shall be subject to repurchase by the applicant, his widow, or legal heirs, within a period of five years from date of the conveyance.

In a decision dated January 7, 1999, the RTC dismissed the complaint. Reconsideration was denied on February 3, 1999.[13] It ruled that the one-year period for redemption should be reckoned from the date of sale, *i.e.*, November 28, 1991. Then

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[7] An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgages.

[8] *Rollo*, pp. 40, 55, 69 and 27.

[9] *Id.*, p. 55.

[10] *Id.*, pp. 186-187.

[11] *Id.*, p. 55.

[12] *Id.*, pp. 55-56.

[13] *Id.*, p. 56.

the five-year period provided under Sec. 119 of CA 141 should be counted from the expiration of the redemption period, *i.e.*, November 28, 1992. Therefore, respondents had until November 28, 1997 to exercise their right to repurchase. However, the complaint was filed on May 15, 1998 which was beyond the prescribed period.[14]

Aggrieved, respondents appealed to the CA. In a decision dated December 14, 2005, the CA reversed and set aside the RTC decision. Reconsideration was denied in a resolution dated March 28, 2006. It held that the period of redemption started from the date of registration of the certificate of sale, *i.e.*, December 24, 1992, and not from the date of sale. Thus, respondents had until December 24, 1998 to repurchase the property and the complaint was seasonably filed.[15]

Hence this petition.

Petitioner raises the following issues: (1) whether Sec. 119 of CA 141 is applicable in this case; (2) whether respondents are the legal heirs of the patentees and (3) whether the right to repurchase has already prescribed.

The petition lacks merit.

Petitioner contends that respondents cannot claim the right under Sec. 119 which covers homesteads and free patents because the free patent issued to Asok's parents had already been cancelled and a new TCT had in fact been issued to him. Thus, the property mortgaged to it was no longer covered by a free patent but by a TCT. [16]

This contention deserves scant consideration.

The plain intent of Sec. 119 is to give the homesteader or patentee every chance to preserve and keep in the family the land that the State has gratuitously given him as a reward for

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[14] *Id.*, p. 31.

[15] *Id.*, pp. 59-61.

[16] *Id.*, pp. 44-45.

his labor in cleaning, developing and cultivating it.[17] Hence, the fact that the land had been inherited by the patentees' son (and a new title in his name issued) does not bring it outside the purview of Sec. 119. In fact, the policy behind the law is fulfilled because the land remains in the family of the patentee. As we explained in *Ferrer v. Mangente*:[18]

> The applicant for a homestead is to be given all the inducement that the law offers and is entitled to its full protection. Its blessings, however, do not stop with him. This is particularly so in this case as the appellee is the son of the deceased. There is no question then as to his status of being a legal heir. The policy of the law is not difficult to understand. The incentive for a pioneer to venture into developing virgin land becomes more attractive if he is assured that his effort will not go for naught should perchance his life be cut short. This is merely a recognition of how closely bound parents and children are in a Filipino family. Logic, the sense of fitness and of right, as well as pragmatic considerations thus call for continued adherence to the policy that not the individual applicant alone but those so closely related to him as are entitled to legal succession may take full advantage of the benefits the law confers.[19]

Having ruled that Sec. 119 is applicable to this case, we now go to the next issue: are respondents the "legal heirs" contemplated in the provision?

Petitioner argues that respondents are not the legal heirs of the patentees because respondents are merely their daughter-in-law and grandchildren.

We disagree. In line with the rationale behind Sec. 119, we reject a restricted definition of legal heirs. It is used in a broad sense and the law makes no distinctions.[20] In *Madarcos v. de la Merced*,[21] we held that:

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[17] *Fontanilla, Sr. v. CA*, 377 Phil. 382, 387 (1999).

[18] 151-A Phil. 427 (1973).

[19] *Id.*, p. 427.

[20] *Salenillas v. CA*, G.R. No. 78687, 31 January 1989, 169 SCRA 829, 835.

[21] G.R. No. L-39975, 30 June 1989, 174 SCRA 599.

The term "legal heirs" is used in Section 119 in a generic sense. It is broad enough to cover any person who is called to the succession either by provision of a will or by operation of law. Thus, legal heirs include both testate and intestate heirs depending upon whether succession is by the will of the testator or by law. Legal heirs are not necessarily compulsory heirs but they may be so if the law reserves a legitime for them.

xxx xxx xxx

Verily, petitioners *are* legal heirs. Having been decreed under the rules on intestacy as entitled to succeed to the estate of the Catain spouses due to the absence of compulsory heirs, they now step into the shoes of the decedents. They should be considered as among the legal heirs contemplated by Section 119 as entitled to redeem the homestead.

The above interpretation of "legal heirs" as contra-distinguished from the restrictive construction given it by the lower court is more in keeping with the salutary purpose behind the enactment of Section 119 and the jurisprudence laid down on the matter. Indeed, it is not far-fetched to arrive at a more liberal conclusion if the section is analyzed in accordance with its purpose xxx [22]

Respondents inherited the property from Asok, their husband and father, who in turn inherited it from his parents. Respondent Ella Gagarani Asok, as daughter-in-law of the patentees, can be considered as among the legal heirs who can repurchase the land in accordance with *Salenillas v. CA*.[23] In that case, we allowed the daughter and son-in-law of the patentees to repurchase the property because this would be "more in keeping with the spirit of the law. We have time and again said that between two statutory interpretations, that which better serves the purpose of the law should prevail."[24] Furthermore, the law must be liberally construed in order to carry out its purpose.[25]

Finally, petitioner asserts that even if respondents could be considered as being entitled to the right under Sec. 119, this

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[22] *Id.*, pp. 601-603.

[23] *Supra* note 20.

[24] *Id*.

[25] *Rivera v. Curamen,* 133 Phil. 454, 458 (1968).

had already prescribed because the period should be counted from the date of conveyance which means the date of sale and not the date of registration of the certificate of sale.

This argument lacks merit.

This is far from a novel issue. It was already resolved in *Rural Bank of Davao City, Inc. v. CA*:[26]

Thus, the rules on redemption in the case of an extrajudicial foreclosure of land acquired under free patent or homestead statutes may be summarized as follows: xxx If the land is mortgaged to parties other than rural banks, the mortgagor may redeem the property within one (1) year from the **registration of the certificate of sale** pursuant to Act No. 3135. If he fails to do so, he or his heirs may repurchase the property within five (5) years from the expiration of the redemption period also pursuant to Section 119 of the Public Land Act.[27]

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[26] G.R. No. 83992, 27 January 1993, 217 SCRA 554.

[27] *Id.*, p. 569. This doctrine had been reiterated in *Sta. Ignacia Rural Bank, Inc. v. CA*, G.R. No. 97872, 1 March 1994, 230 SCRA 513, 526 and *Heirs of Felicidad Canque v. CA*, G.R. No. 119184, 21 July 1997, 275 SCRA 741, 748-749.

Petitioner cites the case of *Lee Chuy Realty Corporation v. CA* (G.R. No. 104114, 4 December 1995, 250 SCRA 596) wherein it was stated:

"Under the free patent or homestead provisions of the Public Land Act a period of five (5) years from the date of conveyance is provided, the five-year period to be reckoned from the date of the sale and not from the date of registration in the office of the Register of Deeds. The redemption of extrajudicially foreclosed properties, on the other hand, is exercisable within one (1) year from the date of the auction sale as provided for in Act No. 3135." (*Id.*, p. 602, citing Peña, Narciso, *Philippine Law on Natural Resources*, 1992 Revised Ed., pp. 35, 37.)

However, this was merely *obiter dictum* because the issue in this case is whether a judicial action to redeem coupled with consignation of the price within the redemption period is equivalent to a formal offer to redeem under Art. 1623 in relation to Art. 1620 of the Civil Code.

Another case petitioner cites is *Mata v. CA* (376 Phil. 525 [1999]) wherein the Court held:

"The term "conveyance" imports the transfer of legal title from one person to another. It usually takes place upon the execution of the deed purporting to transfer the ownership of the land as the same is already valid and binding against the parties thereto even without the act of registration.

There is no dispute that in extrajudicial foreclosures under Act 3135, the debtor or his or her successors-in-interest may redeem the property within one year. This redemption period should be reckoned from the date of registration of the certificate of sale.[28] The five-year period fixed in Sec. 119 begins to run from the expiration of the one-year redemption period.[29] Here, the certificate of sale was registered on December 24, 1992 and the one-year redemption period expired on December 24, 1993. Reckoned from that day, respondents had a five-year period, or until December 24, 1998, to exercise their right to repurchase under Sec. 119 of CA 141. Consequently, the CA was correct in holding that the complaint filed on May 15, 1998 was on time.

WHEREFORE, the petition is hereby *DENIED*. Petitioner Development Bank of the Philippines is ordered to execute a deed of reconveyance in favor of respondents upon payment by the latter of the redemption price.

No costs.

SO ORDERED.

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

The registration is intended to protect the buyer against claims of third parties against subsequent alienations by the vendor, and is certainly not necessary to give effect, as between the parties, to their deed of sale. Thus, for the purpose of reckoning the five-year period to exercise the right to repurchase, the date of conveyance is construed to refer to the date of the execution of the deed transferring the ownership of the land to the buyer." (*Id.*, pp. 541-542.)

Again, this is not applicable because it did not involve an extrajudicial foreclosure sale.

[28] *Belisario v. Intermediate Appellate Court*, G.R. No. 73503, 30 August 1988, 165 SCRA 101, 107, citing *PNB v. CA et al.*, G.R. L-30831 and L-31176, Nov. 21, 1979, 94 SCRA 357, 371.

[29] *Id.*, citing *Manuel v. PNB et al.*, 101 Phil. 968 (1957).

[*] As replacement of Justice Antonio T. Carpio who is on official leave per Special Order No. 515.

SECOND DIVISION

[G.R. No. 173242. September 17, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ESPERIDION BALAIS,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ALIBI AND DENIAL; CANNOT PREVAIL OVER THE POSITIVE IDENTIFICATION OF THE ACCUSED. — Alibi as a defense is often viewed with suspicion, because it is inherently weak and unreliable. For this defense to prosper, it must preclude any doubt about the physical impossibility of the presence of the accused at the *locus criminis* or its immediate vicinity at the time of the incident. Moreover, Balais' alibi cannot prevail over the positive identification of eyewitness Roman Garsain who positively identified Balais as a perpetrator of the gruesome crime. Roman's testimony appears clear, straightforward and convincing. Positive identification of the accused, when categorical and without any ill motive on the part of the witness, prevails over alibi and denial which are negative and self-serving. It is axiomatic that positive identification by the prosecution witnesses of the accused as perpetrator of the crime is entitled to greater weight than his alibi and denial. In the face of positive identification, Balais' denial vanishes into thin air. Indeed denial, like alibi, is an insipid and weak defense, being easy to fabricate and difficult to disprove. A positive identification of the accused, when categorical, consistent and straightforward, and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over this defense. When there is no evidence to show any dubious reason or improper motive why a prosecution witness would testify falsely against an accused or falsely implicate him in a heinous crime, the testimony is worthy of full faith and credit.

2. CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; ESSENCE OF TREACHERY IS THE SUDDEN AND UNEXPECTED ATTACK, WITHOUT THE SLIGHTEST PROVOCATION ON THE PERSON ATTACKED; PROVEN IN CASE AT BAR BY THE FACT THAT VICTIM HAD NO

OPPORTUNITY TO DEFEND HIMSELF. — The essence of treachery is the sudden and unexpected attack, without the slightest provocation on the part of the person attacked. There is treachery when the attack on the victim was made without giving the latter warning of any kind and thus rendering him unable to defend himself from an assailant's unexpected attack. In *People v. Javier*, the defense asked this Court to discount the fact that the attack on the victim was executed treacherously, considering that the victim would have been able to see the approach of his would-be attackers. In refusing to discount the fact that treachery attended the crime, we reasoned that while a victim may have been warned of a possible danger to his person, in treachery, what is decisive is that the attack was executed in such a manner as to make it impossible for the victim to retaliate. The case at bar presents a similar scenario, for while the victim might have been able to look around after Balais stabbed him, still the victim had no opportunity to defend himself. In fact, he had no inkling that he would be the target of five to six persons who waited for him at a place where he would be utterly defenseless when he left Brgy. Picas. As testified to by eyewitness Roman Garsain, they were merely on their way to Brgy. Roosevelt when they were waylaid and attacked. Clearly, they were in a helpless position.

3. ID.; ID.; ID.; ID.; FROM THE NATURE, LOCATION AND NUMBER OF STABBING, HACKING, AMPUTATING WOUNDS SUSTAINED BY THE DECEASED, IT IS APPARENT THAT TREACHERY WAS ATTENDANT IN THE COMMISSION OF THE CRIME; EVEN IF THE ATTACK IS FRONTAL, THE SAME IS TREACHEROUS WHEN UNEXPECTED AND THE UNARMED VICTIM WOULD BE IN NO POSITION TO REPEL THE ATTACK OR AVOID IT. — For *alevosia* to qualify the crime to murder, it must be shown that: (a) the malefactor employed such means, method or manner of execution as to ensure his or her safety from the defensive or retaliatory acts of the victim; and (b) the said means, method and manner of execution were deliberately adopted. Treachery exists when any of the crimes against persons is committed with the employment of means, methods or forms that tend directly and specially to insure its execution, such that the offender faces no risk that may arise from the defense which the offended party might make. The essence of treachery is the swift and unexpected attack

on an unsuspecting and unarmed victim who does not give the slightest provocation. In the instant case, Francisco Ala was attacked by Balais and his companions when Francisco was on his way to Brgy. Roosevelt, Barugo, Leyte. Francisco sustained twenty hacking, stabbing, chopping and amputating wounds all over his body. The skull of the victim was completely cut, exposing the brain, with the left and right wrists completely amputated. From the nature, location and number of stabbing, hacking, amputating wounds sustained by the deceased, it is apparent that treachery was attendant in the commission of the crime. Even if the attack was frontal, the same is treacherous when unexpected and the unarmed victim would be in no position to repel the attack and avoid it.

4. ID.; AGGRAVATING CIRCUMSTANCES; NIGHTTIME; NOT APPLICABLE IN CASE AT BAR; NO SHOWING THAT APPELLANT AND HIS COMPANIONS DELIBERATELY SOUGHT NIGHTTIME AND TOOK ADVANTAGE THEREOF TO FACILITATE THE PERPETRATION OF THE CRIME OR INSURE ITS COMMISSION. — We agree with the Court of Appeals that the RTC erred in finding that the killing was attended by the aggravating circumstances of nighttime and conspiracy. On record, there is no showing that Balais and his companions deliberately sought nighttime and took advantage thereof to facilitate the perpetration of the crime or insure its commission. By and of itself, nighttime is not an aggravating circumstance. It becomes so only when it is especially sought by the offender and taken advantage of by him to facilitate the commission of the crime to insure his immunity from capture. Stated differently, in default of any showing that the peculiar advantage of nighttime was purposely and deliberately sought by the accused, the fact that the offense was committed at night will not suffice to sustain *nocturnidad*. To be aggravating, this circumstance must concur with the intent or design of the offender to capitalize on the intrinsic impunity afforded by the darkness of night. Moreover, in *People v. Necerio*, this Court held that nighttime should not have been considered a separate aggravating circumstance as this was absorbed by *alevosia*. Beyond question, the crime took place in a well-lighted area which, consequently, enabled a prosecution witness to identify Balais as one of the killers. As held by this

Honorable Court in several cases, nocturnity is not aggravating where the place of the commission of the crime was well illuminated.

5. ID.; PENALTY; CIVIL INDEMNITY; CASE AT BAR. — Since treachery qualified the killing to murder and there being no aggravating nor mitigating circumstance, the penalty imposed should have been *reclusion perpetua* and not death, applying Article 63 of the Revised Penal Code. As for damages, when death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases. The award for civil indemnity is mandatory and is granted to the heirs of the victim without need of proof other than the commission of the crime. Hence, the award of civil indemnity of ₱50,000.00 to the heirs of Francisco Ala is proper. The RTC correctly awarded moral damages in the amount of ₱50,000.00 in view of the violent death of the victim and the resultant grief to his family. The award of exemplary damages is also warranted because of the presence of the qualifying aggravating circumstance of treachery in the commission of the crime. This is in accordance with our ruling in *People v. Catubig* where we emphasized that insofar as the civil aspect of the crime is concerned, exemplary damages in the amount of ₱25,000.00 is recoverable if there is present an aggravating circumstance (whether qualifying or ordinary) in the commission of the crime.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

QUISUMBING, *J.*:

On appeal is the March 15, 2006 Decision[1] of the Court of Appeals in CA-G.R. CR. H.C. No. 00163, which affirmed with

[1] *Rollo*, pp. 5-14. Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Ramon M. Bato, Jr. and Enrico A. Lanzanas concurring.

modification the Decision[2] dated November 18, 2003 of the Regional Trial Court (RTC) of Carigara, Leyte, Branch 13, in Criminal Case No. 2593. The RTC had found the accused-appellant Esperidion Balais (Balais) guilty beyond reasonable doubt of the crime of murder and sentenced him to suffer the maximum penalty of death. The Court of Appeals had modified Balais' sentence to *reclusion perpetua*.

In an Information dated October 28, 1996, Balais was charged before the RTC as follows:

> That on or about the 20th day of May, 1989, in the municipality of Barugo, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with deliberate intent, with treachery and evident prem[e]ditation, did then and there wilfully, unlawfully and feloniously attack, assault, hack and stab one FRANCISCO ALA with long sharp pointed weapons ([*sundang*]) which the accused have provided themselves for the purpose, thereby inflicting upon the latter the following wounds, to wit:
>
> 1. Incised wound over the right parietal region extending from the right outer canthus, 22 cms. long up to behind the right ear x 2.5 cm. wide, cutting completely the skull, exposing the brain.
> 2. Incised wound below the No. 1 wound, extending the right parietal region to behind the right ear, 12 cms. x 1 cm., scalp deep.
> 3. Incised wound, chopping completely the tip of the nose and the upper mandible.
> 4. Incised wound over the right clavicular region, 2 cm. x 1 cm., muscle deep.
> 5. Incised wound over the right paraxillary region, 2 cms. x 1 cm. muscle deep.
> 6. Stabbed wound over the right mid chest, 7 cms. x 5 cms., penetrating thoracic cavity, wound lower lobe, lung, right.
> 7. Incised wound, linear in shape, cutting subcutaneous tissue, extending from the left inner angle of the clavicle up to the left chest, 18 cms. long.

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[2] CA *rollo*, pp. 16-30. Penned by Presiding Judge Crisostomo L. Garrido.

8. Wound in[ci]sed, over the left outer clavicular region, 9 cms. x 2 cms. muscle deep.
9. Stabbed wound over the left mid axillary region, lower chest, 2.5 cms. x 1 cm., penetrating thoracic cavity, directed medialwards, wounding the left lower lobe, lung.
10. Stabbed wound over the left iliac region, 6 cms. x 1.4 cms. directed upwards, cutting muscles only.
11. Chopping wound over the posterior aspect, upper 3rd arm, (L) subcutaneous deep.
12. Stabbed wound over the left lower 3rd arm, posterior aspect, 3.2 cms. x 2 cms., muscle deep.
13. Incised wound over the platero-lateral aspect, lower 3rd, arm, left, 4 cms. x 1.5 cms., muscle deep.
14. Incised wound, over the posterior aspect, upper 3rd forearm, left 4.2 cms. x 1.2 cm., muscle deep.
15. Complete amputating wound over the right wrist.
16. Incised wound over the lateral side, body, 12 cms[.] x 3.5 cms., muscle deep.
17. Stabbed wound over the right lumbar region, 4 cms. x 1 cm., directed upwards, muscle deep.
18. Amputating wound, complete over the left wrist.
19. Incised wound over the anterior aspect, lower 3rd, thigh, right 4.1 cms. x 0.5 cm. subcutaneous deep.
20. Incised wound over the posterior aspect, lower 3rd thigh, level of the right knee.

which wounds caused the death of said Francisco Ala.

CONTRARY TO LAW.[3]

A Warrant of Arrest was issued on January 6, 1997 for the arrest of Balais. However, on November 10, 1997, the case was archived due to the failure of the police to arrest the accused.[4] It was only on October 25, 2002[5] that Balais was arrested by virtue of an *Alias* Warrant of Arrest[6] issued by the

[3] Records, pp. 1-2.

[4] *Id.* at 13.

[5] *Id.* at 15.

[6] *Id.* at 17.

RTC on December 15, 1997. Consequently, the case was revived.

On November 4, 2002, Balais was arraigned. Balais pleaded not guilty to the charge of murder.[7] Thereafter, trial ensued.

The prosecution presented the following witnesses: Roman Garsain and Lucrecia Acebo, the nephew and the wife, respectively, of the deceased Francisco Ala, and Ricardo Negado, Municipal Civil Registrar of Barugo, Leyte.

Roman Garsain testified that on May 20, 1989, he was at the house of Brgy. Captain Elena Cubilla at Brgy. Picas, Barugo, Leyte. It was the eve of the fiesta of Brgy. Picas, and he was with his uncle, the deceased Francisco Ala, who was a resident of Brgy. Pongso, Barugo, Leyte. His uncle accompanied him because he will pick up a package from his child in Brgy. Picas. At about 11:30 p.m., they decided to go home because they were informed that Roman's wife was about to deliver their baby. On their way home, his uncle was walking ahead of him when they were accosted by Balais and other persons, numbering 5 to 6, whose names Roman does not know. Suddenly, Balais delivered hacking blows on his uncle. At that time, they were about 250 meters away from the house of Brgy. Captain Cubilla and 50 meters across the river which they had to cross. Roman testified that he saw Balais hit Francisco twice on the head and his other companions also delivered hacking blows. When Francisco retreated to the tall grasses, Balais and his companions followed him and continued hacking him. Roman narrated that he was able to see Balais because it was a moonlit night. Roman then ran away towards the house of Brgy. Captain Cubilla to ask for assistance. Brgy. Captain Cubilla sought the help of the police but when they returned to the place of the incident, they found Francisco already dead.[8]

Lucrecia Acebo testified that on May 20, 1989, she and her eight children were in their house in Brgy. Pongso, Barugo,

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[7] *Id.* at 20.

[8] *Id.* at 85. TSN, January 16, 2003, pp. 3-9.

Leyte sleeping when she was awakened by Antonio Elizondo who told her that her husband, Francisco Ala, was already dead. She cried and later went to the place of incident and took the body of her husband from the river and brought it to their house. She testified that she incurred ₱50,000.00 as funeral expenses.[9]

Ricardo Negado, the Municipal Civil Registrar of Barugo, Leyte, read in open court the entries relative to the death of Francisco Ala, including Francisco's cause of death which is irreversible shock, severe hemorrhage and multiple wounds.[10]

The Autopsy Report[11] dated May 23, 1989 and signed by Dr. Editha Decena-Tiu states that Francisco Ala's death was due to irreversible shock, severe hemorrhage and multiple wounds. The Post-Mortem Findings[12] confirmed twenty incised, stabbing and chopping wounds including complete amputating wounds over the victim's right and left wrists.

The defense presented the following witnesses: Lolito Andrales,[13] Arturo Balais and the accused himself.

Taken together, the testimonies of the defense witnesses established that on May 20, 1989 at about 2:00 p.m., Balais was in the house of Lolito Andrales having a drinking spree when he was informed that his friend, Noel Andrales, was stabbed. At about 5:00 p.m., Balais allegedly proceeded to the Carigara District Hospital where he found out that Noel Andrales was no longer there but had been referred to the EVRMC Hospital in Tacloban City. Balais allegedly proceeded to and arrived at EVRMC Hospital in Tacloban City at about 7:00 p.m. Since that time, he purportedly stayed there and attended to Noel Andrales until he left the hospital on May 22, 1989 at about 6:00 a.m.[14]

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[9] *Id.* at 86. TSN, February 10, 2003, pp. 3-5.

[10] *Id.* TSN, March 4, 2003, pp. 2-3.

[11] Exhibit "B", records.

[12] *Id*.

[13] Adrales in some parts of the record.

[14] *Rollo*, pp. 9-10.

On November 18, 2003, the RTC rendered a Decision finding Balais guilty of the crime of murder and imposed upon him the penalty of death. The dispositive portion of the decision reads:

> WHEREFORE, **premises considered, pursuant to Art. 248 of the Revised Penal Code as amended, and further amended by R.A. 7659 (The Death Penalty Law), the Court found ESPERIDION BALAIS, GUILTY, beyond reasonable doubt of the crime of MURDER and sentenced to suffer the maximum penalty of DEATH and to pay civil indemnity *ex* [*delicto*], to the heirs of Francisco Ala the sum of Seventy-Five Thousand (₱75,000.00) Pesos and pay temperate damages in the amount of Twenty-five Thousand (₱25,000.00); and**
>
> **Pay the Cost.**
>
> SO ORDERED.[15]

The case was automatically elevated to this Court because the penalty imposed was death. However, pursuant to our ruling in the case of *People v. Mateo*,[16] the case was transferred to the Court of Appeals.

The Court of Appeals, in a Decision promulgated on March 15, 2006, affirmed with modification the trial court's ruling and reduced the penalty to *reclusion perpetua*. The dispositive portion of the appellate court's decision reads:

> WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us **DISMISSING** the appeal filed in this case and **AFFIRMING with MODIFICATION** the Decision dated November 18, 2003 of the RTC in Carigara, Leyte in Criminal Case No. 2593 such that the accused-appellant is hereby sentenced to suffer the penalty of *reclusion perpetua* instead of death and he is hereby ordered to pay to the heirs of Francisco Ala the sum of ₱50,000.00 as civil indemnity *ex* [*delicto*] (*People vs. Samson*, 377 SCRA 25) instead of ₱75,000.00, the sum of ₱50,000.00 as moral damages, and the sum of ₱25,000.00 as exemplary damages.
>
> SO ORDERED.[17]

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[15] CA *rollo*, pp. 29-30.

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

[17] *Rollo*, pp. 13-14.

In his appeal, Balais has assigned the following as errors:

I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF MURDER.

II.

THE TRIAL COURT GRAVELY ERRED IN IMPOSING UPON THE ACCUSED-APPELLANT THE PENALTY OF DEATH.[18]

We shall now review the assailed decision, focusing on the abovecited assignment of errors. Simply stated, the issues are: (1) Is Balais guilty of murder? and (2) Is the penalty imposed on him correct?

Appellant Balais anchors his defense on alibi. He contends that at the time of the commission of the alleged crime on May 20, 1989 at approximately 11:30 p.m., he was at the EVRMC Hospital in Tacloban City purportedly attending to his friend, Noel Andrales, who was stabbed earlier that day.

His alibi was rejected by the RTC and the Court of Appeals. On this score, we are in agreement. The alibi cannot be sustained. Balais himself admitted that there were available means of transportation from Barugo, Leyte to Tacloban City at the time of the killing of Francisco Ala. It was shown that he himself rode a motorcycle from Barugo, Leyte to Tunga, Leyte, then on a bus going to Tacloban City. Indeed, one could take a round trip in a motor vehicle from Tacloban City to Barugo, Leyte and back to Tacloban City. Thus, it is not physically impossible for Balais to have visited Noel Andrales in the hospital on May 20, 1989 at about 7:00 p.m. and then go back to Brgy. Picas in Barugo, Leyte on the same night to commit the crime against the deceased Francisco Ala.

Alibi as a defense is often viewed with suspicion, because it is inherently weak and unreliable. For this defense to prosper, it must preclude any doubt about the physical impossibility of

[18] CA *rollo*, p. 42

the presence of the accused at the *locus criminis* or its immediate vicinity at the time of the incident.[19]

Moreover, Balais' alibi cannot prevail over the positive identification of eyewitness Roman Garsain who positively identified Balais as a perpetrator of the gruesome crime.

The eyewitness testimony of Roman is as follows:

xxx xxx xxx

Q: At about 11:30 o'clock in the evening while you and your uncle Francisco Ala were celebrating the [vespers] day, do you recall of any untoward incident that transpired thereat?
A: Yes sir, I remember.

Q: What was that untoward incident that transpired?
A: At the time 11:30 o'clock in the evening, we were about to go home and we were waylaid by a person.

Q: You said we were about to go home, were you in fact going home at 11:30 o'clock in the evening?
A: Yes sir, we are about to go home at that time because I was informed by a person that my wife was about to deliver a baby.

xxx xxx xxx

Q: Now, were there any other companion of yours other than your uncle Francisco Ala [on] your way home?
A: No sir.

Q: **You said that [on] your way home, you were accosted by a person, who was that person who waylaid or accosted you and your uncle Francisco Ala?**
A: **Esperidion Balais and others.**

Q: And who was that other person whom you are referring to that which (sic) was with Esperidion Balais?

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[19] *People v. Navales*, G.R. No. 135230, August 8, 2000, 337 SCRA 436, 449.

A: I was not able to identify their names but they were about 5 to 6 people.

x x x x x x x x x

Q: Could you describe the stone which (sic) they were hiding themselves?
A: No sir, they were not hiding but they were only sitting on the big stones and on the sides of the road are cogons and talahib grass, a little bit higher compared to an ordinary height of a person.

Q: Now, when this ambush incident came in, how far were you [from] the house of the Brgy. Captain?
A: About 250 meters because we had [to] cross the river.

x x x x x x x x x

Q: **And when you and your uncle [were] ambushed, where did Esperidion Balais place himself during that ambush?**
A: **Crossing to Brgy. Pongso, he was situated on the left side of the road.**

Q: **And what did Esperidion Balais do?**
A: **He delivered hacking blows.**

Q: **Upon whose person did he deliver hacking blows?**
A: **Francisco Ala.**

Q: **Was Francisco Ala hit?**
A: **Yes sir because before I ran I saw that he delivered 2 hacking blows.**

Q: **Was Francisco Ala hit by the hacking blows?**
A: **Yes sir, both hacking blows hit his head.**

Q: How about the other companion[s], what did the other person[s] do?
A: They both [sic] delivered hacking blows, my uncle retreated to the place where there were tall grasses and his companions

also went to the place where my uncle was and they all both (sic) delivered hacking blows, that's why my uncle's hands [were] decapitated (sic).

x x x x x x x x x

Q: **The incident happened about 11:30 o'clock in the evening, how come that you were able to identify the person of Esperidion Balais and his companion[s]?**
A: **Because the moon was bright and situated about 12:00 o'clock position.**

Q: **It was illuminated by virtue of a moonlight?**
A: **Yes sir.**

Q: **And for that reason you were able to identify Esperidion Balais?**
A: **Yes sir.**[20] (Emphasis supplied.)

x x x x x x x x x

Roman's testimony appears clear, straightforward and convincing. Positive identification of the accused, when categorical and without any ill motive on the part of the witness, prevails over alibi and denial which are negative and self-serving.

It is axiomatic that positive identification by the prosecution witnesses of the accused as perpetrator of the crime is entitled to greater weight than his alibi and denial.[21]

In the face of positive identification, Balais' denial vanishes into thin air. Indeed denial, like alibi, is an insipid and weak defense, being easy to fabricate and difficult to disprove. A positive identification of the accused, when categorical, consistent and straightforward, and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over this defense. When there is no evidence to show any dubious reason or improper motive why a prosecution witness would

[20] TSN, January 16, 2003, pp. 4-8.

[21] *People v. Manegdeg*, G.R. No. 115470, October 13, 1999, 316 SCRA 689, 704.

testify falsely against an accused or falsely implicate him in a heinous crime, the testimony is worthy of full faith and credit.[22]

Treachery was likewise correctly appreciated by the RTC and the Court of Appeals as qualifying the offense to murder in accordance with Article 248[23] of the Revised Penal Code. Treachery was alleged in the Information and proven during the course of the trial.

The essence of treachery is the sudden and unexpected attack, without the slightest provocation on the part of the person attacked. There is treachery when the attack on the victim was made without giving the latter warning of any kind and thus rendering him unable to defend himself from an assailant's unexpected attack.[24]

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[22] *People v. Bacungay*, G.R. No. 125017, March 12, 2002, 379 SCRA 22, 31.

[23] ART. 248. *Murder*.— Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:

1. **With treachery**, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

2. In consideration of a price, reward or promise.

3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.

5. With evident premeditation.

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse. (*As amended by R.A. 7659.*) (Emphasis supplied.)

[24] *People v. Ronato*, G.R. No. 124298, October 11, 1999, 316 SCRA 433, 441-442.

In *People v. Javier*, [25] the defense asked this Court to discount the fact that the attack on the victim was executed treacherously, considering that the victim would have been able to see the approach of his would-be attackers. In refusing to discount the fact that treachery attended the crime, we reasoned that while a victim may have been warned of a possible danger to his person, in treachery, what is decisive is that the attack was executed in such a manner as to make it impossible for the victim to retaliate.[26] The case at bar presents a similar scenario, for while the victim might have been able to look around after Balais stabbed him, still the victim had no opportunity to defend himself. In fact, he had no inkling that he would be the target of five to six persons who waited for him at a place where he would be utterly defenseless when he left Brgy. Picas. As testified to by eyewitness Roman Garsain, they were merely on their way to Brgy. Roosevelt when they were waylaid and attacked. Clearly, they were in a helpless position.[27]

For *alevosia* to qualify the crime to murder, it must be shown that: (a) the malefactor employed such means, method or manner of execution as to ensure his or her safety from the defensive or retaliatory acts of the victim; and (b) the said means, method and manner of execution were deliberately adopted. Treachery exists when any of the crimes against persons is committed with the employment of means, methods or forms that tend directly and specially to insure its execution, such that the offender faces no risk that may arise from the defense which the offended party might make. The essence of treachery is the swift and unexpected attack on an unsuspecting and unarmed victim who does not give the slightest provocation.[28]

In the instant case, Francisco Ala was attacked by Balais and his companions when Francisco was on his way to Brgy.

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[25] G.R. No. 84449, March 4, 1997, 269 SCRA 181.

[26] *Id.* at 196.

[27] *People v. Ronato, supra* at 442.

[28] *People v. Bermas*, G.R. Nos. 76416 and 94312, July 5, 1999, 309 SCRA 741, 778.

Roosevelt, Barugo, Leyte. Francisco sustained twenty hacking, stabbing, chopping and amputating wounds all over his body. The skull of the victim was completely cut, exposing the brain, with the left and right wrists completely amputated. From the nature, location and number of stabbing, hacking, amputating wounds sustained by the deceased, it is apparent that treachery was attendant in the commission of the crime. Even if the attack was frontal, the same is treacherous when unexpected and the unarmed victim would be in no position to repel the attack and avoid it.

We therefore affirm the ruling of the RTC, which was sustained by the Court of Appeals, finding Balais guilty of murder.

As to the second issue of whether or not the penalty of death should be imposed on him, we agree with the Court of Appeals that the RTC erred in finding that the killing was attended by the aggravating circumstances of nighttime and conspiracy.

On record, there is no showing that Balais and his companions deliberately sought nighttime and took advantage thereof to facilitate the perpetration of the crime or insure its commission.[29] By and of itself, nighttime is not an aggravating circumstance. It becomes so only when it is especially sought by the offender and taken advantage of by him to facilitate the commission of the crime to insure his immunity from capture. Stated differently, in default of any showing that the peculiar advantage of nighttime was purposely and deliberately sought by the accused, the fact that the offense was committed at night will not suffice to sustain *nocturnidad*. To be aggravating, this circumstance must concur with the intent or design of the offender to capitalize on the intrinsic impunity afforded by the darkness of night.[30]

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[29] *People v. Bato*, No. L-23405, December 29, 1967, 21 SCRA 1445, 1448.

[30] *People v. Boyles*, No. L-15308, May 29, 1964, 11 SCRA 88, 94.

Moreover, in *People v. Necerio*,[31] this Court held that nighttime should not have been considered a separate aggravating circumstance as this was absorbed by *alevosia*.[32]

Beyond question, the crime took place in a well-lighted area which, consequently, enabled a prosecution witness to identify Balais as one of the killers. As held by this Honorable Court in several cases, nocturnity is not aggravating where the place of the commission of the crime was well illuminated.[33]

Since treachery qualified the killing to murder and there being no aggravating nor mitigating circumstance, the penalty imposed should have been *reclusion perpetua* and not death, applying Article 63[34] of the Revised Penal Code.

As for damages, when death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for

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[31] G.R. No. 98430, July 10, 1992, 211 SCRA 415.

[32] *Id.* at 422.

[33] *People v. Rosario*, G.R. No. 108789, July 18, 1995, 246 SCRA 658, 670-671; *People v. Bato*, *supra* note 29.

[34] ART. 63. *Rules for the application of indivisible penalties*. — In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

3. When the commission of the act is attended by some mitigating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.

4. When both mitigating and aggravating circumstances attended the commission of the act, the court shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation. (Emphasis supplied.)

the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.[35]

The award for civil indemnity is mandatory and is granted to the heirs of the victim without need of proof other than the commission of the crime. Hence, the award of civil indemnity of ₱50,000.00 to the heirs of Francisco Ala is proper.[36]

The RTC correctly awarded moral damages in the amount of ₱50,000.00 in view of the violent death of the victim and the resultant grief to his family.[37]

The award of exemplary damages[38] is also warranted because of the presence of the qualifying aggravating circumstance of treachery in the commission of the crime. This is in accordance with our ruling in *People v. Catubig*[39] where we emphasized that insofar as the civil aspect of the crime is concerned, exemplary damages in the amount of ₱25,000.00 is recoverable if there is present an aggravating circumstance (whether qualifying or ordinary) in the commission of the crime.[40]

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[35] *People v. Tubongbanua*, G.R. No. 171271, August 31, 2006, 500 SCRA 727, 742.

[36] *People v. Piliin*, G.R. No. 172966, February 8, 2007, 515 SCRA 207, 218.

[37] *People v. Tubongbanua*, *supra* at 743.

[38] CIVIL CODE OF THE PHILIPPINES,

SECTION 5. — *Exemplary or Corrective Damages*

ART. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

ART. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

[39] G.R. No. 137842, August 23, 2001, 363 SCRA 621.

[40] *People v. Samson*, G.R. No. 124666, February 15, 2002, 377 SCRA 25, 38.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR. H.C. No. 00163 promulgated on March 15, 2006 affirming with modification the Decision dated November 18, 2003 of the Regional Trial Court of Carigara, Leyte, Branch 13, in Criminal Case No. 2593 is *AFFIRMED*. Appellant Esperidion Balais is found *GUILTY* beyond reasonable doubt of *MURDER* as defined in Article 248 of the Revised Penal Code, qualified by treachery, with no aggravating or mitigating circumstances and he is sentenced to suffer the penalty of *Reclusion Perpetua*. The appellant is further *ORDERED* to pay the heirs of Francisco Ala the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages, all with interest at the legal rate of six percent (6%) per annum from this date until fully paid.

No pronouncement as to costs.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and *Brion, JJ.*, concur.

SECOND DIVISION

[G.R. No. 173283. September 17, 2008]

SCENARIOS, INC. and/or RHOTZIV BAGO, *petitioners, vs.* **JELLY VINLUAN,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; NATIONAL LABOR RELATIONS COMMISSION RULES OF PROCEDURE; SERVICE OF NOTICES; SERVICE BY REGISTERED MAIL IS COMPLETE AFTER FIVE (5) DAYS FROM THE DATE OF FIRST NOTICE OF THE POSTMASTER IN THE EVENT THAT THE ADDRESSEE FAILS TO CLAIM

HIS REGISTERED MAIL FROM THE POST OFFICE; CASE AT BAR. — Service of notices and resolutions, including summons, in cases filed before the labor arbiters is governed by Sections 5 and 6 of Rule III of the New NLRC Rules of Procedure. Following the explicit language of the above-quoted Section 5, it has been held that service by registered mail is complete after five (5) days from the date of first notice of the postmaster in the event that the addressee fails to claim his registered mail from the post office. Moreover, it is a fundamental rule that unless the contrary is proven, official duty is presumed to have been performed regularly and judicial proceedings regularly conducted. This presumption of the regularity of the quasi-judicial proceedings before the NLRC includes the presumption of regularity of service of summons and other notices. It is therefore incumbent upon herein petitioners to rebut that legal presumption with competent and proper evidence, for the return of the registered mail as "unclaimed" is *prima facie* proof of the facts indicated therein. From the records, we see that the envelope containing the summons addressed to Jess Jimenez, Scenarios, Inc./GMA Complex, EDSA, corner Timog Avenue, Diliman, Quezon City 1104, is marked "RETURN TO SENDER" and "UNCLAIMED" and has the notations "SECOND NOTICE DATE 8/14" and "LAST NOTICE DATE 9/6." There is also an unsigned Registry Return Receipt attached to the said envelope. It appears that Jess Jimenez has been notified at least twice. At the very least, petitioners had five (5) days from the 14 August 2000 notice within which to claim the summons. As petitioners failed to do so, the service was deemed complete at the end of the said five-day period.

2. ID.; ID.; ID.; ID.; ID.; RECEIPT OF NOTICES BY PETITIONERS, ESTABLISHED. — Scrutinizing the records, we find that excluding the mandatory conference scheduled on 25 August 2000, five (5) dates were set by the labor arbiter for the hearing of the case: 25 August 2000, 5 September 2000, 2 October 2000, 17 October 2000, and 17 November 2000. Per the handwritten notation in the notices, they had all been sent by registered mail to either Jess Jimenez and/or Rhotziv P. Bago and to respondent. While no registry return receipts were attached to the notices sent to petitioners, we note that certifications from Quezon City Central Post Office indicate that at least two (2) of the notices were delivered at the address indicated therein,

one received on 17 October 2000 and another on 25 October 2000. Both were received by a certain Mr. M. Sulit. The records furthermore indicate that petitioners had been furnished a copy of the decision of the labor arbiter. As indicated in the certification issued by the Quezon City Central Post Office, a notice of judgment/ decision was served by registered mail on petitioners, delivered on 5 June 2001 and received by a certain S/G Cuevas.

3. ID.; ID.; ID.; ID.; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY, STANDS; THE POSTAL OFFICE CERTIFICATIONS ARE *PRIMA FACIE* PROOF THAT THE PROCESSES HAD BEEN DELIVERED TO AND RECEIVED BY PETITIONERS; CASE AT BAR. — Turning to another point, there is enough evidence showing that petitioners had been duly notified of the hearings and of the decision. The postal office certifications are *prima facie* proof that the said processes had been delivered to and received by petitioners. The presumption of regularity in the performance of official duty stands. It is incumbent upon petitioners to prove otherwise, a task which they failed to do. Moreover, despite petitioners' assertion that the summons and notices had not been served on any of the authorized officers or agents of the corporation, they do not however deny that the same had been properly sent to their business address. In fact, even the writ of execution was served at the very same address written on the summons, notices and decision. Technical rules of procedure are not strictly applied in quasi-judicial proceedings; only substantial compliance is required. The constitutional requirement of due process exacts that the service be such as may reasonably be expected to give the notice desired. Petitioners' bare assertion that the notices had not been received requires substantiation by competent evidence, as mere allegation is neither equivalent to proof nor evidence. Besides, the registry return receipt states that "a registered article must not be delivered to anyone but the addressee, or upon the addressee's written order." Thus, the persons who received the notice are presumably able to present a written authorization to receive the same and we can assume that the notices are duly received in the ordinary course of events. It is a legal presumption, born of wisdom and experience, that official duty has been regularly performed; that the proceedings of a judicial tribunal are regular and valid, and that judicial acts and duties have been and will be duly and properly performed. Whether or not petitioners deliberately ignored the

summons and notices or whether those who actually received the same failed to show petitioners the summons and notices due to lack of instruction or out of negligence is no longer important to us. The registry return receipt for the summons marked "UNCLAIMED" and the certifications from the Quezon City Central Post Office that two of the notices and a copy of the decision had been delivered to and received in the premises of petitioners' office are, under the prevailing rules, enough to convince us that service of said processes and decision was completed.

APPEARANCES OF COUNSEL

Belo Gozon Elma Parel Asuncion and Lucila for petitioners.
Public Attorney's Office for respondent.

D E C I S I O N

TINGA, *J.*:

The instant petition assails the Decision[1] and Resolution[2] of the Court of Appeals dated 25 October 2005 and 21 June 2006, respectively, in CA-G.R. SP No. 85387 reinstating the decision of the labor arbiter which ordered the reinstatement of respondent Jelly Vinluan without loss of seniority rights, full backwages and payment of other money claims.

On 8 August 2000, respondent, a former setman of Scenarios, Inc., filed a complaint for illegal dismissal, underpayment of salaries and nonpayment of benefits against petitioners Scenarios, Inc. and Rhotziv Bago and a certain Jess Jimenez.[3] Summons were issued and sent by registered mail to "Mr. Jess Jimenez" with address at "Scenario, Inc./GMA Complex, EDSA, corner Timog Avenue, Diliman, Quezon City 1104."[4] However, the summons

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[1] *Rollo,* pp. 27-44; Both penned by Associate Justice Regalado E. Maambong, with Associate Justices Rodrigo V. Cosico and Lucenito N. Tagle, concurring.

[2] *Id.* at 46-47.

[3] *Id.* at 51-52.

[4] *Id.* at 53.

envelope bore the mark "RETURN TO SENDER" and "UNCLAIMED."[5] Notices of hearing were also sent by registered mail separately to Rhotziv Bago and/or Jess Jimenez, both addressed at "Scenarios, Inc., GMA Complex, EDSA, corner Timog Avenue, Diliman, Quezon City 1104."[6] Petitioners failed to appear during the scheduled hearings. As a result, their right to file their position paper was deemed waived by the labor arbiter.[7] On 17 November 2000, respondent filed his position paper.

In his Decision[8] dated 26 April 2001, Labor Arbiter Salimathar Nambi ordered the reinstatement of respondent to his former position without loss of seniority rights and with full backwages from the time of dismissal up to the time of actual reinstatement, or, if not feasible, the payment of separation pay of one (1) month salary per year of service.[9] Subsequently, a writ of execution[10] dated 6 July 2001 was served on Scenarios, Inc. Claiming that it was the only time that they became aware of the proceedings before the labor arbiter, petitioners filed a Notice and Memorandum of Appeal[11] with the National Labor Relations Commission (NLRC).

On 20 August 2003, after finding no proof that petitioners received the summons, the notices of hearing and the notice of the decision, the NLRC issued an order remanding the case to the labor arbiter for proper service of summons and appropriate proceedings.[12] Respondent sought reconsideration of the order but his motion was denied by the NLRC.[13]

Respondent then filed a petition for *certiorari* before the Court of Appeals assailing the aforesaid orders of the NLRC.

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[5] *Id.* at 54.

[6] *Id.* at 77-80. The Notices covered separate hearing dates, to wit: 5 September 2000, 2 October 2000, 17 October 2000 and 17 November 2000.

[7] Constancia dated 17 November 2000, NLRC records, p. 30.

[8] *Rollo*, pp. 55-58.

[9] *Id.* at 55-58.

[10] *Id.* at 84-86.

[11] *Id.* at 61-72.

[12] *Id.* at 91-93.

[13] *Id.* at 94-95.

The Court of Appeals granted the petition and ruled that petitioners failed to overcome the presumption that the notices and summons had been regularly sent and received in the ordinary course of events.[14] Relying on the certification of the Quezon City Central Post Office that petitioners had received a copy of the labor arbiter's decision on 5 June 2001, the Court of Appeals ruled that petitioners' appeal with the NLRC was belatedly filed on 2 August 2001.[15] As a result of these findings the Court of Appeals reinstated the decision of the labor arbiter, but deleted the name "Tess Jimenez" from the dispositive portion since said person was not impleaded in the petition.[16]

Petitioners posit that they were denied due process when the labor arbiter decided the case even in the absence of sufficient proof that the summons and notices were delivered to them.[17] They maintain that there was no proof that the notices were sent to the addressees, neither was there a certification from the postmaster that notices were delivered and received by them. Moreover, they argue that there was no valid service of summons on Scenarios, Inc., considering that no proof that summons were received by persons authorized to receive them, since Jess Jimenez, the person named in the summons, is a complete stranger to Scenarios, Inc.[18]

The petition has no merit.

Service of notices and resolutions, including summons, in cases filed before the labor arbiters is governed by Sections 5 and 6 of Rule III of the New NLRC Rules of Procedure.[19] The said provisions read:

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[14] *Id.* at 40.

[15] *Id.* at 40. Under Art. 223 of the Labor Code, an appeal should be filed within ten (10) days from receipt of the decision.

[16] *Id.* at 42.

[17] *Id.* at 12.

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

[19] As amended By Resolution 3-99, Series of 1999, which took effect on 1 January 2000.

Section 5. *Service of Notices and Resolutions*.—(a) Notices or summons and copies of orders, resolutions or decisions shall be served on the parties to the case personally by the bailiff or duly authorized public officer within three (3) days from receipt thereof or by registered mail; Provided that in special circumstances, service of summons maybe effected in accordance with the pertinent provisions of the Rules of Court, Provided further that in cases of decisions and final awards, copies thereof shall be served on both parties and their counsel by registered mail, provided further that in cases where a party to a case or his counsel on record personally seeks service of the decision upon inquiry thereon, service to said party shall be deemed effected upon actual receipt thereof; provided finally, that in case where the parties are so numerous, service shall be made on counsel and upon such number of complainants as may be practicable, which shall be considered substantial compliance with Article 224(a) of the Labor Code, as amended. (Emphasis supplied)

xxx xxx xxx.

Section 6. *Proof and completeness of service*.—The return is *prima facie* proof of the facts indicated therein. Service by registered mail is complete upon receipt by the addressee or his agent; but if the addressee fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect after such time. (Emphasis supplied)

Following the explicit language of the above-quoted Section 5, it has been held that service by registered mail is complete after five (5) days from the date of first notice of the postmaster in the event that the addressee fails to claim his registered mail from the post office.[20] Moreover, it is a fundamental rule that unless the contrary is proven, official duty is presumed to have been performed regularly and judicial proceedings regularly conducted. This presumption of the regularity of the quasi-judicial proceedings before the NLRC includes the presumption of regularity of service of summons and other notices.[21] It is therefore incumbent upon herein petitioners to rebut that legal presumption with competent

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[20] *Columbus Philippines Bus Corporation v. NLRC*, 417 Phil. 81, 96 (2001), citing *Masagana Concrete Products v. NLRC*, G.R. No. 106916, 313 SCRA 576, 586-587 (1999).

[21] *Id*.

and proper evidence, for the return of the registered mail as "unclaimed" is *prima facie* proof of the facts indicated therein.

From the records, we see that the envelope containing the summons addressed to Jess Jimenez, Scenarios, Inc./GMA Complex, EDSA, corner Timog Avenue, Diliman, Quezon City 1104, is marked "RETURN TO SENDER" and "UNCLAIMED" and has the notations "SECOND NOTICE DATE 8/14" and "LAST NOTICE DATE 9/6."[22] There is also an unsigned Registry Return Receipt attached to the said envelope.[23] It appears that Jess Jimenez has been notified at least twice.[24] At the very least, petitioners had five (5) days from the 14 August 2000 notice within which to claim the summons. As petitioners failed to do so, the service was deemed complete at the end of the said five-day period.

However, petitioners allege that Jess Jimenez, the person named in the summons, is a complete stranger to Scenarios, Inc., and thus no valid service of summons was made on Scenarios, Inc. This is a factual matter which the Court is not in a position to resolve. Besides, the name of respondent Scenarios, Inc. itself is mentioned on the face of the letter envelope. In any case, when the summons was sent, the labor arbiter could only rely on the name and address indicated by respondent in the complaint. There was no way to determine, at that point, whether Jess Jimenez is an employee or an officer of Scenarios, Inc.

Petitioners likewise maintain that there was no valid service of the notices of hearing and that they did not receive the said notices. They also add that they did not receive a copy of the labor arbiter's decision. The records tell us a different story.

Scrutinizing the records, we find that excluding the mandatory conference scheduled on 25 August 2000, five (5) dates were set by the labor arbiter for the hearing of the case: 25 August 2000, 5 September 2000, 2 October 2000, 17 October 2000,

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[22] NLRC records, p. 7.

[23] *Id.* at 6.

[24] 14 August and 16 September 2000, per the summons envelope. The date of the first notice is not indicated.

and 17 November 2000.[25] Per the handwritten notation in the notices, they had all been sent by registered mail to either Jess Jimenez and/or Rhotziv P. Bago and to respondent. While no registry return receipts were attached to the notices sent to petitioners, we note that certifications from Quezon City Central Post Office indicate that at least two (2) of the notices were delivered at the address indicated therein, one received on 17 October 2000 and another on 25 October 2000.[26] Both were received by a certain Mr. M. Sulit.

The records furthermore indicate that petitioners had been furnished a copy of the decision of the labor arbiter. As indicated in the certification issued by the Quezon City Central Post Office, a notice of judgment/decision was served by registered mail on petitioners, delivered on 5 June 2001 and received by a certain S/G Cuevas.[27]

Turning to another point, there is enough evidence showing that petitioners had been duly notified of the hearings and of the decision. The postal office certifications are *prima facie* proof that the said processes had been delivered to and received by petitioners. The presumption of regularity in the performance of official duty stands. It is incumbent upon petitioners to prove otherwise, a task which they failed to do.

Moreover, despite petitioners' assertion that the summons and notices had not been served on any of the authorized officers or agents of the corporation, they do not however deny that the same had been properly sent to their business address. In fact, even the writ of execution was served at the very same address written on the summons, notices and decision. Technical rules of procedure are not strictly applied in quasi-judicial proceedings; only substantial compliance is required. The constitutional requirement of due process exacts that the service

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[25] NLRC Records, pp. 4-17.

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

[27] *Id.* at 78.

be such as may reasonably be expected to give the notice desired.[28] Petitioners' bare assertion that the notices had not been received requires substantiation by competent evidence, as mere allegation is neither equivalent to proof nor evidence.[29] Besides, the registry return receipt states that "a registered article must not be delivered to anyone but the addressee, or upon the addressee's written order." Thus, the persons who received the notice are presumably able to present a written authorization to receive the same and we can assume that the notices are duly received in the ordinary course of events. It is a legal presumption, born of wisdom and experience, that official duty has been regularly performed; that the proceedings of a judicial tribunal are regular and valid, and that judicial acts and duties have been and will be duly and properly performed.[30] Whether or not petitioners deliberately ignored the summons and notices or whether those who actually received the same failed to show petitioners the summons and notices due to lack of instruction or out of negligence is no longer important to us. The registry return receipt for the summons marked "UNCLAIMED" and the certifications from the Quezon City Central Post Office that two of the notices and a copy of the decision had been delivered to and received in the premises of petitioners' office are, under the prevailing rules, enough to convince us that service of said processes and decision was completed.

WHEREFORE, the Decision and Resolution of the Court of Appeals dated 25 October 2005 and 21 June 2006, respectively, in CA-G.R. SP No. 85387 are *AFFIRMED*.

Costs against petitioners.

SO ORDERED.

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

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[28] *Toyota Cubao, Inc. v. CA*, 346 Phil. 181, 188 (1997), citing *Boticano v. Chu, Jr.*, 148 SCRA 541.

[29] *Masagana Concrete Products v. NLRC*, 372 Phil. 459, 472 (1999).

[30] *Id*.

THIRD DIVISION

[G.R. No. 173808. September 17, 2008]

FERNANDA ARBIAS, *petitioner, vs.* **THE REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; REGALIAN DOCTRINE; BURDEN OF PROOF IN OVERCOMING THE PRESUMPTION OF STATE OWNERSHIP OF LANDS OF THE PUBLIC DOMAIN IS ON THE PERSON APPLYING FOR REGISTRATION. — Under the Regalian doctrine, all lands of the public domain belong to the State, and the State is the source of any asserted right to ownership of land and charged with the conservation of such patrimony. This same doctrine also states that all lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State. Hence, the burden of proof in overcoming the presumption of State ownership of lands of the public domain is on the person applying for registration. The applicant must show that the land subject of the application is alienable or disposable.

2. ID.; ID.; PROPERTY REGISTRATION DECREE; REQUIREMENTS NECESSARY FOR JUDICIAL CONFIRMATION OF IMPERFECT TITLE; POSSESSION OF SUBJECT LAND UNDER A *BONA FIDE* CLAIM OF OWNERSHIP FROM 12 JUNE 1945 OR EARLIER AND FACT THAT THE LAND IS CLASSIFIED AS ALIENABLE AND DISPOSABLE LAND OF THE PUBLIC DOMAIN MUST BE ESTABLISHED. — Section 14, paragraph 1 of Presidential Decree No. 1529 states the requirements necessary for a judicial confirmation of imperfect title to be issued. In accordance with said provision, persons 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 12 June 1945 or earlier, may file in the proper trial court an application for registration of title to land, whether personally or through their duly authorized representatives. Hence, the applicant for registration under said statutory provision must

specifically prove: 1) possession of the subject land under a *bona fide* claim of ownership from 12 June 1945 or earlier; and 2) the classification of the land as an alienable and disposable land of the public domain.

3. ID.; ID.; ID.; PETITIONER MISERABLY FAILED TO DISCHARGE THE BURDEN OF PROOF IMPOSED ON HER BY LAW; TAX DECLARATIONS ARE NOT CONCLUSIVE EVIDENCE OF OWNERSHIP OR OF THE RIGHT TO POSSESS LAND WHEN NOT SUPPORTED BY ANY OTHER EVIDENCE; THE SURVEY PLAN AND TECHNICAL DESCRIPTION ARE COMPLETELY INEFFECTUAL IN PROVING ACTUAL POSSESSION OF THE SUBJECT PROPERTY IN THE CONCEPT OF AN OWNER FOR THE NECESSARY PERIOD. — In the case at bar, petitioner miserably failed to discharge the burden of proof imposed on her by the law. *First*, the documentary evidence that petitioner presented before the RTC did not in any way prove the length and character of her possession and those of her predecessor-in-interest relative to the subject property. The Deed of Sale merely stated that the vendor of the subject property, Jardeleza, was the true and lawful owner of the subject property, and that she sold the same to petitioner on 12 March 1993. The Deed did not state the duration of time during which the vendor (or her predecessors-in-interest) possessed the subject property in the concept of an owner. Petitioner's presentation of tax declarations of the subject property for the years 1983, 1989, 1991 and 1994, as well as tax receipts of payment of the realty tax due thereon, are of little evidentiary weight. Well-settled is the rule that tax declarations and receipts are not conclusive evidence of ownership or of the right to possess land when not supported by any other evidence. The fact that the disputed property may have been declared for taxation purposes in the names of the applicants for registration or of their predecessors-in-interest does not necessarily prove ownership. They are merely *indicia* of a claim of ownership. The Survey Plan and Technical Description of the subject property submitted by petitioner merely plot the location, area and boundaries thereof. Although they help in establishing the identity of the property sought to be registered, they are completely ineffectual in proving that petitioner and her predecessors-in-interest actually possessed the subject property in the concept of an owner for the necessary period.

4. ID.; ID.; ID.; THE BARE CLAIM OF PETITIONER THAT THE LAND APPLIED FOR HAD BEEN IN THE POSSESSION OF HER PREDECESSOR-IN-INTEREST FOR 30 YEARS DOES NOT CONSTITUTE THE "WELL-NIGH INCONTROVERTIBLE" AND "CONCLUSIVE" EVIDENCE REQUIRED IN LAND REGISTRATION. — The testimonial evidence adduced by petitioner likewise fails to persuade us. The statements made by petitioner during her testimony, by themselves, are nothing more than self-serving, bereft of any independent and objective substantiation. As correctly found by the Court of Appeals, petitioner cannot thereby rely on her assertions to prove her claim of possession in the concept of an owner for the period required by law. Petitioner herself admitted that she only possessed the property for six years. The bare claim of petitioner that the land applied for had been in the possession of her predecessor-in-interest, Jardeleza, for 30 years, does not constitute the "well-nigh inconvertible" and "conclusive" evidence required in land registration.

5. ID.; ID.; ID.; NO EVIDENCE ON RECORD TO ESTABLISH THAT THE SUBJECT PROPERTY HAS BEEN CLASSIFIED AS ALIENABLE AND DISPOSABLE LAND; AN APPLICANT CANNOT RELY ON THE NOTATION IN THE BLUEPRINT MADE BY A SURVEYOR-GEODETIC ENGINEER INDICATING THAT THE PROPERTY INVOLVED IS ALIENABLE AND DISPOSABLE. — Neither does the evidence on record establish to our satisfaction that the subject property has been classified as alienable and disposable. To prove this requirement, petitioner merely points to an annotation in the lower left portion of the blueprint of the subject property, which recites: ALL CORNERS ARE OLD POINTS. **ALIENABLE AND DISPOSABLE** PROJ. 44 BLK-1 PER LC MAP. 1020 APPROVED BY THE DIRECTOR OF FORESTRY ON JULY 26, 1933. COORDINATES OF BLLM#1 N=1266998.39, E=516077.19 LAT 11° 27' 27.4" N, LONG 123° 08' 9.9" E. Petitioner's reliance on the above inscription is misguided. In *Menguito v. Republic*, we held that an applicant cannot rely on the notation in the blueprint made by a surveyor-geodetic engineer indicating that the property involved is alienable and disposable land. We emphasized therein that — For the original registration of title, the applicant must overcome the presumption that the land sought to be registered forms part of the public domain. Unless public land is shown to have

been reclassified or alienated to a private person by the State, it remains part of the inalienable public domain. Indeed, "occupation thereof in the concept of owner, no matter how long, cannot ripen into ownership and be registered as a title." To overcome such presumption, incontrovertible evidence must be shown by the applicant. Absent such evidence, the land sought to be registered remains inalienable. In the present case, petitioners cite a surveyor-geodetic engineer's notation x x x indicating that the survey was inside alienable and disposable land. Such notation does not constitute a positive government act validly changing the classification of the land in question. Verily, a mere surveyor has no authority to reclassify lands of the public domain. By relying solely on the said surveyor's assertion, petitioners have not sufficiently proven that the land in question has been declared alienable. In the absence of incontrovertible evidence to prove that the subject property is already classified as alienable and disposable, we must consider the same as still inalienable public domain.

6. ID.; ID.; ID.; FACT THAT NO THIRD PERSON APPEARED BEFORE THE TRIAL COURT TO OPPOSE PETITIONER'S APPLICATION FOR REGISTRATION IS IRRELEVANT; THE BURDEN OF PROOF IMPOSED BY LAW ON PETITIONER DOES NOT SHIFT. — The fact that no third person appeared before the RTC to oppose the petitioner's application for registration is also irrelevant. The burden of proof imposed by law on petitioner does not shift. Indeed, a person who seeks the registration of title to a piece of land on the basis of possession by himself and his predecessors-in-interest must prove his claim by clear and convincing evidence, *i.e.*, he must prove his title and should not rely on the absence or weakness of the evidence of the oppositors. Furthermore, the court has the bounden duty, even in the absence of any opposition, to require the petitioner to show, by a preponderance of evidence and by positive and absolute proof, so far as possible, that he is the owner in fee simple of the lands which he is attempting to register.

7. ID.; ID.; ID.; ESTOPPEL DOES NOT OPERATE AGAINST THE STATE OR ITS AGENTS. — Petitioner cannot also invoke estoppel on the part of the OSG as to bar the latter from challenging the decision of the RTC. In land registration cases, the Solicitor General is not merely the principal, but the only

legal counsel of the government. The City Prosecutor appeared as counsel for the respondent before the RTC only after being deputized by the OSG. Being the representative of the Republic of the Philippines, the OSG, thus, falls within the purview of the doctrine which provides that estoppel does not operate against the state or its agents. Although exceptions from this rule are allowed, as when there is a need to uphold a policy adopted to protect the public or to protect the citizens from dishonorable, capricious and ignoble acts by the government, the same are not present in the instant case. In fact, public policy demands that the respondent, through the OSG, must deter dubious applications for registration of real property and protect within all legal means the inalienable public domain which rightfully belongs only to the State.

8. ID.; ID.; ID.; NO COMPELLING REASON TO GRANT PETITIONER A SECOND CHANCE BY REMANDING THE CASE TO THE TRIAL COURT FOR FURTHER RECEPTION OF EVIDENCE. — This Court cannot subscribe to the submission of the petitioner that the Court of Appeals erred in dismissing the petitioner's appeal outright instead of remanding the same to the RTC for further proceedings. The cases cited by petitioner, namely *Abaoag v. Director of Lands* and *Republic v. Sayo*, are not on all fours with the instant case. In *Abaoag,* we remanded the case notwithstanding the failure of the applicants to prove their entitlement to the registration of their property because the public land laws prevailing at that time granted a presumption of ownership in favor of the actual occupants of the particular property and against the State; while in *Sayo,* the case was ordered remanded for further proceedings since it was proven that an invalid compromise agreement was entered into between parties and non-parties to the land registration case, without the participation of the Solicitor General, and that some of the parties therein failed to adduce evidence to prove their land ownership. None of the above circumstances appear to be present in the case presently before us. Simply, petitioner failed to prove that she had an imperfect title to the subject property, which could be confirmed by registration. She had every opportunity before the RTC to present all the evidence in support of her application for registration, and neither the Court of Appeals nor this Court has the duty, absent any compelling reason, to grant her a

second chance by remanding the case to the RTC for further reception of evidence.

APPEARANCES OF COUNSEL

Real Brotarlo & Real Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review on *Certiorari*[1] filed by Fernanda Arbias seeking to annul and set aside the Decision[2] and Resolution[3] of the Court of Appeals dated 2 September 2005 and 19 July 2006, respectively, in CA-G.R. CV No. 72120. The appellate court, in its assailed Decision, reversed the Decision[4] dated 26 June 2000 of the Regional Trial Court (RTC) of Iloilo City, Branch 34, in Land Registration Case (LRC) No. N-1025, which granted the application of petitioner Fernanda Arbias to register the subject property under the provisions of Presidential Decree No. 1529 (Property Registration Decree); and in its assailed Resolution, denied petitioner's Motion for Reconsideration.

The factual antecedents of the case are as follows:

On 12 March 1993, Lourdes T. Jardeleza (Jardeleza) executed a Deed of Absolute Sale[5] selling to petitioner, married to Jimmy Arbias (Jimmy), a parcel of unregistered land situated at Poblacion, Estancia, Iloilo, and identified as Cadastral Lot No. 287 of the

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[1] *Rollo*, pp. 8-23.

[2] Penned by Associate Justice Enrico A. Lanzanas with Associate Justices Arsenio J. Magpale and Sesinando E. Villon, concurring; *rollo*, pp. 24-33.

[3] *Rollo*, pp. 34-35.

[4] Penned by Judge Julio L. Villanueva; *rollo*, pp. 80-82.

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

Estancia Cadastre (subject property), for the sum of ₱33,000.00. According to the Deed, the subject property was residential and consisted of 600 square meters, more or less.

Three years thereafter, on 17 June 1996, petitioner filed with the RTC a verified Application for Registration of Title[6] over the subject property, docketed as LRC Case No. N-1025. She attached to her application the Tracing Cloth with Blue Print copies, the Deed of Absolute Sale involving the subject property, the Surveyor's Certification, the Technical Description of the land, and Declaration of Real Property in the name of petitioner and her spouse Jimmy.[7]

On 3 September 1996, the RTC transmitted the application with all the attached documents and evidences to the Land Registration Authority (LRA),[8] pursuant to the latter's function as the central repository of records relative to original registration of lands.[9] On 13 April 1998, the LRA submitted its report to the RTC that petitioner had already complied with all the requirements precedent to the publication.[10]

Subsequently, the RTC ordered that its initial hearing of LRC Case No. N-1025 be held on 17 February 1999.[11]

On 6 January 1999, the respondent Republic of the Philippines, through the Office of the Solicitor General (OSG), filed its Notice of Appearance and deputized the City Prosecutor of Iloilo City to appear on its behalf before the RTC in LRC Case No. N-1025. Thereafter, the respondent filed an Opposition to petitioner's application for registration of the subject property.[12]

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[6] *Id.* at 38-41.

[7] *Id.* at 41.

[8] *Id.* at 157.

[9] See Section 6, paragraph 2(c) of Presidential Decree No. 1529.

[10] *Rollo*, p. 157.

[11] *Id.* at 157.

[12] *Id.* at 25.

The RTC then ordered that its initial hearing of LRC Case No. N-1025 be re-set on 23 July 1999.[13] The LRA, thus, issued on 16 March 1999 a Notice of Initial Hearing.[14] The Notice of Initial Hearing was accordingly posted and published.[15]

At the hearing on 23 July 1999 before the RTC, petitioner took the witness stand where she identified documentary exhibits and testified as to her purchase of the subject property, as well as her acts of ownership and possession over the same. The owners of the lots adjoining the subject property who attended the hearing were Hector Tiples, who opposed the supposed area of the subject property; and Pablo Garin, who declared that he had no objection thereto.[16]

When its turn to present evidence came, respondent, represented by the City Prosecutor, manifested that it had no evidence to contradict petitioner's application for registration. It merely reiterated its objection that the area of the subject property, as stated in the Deed of Sale in favor of petitioner

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[13] *Id.* at 158.

[14] *Id.*

[15] The Office of the Provincial Sheriff certified the posting of the Notice of Initial Hearing of LRC Case No. N-1025 in a conspicuous place on the subject property and on the bulletin board of the Municipal Building of the Municipality of Estancia, Iloilo, where the subject property is situated. (*Rollo*, p. 158.) The National Printing Office issued a Certificate of Publication dated 29 June 1999, which stated that the Notice of Initial Hearing relative to LRC No. N-1025 was published in the Official Gazette issued on 21 June 1999 and the last issue had been officially released on 29 June 1999. (*Rollo*, p. 159.) The LRA itself issued a certification dated July 1999 on sending copies of the Notice of Initial Hearing by registered mail on 21 May 1999 to all adjoining owners and to every person named in the Notice whose address is known and to all government agencies and offices concerned. (*Rollo*, p. 158.) An Affidavit of Publication from *Balita*, a newspaper of general circulation in the Philippines, through its Advertising Manager Ponciano C. Sillano, was also submitted to the RTC attesting that a Notice of Initial Hearing of LRC No. N-1025 was published in said newspaper on 29 May 1999 (*Rollo*, pp. 158-159), with the attached newspaper clippings of the Notice as published in the said newspaper (*Rollo*, p. 142).

[16] *Rollo*, p. 25.

and the Tax Declarations covering the property, was only 600 square meters, while the area stated in the Cadastral Survey was 717 square meters.[17] The case was then submitted for decision.

On 26 June 2000, the RTC ruled on petitioner's application for registration in this wise:

> As to the issue that muniments of title and/or tax declarations and tax receipts/payments do not constitute competent and sufficient evidence of ownership, the same cannot hold through (sic) anymore it appearing from the records that the muniments of titles as presented by the herein applicant are coupled with open, adverse and continuous possession in the concept of an owner, hence, it can be given greater weight in support of the claim for ownership. The [herein petitioner] is a private individual who is qualified under the law being a purchaser in good faith and for value. The adverse, open, continuous and exclusive possession of the land in the concept of owner of the [petitioner] started as early as in 1992 when their predecessors in interest from Lourdes Jardeleza then to the herein [petitioner] without any disturbance of their possession as well as claim of ownership. Hence, uninterrupted possession and claim of ownership has ripen (sic) into an incontrovertible proof in favor of the [petitioner].
>
> Premises considered, the Application of Petitioner Fernanda Arbias to bring Lot 287 under the operation of the Property Registration Decree is GRANTED.
>
> Let therefore a DECREE be issued in favor of the [petitioner] Fernanda Arbias, of legal age, married to Jimmy Arbias and a resident of Golingan St. Poblacion, Estancia, Iloilo and after the Decree shall have been issued, the corresponding Certificate of Title over the said parcel of land (Lot 287) shall likewise be issued in favor of the petitioner Fernanda Arbias after the parties shall have paid all legal fees due thereon.[18]

Respondent, through the OSG, filed with the RTC a Notice of Appeal[19] of the above Decision. In its Brief[20] before the Court of Appeals, respondent questioned the granting by the RTC of the application, notwithstanding the alleged non-approval

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[17] *Id.* at 26.

[18] *Id.* at 81-82.

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

[20] *Id.* at 58-78.

of the survey plan by the Director of the Land Management Bureau (LMB); the defective publication of the notice of initial hearing; and the failure of petitioner to prove the continuous, open, exclusive and notorious possession by their predecessor-in-interest.

On 2 September 2005, the Court of Appeals rendered the assailed Decision in which it decreed, thus:

> WHEREFORE, the Decision of the trial court dated June 26, 2000 is hereby REVERSED and SET ASIDE. Accordingly, the application for original registration of title is hereby DISMISSED.[21]

The appellate court declared that the Certification of the blueprint of the subject lot's survey plan issued by the Regional Technical Director of the Lands Management Services (LMS) of the Department of Environment and Natural Resources (DENR) was equivalent to the approval by the Director of the LMB, inasmuch as the functions of the latter agency was already delegated to the former. The blueprint copy of said plan was also certified[22] as a duly authentic, true and correct copy of the original plan, thus, admissible for the purpose for which it was offered.

The Court of Appeals likewise brushed aside the allegation that the Notice of Initial Hearing posted and published was defective for having indicated therein a much bigger area than that described in the tax declaration for the subject property. The appellate court ruled that the property is defined by its boundaries and not its calculated area, and measurements contained in tax declarations are merely based on approximation, rather than computation. At any rate, the Court of Appeals reasoned further that the discrepancy in its land area did not cast doubt on the identity of the subject property.

It was on the issue of possession, however, that the Court of Appeals digressed from the ruling of the RTC. The appellate

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[21] *Id.* at 31.

[22] By Fabiola C. Cabarot, Chief of the Records Section of the Surveys Division, LMS, DENR in Iloilo City (*Rollo*, p. 27).

court found that other than petitioner's own general statements and tax declarations, no other evidence was presented to prove her possession of the subject property for the period required by law. Likewise, petitioner failed to establish the classification of the subject property as an alienable and disposable land of the public domain.

Petitioner sought reconsideration[23] of the afore-mentioned Decision, but the Court of Appeals denied the same in a Resolution[24] dated 19 July 2006.

Petitioner now comes to us *via* the instant Petition, raising the following issues:

I.

WHETHER OR NOT THE PUBLIC RESPONDENT COURT OF APPEALS ERRED IN NOT HOLDING THAT THE OFFICE OF THE SOLICITOR GENERAL IS ESTOPPED FROM ASSAILING THE DECISION OF THE COURT *A QUO* AS IT DID NOT OBJECT TO PETITIONER'S EVIDENCE AND PRESENT PROOF TO REFUTE THE SAME.

II.

WHETHER OR NOT THE PUBLIC RESPONDENT COURT OF APPEALS ERRED IN DEPARTING FROM THE WELL SETTLED RULE THAT THE CONCLUSIONS OF THE COURT *A QUO*, WHICH IS IN BEST POSITION TO OBSERVE THE DEMEANOR, CONDUCT AND ATTITUDE OF THE WITNESS AT THE TRIAL, ARE GIVEN MORE WEIGHT AND MUCH MORE THAT THE OFFICE OF THE SOLICITOR GENERAL DID NOT PRESENT EVIDENCE FOR THE REPUBLIC IN THE COURT BELOW.

III.

WHETHER OR NOT THE PUBLIC RESPONDENT COURT OF APPEALS ERRED IN NOT HOLDING THAT THE LOT IN QUESTION CEASES (sic) TO BE PUBLIC LAND IN VIEW OF PETITIONER'S AND THAT OF HER PREDECESSOR'S-IN-INTEREST POSSESSION *EN CONCEPTO DE DUENO* FOR MORE THAN THIRTY (30) YEARS.

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[23] *Rollo*, pp. 98-105.

[24] *Id.* at 34-35.

IV.

WHETHER OR NOT THE PUBLIC RESPONDENT COURT OF APPEALS ERRED IN DISMISSING OUTRIGHT PETITIONER'S APPLICATION FOR TITLING WITHOUT REMANDING THE INSTANT CASE FIRST TO THE COURT *A QUO* FOR FURTHER PROCEEDINGS PURSUANT TO THE RULINGS OF THIS HONORABLE COURT IN THE CASES OF *VICENTE ABAOAG VS. DIRECTOR OF LANDS*, 045 Phil. 518 AND *REPUBLIC OF THE PHILIPPINES VS. HON. SOFRONIO G. SAYO ET. AL.*, G.R. NO. 60413, OCTOBER 31, 1990.

Petitioner ascribes error on the part of the Court of Appeals for failing to conclude that she and her predecessor-in-interest possessed the subject property in the concept of an owner for more than 30 years and that the said property had already been classified as an alienable and disposable land of the public domain. Petitioner contends that her documentary and testimonial evidence were sufficient to substantiate the said allegations, as correctly and conclusively pronounced by the RTC. Petitioner likewise points out that no third party appeared before the RTC to oppose her application and possession other than respondent. Respondent, then represented by the City Prosecutor, did not even adduce any evidence before the RTC to rebut petitioner's claims; thus, respondent, presently represented by the OSG, is now estopped from assailing the RTC Decision. Petitioner finally maintains that assuming her possession was indeed not proven under the circumstances, the Court of Appeals should have remanded the case to the trial court for further proceedings, instead of dismissing it outright.

This Court finds the petition plainly without merit.

Under the Regalian doctrine, all lands of the public domain belong to the State, and the State is the source of any asserted right to ownership of land and charged with the conservation of such patrimony. This same doctrine also states that all lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State.[25] Hence, the burden of

[25] *Spouses Reyes v. Court of Appeals*, 356 Phil. 606, 622 (1998).

proof in overcoming the presumption of State ownership of lands of the public domain is on the person applying for registration. The applicant must show that the land subject of the application is alienable or disposable.[26]

Section 14, paragraph 1 of Presidential Decree No. 1529[27] states the requirements necessary for a judicial confirmation of imperfect title to be issued. In accordance with said provision, persons 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 12 June 1945 or earlier, may file in the proper trial court an application for registration of title to land, whether personally or through their duly authorized representatives.

Hence, the applicant for registration under said statutory provision must specifically prove: 1) possession of the subject land under a *bona fide* claim of ownership from 12 June 1945 or earlier; and 2) the classification of the land as an alienable and disposable land of the public domain.

In the case at bar, petitioner miserably failed to discharge the burden of proof imposed on her by the law.

First, the documentary evidence that petitioner presented before the RTC did not in any way prove the length and character of her possession and those of her predecessor-in-interest relative to the subject property.

The Deed of Sale[28] merely stated that the vendor of the subject property, Jardeleza, was the true and lawful owner of

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[26] *Id*.

[27] Sec. 14. *Who may apply*.— The following persons may file in the proper Court of First Instance 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.

[28] Exhibit "M" for Petitioner, *rollo*, pp. 36-37.

the subject property, and that she sold the same to petitioner on 12 March 1993. The Deed did not state the duration of time during which the vendor (or her predecessors-in-interest) possessed the subject property in the concept of an owner.

Petitioner's presentation of tax declarations of the subject property for the years 1983, 1989, 1991 and 1994, as well as tax receipts of payment of the realty tax due thereon, are of little evidentiary weight. Well-settled is the rule that tax declarations and receipts are not conclusive evidence of ownership or of the right to possess land when not supported by any other evidence. The fact that the disputed property may have been declared for taxation purposes in the names of the applicants for registration or of their predecessors-in-interest does not necessarily prove ownership. They are merely *indicia* of a claim of ownership.[29]

The Survey Plan[30] and Technical Description[31] of the subject property submitted by petitioner merely plot the location, area and boundaries thereof. Although they help in establishing the identity of the property sought to be registered, they are completely ineffectual in proving that petitioner and her predecessors-in-interest actually possessed the subject property in the concept of an owner for the necessary period.

The following testimonial evidence adduced by petitioner likewise fails to persuade us:

> Direct Examination of Fernanda Arbias:
> Atty. Rey Padilla:
>
> Q: You said you bought this property from the Spouses Jardeleza. Can you tell us how long did they possess the subject property?
>
> A: 30 years.

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[29] *Director of Lands v. Intermediate Appellate Court*, G.R. No. 73246, 2 March 1993, 219 SCRA 339, 347-348.

[30] Exhibit "E" for Petitioner, *rollo*, pp. 42-43.

[31] Exhibit "F" for Petitioner, *rollo*, p. 44.

Q: And you said you bought this property sometime in the year 1993. After 1993, do you know if anybody filed claim or ownership of the subject property?

A: No, Sir.

Q: Can you tell us if anybody disturbed your possession in the subject property?

A: No, Sir.

Q: Are you possessing the subject property in concept of the owner open and continuous?

A: Yes, Sir.

Q: What are the improvements you introduced in the subject property?

A: I have the intention to put up my house.[32]

Cross Examination of Fernanda Arbias:
Prosecutor Nelson Geduspan:

Q: How long have you been in open, continuous, exclusive possession of this property?

A: Almost six (6) years.

Q: And before that it is Lourdes Jardeleza who is in open, continuous and in actual possession of the property?

A: Yes, Sir.

Q: Of your own knowledge, aside from this predecessor Lourdes Jardeleza, has anybody had any claim of the property?

A: No, Sir.[33]

Quite obviously, the above-quoted statements made by petitioner during her testimony, by themselves, are nothing more than self-serving, bereft of any independent and objective substantiation. As correctly found by the Court of Appeals, petitioner cannot thereby rely on her assertions to prove her

[32] *Rollo*, p. 29.

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

claim of possession in the concept of an owner for the period required by law. Petitioner herself admitted that she only possessed the property for six years. The bare claim of petitioner that the land applied for had been in the possession of her predecessor-in-interest, Jardeleza, for 30 years, does not constitute the "well-nigh inconvertible" and "conclusive" evidence required in land registration.[34]

Second, neither does the evidence on record establish to our satisfaction that the subject property has been classified as alienable and disposable. To prove this requirement, petitioner merely points to an annotation in the lower left portion of the blueprint of the subject property, which recites:

ALL CORNERS ARE OLD POINTS.

ALIENABLE AND DISPOSABLE PROJ. 44 BLK-1 PER LC MAP. 1020 APPROVED BY THE DIRECTOR OF FORESTRY ON JULY 26, 1933. COORDINATES OF BLLM#1 N=1266998.39, E=516077.19 LAT 11°27' 27.4" N, LONG 123°08' 9.9" E.[35] (Emphasis supplied.)

Petitioner's reliance on the above inscription is misguided. In *Menguito v. Republic*,[36] we held that an applicant cannot rely on the notation in the blueprint made by a surveyor-geodetic engineer indicating that the property involved is alienable and disposable land. We emphasized therein that –

> For the original registration of title, the applicant must overcome the presumption that the land sought to be registered forms part of the public domain. Unless public land is shown to have been reclassified or alienated to a private person by the State, it remains part of the inalienable public domain. Indeed, "occupation thereof in the concept of owner, no matter how long, cannot ripen into ownership and be registered as a title." To overcome such presumption, incontrovertible evidence must be shown by the applicant. Absent such evidence, the land sought to be registered remains inalienable.

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[34] *Republic v. Lee*, 274 Phil. 284, 291 (1991), cited in *Turquesa v. Valera*, 379 Phil. 618, 631 (2000).

[35] *Rollo*, p. 31.

[36] 401 Phil. 274 (2000).

In the present case, petitioners cite a surveyor-geodetic engineer's notation x x x indicating that the survey was inside alienable and disposable land. Such notation does not constitute a positive government act validly changing the classification of the land in question. Verily, a mere surveyor has no authority to reclassify lands of the public domain. By relying solely on the said surveyor's assertion, petitioners have not sufficiently proven that the land in question has been declared alienable.[37]

In the absence of incontrovertible evidence to prove that the subject property is already classified as alienable and disposable, we must consider the same as still inalienable public domain.

The fact that no third person appeared before the RTC to oppose the petitioner's application for registration is also irrelevant. The burden of proof imposed by law on petitioner does not shift. Indeed, a person who seeks the registration of title to a piece of land on the basis of possession by himself and his predecessors-in-interest must prove his claim by clear and convincing evidence, *i.e.*, he must prove his title and should not rely on the absence or weakness of the evidence of the oppositors.[38] Furthermore, the court has the bounden duty, even in the absence of any opposition, to require the petitioner to show, by a preponderance of evidence and by positive and absolute proof, so far as possible, that he is the owner in fee simple of the lands which he is attempting to register.[39]

Petitioner cannot also invoke estoppel on the part of the OSG as to bar the latter from challenging the decision of the RTC. In land registration cases, the Solicitor General is not merely the principal, but the only legal counsel of the government.[40] The City Prosecutor appeared as counsel for the respondent before the RTC only after being deputized by the OSG. Being the representative of the Republic of the Philippines, the OSG, thus, falls within the purview of the

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[37] *Id.* at 287-288.

[38] *Republic of the Philippines v. Intermediate Appellate Court*, 317 Phil. 374, 376 (1984), cited in *Edaño v. Court of Appeals*, G.R. No. 83995, 4 September 1992, 213 SCRA 585, 593.

[39] *Maloles v. Director of Lands*, 25 Phil. 548, 552-553 (1913), cited in *Edaño v. Court of Appeals*, *id.*

[40] *Republic v. Sayo*, G.R. No. 60413, 31 October 1990, 191 SCRA 71, 76.

doctrine which provides that estoppel does not operate against the state or its agents.[41] Although exceptions from this rule are allowed, as when there is a need to uphold a policy adopted to protect the public or to protect the citizens from dishonorable, capricious and ignoble acts by the government,[42] the same are not present in the instant case. In fact, public policy demands that the respondent, through the OSG, must deter dubious applications for registration of real property and protect within all legal means the inalienable public domain which rightfully belongs only to the State.

Finally, this Court cannot subscribe to the submission of the petitioner that the Court of Appeals erred in dismissing the petitioner's appeal outright instead of remanding the same to the RTC for further proceedings. The cases cited by petitioner, namely *Abaoag v. Director of Lands*[43] and *Republic v. Sayo*,[44] are not on all fours with the instant case.

In *Abaoag*, we remanded the case notwithstanding the failure of the applicants to prove their entitlement to the registration of their property because the public land laws[45] prevailing at that

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[41] See *Estate of the late Jesus S. Yujuico v. Republic*, G.R. No. 168661, 26 October 2007, 537 SCRA 513, 529-530.

[42] Estoppels against the public are little favored. They should not be invoked except in rare and unusual circumstances, and may not be invoked when they would operate to defeat the effective operation of a policy adopted to protect the public. They must be applied with circumspection and should be applied only in those special cases in which the interests of justice clearly require it. Nevertheless, the government must not be allowed to deal dishonorably or capriciously with its citizens, and must not play an ignoble part or do a shabby thing; and subject to limitations x x x. The doctrine of equitable estoppel may be invoked against public authorities as well as against private individuals. *(Republic v. Court of Appeal*s, 361 Phil. 319, 329 [1999].)

[43] 45 Phil. 518 (1923).

[44] *Supra* note 40.

[45] The Court stated in the above case that, upon a review of the Royal Decrees of Spain, it reached the conclusion that:

Spain did not assume to convert all the native inhabitants of the Philippines into trespassers of the land which they occupied, or even tenants at will. (Book 4, Title 12, Law 14 of the *Recopilación de Leyes de las Indias*.) In the Royal

time granted a presumption of ownership in favor of the actual occupants of the particular property and against the State; while in *Sayo*, the case was ordered remanded for further proceedings since it was proven that an invalid compromise agreement was entered into between parties and non-parties to the land registration case, without the participation of the Solicitor General, and that some of the parties therein failed to adduce evidence to prove their land ownership.

None of the above circumstances appear to be present in the case presently before us. Simply, petitioner failed to prove that she had an imperfect title to the subject property, which could be confirmed by registration. She had every opportunity before the RTC to present all the evidence in support of her application for registration, and neither the Court of Appeals nor this Court has the duty, absent any compelling reason, to grant her a second chance by remanding the case to the RTC for further reception of evidence.

WHEREFORE, premises considered, the Petition is *DENIED*. The Decision of the Court of Appeals dated 2 September 2005 in CA-G.R. CV No. 72120 is hereby *AFFIRMED*. Costs against the petitioner.

SO ORDERED.

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

Cédula of October 15, 1754, we find the following: "Where such possessors shall not be able to produce title deeds, it shall be sufficient if they shall show that (sic) ancient possession as a valid title by prescription." We may add that every presumption of ownership under the public land laws of the Philippine Islands is in favor of the one actually occupying the land for many years, and against the Government which seeks to deprive him of it, for failure to comply with provisions of subsequently enacted registration land [acts]. (*Abaoag v. Director of Lands, supra* note 43 at 521-522.)

[*] Justice Presbitero J. Velasco, Jr. was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 3 October 2007.

SECOND DIVISION

[G.R. No. 174569. September 17, 2008]

CHINA BANKING CORPORATION, SPOUSES JOEY & MARY JEANNIE CASTRO and SPOUSES RICHARD & EDITHA NOGOY, *petitioners, vs.* **BENJAMIN CO, ENGR. DALE OLEA and THREE KINGS CONSTRUCTION & REALTY CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUCTION; JUSTIFIED ONLY IN CLEAR CASES, FREE FROM DOUBT OR DISPUTE. — It is settled that the grant of a preliminary mandatory injunction rests on the sound discretion of the court, and the exercise of sound judicial discretion by the lower court should not be interfered with except in cases of manifest abuse. It is likewise settled that a court should avoid issuing a writ of preliminary mandatory injunction which would effectively dispose of the main case without trial. In the case at bar, petitioners base their prayer for preliminary mandatory injunction on Section 44 of Act No. 496 (as amended by Republic Act No. 440), Section 50 of Presidential Decree 1529, and their claim that Lot No. 3783-E is a road lot. To be entitled to a writ of preliminary injunction, however, the petitioners must establish the following requisites: (a) the invasion of the right sought to be protected is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and permanent necessity for the writ to prevent serious damage. Since a preliminary mandatory injunction commands the performance of an act, it does not preserve the *status quo* and is thus more cautiously regarded than a mere prohibitive injunction. Accordingly, the issuance of a writ of preliminary mandatory injunction is justified only in a clear case, free from doubt or dispute. When the complainant's right is thus doubtful or disputed, he does not have a clear legal right and, therefore, the issuance of injunctive relief is improper.

2. ID.; ID.; ID.; THE ABSENCE OF A SHOWING THAT PETITIONERS HAVE AN URGENT AND PARAMOUNT NEED FOR A WRIT OF PRELIMINARY INJUNCTION TO PREVENT IRREPARABLE DAMAGE NEGATES THEIR ENTITLEMENT TO SUCH WRIT. — The best evidence thus that Lot No. 3783-E is a road lot would be a memorandum to that effect annotated on the certificate of title covering it. Petitioners presented TCT No. 185702-R covering Lot No. 3783-E in the name of Sunny Acres Realty Management Corporation which states that the registration is subject to "the restrictions imposed by Section 44 of Act 496, as amended by Rep. Act No. 440." The annotation does not explicitly state, however, that Lot No. 3783-E is a road lot. In any event, TCT No. 185702-R had been cancelled and in its stead was issued TCT No. 247778-R which, in turn, was cancelled by TCT No. 269758-R in the name of respondent Co and his siblings. TCT No. 247778-R and respondent Co's TCT No. 269758-R do not now contain the aforementioned memorandum annotated on TCT No. 185702-R re the registration being "subject to restrictions imposed by Section 44 of Act 496, as amended by Republic Act No. 440." Given the immediately foregoing circumstances, there is doubt on whether Lot No. 3783-E is covered by a road lot. While petitioners correctly argue that certain requirements must be observed before encumbrances, in this case the condition of the lot's registration as being subject to the law, may be discharged and before road lots may be appropriated gratuity assuming that the lot in question was indeed one, TCT Nos. 247778-R and 269758-R enjoy the presumption of regularity and the legal requirements for the removal of the memorandum annotated on TCT No. 185702-R are presumed to have been followed. At all events, given the following factual observations of the trial court after conducting an ocular inspection of Lot 3783-E, *viz*: "x x x The ocular inspection showed that [petitioners] will not lose access to their residences. As a matter of fact, lot 3783-E is not being used as an access road to their residences and there is an existing secondary road within St. Benedict Subdivision that serves as the main access road to the highway. With respect to the blocking of ventilation and light of the residence of the Sps. Castro, suffice it to state that they are not deprived of light and ventilation. The perimeter wall of the defendants is situated on the left side of the garage and its front entrance is still open

and freely accessible," and the absence of a showing that petitioners have an urgent and paramount need for a writ of preliminary mandatory injunction to prevent irreparable damage, they are not entitled to such writ.

APPEARANCES OF COUNSEL

Lim Vigilia Alcala Dumlao and *Orencia* for petitioners.
Panlilio Paras Timbol & Panlilio for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Petitioner China Banking Corporation sold a lot located at St. Benedict Subdivision, Sindalan, San Fernando, Pampanga, which was covered by Transfer Certificate of Title (TCT) No. 450216-R to petitioner-spouses Joey and Mary Jeannie Castro (the Castro spouses). It sold two other lots also located in the same place covered by TCT Nos. 450212-R and 450213-R to petitioner-spouses Richard and Editha Nogoy (the Nogoy spouses).

The lots of the Castro spouses and the Nogoy spouses are commonly bound on their southeastern side by Lot No. 3783-E, which is covered by TCT No. 269758-R in the name of respondent Benjamin Co (Co) and his siblings.

Co and his siblings entered into a joint venture with respondent Three Kings Construction and Realty Corporation for the development of the Northwoods Estates, a subdivision project covering Lot No. 3783-E and adjacent lots. For this purpose, they contracted the services of respondent, Engineer Dale Olea.

In 2003, respondents started constructing a perimeter wall on Lot No. 3783-E.

On November 28, 2003, petitioners, through counsel, wrote respondents asking them to stop constructing the wall, and remove all installed construction materials and restore the former

condition of Lot No. [3]783-E which they (petitioners) claimed to be a road lot.[1] They also claimed that the construction obstructed and closed the only means of ingress and egress of the Nogoy spouses and their family, and at the same time, caved in and impeded the ventilation and clearance due the Castro spouses' residential house.[2]

Petitioners' demand remained unheeded, prompting them to file before the Regional Trial Court (RTC) of San Fernando, Pampanga a complaint,[3] docketed as Civil Case No. 12834, for injunction, restoration of road lot/right of way and damages with prayer for temporary restraining order and/or writ of preliminary injunction.

Before respondents filed their Answer,[4] petitioners filed an Amended Complaint,[5] alleging that the construction of the perimeter wall was almost finished and thus modifying their prayer for a writ of preliminary injunction to a writ of preliminary mandatory injunction, *viz*:

> WHEREFORE, it is respectfully prayed of this Honorable Court that:
>
> A. Before trial on the merits, a temporary restraining order be issued immediately restraining the defendants from doing further construction of the perimeter wall on the premises, and thereafter, a writ of preliminary **mandatory** injunction be issued enjoining the defendants from perpetrating and continuing with the said act and directing them jointly and severally, to restore the road lot, Lot 3783-E to its previous condition.
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> x x x x x x x x x[6] (Underscoring in the original; emphasis supplied)

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[1] Records, Vol. I, pp. 22-23.

[2] *Ibid.*

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

[4] *Id.* at 68-86.

[5] *Id.* at 34-43.

[6] *Id.* at 40.

After hearing petitioners' application for a writ of preliminary mandatory injunction, Branch 44 of the San Fernando, Pampanga RTC denied the same, without prejudice to its resolution after the trial of the case on the merits, in light of the following considerations:

> After a judicious evaluation of the evidence, the Commissioner's Report on the Conduct of the Ocular Inspection held on February 14, 2004, as well as the pleadings, the Court is of the opinion and so holds that a writ of preliminary injunction should not be issued at this time. Plaintiffs have not clearly shown that their rights have been violated and that they are entitled to the relief prayed for and that irreparable damage would be suffered by them if an injunction is not issued. Whether lot 3783-E is a road lot or not is a factual issue which should be resolved after the presentation of evidence. This Court is not inclined to rely only on the subdivision plans presented by plaintiffs since, as correctly argued by defendants, the subdivision plans do not refer to lot 3783-E hence are not conclusive as to the status or classification of lot 3783-E. This court notes further that Subdivision Plan Psd-03-000577 of Lot 3783 from which the other subdivision plans originates [*sic*] does not indicate lot 3783-E as a road lot.
>
> Even the physical evidence reveals that lot 3783-E is not a road lot. The Court noticed during the ocular inspection on February 14, 2004, that there is a PLDT box almost in front of lot 3783-E. There is no visible pathway either in the form of a beaten path or paved path on lot 3783-E. Visible to everyone including this court are wild plants, grasses, and bushes of various kinds. Lot 3783-E could not have been a road lot because Sps. Nogoy, one of the plaintiffs, even built a structure on lot 3783-E which they used as a coffin factory.
>
> Plaintiffs failed to prove that they will be prejudiced by the construction of the wall. The ocular inspection showed that they will not lose access to their residences. As a matter of fact, lot 3783-E is not being used as an access road to their residences and there is an existing secondary road within St. Benedict Subdivision that serves as the main access road to the highway. With respect to the blocking of ventilation and light of the residence of the Sps. Castro, suffice it to state that they are not deprived of light and ventilation. The perimeter wall of the defendants is situated on the left side of the garage and its front entrance is still open and freely accessible.

This is indeed an issue of fact which should be ventilated in a full blown trial, determinable through further presentation of evidence by the parties. x x x

x x x x x x x x x

WHEREFORE, premises considered, plaintiffs' application for the issuance of a writ of preliminary mandatory injunction is denied without prejudice to its resolution after the trial of the case on the merits.[7] (Underscoring supplied)

Their Motion for Reconsideration[8] having been denied, petitioners filed a petition for *certiorari*[9] before the Court of Appeals which dismissed the same [10] and denied their subsequent Motion for Reconsideration.[11]

Hence, the petitioners filed the present petition,[12] faulting the Court of Appeals in

I.

. . . DECID[ING] AND RESOLV[ING] A QUESTION OF SUBSTANCE NOT IN ACCORD WITH THE BASIC GOVERNING LAW (*PRESIDENTIAL DECREE NO. 1529*) AND APPLICABLE DECISIONS OF THIS HONORABLE COURT.

II.

. . . PROMOTING THE LOWER COURT'S RATIOCINATION THAT PETITIONERS ARE SEEKING THE ESTABLISHMENT OF AN EASEMENT OF RIGHT OF WAY, WHEN THEY ARE CLAIMING THE ENFORCEMENT OF THE STATUTORY PROHIBITION AGAINST CLOSURE OR DISPOSITION OF AN ESTABLISHED ROAD LOT.

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[7] *Id.* at 297-298.

[8] *Id.* at 299-312.

[9] CA *rollo*, pp. 2-34.

[10] Decision of July 7, 2005, penned by Court of Appeals Associate Justice Aurora Santiago-Lagman, with the concurrences of Associate Justices Conrado M. Vasquez, Jr. and Rebecca de Guia-Salvador. *Id.* at 328-341.

[11] *Id.* at 344-355, 380-381.

[12] *Rollo*, pp. 29-70.

III.

… SANCTION[ING] THE LOWER COURT'S PATENT GRAVE ABUSE OF DISCRETION IN PERFUNCTORILY DENYING PETITIONERS' APPLICATION FOR WRIT OF PRELIMINARY INJUNCTION.[13]

It is settled that the grant of a preliminary mandatory injunction rests on the sound discretion of the court, and the exercise of sound judicial discretion by the lower court should not be interfered with except in cases of manifest abuse.[14]

It is likewise settled that a court should avoid issuing a writ of preliminary mandatory injunction which would effectively dispose of the main case without trial.[15]

In the case at bar, petitioners base their prayer for preliminary mandatory injunction on Section 44 of Act No. 496 (as amended by Republic Act No. 440), Section 50 of Presidential Decree 1529, and their claim that Lot No. 3783-E is a road lot.

To be entitled to a writ of preliminary injunction, however, the petitioners must establish the following requisites: (a) the invasion of the right sought to be protected is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and permanent necessity for the writ to prevent serious damage.[16]

Since a preliminary mandatory injunction commands the performance of an act, it does not preserve the *status quo* and is thus more cautiously regarded than a mere prohibitive injunction.[17] Accordingly, the issuance of a writ of preliminary

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

[14] Vide *Nisce v. Equitable PCI Bank, Inc.*, G.R. No. 167434, February 19, 2007, 516 SCRA 231, 253.

[15] Vide *Cortez-Estrada v. Heirs of Domingo Samut/Antonia Samut*, G.R. No. 154407, February 14, 2005, 451 SCRA 275, 292.

[16] *Gateway Electronics Corporation v. Land Bank of the Philippines*, G.R. Nos. 155217 and 156393, July 30, 2003, 407 SCRA 454, 462.

[17] *Ibid.*

mandatory injunction is justified only in a clear case, free from doubt or dispute.[18] When the complainant's right is thus doubtful or disputed, he does not have a clear legal right and, therefore, the issuance of injunctive relief is improper.

Section 44 of Act 496,[19] which petitioners invoke, provides:

xxx xxx xxx

Any owner subdividing a tract of registered land into lots shall file with the Chief of the General Land Registration Office a subdivision plan of such land on which all boundaries, streets and passageways, if any, shall be distinctly and accurately delineated. If no streets or passageways are indicated or no alteration of the perimeter of the land is made, and it appears that the land as subdivided does not need of them and that the plan has been approved by the Chief of the General Land Registration Office, or by the Director of Lands as provided in section fifty-eight of this Act, the Register of Deeds may issue new certificates of title for any lot in accordance with said subdivision plan. If there are streets and/or passageways, no new certificates shall be issued until said plan has been approved by the Court of First Instance of the province or city in which the land is situated. A petition for that purpose shall be filed by the registered owner, and the court after notice and hearing, and after considering the report of the Chief of the General Land Registration Office, may grant the petition, subject to the condition, which shall be noted on the proper certificate, that no portion of any street or passageway so delineated on the plan shall be closed or otherwise disposed of by the registered owner without approval of the court first had, or may render such judgment as justice and equity may require.[20] (Underscoring supplied by the petitioners)

Section 50 of Presidential Decree No. 1529,[21] which petitioners likewise invoke, provides:

SECTION 50. Subdivision and consolidation plans.— Any owner subdividing a tract of registered land into lots which do not constitute

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[18] *Ibid.*

[19] The Land Registration Act.

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

[21] The Property Registration Decree.

a subdivision project as defined and provided for under P.D. No. 957, shall file with the Commissioner of Land Registration or with the Bureau of Lands a subdivision plan of such land on which all boundaries, streets, passageways and waterways, if any, shall be distinctly and accurately delineated.

If a subdivision plan, be it simple or complex, duly approved by the Commissioner of Land Registration or the Bureau of Lands together with the approved technical descriptions and the corresponding owner's duplicate certificate of title is presented for registration, the Register of Deeds shall, without requiring further court approval of said plan, register the same in accordance with the provisions of the Land Registration Act, as amended: Provided, however, that the Register of Deeds shall annotate on the new certificate of title covering the street, passageway or open space, a memorandum to the effect that except by way of donation in favor of the national government, province, city or municipality, no portion of any street, passageway, waterway or open space so delineated on the plan shall be closed or otherwise disposed of by the registered owner without the approval of the Court of First Instance of the province or city in which the land is situated. x x x[22] (Underscoring supplied by petitioner)

The best evidence thus that Lot No. 3783-E is a road lot would be a memorandum to that effect annotated on the certificate of title covering it. Petitioners presented TCT No. 185702-R covering Lot No. 3783-E in the name of Sunny Acres Realty Management Corporation which states that the registration is subject to "the restrictions imposed by Section 44 of Act 496, as amended by Rep. Act No. 440."[23] The annotation does not explicitly state, however, that Lot No. 3783-E is a road lot.

In any event, TCT No. 185702-R had been cancelled and in its stead was issued TCT No. 247778-R[24] which, in turn, was cancelled by TCT No. 269758-R[25] in the name of respondent Co and his siblings.

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[22] *Rollo*, p. 56.

[23] Exhibit "I-1", records, p. 180.

[24] Exhibit "7", *id.* at 281.

[25] Exhibit "5", *id.* at 270.

TCT No. 247778-R and respondent Co's TCT No. 269758-R do not now contain the aforementioned memorandum annotated on TCT No. 185702-R re the registration being "subject to restrictions imposed by Section 44 of Act 496, as amended by Republic Act No. 440." Given the immediately foregoing circumstances, there is doubt on whether Lot No. 3783-E is covered by a road lot.

While petitioners correctly argue that certain requirements must be observed before encumbrances, in this case the condition of the lot's registration as being subject to the law, may be discharged and before road lots may be appropriated [26] gratuity assuming that the lot in question was indeed one, TCT Nos. 247778-R and 269758-R enjoy the presumption of regularity [27] and the legal requirements for the removal of the memorandum annotated on TCT No. 185702-R are presumed to have been followed.[28]

At all events, given the following factual observations of the trial court after conducting an ocular inspection of Lot 3783-E, *viz*:

> x x x The ocular inspection showed that [petitioners] will not lose access to their residences. As a matter of fact, lot 3783-E is not being used as an access road to their residences and there is an existing secondary road within St. Benedict Subdivision that serves as the main access road to the highway.[29] With respect to the blocking of ventilation and light of the residence of the Sps. Castro, suffice it to state that they are not deprived of light and ventilation. The perimeter wall of the defendants is situated on the left side of the garage and its front entrance is still open and freely accessible,[30]

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[26] *Rollo*, pp. 60-63.

[27] Vide *Ocampo v. Ocampo,* G.R. No. 150707, April 14, 2004, 427 SCRA 545, 559; *Equatorial Realty Development, Inc. v. Mayfair Theater, Inc.*, 412 Phil. 77, 79-80 (2001).

[28] Vide RULES OF COURT, Rule 131 Section 2 (m) and (ff).

[29] Vide TSN, February 6, 2004, p. 36.

[30] Records, Vol. I, p. 298.

and the absence of a showing that petitioners have an urgent and paramount need for a writ of preliminary mandatory injunction to prevent irreparable damage, they are not entitled to such writ.

WHEREFORE, the petition is *DENIED.*

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 174711. September 17, 2008]

SALLY SUENO, *petitioner, vs.* **LAND BANK OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; NOVATION; REQUISITES. — An obligation may be extinguished by novation, pursuant to Article 1292 of the Civil Code, which reads as follows: ART. 1292. In order that an obligation may be extinguished by another which substitute the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other. Novation is the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one which extinguishes or modifies the first, either by changing the object or principal conditions, or by substituting another in place of the debtor, or by subrogating a third person in the rights of the creditor. In order for novation to take place, the concurrence of the following requisites are indispensable: 1. There must be a previous valid obligation; 2. There must be an agreement of the parties concerned to a new contract; 3. There must be the extinguishment of the old contract; and 4. There must be the validity of the new contract.

2. ID.; ID.; ID.; ID.; ELEMENTS OF NOVATION CLEARLY DO NOT EXIST IN CASE AT BAR; NO CLEAR AGREEMENT BETWEEN THE PARTIES TO A NEW CONTRACT; WITHOUT A NEW CONTRACT, THE OLD CONTRACT CANNOT BE CONSIDERED EXTINGUISHED. — The elements of novation clearly do not exist in the instant case. While it is true that there is a previous valid obligation (*i.e.*, the obligation of LBP to honor Sueno's right to redeem the subject property within a period of one year), such obligation expired at the same time as the redemption period on 6 March 2001. There is, however, no clear agreement between the parties to a new contract, again imposing upon LBP the obligation of honoring Sueno's right to redeem the subject properties within an extended period of six months. Without a new contract, the old contract cannot be considered extinguished.

3. ID.; ID.; ID.; ID.; THE CONSENT OF RESPONDENT BANK TO AN EXTENSION OF THE PERIOD TO REDEEM IS SUBJECT TO A SUSPENSIVE CONDITION THAT PETITIONER SHALL PAY THE AGREED AMOUNT IN FULL; PETITIONER'S FAILURE TO REMIT THE BALANCE OF THE AGREED AMOUNT RESULTED IN NON-PERFECTION OF THE NEW CONTRACT. — The condition of LBP for the extension of the redemption period for the subject properties was plain and simple, that Sueno pay an initial amount of ₱115,000.00 for the extension of the redemption period. Sueno tendered a check for ₱50,000.00 in partial payment of the amount demanded by LBP. By accepting the check payment, LBP merely accepted partial compliance of Sueno with its demand, but it does not mean that LBP had conceded to the extension of the redemption period for such reduced amount. In fact, LBP promptly sent Sueno a letter dated 6 March 2001, which was duly received by the latter, explicitly and consistently requiring payment of the full amount of ₱115,000.00 for the extension of the redemption period. It is without doubt that LBP was still expecting Sueno to pay the balance of ₱65,000.00. Hence, not until full payment of the amount it demanded, for LBP had not yet agreed to extend the period for redemption of the subject properties. The consent of LBP to an extension of the period to redeem is subject to the suspensive condition that Sueno shall pay the initial amount of ₱115,000.00 in full. With Sueno's failure to remit the balance of ₱65,000.00 to LBP, then there is non-perfection of a new contract.

4. ID.; ID.; ID.; ID.; ID.; NO MUTUAL AGREEMENT TO EXTEND THE ORIGINAL PERIOD FOR REDEMPTION OF THE SUBJECT PROPERTIES AND NO COMMON INTENT BY THE PARTIES TO NOVATE THE OLD OBLIGATION BY EXTENDING THE PERIOD THEREOF; CASE AT BAR.— What further belies Sueno's assertion that LBP consented to her request for extension is its letter dated 7 March 2006, again duly received by Sueno, categorically denying her request to lengthen the redemption period. The language and intent of the letter is too clear and simple to be misinterpreted, to wit: We wish to inform you that **the management denied your request to extend the redemption period of your foreclosed property for six (6) months** since you failed to comply with the Bank's requirement, upfront payment of ₱115,000.00. Hence, the Bank is now consolidating the transfer of its ownership in the name of Land Bank. Enclosed is the ₱50,000.00 Manager's Check re: your upfront payment refunded to you. Irrefragably, there is no mutual agreement to extend the original period for the redemption of the subject properties. There is no common intent by the parties to novate the old obligation by extending the period thereof. For this Court to sustain Sueno's position — that the LBP agreed to extend the redemption period upon her payment of an amount substantially less than what it demanded — offends the elementary principle enunciated in our jurisdiction that novation can never be presumed.

5. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; DEED AND POSSESSION TO BE GIVEN AT EXPIRATION OF REDEMPTION PERIOD; WRIT OF POSSESSION ISSUED BY REASON THEREOF; EXPOUNDED.— Given the lapse of the period for Sueno to redeem the subject properties, then the Court cannot enjoin LBP from taking physical possession of the said properties after the titles thereto were duly consolidated in its name. The right of LBP to physical possession of the subject properties is explicitly authorized by Section 33, Rule 39 of the Revised Rules of Court. Under the said provisions, the purchaser in a foreclosure sale may apply for a writ of possession during the redemption period by filing an *ex parte* motion under oath for that purpose in the corresponding registration or cadastral proceeding in the case of property covered by a Torrens title. Upon the filing of such motion and the approval of the corresponding bond, the law also in express terms directs the court to issue the order

for a writ of possession. A writ of possession may also be issued after consolidation of ownership of the property in the name of the purchaser. It is settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of sale. As such, he is entitled to the possession of the property and can demand it any time following the consolidation of ownership in his name and the issuance of a new transfer certificate of title. In such a case, the bond required in Section 7 of Act No. 3135 is no longer necessary. Possession of the land then becomes an absolute right of the purchaser as confirmed owner. Upon proper application and proof of title, the issuance of the writ of possession becomes a ministerial duty of the court.

6. ID.; ID.; ID.; RIGHT OF RESPONDENT BANK TO THE POSSESSION OF THE SUBJECT PROPERTIES IS UNASSAILABLE AS IT IS FOUNDED ON ITS RIGHT OF OWNERSHIP; THE TRIAL COURT IS ALREADY DEPRIVED OF DISCRETION AND MUST COMPLY WITH ITS MINISTERIAL DUTY TO ISSUE THE WRIT OF POSSESSION IN ITS FAVOR. — The right of LBP to the possession of the subject properties is unassailable. It is founded on its right of ownership. As the purchaser of the subject properties in the foreclosure sale, in whose name titles over the subject properties were already issued, the right of LBP over the subject properties has become absolute, vesting in it the corollary right of possession over the subject properties, which the Court must aid by effecting their delivery. In this case, the RTC is already deprived of discretion and must comply with its ministerial duty to issue the writ of possession in favor of LBP.

APPEARANCES OF COUNSEL

Sepnio Erbon Gupita & Associates for petitioner.
Litigation Dept. (LBP) for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is a Petition for Review on *Certiorari* filed by petitioner Sally Sueno (Sueno) seeking to reverse and

set aside the Decision[1] dated 13 July 2006 of the Court of Appeals in CA-G.R. CV No. 79566, which affirmed the Decision[2] dated 24 January 2003 of the Regional Trial Court (RTC) of Marikina City, Branch 192, in LRC Case No. R-2002-551-MK; and the Resolution[3] dated 20 September 2006 of the appellate court which denied Sueno's Motion for Reconsideration. The RTC, in its Decision affirmed by the Court of Appeals, issued the Writ of Possession authorizing respondent Land Bank of the Philippines (LBP) to take physical possession of the two disputed parcels of land pursuant to its Consolidation of Ownership dated 2 April 2001.

The factual and procedural backdrop of this case are as follows:

On different occasions, Sueno obtained loans from LBP, the total sum of which reached ₱2,500,000.00, as evidenced by the Contracts of Loan[4] executed by the parties on 28 February 1996 and 9 October 1996. The loans were secured by Real Estate Mortgages over two parcels of land (subject properties) covered by Transfer Certificates of Title (TCTs) No. T-299900 and No. T-314839 registered in Sueno's name and registered with the Registry of Deeds of Marikina City. Subsequently, Sueno incurred default, which prompted LBP to cause the extrajudicial foreclosure of the mortgage constituted on the subject properties,[5] and the sale of said properties at a public auction. LBP was the highest bidder in the auction sale, as shown in the Certificate of Sale[6] dated 6 March 2000 in its favor.

Before the expiration on 6 March 2001 of the one-year period for the redemption of the subject properties, Sueno wrote LBP

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[1] Penned by Associate Justice Estela M. Perlas-Bernabe with Associate Justices Andres B. Reyes, Jr., and Hakim S. Abdulwahid, concurring; *rollo*, pp. 21-28.

[2] Records, pp. 173-175.

[3] *Rollo*, p. 36.

[4] *Id.* at 68-105.

[5] *Id.* at 112-113.

[6] *Id.* at 134-135.

a letter[7] dated 16 February 2001 requesting a six-month extension of her period to redeem. Upon receipt of Sueno's letter, LBP informed her that she needed to post an initial amount of ₱115,000.00, so that LBP would not consolidate the titles to the subject properties in its name. The said amount shall be used to answer for penalties and surcharges that the Registry of Deeds may impose as a result of the failure of LBP to consolidate the titles to the subject properties within the required period.[8]

In partial compliance with the aforesaid condition, Sueno issued a check on 23 February 2001 in the amount of ₱50,000.00 with LBP as the payee. Upon receipt of Sueno's partial payment, LBP, in a letter dated 6 March 2001, reiterated its previous condition that Sueno must post the full amount of ₱115,000.00 for LBP to approve her request for the extension of the redemption period. The LBP further warned Sueno that should she fail to pay the balance of ₱65,000.00 by 7 March 2001, it would proceed to consolidate the ownership of the subject properties in its name. Despite such warning, Sueno failed to remit the balance of ₱65,000.00.

Thus, in a letter dated 7 March 2001, LBP denied Sueno's request for an extension of the period to redeem the subject properties, and proceeded to consolidate ownership of the said properties in its name. Accordingly, TCTs No. 299900 and No. 314839 in Sueno's name were cancelled and were replaced by TCTs No. 411101 and 411102, respectively, in the name of LBP.

In order to acquire physical possession of the subject properties, LBP filed an *Ex Parte* Petition/Motion for the Issuance of Writ of Possession[9] before the RTC, docketed as LRC Case No. R-2002-551-MK. During the hearing set by the court for the issuance of the writ, Sueno manifested her Opposition[10] thereto on the ground that a novation of the original obligation was already effected by her and LBP, thereby extending the

[7] *Id.* at 140.

[8] *Id.* at 141.

[9] *Id.* at 1-4.

[10] *Id.* at 51-55.

original period for the redemption of the subject properties. Therefore, the right of LBP to consolidate the titles to the subject properties in its name was held in abeyance pending Sueno's exercise of her right of redemption within the extended period.

In a Decision dated 24 January 2003, the RTC recognized the right of LBP to the possession of the subject properties as the registered owner thereof after having lawfully acquired the same at the auction sale. It dismissed Sueno's opposition to the pending Petition/Motion for utter lack of merit, since she failed to establish that she and LBP indeed agreed to extend the redemption period for the subject properties. Hence, the RTC granted the Petition/ Motion of LBP for the issuance of a Writ of Possession, to wit:

> WHEREFORE, petition being sufficient in form and substance, and the testimonial and documentary evidence well-founded, the same is hereby GRANTED.
>
> Let a Writ of Possession be issued authorizing [LBP] to take physical possession of the properties covered by Transfer Certificate[s] of Title Nos. 411101 and 411102 of the Registry of Deeds for Marikina City registered in the name of [LBP] by virtue of the consolidation of ownership dated June 6, 2001.[11]

Unyielding, Sueno filed an appeal of the adverse RTC Decision before the Court of Appeals,[12] where it was docketed as CA-G.R. CV No. 79566.

On 13 July 2006, the Court of Appeals rendered a Decision dismissing Sueno's appeal and affirming the RTC Decision. According to the Court of Appeals, the records were bereft of evidence to prove that LBP granted Sueno's request for the extension of the redemption period for the subject properties, making Sueno's novation theory unacceptable. On the other hand, the appellate court ruled that the right of LBP to the possession of the subject properties became absolute after the expiration of the period of redemption without Sueno exercising her right to redeem. The decretal part of the assailed Court of Appeals Decision reads:

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[11] Records, p. 175.

[12] CA *rollo*, pp. 25-34.

WHEREFORE, the instant appeal is DENIED and the assailed Decision dated January 24, 2003 of the RTC of Markina City, Branch 192 is hereby AFFIRMED.[13]

In its Resolution dated 20 September 2006, the appellate court denied Sueno's Motion for Reconsideration.

Sueno then proceeded to file this instant Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court raising the following issues:

I.

WHETHER OR NOT THERE WAS A VALID NOVATION ENTERED BY PARTIES FOR THE EXTENSION OF THE REDEMPTION PERIOD.

II.

WHETHER OR NOT THE ISSUANCE OF THE WRIT OF POSSESSION OF THE SUBJECT PROPERTIES TO LBP IS VALID.

Sueno argues that there was a novation of the original obligation of LBP allowing her to redeem the subject properties within a period of one year, when LBP consented to the extension of said period of redemption. Sueno insists that the acceptance of LBP of her check payment for the partial sum of ₱50,000.00, and its encashment of said check signifies its acquiescence to her request for an extension of the period of redemption for the subject properties.

We are not persuaded.

An obligation may be extinguished by novation, pursuant to Article 1292 of the Civil Code, which reads as follows:

ART. 1292. In order that an obligation may be extinguished by another which substitute the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other.

Novation is the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one which extinguishes or modifies the first, either by changing the

[13] *Rollo*, p. 27.

object or principal conditions, or by substituting another in place of the debtor, or by subrogating a third person in the rights of the creditor. In order for novation to take place, the concurrence of the following requisites are indispensable:

1. There must be a previous valid obligation;

2. There must be an agreement of the parties concerned to a new contract;

3. There must be the extinguishment of the old contract; and

4. There must be the validity of the new contract.[14]

The elements of novation clearly do not exist in the instant case. While it is true that there is a previous valid obligation (*i.e.*, the obligation of LBP to honor Sueno's right to redeem the subject property within a period of one year), such obligation expired at the same time as the redemption period on 6 March 2001. There is, however, no clear agreement between the parties to a new contract, again imposing upon LBP the obligation of honoring Sueno's right to redeem the subject properties within an extended period of six months. Without a new contract, the old contract cannot be considered extinguished.

The condition of LBP for the extension of the redemption period for the subject properties was plain and simple, that Sueno pay an initial amount of ₱115,000.00 for the extension of the redemption period. Sueno tendered a check for ₱50,000.00 in partial payment of the amount demanded by LBP. By accepting the check payment, LBP merely accepted partial compliance of Sueno with its demand, but it does not mean that LBP had conceded to the extension of the redemption period for such reduced amount. In fact, LBP promptly sent Sueno a letter dated 6 March 2001, which was duly received by the latter, explicitly and consistently requiring payment of the full amount of ₱115,000.00 for the extension of the redemption period. It is without doubt that LBP was still expecting Sueno to pay the

[14] *Velasquez v. Court of* Appeals, 368 Phil. 863, 871 (1999).

balance of ₱65,000.00. Hence, not until full payment of the amount it demanded, for LBP had not yet agreed to extend the period for redemption of the subject properties.

The consent of LBP to an extension of the period to redeem is subject to the suspensive condition that Sueno shall pay the initial amount of ₱115,000.00 in full. With Sueno's failure to remit the balance of ₱65,000.00 to LBP, then there is non-perfection of a new contract. As aptly declared by the Court of Appeals:

> The parties are bound to fulfill the stipulations in a contract only upon its perfection. At anytime prior to the perfection of a contract, unaccepted offers and proposals remain as such and cannot be considered binding commitments, hence, not demandable. Since [Sueno] failed to perform what was incumbent upon her then, [LBP] cannot be faulted in not granting the extension sought. x x x.[15]

What further belies Sueno's assertion that LBP consented to her request for extension is its letter dated 7 March 2006, again duly received by Sueno, categorically denying her request to lengthen the redemption period. The language and intent of the letter is too clear and simple to be misinterpreted, to wit:

> We wish to inform you that **the management denied your request to extend the redemption period of your foreclosed property for six (6) months** since you failed to comply with the Bank's requirement, upfront payment of ₱115,000.00.
>
> Hence, the Bank is now consolidating the transfer of its ownership in the name of Land Bank. Enclosed is the ₱50,000.00 Manager's Check re: your upfront payment refunded to you.[16] (Emphasis supplied).

Irrefragably, there is no mutual agreement to extend the original period for the redemption of the subject properties. There is no common intent by the parties to novate the old obligation by extending the period thereof.

For this Court to sustain Sueno's position – that the LBP agreed to extend the redemption period upon her payment of an amount

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[15] *Rollo*, p. 26.

[16] Records, p. 142.

substantially less than what it demanded – offends the elementary principle enunciated in our jurisdiction that novation can never be presumed. As elucidated by this Court in *Philippine Savings Bank v. Mañalac, Jr.*:[17]

> **Novation is never presumed, and the *animus novandi*, whether totally or partially, must appear by express agreement of the parties, or by their acts that are too clear and unmistakable.** The extinguishment of the old obligation by the new one is a necessary element of novation, which may be effected either expressly or impliedly. The term "expressly" means that the contracting parties incontrovertibly disclose that their object in executing the new contract is to extinguish the old one. Upon the other hand, no specific form is required for an implied novation, and all that is prescribed by law would be an incompatibility between the two contracts. While there is really no hard and fast rule to determine what might constitute to be a sufficient change that can bring about novation, the touchstone for contrariety, however, would be an irreconcilable incompatibility between the old and the new obligations. (Emphasis supplied.)

Given the lapse of the period for Sueno to redeem the subject properties, then the Court cannot enjoin LBP from taking physical possession of the said properties after the titles thereto were duly consolidated in its name. The right of LBP to physical possession of the subject properties is explicitly authorized by Section 33, Rule 39 of the Revised Rules of Court, which provides:

> SECTION 33. *Deed and possession to be given at expiration of redemption period; by whom executed or given.* – If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; x x x.
>
> Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment obligor.

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[17] G.R. No. 145441, 26 April 2005, 457 SCRA 203, 218.

Corollarily, Section 7 of Act 3135,[18] as amended by Act 4118, reads:

> Section 7. *Possession during redemption period*. –In any sale made under the provisions of this Act, the purchaser may petition the [Regional Trial Court] of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an *ex parte* motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

Under the above-quoted provisions, the purchaser in a foreclosure sale may apply for a writ of possession during the redemption period by filing an *ex parte* motion under oath for that purpose in the corresponding registration or cadastral proceeding in the case of property covered by a Torrens title. Upon the filing of such motion and the approval of the corresponding bond, the law also in express terms directs the court to issue the order for a writ of possession.[19]

A writ of possession may also be issued after consolidation of ownership of the property in the name of the purchaser. It is settled that the buyer in a foreclosure sale becomes the absolute owner

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[18] "An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real Estate Mortgages."

[19] *Philippine National Bank v. Sanao Marketing Corporation*, G.R. No. 153951, 29 July 2005, 465 SCRA 287, 299.

of the property purchased if it is not redeemed during the period of one year after the registration of sale. As such, he is entitled to the possession of the property and can demand it any time following the consolidation of ownership in his name and the issuance of a new transfer certificate of title. In such a case, the bond required in Section 7 of Act No. 3135 is no longer necessary. Possession of the land then becomes an absolute right of the purchaser as confirmed owner.[20] Upon proper application and proof of title, the issuance of the writ of possession becomes a ministerial duty of the court.[21]

The right of LBP to the possession of the subject properties is unassailable. It is founded on its right of ownership. As the purchaser of the subject properties in the foreclosure sale, in whose name titles over the subject properties were already issued, the right of LBP over the subject properties has become absolute, vesting in it the corollary right of possession over the subject properties, which the Court must aid by effecting their delivery. In this case, the RTC is already deprived of discretion and must comply with its ministerial duty to issue the writ of possession in favor of LBP.

WHEREFORE, IN VIEW OF THE FOREGOING, the instant Petition is *DENIED***.** The Decision dated 13 July 2006 and Resolution dated 20 September 2006 of the Court of Appeals in CA-G.R. CV No. 79566 are hereby *AFFIRMED*. Costs against petitioner Sally Sueno.

SO ORDERED.

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

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[20] *Id*.

[21] *F. David Enterprises v. Insular Bank of Asia and America,* G.R. No. 78714, 21 November 1990, 191 SCRA 516, 523.

FIRST DIVISION

[G.R. No. 175550. September 17, 2008]

DASMARIÑAS WATER DISTRICT, *petitioner, vs.* **MONTEREY FOODS CORPORATION,**** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JURISDICTION; DETERMINED FROM THE ALLEGATIONS OF THE COMPLAINT; IT IS CLEAR THAT THE COMPLAINT INVOLVED THE DETERMINATION AND ENFORCEMENT OF PETITIONER'S RIGHT UNDER PD 198 TO IMPOSE PRODUCTION ASSESSMENTS, NOT THE APPROPRIATION AND USE OF WATER AND THE ADJUDICATION OF THE PARTIES' RESPECTIVE WATER RIGHTS. — It is axiomatic that jurisdiction is determined by the allegations in the complaint. It is clear from the allegations that the complaint involved the determination and enforcement of petitioner's right under PD 198 to impose production assessments, not the appropriation and use of water and the adjudication of the parties' respective water rights. It was admitted that petitioner was a duly constituted water district. Respondent, on the other hand, obtained water permits from the NWRB. Both thus had respective rights to the use of the water. But petitioner was not challenging the water permits acquired by respondent. As we held in *Atis v. CA*: The case at bar does not involve any dispute relating to appropriation or use of waters. "Appropriation" as used in the Water Code means the "acquisition of rights over the use of waters or the taking or diverting of waters from a natural source" (Art. 9); while "use of water for fisheries is the utilization of water for the propagation and culture of fish as a commercial enterprise." In fact, Petitioner is the holder of [two water permits]. The issuance of said permits served to grant petitioner water rights or the privilege to appropriate and use water (Art. 13, [PD] 1067)

** The Court of Appeals was originally impleaded as public respondent. However, it was excluded pursuant to Rule 45, Sec. 4 of the Rules of Court.

from the San Pedro Creek and sea water from Dapitan Bay for his fishpond.

2. ID.; ID.; ISSUE IN CASE AT BAR IS A JUDICIAL QUESTION PROPERLY ADDRESSED TO THE COURTS. — Clearly at issue in this case is whether, under the factual allegations of petitioner, it had the right under PD 198 to impose production assessments on respondent. It did and it was a judicial question properly addressed to the courts. A judicial question is raised when the determination of the question involves the exercise of a judicial function, that is, it involves the determination of what the law is and what the legal rights of the parties are with respect to the matter in controversy.

3. ID.; ID.; INSTANT CASE IS WITHIN THE EXCLUSIVE JURISDICTION OF THE REGIONAL TRIAL COURT BECAUSE THE ACTION IS INCAPABLE OF PECUNIARY ESTIMATION AS PROVIDED IN SECTION 19 (1) OF BP 129, AS AMENDED; ALTHOUGH THERE WAS A CLAIM FOR A SUM OF MONEY, IT WAS PURELY INCIDENTAL TO, OR A CONSEQUENCE OF THE PRINCIPAL RELIEF SOUGHT.— We ruled in the following that judicial questions were raised and were thus properly cognizable by the regular courts: (1) in *Metro Iloilo Water District v. CA*, the issue was whether the extraction and sale of ground water within petitioner's service area violated petitioner's rights as a water district, justifying the issuance of an injunction. (2) the action in *Bulao v. CA* was for damages predicated on a quasi-delict. Private respondent alleged that petitioner maliciously constructed a dam and diverted the flow of water, causing the interruption of water passing through petitioner's land towards that of private respondent and resulting in the loss of harvest of rice and loss of income. In the same vein, the claim under Sec. 39 related to a prejudice or damage to petitioner's finances as a water district which gave it the right to levy a production assessment to compensate for the loss. Under the provision, the water district was also entitled to injunction and damages in case there was failure to pay. Obviously, this was a judicial issue which fell under the jurisdiction of the regular courts. Since this involved a judicial question, it followed that the doctrine of primary jurisdiction did not apply because the technical expertise of the NWRB was not required. Specifically, the action was within the exclusive jurisdiction of the RTC because it was incapable of

pecuniary estimation as provided in Sec. 19 (1) of BP 129, as amended by RA 7691. The basic issue was petitioner's entitlement to the right provided under Sec. 39 of PD 198. Although there was a claim for a sum of money, it was purely incidental to, or a consequence of, the principal relief sought.

4. ID.; ID.; IT WAS PREMATURE FOR THE COURT OF APPEALS TO RULE ON THE ISSUE OF PETITIONER'S AUTHORITY TO IMPOSE THE PRODUCTION ASSESSMENTS BECAUSE THE TRIAL COURT HAD NOT YET HAD THE OPPORTUNITY TO RESOLVE THE ISSUE. — We note that the CA already ruled on the issue of whether petitioner had the authority to impose production assessments. Petitioner did not raise this issue in its petition before us. Did this amount to a waiver of the issue? No, it did not. In its motion to dismiss in the RTC, respondent raised the sole issue of lack of jurisdiction. Accordingly, the RTC in its April 28, 2005 and June 8, 2005 orders dealt only with this issue. However, respondent, in its petition for *certiorari* in the CA, raised the additional question of petitioner's authority to impose the production assessments. This was obviously premature because it already went into the merits of the case and the RTC had not yet had the opportunity to resolve the issue. Furthermore, points of law, theories, issues and arguments not brought to the attention of the trial court ought not to be considered by a reviewing court as these cannot be raised for the first time on appeal. Therefore, it was an error for the CA to rule on this issue.

5. ID.; ID.; A COLLATERAL ATTACK ON A PRESUMABLY VALID LAW IS NOT ALLOWED; REASON. — Finally, respondent challenged the constitutionality of Sec. 39 of PD 198 in its memorandum. It contended that said provision was an undue delegation of legislative power. A collateral attack on a presumably valid law is not allowed. We have ruled time and again that the constitutionality or validity of laws, orders, or such other rules with the force of law cannot be attacked collaterally. There is a legal presumption of validity of these laws and rules. Unless a law or rule is annulled in a direct proceeding, the legal presumption of its validity stands. Besides, [a] law is deemed valid unless declared null and void by a competent court; more so when the issue has not been duly pleaded in the trial court. The question of constitutionality must be raised at the earliest opportunity. x x x The settled rule is that courts will not anticipate a question of constitutional law in advance of the necessity of deciding it.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel and *Dominguez and Associates Law Office* for petitioner.

Office of the General Counsel San Miguel Corp. for respondent.

R E S O L U T I O N

CORONA, *J.*:

This is a petition for review on *certiorari*[1] of the May 26, 2006 decision[2] and November 21, 2006 resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 90855.

Respondent Monterey Foods Corporation is a domestic corporation primarily engaged in the livestock and agriculture business. It was issued water permit nos. 17779 and 17780 by the National Water Resources Board (NWRB)[4] for its two deep wells located at Barangay Langcaan, Dasmariñas, Cavite. The water drawn from the wells was used solely for respondent's business and not for the purpose of selling it to third persons for profit.

Petitioner Dasmariñas Water District is a government-owned corporation organized by the *Sangguniang Bayan* of Dasmariñas in accordance with the provisions of PD 198

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[1] Under Rule 45 (but petitioner also invokes Rule 65) of the Rules of Court. *Rollo*, p. 12.

[2] Penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Amelita G. Tolentino and Fernanda Lampas Peralta of the Special Fourth Division of the Court of Appeals; *id*, pp. 287-296.

[3] *Id.*, pp. 304-306.

[4] Formerly referred to as the National Water Resources Council. It was renamed to National Water Resources Board pursuant to EO 124-A dated July 22, 1987.

(otherwise known as the "Provincial Water Utilities Act of 1973").[5]

On March 30, 2004, petitioner filed a complaint for payment of production assessment against respondent in the Regional Trial Court (RTC) of Imus, Cavite, Branch 90, docketed as Civil Case No. 0113-04. Invoking Sec. 39 of PD 198, it prayed that respondent be ordered to pay the following: (1) monthly production assessment for the two deep wells in the amount of ₱55,112.46 from the date of demand; (2) actual expenses of at least ₱50,000 and (3) attorney's fees and costs of suit.[6]

On June 8, 2004, respondent filed a motion to dismiss on the ground that the RTC had no jurisdiction to hear the case because, under PD 1067 (otherwise known as the "Water Code of the Philippines"),[7] it was the NWRB that had jurisdiction.[8]

On April 28, 2005, the RTC issued an order denying the motion to dismiss.[9] It ruled that it had jurisdiction over the subject matter of the case because it referred to the right of petitioner to collect production assessments. It denied reconsideration in an order dated June 8, 2005.[10]

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[5] Entitled "Declaring a National Policy Favoring Local Operation and Control of Water Systems; Authorizing the Formation of Local Water Districts and Providing for the Government and Administration of Such Districts; Chartering a National Administration to Facilitate Improvement of Local Water Utilities; Granting Said Administration Such Powers as are Necessary to Optimize Public Service from Water Utility Operation, and for Other Purposes." This took effect upon its issuance by then President Marcos on May 25, 1973; *Metropolitan Cebu Water District v. Adala*, G.R. No. 168914, 4 July 2007, 526 SCRA 465, 469.

[6] *Rollo*, p. 30.

[7] Entitled "A Decree Instituting a Water Code, Thereby Revising and Consolidating the Laws Governing the Ownership, Appropriation, Utilization, Exploitation, Development, Conservation and Protection of Water Resources" and enacted on December 31, 1976.

[8] *Rollo*, p. 38.

[9] *Id.*, p. 67. Penned by Executive Judge Perla V. Cabrera-Faller.

[10] *Id.*, p. 79.

Aggrieved, respondent filed a petition for *certiorari*[11] in the CA under Rule 65 of the Rules of Court docketed as CA-G.R. SP No. 90855 assailing the April 28, 2005 and June 8, 2005 RTC orders. Aside from the issue of jurisdiction, it likewise raised the issue of whether petitioner had the authority to impose a production assessment under Sec. 39 of PD 198.

In a decision promulgated on May 26, 2006, the CA granted herein respondent's petition and dismissed petitioner's complaint.[12] It held that since the complaint involved a dispute relating to the appropriation, utilization, exploitation, development, control, conservation and protection of waters, the NWRB had original jurisdiction over it under Art. 88 of PD 1067. It also ruled that under PD 1067, petitioner had no authority to impose the assessment without the prior approval of the NWRB.[13]

Hence this petition. The sole issue is whether it is the RTC or the NWRB which has jurisdiction over the collection of water production assessments.

The CA ruled that the NWRB had original jurisdiction over the complaint under Arts. 3 (d), 88 and 89 of PD 1067 and that the regular courts exercised only appellate jurisdiction:

ART. 3. The underlying principles of this Code are:

xxx xxx xxx

d. The utilization, exploitation, development, conservation and protection of water resources shall be subject to the control and regulation of the government through the [NWRB].

xxx xxx xxx

ART. 88. The [NWRB] shall have original jurisdiction over all disputes relating to appropriation, utilization, exploitation, development, control, conservation and protection of waters within the meaning and context of the provision of this Code.

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[11] With very urgent prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction; *id.*, p. 101.

[12] *Id.*, p. 296.

[13] *Id.*, pp. 291, 294-295.

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ART. 89. The decisions of the [NWRB] on water rights controversies may be appealed to the [RTC][14] of the province where the subject matter of the controversy is situated within fifteen (15) days from the date the party appealing receives a copy of the decision, on any of the following grounds: (1) grave abuse of discretion; (2) question of law; and (3) questions of fact and law.

Petitioner argues that the issue in its complaint was the determination of its right as a water district under Sec. 39 of PD 198 to impose production assessments on respondent:

Sec. 39. **Production Assessment**.— In the event the board of a district finds, after notice and hearing, that production of ground water by other entities within the district for commercial or industrial uses is injuring or reducing the district's financial condition, **the board may adopt and levy a ground water production assessment to compensate for such loss**. In connection therewith, the district may require necessary reports by the operator of any commercial or industrial well. Failure to pay said assessment shall constitute an invasion of the waters of the district and shall entitle this district to an injunction and damages pursuant to Section 32[15] of this Title. (Emphasis supplied)

Thus, it avers that the regular courts had jurisdiction over the subject matter thereof. It asserts that since it was not questioning

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[14] Formerly, the Court of First Instance.

[15] Sec. 32. Protection of Waters and Facilities of District. — A district shall have the right to:

(a) Commence, maintain, intervene in, defend and compromise actions or proceedings to prevent interference with or deterioration of water quality or the natural flow of any surface, steam or ground water supply which may be used or useful for any purpose of the district or be a common benefit to the lands or its inhabitants. The ground water within a district is necessary to the performance of the district's powers and such district is hereby authorized to adopt rules and regulations subject to the approval of the [NWRB] governing the drilling, maintenance and operation of wells within its boundaries for purposes other than a single family domestic use on overlying land. Any well operated in violation of such regulations shall be deemed in interference with the waters of the district. x x x (As amended by PD 768 and 1479)

the validity of the water permits issued by the NWRB to respondent, it was not a water rights dispute over which the NWRB had original jurisdiction.[16]

The petition has merit.

It is axiomatic that jurisdiction is determined by the allegations in the complaint.[17] Petitioner alleged the following:

> 1. That [petitioner] is a government owned agency duly organized by the *Sangguniang Bayan* of the Municipality of Dasmariñas pursuant to the express provisions of [PD. 198], as amended, particularly Secs. 5, 6, 7, Chapter 1, Title 2, thereof and with principal office at Camerino Avenue, Dasmariñas, Cavite;
>
> xxx xxx xxx
>
> 3. That under the provisions of [PD 198], specifically Sec. 47 thereof, [petitioner] is the exclusive franchise holder in the maintenance and operation of water supply and in the distribution thereof for domestic, industrial uses, and that no franchise shall be granted to any other person, agency or corporation for domestic, industrial or commercial water service within its district without the consent of [petitioner] and subject only to the review by the Local Water Utilities Administration;
>
> 4. That [respondent] is engaged in farm business, in the operation of which [respondent] has installed two (2) deepwells, namely Well No. 1 and Well No. 2, with the following description and capacity:
>
> | WELL No. | HP | CAPACITY |
> |---|---|---|
> | 1 | 30 | 300 gpm |
> | 2 | 7.5 | 75 gpm |
>
> 5. That under the provision of [PD 198], particularly Sec. 39 Chapter VIII, Title II thereof, if the district ([petitioner] herein) thru its board of directors, finds, after notice and hearing, that production of ground water by other entities, including [respondent] herein, within the

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[16] *Rollo*, pp. 389-390.

[17] *Sta. Clara Homeowners' Association v. Sps. Gaston*, 425 Phil. 221, 239 (2002); *Samar II Electric Cooperative, Inc. v. Quijano*, G.R. No. 144474, 27 April 2007, 522 SCRA 364, 373-374, citing *Fabia v. CA*, 415 Phil. 656, 662 (2001).

district for commercial or industrial uses is injuring or reducing the district's financial condition, the Board may adopt and levy a ground-water assessment to compensate for such loss;

6. Since the operation of [respondent's] business, together with other companies or entities within the district, [petitioner] has found that [respondent's] operation of its two (2) deepwells has adversely affected [petitioner's] financial condition;

7. That [petitioner] therefore invited [respondent's] representative or representatives to discuss the matter of production assessment on the basis of the volume of water consumption extracted from [respondent's] two (2) deepwells and its adverse effect on [petitioner's] financial condition, as shown by [petitioner's] letters dated 24 March 1998 and 31 August 2002 and others, xerox copies of said letters dated 24 March 1998 and 31 August 2002 are hereto attached and marked as Annexes "A" and "B" hereof;

8. That [petitioner] thru its authorized inspectors, conducted inspection of [respondent's] deepwells Nos. 1 and 2 and submitted their own findings of the daily and monthly average consumption of [respondent's] subject deepwells, and on the basis of [petitioner's] duly approved resolution regarding charge rate of ₱2.00 per cubic meter, petitioner came up with the following production assessment charge:

Well	HP	Capacity	Hrs. of Operation	Charge Rate Peso/m3	Average Consumption Daily	Monthly	Actual Charge Daily peso/m3	Average Monthly peso/m3
1	3 0	300	12	₱2.00	816.48	2,449.42	1,632.96	48,988.85
2	7.5	75	6	₱2.00	102.06	3,061.80	204.12	6.123.61
								₱55,112.46

xerox copies of said finding and computation is hereto marked as Annex "C" hereof;

9. That despite demands made upon [respondent], the latter failed and refused and continues to fail and refuse to pay [petitioner's] fair and just demands, to the damage and prejudice of [petitioner].[18]

It is clear from the allegations that the complaint involved the determination and enforcement of petitioner's right under PD 198 to impose production assessments, not the appropriation

[18] *Rollo*, pp. 28-29.

and use of water and the adjudication of the parties' respective water rights.[19] It was admitted that petitioner was a duly constituted water district. Respondent, on the other hand, obtained water permits from the NWRB. Both thus had respective rights to the use of the water. But petitioner was not challenging the water permits acquired by respondent. As we held in *Atis v. CA*:[20]

> The case at bar does not involve any dispute relating to appropriation or use of waters. "Appropriation" as used in the Water Code means the "acquisition of rights over the use of waters or the taking or diverting of waters from a natural source" (Art. 9); while "use of water for fisheries is the utilization of water for the propagation and culture of fish as a commercial enterprise." In fact, Petitioner is the holder of [two water permits]. The issuance of said permits served to grant petitioner water rights or the privilege to appropriate and use water (Art. 13, [PD] 1067) from the San Pedro Creek and sea water from Dapitan Bay for his fishpond.
>
> Private Respondents/Intervenors do not dispute the water rights petitioner had acquired by reason of those permits xxx
>
> xxx no dispute lies relative to the use or appropriation by Petitioner of water from the San Pedro Creek and sea water from the Dapitan Bay. The case does not involve a determination of the parties' respective water rights, which would otherwise be within the competence and original jurisdiction of the [NWRB]. Rather, the issue is whether or not the construction of the dike, obstructed the natural water course or the free flow or water from Petitioner's higher estate to Intervenors' lower estate thereby causing injury to petitioner's rights and impairing the use of his fishpond.[21]

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[19] Art. 13, PD 1067 states:

"Except as otherwise herein provided, no person, including government instrumentalities or government-owned or controlled corporations, shall appropriate water without a water right, which shall be evidenced by a document known as a water permit.

A water right is the privilege granted by the government to appropriate and use water."

[20] G.R. No. 96401, 6 April 1992, 207 SCRA 742.

[21] *Id.*, pp. 746-747.

Also, in *Amistoso v. Ong, et al.*,[22] we explained:

As correctly postulated by the petitioner, the court *a quo* is not being asked to grant petitioner the right to use but to compel private respondents to recognize that right and have the same annotated on respondent Neri's Torrens Certificate of Title. Resort to judicial intervention becomes necessary because of the closure made by the respondents of the irrigation canal thus depriving the petitioner to continue enjoying irrigation water coming from Silmod River through respondents' property. The interruption of the free flow of water caused by the refusal to re-open the closed irrigation canal constituted petitioner's cause of action in the court below, which decidedly do not fall within the domain of the authority of the [NWRB].

Respondents, however, rely very heavily on the dictum laid down in the *Abe-Abe vs. Manta*[23] xxx

xxx xxx xxx

The said pronouncement, however, finds no application to the instant case for in there, both petitioners and respondent have no established right emanating from any grant by any governmental agency to the use, appropriation and exploitation of water. In the case at bar, however, a grant indubitably exists in favor of the petitioner. It is the enjoyment of the right emanating from that grant that is in litigation. Violation of the grantee's right, who in this case is the petitioner, by the closure of the irrigation canal, does not bring the case anew within the jurisdiction of the [NWRB].[24]

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[22] 215 Phil. 197 (1984). This was reiterated in *Santos v. CA* (G.R. No. 61218, 23 September 1992, 214 SCRA 162). This case involved an action for annulment of title and reversion of a portion of the lot to the government. The Court stated:

"Article 88 of [PD 1067] speaks of limited jurisdiction conferred upon the [NWRB] over all disputes relating to appropriation, utilization, exploitation, development, control, conservation and protection of waters and said jurisdiction of the council does not extend to, much less cover, conflicting rights over real properties, jurisdiction over which is vested by law with the regular courts. Where the issue involved is not on a settlement of water rights dispute, but the enjoyment of a right to water use for which a permit was already granted, the regular court has jurisdiction over the dispute, not the [NWRB] (*Amistoso v. Ong*, 130 SCRA 228, 237 [1984])." (*Id.*, pp. 170-171)

[23] 179 Phil. 416 (1979).

[24] *Supra* note 22, pp. 205-206.

Clearly at issue in this case is whether, under the factual allegations of petitioner, it had the right under PD 198 to impose production assessments on respondent. It did and it was a judicial question properly addressed to the courts.

A judicial question is raised when the determination of the question involves the exercise of a judicial function, that is, it involves the determination of what the law is and what the legal rights of the parties are with respect to the matter in controversy.[25]

Aside from the aforequoted cases, we ruled in the following that judicial questions were raised and were thus properly cognizable by the regular courts:

(1) in *Metro Iloilo Water District v. CA*,[26] the issue was whether the extraction and sale of ground water within petitioner's service area violated petitioner's rights as a water district, justifying the issuance of an injunction.

(2) the action in *Bulao v. CA*[27] was for damages predicated on a quasi-delict. Private respondent alleged that petitioner maliciously constructed a dam and diverted the flow of water, causing the interruption of water passing through petitioner's land towards that of private respondent and resulting in the loss of harvest of rice and loss of income.[28]

In the same vein, the claim under Sec. 39 related to a prejudice or damage to petitioner's finances as a water district which gave it the right to levy a production assessment to compensate for the loss. Under the provision, the water district was also entitled to injunction and damages in case there was failure to pay. Obviously, this was a judicial issue which fell under the

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[25] *Metro Iloilo Water District v. CA*, G.R. No. 122855, 31 March 2005, 454 SCRA 249, 259, citing *Gonzales v. Climax Mining Ltd.*, G.R. No. 161957, 28 February 2005, 452 SCRA 607, 620, in turn citing Jose Agaton R. Sibal, *Philippine Legal Encyclopedia* (1986), p. 472.

[26] *Id*.

[27] G.R. No. 101983, 1 February 1993, 218 SCRA 321.

[28] *Id.*, p. 325.

jurisdiction of the regular courts. Since this involved a judicial question, it followed that the doctrine of primary jurisdiction did not apply because the technical expertise of the NWRB was not required.

Specifically, the action was within the exclusive jurisdiction of the RTC because it was incapable of pecuniary estimation as provided in Sec. 19 (1) of BP 129,[29] as amended by RA 7691.[30] The basic issue was petitioner's entitlement to the right provided under Sec. 39 of PD 198. Although there was a claim for a sum of money, it was purely incidental to, or a consequence of, the principal relief sought.[31]

We note that the CA already ruled on the issue of whether petitioner had the authority to impose production assessments. Petitioner did not raise this issue in its petition before us. Did this amount to a waiver of the issue? No, it did not. In its motion to dismiss in the RTC, respondent raised the sole issue of lack of jurisdiction. Accordingly, the RTC in its April 28, 2005 and June 8, 2005 orders dealt only with this issue. However, respondent, in its petition for *certiorari* in the CA, raised the additional question of petitioner's authority to impose the production assessments. This was obviously premature because it already went into the merits of the case and the RTC had not yet had the opportunity to resolve the issue. Furthermore, points of law, theories, issues and arguments not brought to the attention of the trial court ought not to be considered by a reviewing court as these cannot be raised for the first time on appeal.[32] Therefore, it was an error for the CA to rule on this issue.

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[29] Also known as "The Judiciary Reorganization Act of 1980."

[30] Entitled "An Act Expanding the Jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts, Amending for the Purpose Batas Pambansa, Blg. 129, Otherwise Known As The 'Judiciary Reorganization Act of 1980'" and approved on March 25, 1994.

[31] *Lapitan v. Scandia, Inc., et al.*, 133 Phil. 526, 528 (1968).

[32] *Valdez v. China Banking Corporation*, G.R. No. 155009, 12 April 2005, 455 SCRA 687.

Finally, respondent challenged the constitutionality of Sec. 39 of PD 198 in its memorandum. It contended that said provision was an undue delegation of legislative power.[33] A collateral attack on a presumably valid law is not allowed.

> We have ruled time and again that the constitutionality or validity of laws, orders, or such other rules with the force of law cannot be attacked collaterally. There is a legal presumption of validity of these laws and rules. Unless a law or rule is annulled in a direct proceeding, the legal presumption of its validity stands.[34]

Besides,

> [a] law is deemed valid unless declared null and void by a competent court; more so when the issue has not been duly pleaded in the trial court. The question of constitutionality must be raised at the earliest opportunity. xxx The settled rule is that courts will not anticipate a question of constitutional law in advance of the necessity of deciding it.[35]

WHEREFORE, the petition is hereby *GRANTED***.** The decision and resolution of the Court of Appeals dated May 26, 2006 and November 21, 2006, respectively, are *REVERSED* and *SET ASIDE*. The case is *REMANDED* to Branch 90 of the Regional Trial Court of Imus, Cavite for further proceedings.

SO ORDERED.

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

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[33] *Rollo*, pp. 372-377.

[34] *Tan v. Bausch & Lomb, Inc.*, G.R. No. 148420, 15 December 2005, 478 SCRA 115, 123-124, citing *Olsen and Co. v. Aldanese*, 43 Phil. 259 (1922); *San Miguel Brewery v. Magno*, 128 Phil. 328 (1967).

[35] *Philippine National Bank v. Palma*, G.R. No. 157279, 9 August 2005, 466 SCRA 307, 323, citations omitted.

[*] As replacement of Justice Antonio T. Carpio who is on official leave per Special Order No. 515.

THIRD DIVISION

[G.R. No. 177667. September 17, 2008]

CLEODIA U. FRANCISCO and CEAMANTHA U. FRANCISCO, represented by their grandmother DRA. MAIDA G. URIARTE as their Attorney-in-Fact, *petitioners, vs.* **SPOUSES JORGE C. GONZALES and PURIFICACION W. GONZALES,** *respondents.*

SYLLABUS

1. CIVIL LAW; MARRIAGE; CONJUGAL PARTNERSHIP OF GAINS; CIRCUMSTANCES WHERE THE CONJUGAL ASSET MAY BE HELD TO ANSWER FOR A SPOUSE'S PERSONAL OBLIGATION, NOT PRESENT IN CASE AT BAR. — A wife may bind the conjugal partnership only when she purchases things necessary for the support of the family, or when she borrows money for that purpose upon her husband's failure to deliver the needed sum; when administration of the conjugal partnership is transferred to the wife by the courts or by the husband; or when the wife gives moderate donations for charity. Failure to establish any of these circumstances means that the conjugal asset may not be bound to answer for the wife's personal obligation. Considering that the foregoing circumstances are evidently not present in this case as the liability incurred by Michele arose from a judgment rendered in an unlawful detainer case against her and her partner Matrai. Furthermore, even prior to the issuance of the Notice of Levy on Execution on November 28, 2001, there was already annotated on the title the following inscription: Entry No. 23341-42/T-167907 – Nullification of Marriage. By order of the Court RTC, NCR, Branch 144, Makati City dated July 4, 2001, which become final and executory on October 18, 2001 declaring the Marriage Contract between Michelle Uriarte and Cleodualdo M. Francisco, Jr. is null & void *ab initio* and title of ownership of the conjugal property consisting of the above-described property shall be transferred by way of a Deed of Donation to Cleodia Michaela U. Francisco and Ceamantha Maica U. Francisco, as co-owners when they reach nineteen (19) and eighteen (18) yrs. old to

the condition that Cleodualdo, shall retain usufructuary rights over the property until he reaches the age of 65 yrs. old. Date of instrument — Oct. 18, 2001 Date of inscription — Oct. 22, 2001. This annotation should have put the RTC and the sheriff on guard, and they should not have proceeded with the execution of the judgment debt of Michele and Matrai.

2. ID.; ID.; ID.; BY NO STRETCH OF IMAGINATION CAN IT BE CONCLUDED THAT THE SUBJECT DEBT/OBLIGATION WAS INCURRED FOR THE BENEFIT OF THE FAMILY; TO HOLD OTHERWISE WOULD BE GOING AGAINST THE SPIRIT AND AVOWED OBJECTIVE OF THE CIVIL CODE TO GIVE UTMOST CONCERN FOR THE SOLIDARITY AND WELL-BEING OF THE FAMILY AS A UNIT. — It should be noted that the judgment debt for which the subject property was being made to answer was incurred by Michele and her partner, Matrai. Respondents allege that the lease of the property in Lanka Drive redounded to the benefit of the family. By no stretch of one's imagination can it be concluded that said debt/obligation was incurred for the benefit of the conjugal partnership or that some advantage accrued to the welfare of the family. In *BA Finance Corporation v. Court of Appeals*, the Court ruled that the petitioner cannot enforce the obligation contracted by Augusto Yulo against his conjugal properties with respondent Lily Yulo because it was not established that the obligation contracted by the husband redounded to the benefit of the conjugal partnership under Article 161 of the Civil Code. The Court stated: In the present case, the obligation which the petitioner is seeking to enforce against the conjugal property managed by the private respondent Lily Yulo was undoubtedly contracted by Augusto Yulo for his own benefit because at the time he incurred the obligation he had already abandoned his family and had left their conjugal home. Worse, he made it appear that he was duly authorized by his wife in behalf of A & L Industries, to procure such loan from the petitioner. Clearly, to make A & L Industries liable now for the said loan would be unjust and contrary to the express provision of the Civil Code. Similarly in this case, Michele, who was then already living separately from Cleodualdo, rented the house in Lanka Drive for her and Matrai's own benefit. In fact, when they entered into the lease agreement, Michele and Matrai purported themselves to be husband and wife. Respondents'

bare allegation that petitioners lived with Michele on the leased property is not sufficient to support the conclusion that the judgment debt against Michele and Matrai in the ejectment suit redounded to the benefit of the family of Michele and Cleodualdo and petitioners. Thus, in *Homeowners Savings and Loan Bank v. Dailo*, the Court stated thus: x x x *Ei incumbit probatio qui dicit, non qui negat* (he who asserts, not he who denies, must prove). Petitioner's sweeping conclusion that the loan obtained by the late Marcelino Dailo, Jr. to finance the construction of housing units without a doubt redounded to the benefit of his family, without adducing adequate proof, does not persuade this Court. Other than petitioner's bare allegation, there is nothing from the records of the case to compel a finding that, indeed, the loan obtained by the late Marcelino Dailo, Jr. redounded to the benefit of the family. Consequently, the conjugal partnership cannot be held liable for the payment of the principal obligation. To hold the property in Taal St. liable for the obligations of Michele and Matrai would be going against the spirit and avowed objective of the Civil Code to give the utmost concern for the solidarity and well-being of the family as a unit.

3. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; THE PROPERTIES LEVIED UPON, OR SOUGHT TO BE LEVIED UPON, ARE UNQUESTIONABLY OWNED BY THE JUDGMENT DEBTOR AND ARE NOT EXEMPT BY LAW FROM EXECUTION. — While the trial court has the competence to identify and to secure properties and interest therein held by the judgment debtor for the satisfaction of a money judgment rendered against him, such exercise of its authority is premised on one important fact: that the properties levied upon, or sought to be levied upon, are properties **unquestionably owned by the judgment debtor** and are not exempt by law from execution. Also, a sheriff is not authorized to attach or levy on property not belonging to the judgment debtor, and even incurs liability if he wrongfully levies upon the property of a third person. A sheriff has no authority to attach the property of any person under execution except that of the judgment debtor.

4. ID.; ID.; ID.; THE SUBJECT PROPERTY SHOULD NOT HAVE BEEN LEVIED AND SOLD AT EXECUTION SALE FOR LACK OF LEGAL BASIS CONSIDERING THAT THE FORMER

SPOUSES HAVE ALREADY WAIVED THEIR RIGHTS OVER THE PROPERTY IN FAVOR OF THEIR TWO CHILDREN. — In justifying the levy against the property, the RTC went over the Compromise Agreement as embodied in the Partial Decision dated November 29, 2000. Oddly, the RTC ruled that there was no effective transfer of ownership to the siblings Cleodia and Ceamantha Francisco. In the same breath, the RTC astonishingly ruled that Michele is now the owner of the property inasmuch as Cleodualdo already waived his rights over the property. The Compromise Agreement must not be read piece-meal but in its entirety. It is provided therein, thus: 7. In their desire to manifest their genuine concern for their children, Cleodia and Ceamantha, **Cleodualdo and Michelle have voluntarily agreed** to herein set forth their obligations, rights and responsibilities on matters relating to their children's support, custody, visitation, as well as to the dissolution of their conjugal partnership of gains as follows: (a) **Title and ownership of the conjugal property consisting of a house and lot located in Ayala Alabang, Muntinlupa, Metro Manila shall be transferred by way of a deed of donation to Cleodia and Ceamantha, as co-owners, when they reach nineteen (19) and eighteen (18) years old, respectively**, **subject to the following conditions**: a.1. Cleodualdo shall retain usufructuary rights over the property until he reaches the age of 65 years old, with the following rights and responsibilities: xxx xxx xxx From the foregoing, it is clear that both Michele and Cleodualdo have waived their title to and ownership of the house and lot in Taal St. in favor of petitioners. The property should not have been levied and sold at execution sale, for lack of legal basis. Verily, the CA committed an error in sustaining the RTC Orders dated June 4, 2003 and July 31, 2003.

APPEARANCES OF COUNSEL

M.B. Tomacruz & Associates Law Offices for petitioners.
Ubano Ancheta Siangho & Lozada for respondents.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Assailed in the present petition for review on *certiorari* under Rule 45 of the Rules of Court is the Court of Appeals (CA) Decision dated April 30, 2007, which affirmed the Regional Trial Court (RTC) Orders dated June 4, 2003 and July 31, 2003, denying petitioners' motion to stop execution sale.

Petitioners Cleodia U. Francisco and Ceamantha U. Francisco are the minor children of Cleodualdo M. Francisco (Cleodualdo) and Michele Uriarte Francisco (Michele). In a Partial Decision dated November 29, 2000 rendered by the RTC of Makati, Branch 144, in Civil Case No. 93-2289 for Declaration of Nullity of Marriage, the Compromise Agreement entered into by the estranged couple was approved. The Compromise Agreement contained in part the following provisions:

> 7. In their desire to manifest their genuine concern for their children, Cleodia and Ceamantha, Cleodualdo and Michelle have voluntarily agreed to herein set forth their obligations, rights and responsibilities on matters relating to their children's support, custody, visitation, as well as to the dissolution of their conjugal partnership of gains as follows:
>
> > (a) Title and ownership of the conjugal property consisting of a house and lot located in Ayala Alabang, Muntinlupa, Metro Manila shall be transferred by way of a deed of donation to Cleodia and Ceamantha, as co-owners, when they reach nineteen (19) and eighteen (18) years old, respectively, subject to the following conditions:
>
> x x x x x x x x x[1]

The property subject of the Compromise Agreement is a house and lot covered by Transfer Certificate of Title No. 167907 in the name of Cleodualdo M. Francisco, married to Michele U. Francisco, with an area of 414 square meters, and located in 410 **Taal St.**, Ayala Alabang Village, Muntinlupa City.[2]

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[1] *Rollo*, pp. 74-75.

[2] *Id.* at 64-65.

Meanwhile, in a case for Unlawful Detainer with Preliminary Attachment filed by spouses Jorge C. Gonzales and Purificacion W. Gonzales (respondents) against George Zoltan Matrai (Matrai) and Michele, the Metropolitan Trial Court (MeTC) of Muntinlupa City, Branch 80, rendered a Decision dated May 10, 2001, ordering Matrai and Michele to vacate the premises leased to them located in 264 **Lanka Drive**, Ayala Alabang Village, Muntinlupa City, and to pay back rentals, unpaid telephone bills and attorney's fees.[3]

Pending appeal with the RTC of Muntinlupa, Branch 256, an order was issued granting respondents' prayer for the execution of the MeTC Decision.[4] A notice of sale by execution was then issued by the sheriff covering the real property under Transfer Certificate of Title No. T-167907 in the name of Cleodualdo M. Francisco, married to Michele U. Francisco.[5]

When petitioners' grandmother learned of the scheduled auction, she, as guardian-in-fact of petitioners, filed with the RTC an Affidavit of Third Party Claim[6] and a Very Urgent Motion to Stop Sale by Execution[7] but this was denied in the Order dated June 4, 2003.[8] Petitioners' motion for reconsideration was denied per RTC Order dated July 31, 2003.[9]

Petitioners then filed a petition for *certiorari* with the CA.

Pending resolution by the CA, the RTC issued an Order dated July 8, 2005, granting respondents' petition for the issuance of a new certificate of title.[10] The RTC also issued an Order

[3] *Rollo*, p. 60.

[4] *Id.* at 61.

[5] *Id.* at 62-65.

[6] *Id.* at 66-67.

[7] *Id.* at 69-71.

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

[9] *Id.* at 81.

[10] *Id.* at 504-505.

on February 13, 2006, granting respondents' motion for the issuance of a writ of possession.[11]

On April 30, 2007, the CA dismissed the petition, the dispositive portion of which reads:

> WHEREFORE, premises considered, the *Petition* is hereby DISMISSED. The *Order(s)*, dated June 4, 2003 and July 31, 2003, of the Regional Trial Court of Muntinlupa City, Br. 256, in Civil Case No. 01-201, STAND. Costs against the Petitioners.
>
> SO ORDERED.[12]

Hence, herein petition. As prayed for, the Court issued a temporary restraining order on July 11, 2007, enjoining respondents, the RTC, the Register of Deeds, and the Sheriff from implementing or enforcing the RTC Order dated July 8, 2005, canceling TCT No. 167907 and Order dated February 13, 2006, issuing a writ of possession, until further orders from the Court.[13]

Petitioners argue that: (1) they are the rightful owners of the property as the Partial Decision issued by the RTC of Makati in Civil Case No. 93-2289 had already become final; (2) their parents already waived in their favor their rights over the property; (3) the adjudged obligation of Michele in the ejectment case did not redound to the benefit of the family; (4) Michele's obligation is a joint obligation between her and Matrai, not joint and solidary.[14]

The Court finds that it was grave error for the RTC to proceed with the execution, levy and sale of the subject property. The power of the court in executing judgments extends only to properties **unquestionably belonging to the judgment debtor alone**,[15] in the present case to those belonging to Michele and

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[11] *Id.* at 513.

[12] *Rollo*, p. 44.

[13] *Id.* at 557.

[14] *Id.* at 16-24.

[15] *Go v. Yamane*, G.R. No. 160762, May 3, 2006, 489 SCRA 107, 124.

Matrai. One man's goods shall not be sold for another man's debts.[16]

To begin with, the RTC should not have ignored that TCT No. 167907 is in the name of "Cleodualdo M. Francisco, married to Michele U. Francisco." On its face, the title shows that the registered owner of the property is not Matrai and Michele but Cleodualdo, married to Michele. This describes the civil status of Cleodualdo at the time the property was acquired.[17]

Records show that Cleodualdo and Michele were married on June 12, 1986, prior to the effectivity of the Family Code on August 3, 1988. As such, their property relations are governed by the Civil Code on conjugal partnership of gains.

The CA acknowledged that ownership of the subject property is conjugal in nature;[18] however, it ruled that since Michele's obligation was not proven to be a personal debt, it must be inferred that it is conjugal and redounded to the benefit of the family, and hence, the property may be held answerable for it.[19]

The Court does not agree.

A wife may bind the conjugal partnership only when she purchases things necessary for the support of the family, or when she borrows money for that purpose upon her husband's failure to deliver the needed sum; when administration of the conjugal partnership is transferred to the wife by the courts or by the husband; or when the wife gives moderate donations for charity. Failure to establish any of these circumstances means that the conjugal asset may not be bound to answer for the wife's personal obligation.[20] Considering that the foregoing

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[16] *Yao v. Perello*, 460 Phil. 658, 662 (2003).

[17] *Heirs of Nicolas Jugalbot v. Court of Appeals*, G.R. No. 170346, March 12, 2007, 518 SCRA 202; *Pisueñas v. Heirs of Petra Unating*, 372 Phil. 372 Phil. 267 (1999); *Estonina v. Court of Appeals*, G.R. No. 111547, January 27, 1997, 266 SCRA 627.

[18] *Rollo*, p. 41.

[19] *Id*.

[20] *Go v. Yamane*, *supra* note 15.

circumstances are evidently not present in this case as the liability incurred by Michele arose from a judgment rendered in an unlawful detainer case against her and her partner Matrai.

Furthermore, even prior to the issuance of the Notice of Levy on Execution on November 28, 2001,[21] there was already annotated on the title the following inscription:

> Entry No. 23341-42/T-167907 – Nullification of Marriage
>
> By order of the Court RTC, NCR, Branch 144, Makati City dated July 4, 2001, which become final and executory on October 18, 2001 declaring the Marriage Contract between Michelle Uriarte and Cleodualdo M. Francisco, Jr. is null & void *ab initio* and title of ownership of the conjugal property consisting of the above-described property shall be transferred by way of a Deed of Donation to Cleodia Michaela U. Francisco and Ceamantha Maica U. Francisco, as co-owners when they reach nineteen (19) and eighteen (18) yrs. old to the condition that Cleodualdo, shall retain usufructuary rights over the property until he reaches the age of 65 yrs. old.
>
> Date of instrument – Oct 18, 2001
> Date of inscription – Oct 22, 2001.[22]

This annotation should have put the RTC and the sheriff on guard, and they should not have proceeded with the execution of the judgment debt of Michele and Matrai.

While the trial court has the competence to identify and to secure properties and interest therein held by the judgment debtor for the satisfaction of a money judgment rendered against him, such exercise of its authority is premised on one important fact: that the properties levied upon, or sought to be levied upon, are properties **unquestionably owned by the judgment debtor** and are not exempt by law from execution.[23] Also, a sheriff is not authorized to attach or levy on property not belonging to the judgment debtor, and even incurs liability if he wrongfully levies upon the property of a third person. A sheriff has no

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[21] *Rollo*, page 208.

[22] *Id.*, back of page 65.

[23] *Abesamis v. Court of Appeals*, 413 Phil. 646 (2001).

authority to attach the property of any person under execution except that of the judgment debtor.[24]

It should be noted that the judgment debt for which the subject property was being made to answer was incurred by Michele and her partner,[25] Matrai. Respondents allege that the lease of the property in Lanka Drive redounded to the benefit of the family.[26] By no stretch of one's imagination can it be concluded that said debt/obligation was incurred for the benefit of the conjugal partnership or that some advantage accrued to the welfare of the family. In *BA Finance Corporation v. Court of Appeals*,[27] the Court ruled that the petitioner cannot enforce the obligation contracted by Augusto Yulo against his conjugal properties with respondent Lily Yulo because it was not established that the obligation contracted by the husband redounded to the benefit of the conjugal partnership under Article 161 of the Civil Code. The Court stated:

> In the present case, the obligation which the petitioner is seeking to enforce against the conjugal property managed by the private respondent Lily Yulo was undoubtedly contracted by Augusto Yulo for his own benefit because at the time he incurred the obligation he had already abandoned his family and had left their conjugal home. Worse, he made it appear that he was duly authorized by his wife in behalf of A & L Industries, to procure such loan from the petitioner. Clearly, to make A & L Industries liable now for the said loan would be unjust and contrary to the express provision of the Civil Code. (Emphasis supplied)

Similarly in this case, Michele, who was then already living separately from Cleodualdo,[28] rented the house in Lanka Drive for her and Matrai's own benefit. In fact, when they entered into the lease agreement, Michele and Matrai purported

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[24] *Johnson & Johnson (Phils.), Inc. v. Court of Appeals*, G.R. No. 102692, September 23, 1996, 262 SCRA 298.

[25] *Rollo*, p. 611.

[26] *Id.* at 122, 139-140.

[27] No. 61464, May 28, 1988, 161 SCRA 608.

[28] *Rollo*, p. 74.

themselves to be husband and wife.[29] Respondents' bare allegation that petitioners lived with Michele on the leased property is not sufficient to support the conclusion that the judgment debt against Michele and Matrai in the ejectment suit redounded to the benefit of the family of Michele and Cleodualdo and petitioners. Thus, in *Homeowners Savings and Loan Bank v. Dailo*, the Court stated thus:

> x x x *Ei incumbit probatio qui dicit, non qui negat* (he who asserts, not he who denies, must prove). Petitioner's sweeping conclusion that the loan obtained by the late Marcelino Dailo, Jr. to finance the construction of housing units without a doubt redounded to the benefit of his family, without adducing adequate proof, does not persuade this Court. Other than petitioner's bare allegation, there is nothing from the records of the case to compel a finding that, indeed, the loan obtained by the late Marcelino Dailo, Jr. redounded to the benefit of the family. Consequently, the conjugal partnership cannot be held liable for the payment of the principal obligation. [30]

To hold the property in Taal St. liable for the obligations of Michele and Matrai would be going against the spirit and avowed objective of the Civil Code to give the utmost concern for the solidarity and well-being of the family as a unit.[31]

In justifying the levy against the property, the RTC went over the Compromise Agreement as embodied in the Partial Decision dated November 29, 2000. Oddly, the RTC ruled that there was no effective transfer of ownership to the siblings Cleodia and Ceamantha Francisco. In the same breath, the RTC astonishingly ruled that Michele is now the owner of the property inasmuch as Cleodualdo already waived his rights over the property. The Compromise Agreement must not be read piece-meal but in its entirety. It is provided therein, thus:

> 7. In their desire to manifest their genuine concern for their children, Cleodia and Ceamantha, **Cleodualdo and Michelle have voluntarily agreed** to herein set forth their obligations, rights and responsibilities

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[29] See Complaint in Civil Case No. 4905, p. 147.

[30] G.R. No. 153802, March 11, 2005, 453 SCRA 283, 292.

[31] *Luzon Surety Co., Inc. v. Garcia*, 140 Phil. 509 (1969).

on matters relating to their children's support, custody, visitation, as well as to the dissolution of their conjugal partnership of gains as follows:

> (a) **Title and ownership of the conjugal property consisting of a house and lot located in Ayala Alabang, Muntinlupa, Metro Manila shall be transferred by way of a deed of donation to Cleodia and Ceamantha, as co-owners, when they reach nineteen (19) and eighteen (18) years old, respectively, subject to the following conditions:**
>
> a.1. Cleodualdo shall retain usufructuary rights over the property until he reaches the age of 65 years old, with the following rights and responsibilities:
>
> x x x[32] (Emphasis supplied)

From the foregoing, it is clear that both Michele and Cleodualdo have waived their title to and ownership of the house and lot in Taal St. in favor of petitioners. The property should not have been levied and sold at execution sale, for lack of legal basis.

Verily, the CA committed an error in sustaining the RTC Orders dated June 4, 2003 and July 31, 2003.

WHEREFORE, the petition is *GRANTED*. The assailed Court of Appeals Decision dated April 30, 2007, affirming RTC Orders dated June 4, 2003 and July 31, 2003, are hereby *NULLIFIED* and *SET ASIDE*. The temporary restraining order issued by the Court per Resolution of July 11, 2007 is hereby made *PERMANENT*.

Costs against respondents.

SO ORDERED.

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

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[32] *Rollo,* pp. 74-75.

FIRST DIVISION

[G.R. No. 179718. September 17, 2008]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **LOURDES V. LEGASPI,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; SEARCH CONDUCTED BY THE POLICE, NOT MARRED BY IRREGULARITIES. — We uphold the findings of the lower courts that the search conducted by the police officers was not marred by irregularities. As found by the CA, the search warrant expressly contained a directive for the police officers to search appellant's house at any time of the day or night. Thus, her contention that the search warrant was irregularly enforced as the search was conducted at an unreasonable time (between 1:25 and 2:30 in the morning) has no merit. Moreover, her averment that the search was not made in her presence has no basis. The RTC held, and the CA affirmed, that the prosecution witnesses (namely the police officers who conducted the search) were very straightforward and consistent in their testimonies that it was made in the presence of the appellant herself and the *barangay tanod.* Thus, it so bore all the earmarks of truth that it would be difficult not to give credence to it. Furthermore, no improper motive could successfully be ascribed to the law enforcers for implicating appellant in the commission of the offense.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; BEST DETERMINED BY TRIAL COURTS. — The issues raised by appellant are actually factual and involve the credibility of the witnesses. Time and again, we have held that findings of trial courts on the credibility of witnesses deserve a high degree of respect. Having observed their demeanor during the trial, the trial judge is in the best position to determine this issue. Thus, his findings are not to be disturbed on appeal in the absence of any clear showing that he overlooked some fact or circumstance which can alter the result of the case. For this reason, we decline to disturb the findings of the trial court.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

R E S O L U T I O N

CORONA, *J.*:

On March 14, 2001, appellant Lourdes V. Legaspi was charged with violating Section 8, Article II[1] and Section 16, Article III[2] of R.A. No. 6425 (otherwise known as "The Dangerous Drugs

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[1] Section 8, Article II of R.A. No. 6425, as amended by R.A. No. 7659, provides:

Sec. 8. *Possession or Use of Prohibited Drugs*. – The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall possess or use any prohibited drugs subject to the provisions of Section 20 hereof.

[2] Section 16, Article III of the same law, as amended by R.A. No. 7659, provides:

Sec. 16. *Possession or Use of Regulated Drugs*. – The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who shall possess or use any regulated drug without the corresponding license or prescription, subject to the provisions of Section 20 hereof.

Section 20 thereof sets forth the penalties to be imposed. Thus:

Sec. 20. *Application of Penalties, Confiscation and Forfeiture of the Procedure or Instruments of the Crime*. – The penalties for offenses under Sections 3, 4, 7, 8 and 9 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities:

x x x x x x x x x

3. 200 grams or more of shabu or methylamphetamine hydrochloride;

x x x x x x x x x

5. 750 grams or more of indian hemp or marijuana;

x x x x x x x x x

Act of 1972") in the Regional Trial Court (RTC) of Malolos City, Branch 76.

The Informations charging appellant of the above offenses read:

Criminal Case No. 749-M-01

That on or about the 14th day of March, 2001, in the Municipality of Meycauayan, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in her possession and control One (1) brick of dried marijuana fruiting tops weighing 900.00 grams which is a prohibited drug.

Contrary to law.

Criminal Case No. 750-M-01

That on or about the 14th day of March, 2001, in the Municipality of Meycauayan, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously have in his [sic] possession and control Twenty-Eight (28) small size heat-sealed transparent plastic pack containing Methamphetamine Hydrochloride (shabu) weighing 8.663 gram,[sic] which is a regulated drug.

Contrary to law.

On arraignment, appellant, assisted by counsel, entered a plea of not guilty to both charges. Trial on the merits ensued.

The prosecution established the following facts:

Between 1:25 and 2:30 a.m. on March 14, 2001, members of the Philippine National Police (PNP) narcotics team went to appellant's house at Libis, Brgy. Saluysoy, Meycauayan, Bulacan to implement a search warrant issued by Executive

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Otherwise, if the quantity involved is less than the foregoing quantities, the penalty shall range from *prision correccional* to *reclusion perpetua* depending upon the quantity.

x x x x x x x x x (As amended by R.A. No. 7659)

Judge Napoleon Sta. Romana of the RTC of Guimba, Nueva Ecija. The search warrant specifically contained an order directing the officers of the law to conduct a search of appellant's house at any time of the day or night.

The officers coordinated with the Meycauayan PNP and the *barangay tanod* of the locality. However, it was the *barangay tanod* who assisted the narcotics team; they acted as witnesses to the search as the Meycauayan PNP was unable to join them.

The officers introduced themselves to appellant and proceeded to search her house in her presence and the *barangay tanod*. During the search, a member of the team saw a transparent plastic pack with white crystalline substance on top of a rice dispenser. This was turned over to the evidence custodian. The same officer also found a brick plastic bag bound with packaging tape. Again, this was given to the evidence custodian.

Thereafter, appellant was informed of her violations and was brought to the headquarters in Brgy. Saluysoy, Meycauayan, Bulacan where she underwent an investigation.

The confiscated evidence was brought to the crime laboratory office in Malolos, Bulacan for examination. The laboratory report yielded positive findings. The white crystalline substance was shabu. The brick plastic bag wrapped with packaging tape, on the other hand, turned out to be dried marijuana fruiting tops.

Appellant's defense hinged on the alleged irregularities that attended the search. She claimed that the officers conducted the search at an unreasonable time and in contravention of her request that it be made in her presence.

After trial on the merits, the RTC convicted appellant of the crime charged. The dispositive portion of the decision[3] read:

WHEREFORE, in view of the above, accused Lourdes V. Legaspi is hereby found GUILTY BEYOND REASONABLE DOUBT of the

[3] Penned by Judge Candido R. Belmonte. Dated September 7, 2004. CA *rollo*, pp. 11-20.

offenses charged. In Criminal Case No. 749-M-01, she is hereby sentenced to suffer the penalty of *Reclusion Perpetua* and a fine of ₱500,000.00. In Criminal Case No. 750-M-01, she is hereby sentenced to suffer the penalty of one (1) year of *Prision Correccional.*

The Branch Clerk of Court is hereby ordered to immediately turn over the dangerous drugs involved in this case to the Philippine Drug Enforcement Agency (PDEA) for proper disposition and destruction.

SO ORDERED.

On appeal, the Court of Appeals (CA) affirmed the RTC decision with modification[4] of the penalty [5] imposed for Criminal Case No. 750-M-01. Thus:

WHEREFORE**,** in the light of the foregoing disquisitions, the decision of the Regional Trial Court of Malolos City, Branch 76, finding appellant Lourdes V. Legaspi, guilty beyond reasonable doubt of violation of Section 8, Article II and of Section 16, Article III of Republic Act 6425, is[,] hereby, **AFFIRMED with MODIFICATION** in that the appellant is sentenced to suffer the penalty of imprisonment ranging from six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum, in Criminal Case No. 750-M-01.

SO ORDERED**.**

We affirm the CA.

We see no reason to disturb the findings of the RTC as affirmed by the CA. The records are replete with evidence establishing appellant's guilt beyond reasonable doubt.

Furthermore, we uphold the findings of the lower courts that the search conducted by the police officers was not marred by irregularities.

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[4] Penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Jose C. Reyes, Jr. and Myrna Dimaranan Vidal of the Tenth Division of the Court of Appeals. Dated April 26, 2007. *Rollo*, pp. 2-21.

[5] See *Rigor v. The Superintendent, New Bilibid Prison*, 458 Phil. 561, 567 (2003).

As found by the CA, the search warrant expressly contained a directive for the police officers to search appellant's house at any time of the day or night.[6] Thus, her contention that the search warrant was irregularly enforced as the search was conducted at an unreasonable time (between 1:25 and 2:30 in the morning) has no merit.

Moreover, her averment that the search was not made in her presence has no basis. The RTC held, and the CA affirmed, that the prosecution witnesses (namely the police officers who conducted the search) were very straightforward and consistent in their testimonies that it was made in the presence of the appellant herself and the *barangay tanod*. Thus, it so bore all the earmarks of truth that it would be difficult not to give credence to it.[7] Furthermore, no improper motive could successfully be ascribed to the law enforcers for implicating appellant in the commission of the offense.[8]

The issues raised by appellant are actually factual and involve the credibility of the witnesses. Time and again, we have held that findings of trial courts on the credibility of witnesses deserve a high degree of respect. Having observed their demeanor during the trial, the trial judge is in the best position to determine this issue. Thus, his findings are not to be disturbed on appeal in the absence of any clear showing that he overlooked some fact or circumstance which can alter the result of the case.[9] For this reason, we decline to disturb the findings of the trial court.

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[6] Section 9, Article 126 of the Revised Rules of Court provides:

Sec. 9. *Time of making search.* – The warrant must direct that it be served in the day time, unless the affidavit asserts that the property is on the person or in the place ordered to be searched, in which case a direction may be inserted that it be served at any time of the day or night.

[7] *People v. Che Chun Ting*, 385 Phil. 305, 320 (2000).

[8] *Mendoza v. People*, G.R. No. 173551, 7 October 2007.

[9] *People v. Romero*, 459 Phil. 484, 502 (2003).

WHEREFORE, the decision of the Court of Appeals in CA-G.R. CR No. 00278 is hereby *AFFIRMED*. Lourdes V. Legaspi is found guilty beyond reasonable doubt of violating Section 8, Article II and Section 16, Article III of R.A. No. 6425. She is sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay a fine of ₱500,000 in Criminal Case No. 749-M-01. She is also sentenced to suffer the penalty of imprisonment ranging from six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum, in Criminal Case No. 750-M-01.

SO ORDERED.

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

EN BANC

[A.M. No. 2007-25-SC. September 18, 2008]

RONNIE C. DELA CRUZ, *complainant, vs.* **REDENTOR A. ZAPICO, QUIRINO V. ITLIONG II, and ODON C. BALANI,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; FACT THAT THE INCIDENT COMPLAINED OF WAS NOT RELATED TO RESPONDENTS' WORK OR OFFICIAL DUTIES AND TOOK PLACE AFTER OFFICE HOURS AND OUTSIDE THE COURT DOES NOT WARRANT DISMISSAL OF THE CASE; EMPLOYEES OF THE JUDICIARY SHOULD BE LIVING EXAMPLES OF UPRIGHTNESS NOT ONLY IN THE

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* As replacement of Justice Antonio T. Carpio who is on official leave per Special Order No. 515.

PERFORMANCE OF THEIR OFFICIAL DUTIES BUT ALSO IN THEIR PRIVATE DEALINGS WITH OTHER PEOPLE, SO AS TO PRESERVE AT ALL TIMES THE GOOD NAME AND STANDING OF COURTS IN THE COMMUNITY. — Anent the preliminary issue of whether the OAS has jurisdiction over the complaint and may take cognizance of the present case, we rule in the affirmative. It is beyond cavil that this Court has the right to discipline erring employees by virtue of its administrative supervision of all courts and court personnel. The fact that the incident complained of was not related to respondents' work or official duties and took place after office hours and outside the Court does not warrant the dismissal of the case, as respondents contend. This Court has held that employees of the judiciary should be living examples of uprightness **not only in the performance of their official duties, but also in their personal and private dealings with other people**, so as to preserve at all times the good name and standing of courts in the community. Employees in the government service are bound by the rules of proper and ethical behavior and are expected **to act with self-restraint and civility at all time***s*, even when confronted with rudeness and insolence. We agree with the following pronouncement of the OAS: We remind the respondents that their employment in this Court is not a status symbol or a badge to be brandished around for all to see, but a sacred duty and, as ordained by the Constitution, a public trust. They should be more circumspect in how they conduct themselves in and outside the office. **After all, they do not stop becoming judiciary employees once they step outside the gates of the Supreme Court**.

2. ID.; ID.; ID.; ID.; ID.; THE CONDUCT OF COURT PERSONNEL MUST BE, AND PERCEIVED TO BE, FREE FROM ANY WHIFF OF IMPROPRIETY, WITH RESPECT NOT ONLY TO THEIR DUTIES IN THE JUDICIARY BUT ALSO IN THEIR BEHAVIOR OUTSIDE THE COURT. — Misconduct generally means wrongful, improper, unlawful conduct motivated by a premeditated, obstinate, or intentional purpose. Any transgression or deviation from the established norm of conduct, **work-related or not**, amounts to a misconduct. The image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women therein, from the judge to the least and lowest of its personnel; hence, it becomes the

imperative and sacred duty of each and everyone in the court to maintain its good name and standing as a true temple of justice. The conduct of court personnel must be, and also perceived to be, free from any whiff of impropriety, with respect not only to their duties in the judiciary **but also in their behavior outside the court**. Their behavior and actuations must be characterized by propriety and decorum and should at all times embody prudence, restraint, courtesy and dignity. Simply put, they must always conduct themselves in a manner worthy of the public's respect for the judiciary.

3. ID.; ID.; ID.; ID.; SIMPLE MISCONDUCT; RESPONDENT'S OUTBURST OF TEMPER AND ACT OF ATTACKING THE COMPLAINANT, DESPITE THE LACK OF EVIDENCE OF SUFFICIENT PROVOCATION ON THE PART OF COMPLAINANT TENDED TO DEGRADE THE DIGNITY AND IMAGE OF THE JUDICIARY. — With respect to respondent Zapico, we agree with the finding of the OAS that his outburst of temper and act of attacking the complainant, despite the lack of evidence of sufficient provocation on the part of complainant tended to degrade the dignity and the image of the judiciary. Such belligerence on the part of Zapico and his infliction of multiple, visible injuries on complainant are clear deviations from the established norm of conduct, even if it is not work-related, and amounts to misconduct. He undeniably fell short of the high standards of propriety and decorum expected of employees of the judiciary. Thus, the recommendation of the OAS finding respondent Zapico guilty of simple misconduct is well-taken.

4. ID.; ID.; ID.; ID.; ID.; ACTUATION OF THE OTHER RESPONDENTS ARE NOT CONSIDERED ABOVE REPROACH; THEIR STATEMENTS CONTRIBUTED TO, IF NOT PRECIPITATED THE TENSION BETWEEN COMPLAINANT AND RESPONDENT; LIKEWISE NOTED WITH DISFAVOR IS THEIR FAILURE TO TIMELY INTERVENE TO PREVENT THE INCIDENT FROM PROGRESSING TO SUCH STAGE THAT COMPLAINANT EVEN SUSTAINED INJURIES. — Section 52 (B) (2) of the Revised Uniform Rules on Administrative Cases in the Civil Service provides: Section 52. *Classification of Offenses.* — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their

gravity or depravity and effects on the government service. B. The following are *less grave offenses* with the corresponding penalties: x x x x x x x x x 2. Simple misconduct 1st offense — Suspension (1 mo. 1 day to 6 mos.) 2nd offense — Dismissal. Under the above provision, it classifies simple misconduct as a less grave offense punishable by suspension of one month and one day to six months for the first offense. However, as recommended by the OAS, we shall appreciate as mitigating circumstances the following: (a) respondent's sixteen (16) years of service in the Court; (b) his Very Satisfactory (VS) rating for the past three consecutive semesters; and (c) this instance being his first time to have been charged administratively. This is also in consonance with Section 53 of the Revised Uniform Rules on Administrative Cases in the Civil Service which provides that in the determination of the penalties to be imposed, the extenuating, mitigating, aggravating or alternative circumstances may be considered. Thus, the penalty of suspension for one (1) month and one (1) day should be imposed upon respondent Zapico for the commission of the first offense of simple misconduct with a stern warning that a repetition of the same or similar acts in the future will be dealt with more severely.

5. ID.; ID.; ID.; ID.; ID.; PENALTY IMPOSED.— With respect to respondents Itliong and Balani, while we agree with the OAS that complainant failed to substantiate his allegation that respondents Itliong and Balani participated in the "mauling" of complainant, we find that their actuations in this case are not above reproach. In their respective comments, they admit that Itliong indeed told Zapico that complainant allegedly gave Zapico "a hard look" or was "sizing [Zapico] up from head to toe." Even Zapico narrated in this own comment that his co-respondents told him that complainant gave him a "bad stare" and "sized him up." All this tended to corroborate complainant's and Rubylyn's statements that she [Rubylyn] heard respondents Itliong and Balani make remarks, such as: "*Ang sama makatingin, o!" "Kabago-bago pa lang sa Court, ang yabang na.*" Such statements contributed to, if not precipitated, the tension between complainant and respondent Zapico. This Court likewise notes with disfavor the fact that although Itliong and Balani did not appear to have helped in the attack on complainant, they failed to timely intervene between their friend

Zapico and complainant to prevent the incident from progressing to such a stage that complainant, their co-employee, even sustained injuries. Respondents Itliong and Balani should be admonished for their deplorable conduct, which likewise falls short of the high standards of decorum and propriety expected of them.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This administrative case stemmed from a complaint-affidavit dated November 29, 2007 filed with the Office of Administrative Services (OAS) of this Court by Ronnie C. Dela Cruz,[1] against Redentor A. Zapico,[2] Quirino V. Itliong II,[3] and Odon C. Balani[4] for grave misconduct, conduct unbecoming a Court employee, and conduct prejudicial to the best interest of the service.

The complaint recounts an altercation involving the parties which happened on the evening of November 14, 2007 at the *Peking Wok* Restaurant, along Arkansas Street, between Orosa and Bocobo Streets, Ermita, Manila. Complainant allegedly went there at around 11:30 p.m. to fetch his girlfriend, Rubylyn C. Badinas (Rubylyn), who worked as a cashier in the said restaurant. When complainant arrived at the restaurant, respondents were having a drinking session at a table in front of the cashier's counter. Rubylyn purportedly heard respondents Itliong and Balani talking about complainant and saying: "*Ang sama makatingin, o!*" "*Kabago-bago pa lang sa* Court, *ang yabang*

[1] Legislative Staff Assistant II of the House of Representative Electoral Tribunal (HRET), detailed in the Office of Associate Justice Antonio T. Carpio.

[2] Court Stenographer IV, Public Information Office, detailed in the Office of the Chief Justice.

[3] Judicial Staff Assistant III, Philippine Judicial Academy.

[4] Utility Worker II, Office of the Clerk of Court, Second Division.

na."[5] Rubylyn told complainant to just ignore the respondents' remarks. To avoid any untoward incident, complainant just moved to a table in the corner of the restaurant, behind the cashier's counter to wait for Rubylyn whom he invited to go to the Caliente Bar on Orosa Street. After a while, complainant decided to go ahead to Caliente Bar and suggested to Rubylyn that she just follow him there.

Complainant further alleged that when he passed by respondents' table upon leaving the restaurant, both respondents Itliong and Balani suddenly uttered invectives at him: "*Putang Ina mo!" "Ano, hanggang tingin ka lang pala eh!" "Ano, papalag ka ba?"* Complainant just ignored their utterances and continued walking towards the door. Respondent Zapico allegedly followed complainant outside, then shouted invectives and attacked the latter. Complainant fell to the ground and while lying down, all three respondents allegedly mauled him. Complainant claims that he tried to defend himself by using his arms and kicking his legs. The mauling allegedly ended when people restrained the parties and stopped the fight.

Thereafter, complainant proceeded to the Philippine General Hospital (PGH) Emergency Room for treatment and medico-legal examination. In the Medico-Legal Certificate issued by PGH, complainant was found to have suffered physical injuries which, "will require medical attendance for a period of less than nine (9) days."[6] When complainant reached home, he requested his friend and officemate Samuel Galope to take photos of his injuries.[7] The following day, he went to the Manila Police District Station 2 and had the incident entered into the police blotter.[8] Due to the injuries he suffered, complainant was not able to report for work for two (2) days.

On December 5, 2007, the OAS issued a Memorandum to respondents, directing them to submit their Comment/Explanation

[5] Complaint-affidavit, *rollo*, p.145.

[6] *Id.*, at 154.

[7] *Id.*, at 156-159.

[8] *Id.*, at 155.

within five (5) days from receipt of the complaint-affidavit. Upon written request of respondents, the OAS granted them an extension of fifteen (15) days, or until December 27, 2007, within which to submit their comments.

In his Comment/Explanation dated December 21, 2007, respondent Zapico disputed complainant's version of the incident. Although he admitted that he was with his co-respondents Itliong and Balani at the *Peking Wok* Restaurant on the evening of November 14, 2007, he insisted that complainant was the one who initiated the altercation when the latter passed by their table. When complainant was barely out of the glass door with the door still open, he allegedly raised both his hands and made two dirty-finger signs and shouted "*fuck you"* to respondents. Thus, Zapico called complainant back to clarify what he meant. When complainant returned towards Zapico's direction, the former was already enraged and continuously shouting invectives, with his finger pointed at the latter [Zapico].

Respondent Zapico further maintained that it was complainant who first started throwing punches but he [Zapico] was able to parry them. He added that because complainant was under the influence of liquor, he missed hitting him [Zapico] which enraged complainant even more. Zapico claimed that he and complainant exchanged blows, with both sides being able to hit or land punches on the other. Zapico alleged that the fighting stopped when his co-respondents restrained him and Rubylyn pulled complainant away from Zapico. Even after they were already parted, complainant allegedly tried to follow Zapico inside and uttered, "*Kilala kita Reden, may Admin tayo, ipapa*admin *kita, kay Justice Carpio ako."* Respondent Zapico further averred that both respondents Itliong and Balani merely helped stop the fight and did not join him in fighting the complainant.

In their separate Comment/Explanation dated December 21, 2007, co-respondents Itliong and Balani corroborated respondent Zapico's narration, reiterating that it was only respondent Zapico and complainant who engaged in a fistfight.

Moreover, all three respondents argued that the incident, which took place after office hours, was purely personal in character and in no way related to office work. Thus, they prayed for the dismissal of the instant administrative complaint not only for lack of merit, but also for want of jurisdiction of the OAS to entertain and take cognizance of the same.

In his Reply dated January 7, 2008, complainant maintained his previous statements in his complaint-affidavit. He insisted that he did not give any provocation and even avoided the three respondents, but they still hurled invectives at him and attacked him. He additionally argued that the OAS has jurisdiction over the complaint, citing *Pablejan v. Calleja*[9] wherein the Court held that "*[e]mployees of the judiciary should be living examples of uprightness not only in the performance of their official duties, but also in their personal and private dealings with other people, so as to preserve at all times the good name and standing of courts in the community*."

In their separate Rejoinders, respondents reiterated that the fight occurred after office hours, outside the court premises and was not work-related. Thus, they insisted and prayed that the case be dismissed. Moreover, respondents Itliong and Balani maintained that they did not actually participate in the fistfight but they only stopped respondent Zapico and complainant from hitting each other.

In its Memorandum dated April 17, 2008, the OAS found only respondent Zapico guilty of conduct unbecoming a court employee, thus:

> In the present case, this Office submits that the Court can take cognizance of the same, pursuant to its mandate in the exercise of its over-all supervision as administrator of Court personnel, including the responsibility of imposing discipline upon erring officials and employees.
>
> The allegation of the respondents that it was the complainant who made the provocation and immediately delivered the attack deserves

[9] A.M. No. P-06-2102, January 24, 2006.

scant consideration. Regrettably, respondent have not presented any evidence and witnesses to rebut the complainant's claim and sufficiently establish any defense relating to the incident so as to tilt the scale of justice in their favor. Neither does this Office see any reason that would show that complainant and his witnesses have any motive whatsoever to concoct a false statement against them except to seek for justice.

Anent the complaint against respondents Itliong and Balani, herein complainant, however, has failed to substantiate his allegations thereto. This Office submits the dismissal of the administrative case against Messrs. Itliong and Balani for lack of merit.

This Office expresses its inability to pin down respondents for the physical injuries sustained by the complainant since they can be the subject of a separate criminal case which requires proof beyond reasonable doubt. Be that as it may, the wrong committed against all the parties to the incident and who may be liable therefore will be determined at the proper time and forum.

We remind the respondents that their employment in this Court is not a status symbol or a badge to be brandished around for all to see, but a sacred duty and, as ordained by the Constitution, a public trust. They should be more circumspect in how they conduct themselves in and outside the office. After all, they do not stop becoming judiciary employees once they step outside the gates of the Supreme Court.

Under Rule XIV, Section 22 of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Services laws, simple misconduct is classified as less grave offense that carries the penalty of suspension ranging from one (1) month and one (1) day to six (6) months for the first offense and the penalty of dismissal for the second offense.

This Office noted, however, the presence of mitigating circumstances such as respondent's length of service of 16 years in the Court; his "Very Satisfactory" (VS) performance ratings for the past three consecutive semesters; and this being the first administrative charge filed against him. It is recommended that he be severely reprimanded.

Premises considered, this Office respectfully recommends that Mr. Redentor A. Zapico, Executive Assistant I, Office of the Chief Justice, be **SEVERELY REPRIMANDED** for conduct unbecoming of a court

employee who acted beyond the tolerable bounds of good manners and propriety in public, with a warning that a repetition of the same or similar act will be dealt with more severely.

Insofar as the complaint filed against Messrs. Quirino V. Itliong II, Judicial Staff Assistant III, Philippine Judicial Academy; and Odon C. Balani, Utility Worker II, Office of the Clerk of Court Second Division, it is recommended that the same be dismissed for lack of merit.[10]

The issue for resolution is whether or not the conduct of respondents shows that they are liable for the offenses charged and warrants the imposition of administrative sanctions.

Anent the preliminary issue of whether the OAS has jurisdiction over the complaint and may take cognizance of the present case, we rule in the affirmative. It is beyond cavil that this Court has the right to discipline erring employees by virtue of its administrative supervision of all courts and court personnel.

The fact that the incident complained of was not related to respondents' work or official duties and took place after office hours and outside the Court does not warrant the dismissal of the case, as respondents contend. This Court has held that employees of the judiciary should be living examples of uprightness **not only in the performance of their official duties, but also in their personal and private dealings with other people**, so as to preserve at all times the good name and standing of courts in the community.[11] Employees in the government service are bound by the rules of proper and ethical behavior and are expected **to act with self-restraint and civility at all times**, even when confronted with rudeness and insolence.[12]

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[10] *Rollo*, pp. 7-8.

[11] *Pablejan v. Calleja*, A.M. No. P-06-2102, January 24, 2006, 479 SCRA 562, 570 citing *Santelices v. Samar*, 373 SCRA 78 (2002).

[12] *Orfila v. Arellano*, A.M. Nos. P-06-2110 & P-03-1692, February 13, 2006, 482 SCRA 280, 300, citing *Rona Quiroz v. Cristeta Orfila*, 338 Phil. 51; 272 SCRA 324.

We agree with the following pronouncement of the OAS:

> We remind the respondents that their employment in this Court is not a status symbol or a badge to be brandished around for all to see, but a sacred duty and, as ordained by the Constitution, a public trust. They should be more circumspect in how they conduct themselves in and outside the office. **After all, they do not stop becoming judiciary employees once they step outside the gates of the Supreme Court**. (citing *Lorenzo v. Lopez*, A.M. No. 2006-02-SC, October 15, 2007; emphasis supplied)

Anent the administrative liability of respondents, we uphold the findings and recommendation of the OAS with modification.

Misconduct generally means wrongful, improper, unlawful conduct motivated by a premeditated, obstinate, or intentional purpose.[13] Any transgression or deviation from the established norm of conduct, **work-related or not**, amounts to a misconduct.[14]

The image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women therein, from the judge to the least and lowest of its personnel; hence, it becomes the imperative and sacred duty of each and everyone in the court to maintain its good name and standing as a true temple of justice.[15] The conduct of court personnel must be, and also perceived to be, free from any whiff of impropriety, with respect not only to their duties in the judiciary **but also in their behavior outside the court**.[16] Their behavior and actuations must be characterized by propriety and decorum

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[13] *Office of the Court Administrator v. Paderanga*, A.M. No. RTJ-01-1660, August 25, 2005, 468 SCRA 21, 35-36.

[14] *Re: Disciplinary Action against Antonio Lamano, Jr., of the Judgment Division, Supreme Court*, A.M. No. 99-10-10-SC, November 29, 1999, 319 SCRA 351.

[15] *Asensi v. Villanueva*, A.M. No. MTJ-00-1245, January 19, 2000, 322 SCRA 255.

[16] *Macinas v. Arimado*, A.M. No. P-04-1869 (Formerly OCA I.P.I. No. 03-1764-P), September 30, 2005, 471 SCRA 162, citing *Francisco v. Laurel*, 413 SCRA 327.

and should at all times embody prudence, restraint, courtesy and dignity. Simply put, they must always conduct themselves in a manner worthy of the public's respect for the judiciary.

With respect to respondent Zapico, we agree with the finding of the OAS that his outburst of temper and act of attacking the complainant, despite the lack of evidence of sufficient provocation on the part of complainant tended to degrade the dignity and the image of the judiciary. Such belligerence on the part of Zapico and his infliction of multiple, visible injuries on complainant are clear deviations from the established norm of conduct, even if it is not work-related, and amounts to misconduct. He undeniably fell short of the high standards of propriety and decorum expected of employees of the judiciary. Thus, the recommendation of the OAS finding respondent Zapico guilty of simple misconduct is well-taken.

Section 52(B)(2) of the Revised Uniform Rules on Administrative Cases in the Civil Service[17] provides:

> Section 52. *Classification of Offenses*.— Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.
>
> B. The following are *less grave offenses* with the corresponding penalties:
>
> xxx xxx xxx
>
> 2. Simple misconduct
>
> 1st offense — Suspension (1 mo. 1 day to 6 mos.)
> 2nd offense — Dismissal

Under the above provision, it classifies simple misconduct as a less grave offense punishable by suspension of one month and one day to six months for the first offense. However, as recommended by the OAS, we shall appreciate as mitigating

[17] Promulgated by the Civil Service Commission (CSC) through Resolution No. 99-1936 dated August 31, 1999 and implemented by CSC Memorandum Circular No. 19, Series of 1999.

circumstances the following: (a) respondent's sixteen (16) years of service in the Court; (b) his Very Satisfactory (VS) rating for the past three consecutive semesters; and (c) this instance being his first time to have been charged administratively. This is also in consonance with Section 53 of the Revised Uniform Rules on Administrative Cases in the Civil Service which provides that in the determination of the penalties to be imposed, the extenuating, mitigating, aggravating or alternative circumstances may be considered.

Thus, the penalty of suspension for one (1) month and one (1) day should be imposed upon respondent Zapico for the commission of the first offense of simple misconduct with a stern warning that a repetition of the same or similar acts in the future will be dealt with more severely.

With respect to respondents Itliong and Balani, while we agree with the OAS that complainant failed to substantiate his allegation that respondents Itliong and Balani participated in the "mauling" of complainant, we find that their actuations in this case are not above reproach. In their respective comments, they admit that Itliong indeed told Zapico that complainant allegedly gave Zapico "a hard look" or was "sizing [Zapico] up from head to toe." Even Zapico narrated in this own comment that his co-respondents told him that complainant gave him a "bad stare" and "sized him up."[18] All this tended to corroborate complainant's and Rubylyn's statements that she [Rubylyn] heard respondents Itliong and Balani make remarks, such as: "*Ang sama makatingin, o!*" "*Kabago-bago pa lang sa Court, ang yabang na.*" Such statements contributed to, if not precipitated, the tension between complainant and respondent Zapico. This Court likewise notes with disfavor the fact that although Itliong and Balani did not appear to have helped in the attack on complainant, they failed to timely intervene between their friend Zapico and complainant to prevent the incident from progressing to such a stage that complainant, their co-employee, even sustained injuries.

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[18] *Rollo*, p. 132.

Respondents Itliong and Balani should be admonished for their deplorable conduct, which likewise falls short of the high standards of decorum and propriety expected of them.

IN VIEW WHEREOF, respondent Redentor A. Zapico is hereby *SUSPENDED* for One (1) Month and One (1) Day without pay while respondents Quirino V. Itliong II, and Odon C. Balani are *REPRIMANDED* for their improper conduct, with a warning to said respondents that a repetition of the same or similar offense shall be dealt with more severely in the future.

SO ORDERED.

Quisumbing, Corona, Carpio Morales, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, and *Brion, JJ.,* concur.

Puno, C.J., no part.

Ynares-Santiago, Carpio, Austria-Martinez, and *Azcuna, JJ.,* on official leave.

SECOND DIVISION

[A.M. No. P-03-1715. September 19, 2008]
(Formerly IPI No. 00-908-P)

FELISA L. GONZALES, *complainant, vs.* **Clerk of Court JOSEPH N. ESCALONA and Sheriff IV EDGAR V. SUPERADA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; COURT PERSONNEL; THOSE CONNECTED WITH THE DISPENSATION OF JUSTICE BEAR A HEAVY BURDEN IN THE PERFORMANCE OF THEIR DUTIES; THEIR POSITIONS DEMAND A VERY HIGH LEVEL OF MORAL RECTITUDE AND UPRIGHTNESS. — Those connected with the dispensation of justice bear a heavy burden in the performance

of their duties. Their positions demand a very high level of moral rectitude and uprightness. Clerks of Court, in particular, must be individuals of competence, honesty, and probity, charged as they are with safeguarding the integrity of the court and its proceedings. For that matter, the behavior of everyone connected with an office charged with the dispensation of justice — from the presiding judge to the lowliest clerk — must always be beyond reproach. Like Caesar's wife, they must not only be faithful to the responsibilities of their position and the propriety and decorum these entail; they must, above all, be above suspicion. Our laws are not lacking in providing guidance and mandates on the responsibilities of a public position and the burdens they impose on the office holder. Section 1 of Article XI of the 1987 Constitution declares that a public office is a public trust. It enjoins public officers and employees to serve with the highest degree of responsibility, integrity, loyalty and efficiency and, at all times, remain accountable to the people. The Code of Conduct and Ethical Standards for Public Officers and Employees sets out a policy towards promoting a high standard of ethical responsibility in the public service. It enjoins those in the government service to extend prompt, courteous, and adequate service to the public, and at all times, to respect the rights of others and refrain from doing acts contrary to law, good morals and good customs, among other ideals.

2. ID.; ID.; ID.; ID.; GROSS MISCONDUCT AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; RECORDS SHOW THAT THERE IS CONNIVANCE BETWEEN THE RESPONDENTS ON THE MANNER OF COLLECTING AND DISBURSING THE AMOUNTS AWARDED TO THE ACCIDENT VICTIMS SO THAT THEY COULD PERSONALLY BENEFIT FROM THE PROCEEDS OF THE COURT'S AWARD. — Our examination of the records of the case tells us that there was connivance between the respondents on the manner of collecting and disbursing the amounts awarded to the accident victims so that they (the respondents) could personally benefit from the proceeds of the court's award. That their actions were concerted is plain from the manner they undertook the exactions; one took care of and complemented the other towards the same result — a share in the complainant's pie. Although both respondents denied that they instructed or proposed to the complainant or the paying

employer that the 24 postdated checks be made payable to respondent Escalona, we stand unconvinced that the respondents had no active hand in the arrangement. For one, why the checks were made payable to Escalona was not sufficiently explained. To be sure, to pay checks whose proceeds are intended for a specific recipient, to someone other than the intended recipient is far from usual, and is an arrangement that has to be explained if the arrangement is claimed to be legitimate. No explanation from the respondents, however, came. We are simply asked to believe, perhaps on faith, that the arrangement simply came without the respondents' active intervention. We cannot accept what amounts to a plain denial given the patent irregularities that attended the arrangement.

3. ID.; ID.; ID.; ID.; AS AN OFFICER OF THE COURT INVOLVED IN THE IMPLEMENTATION OF COURT DECISIONS, RESPONDENT SHERIFF IS BOUND TO OBSERVE THE RULES OF COURT FAITHFULLY AND NOT USE THEM FOR PERSONAL ENDS; CHARGING ANY AMOUNT TO LITIGANTS FOR HIS SERVICES WITHOUT APPROVAL OF THE COURT CONSTITUTE GRAVE MISCONDUCT AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE. — Respondent Superada admits having received the amount of ₱7,000.00, but explained that the ₱7,000.00 was agreed upon by the complainant and the other victims of the vehicular accident to defray the expenses for the apprehension of the accused. Why Superada, a court sheriff, would participate in the apprehension of the accused escapes us. Likewise, the excuse, even if legitimate, will not completely exculpate him as he is mandated to act within defined limits in the performance of his duties as sheriff, particularly on the matter of expenses. For him, good faith is not a defense as he is charged with the knowledge of what his proper conduct should be. As an officer of the court involved in the implementation of court decisions, he is bound to observe the Rules of Court faithfully, not use them for his personal ends; sheriffs must perform their duties by the book. Charging any amount to litigants for his services without the approval of the court constitutes grave misconduct and conduct prejudicial to the best interest of the service. While allowed to collect sums to cover his expenses in the service of summons and writs of execution, he can only charge and collect with the approval of the court as provided for in

Section 9, Rule 141 of the Rules of Court. To do this by the book, an estimate has to be made of the projected expenses for approval by the court and the amounts paid should be deposited by the requesting party with the Clerk of Court and *Ex-Officio* Sheriff who shall disburse the amount to the executing sheriff. The latter shall liquidate his expenses within the same period for rendering a return on the writ. Any amount received by the sheriff in excess of the lawful fees allowed by the Rules of Court is an unlawful exaction that renders him liable for grave misconduct and gross dishonesty. Moreover, any unspent amount must be refunded to the paying party, the failure to refund is again a violation.

4. ID.; ID.; ID.; SHERIFF'S ACT OF RECEIVING AN AMOUNT FOR EXPENSES TO BE INCURRED IN THE EXECUTION OF THE WRIT IS CLEARLY PROSCRIBED BY THE RULE; MERE ACCEPTANCE OF THE AMOUNT WITHOUT PRIOR APPROVAL OF THE COURT AND WITHOUT HIM ISSUING A RECEIPT THEREFOR IS CLEARLY A MISCONDUCT IN OFFICE. — A misconduct is the violation of an established and definite rule of action, a forbidden act, a dereliction from duty, an unlawful behavior, willful in character, improper and wrong; while "gross" has been defined as "out of all measure; beyond allowance; flagrant; shameful." In short, it is a level of conduct that is not to be excused. In considering the present case, we are guided by the ruling of this Court in *Letter of Atty. Socorro M. Villamer-Basilla, Clerk of Court V, Regional Trial Court, Branch 4, Legaspi City*, where we held that the sheriff's "act of receiving an amount for expenses to be incurred in the execution of the writ is clearly proscribed by the rule. Whether the amount was advanced to him by the counsel for the plaintiffs or he offered to return the excess to the plaintiff is beside the point; his mere acceptance of the amount without the prior approval of the court and without him issuing a receipt therefor is clearly a misconduct in office."

5. ID.; ID.; ID.; ID.; RESPONDENTS ACTED IN CONCERT IN FLEECING THE COMPLAINANT OF A PART OF HER AWARDED DAMAGES.— In *Danao v. Franco, Jr.*, the Court ruled that the conduct of a sheriff in simply demanding from a party a particular sum without first furnishing her the estimate or detail of the expenses and without securing court approval is highly improper and erodes faith and confidence in the

administration of justice; it brings the whole court to disrepute, and marks it as an institution to be approached warily and with caution. While both cited cases involved sheriffs, their rulings apply, *mutatis mutandis*, to respondent Escalona. Not only is he guilty of his own specific gross misconduct against the complainant, but also, as we explained above, we find him guilty of having acted in concert with the respondent Superada in fleecing the complainant of a part of her awarded damages.

6. ID.; ID.; ID.; ID.; RESPONDENT'S RESIGNATION DOES NOT RENDER THE CASE MOOT, NOR DOES IT FREE HIM FROM LIABILITY; RESIGNATION BEFORE THE INVESTIGATION IS AN INDICATION OF GUILT, IN THE SAME WAY THAT FLIGHT OF AN ACCUSED IN A CRIMINAL CASE IS INDICATIVE OF GUILT. — Under Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order 292, grave misconduct carries with it the penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and perpetual disqualification for reemployment in government service. Respondent Escalona had already resigned from the service. His resignation, however, does not render this case moot, nor does it free him from liability. In fact, the Court views respondent Escalona's resignation before the investigation as indication of his guilt, in the same way that flight by an accused in a criminal case is indicative of guilt. In short, his resignation will not be a way out of the administrative liability he incurred while in the active service. While we can no longer dismiss him, we can still impose a penalty sufficiently commensurate with the offense he committed.

7. ID.; ID.; ID.; ID.; FACTORS NECESSITATING THE DISMISSAL OF AN ADMINISTRATIVE CASE BY REASON OF DEATH OF RESPONDENT; NOT APPLICABLE IN CASE AT BAR.— We treat respondent Superada no differently. While his death intervened after the completion of the investigation, it has been settled that the Court is not ousted of its jurisdiction over an administrative matter by the mere fact that the respondent public official ceases to hold office during the pendency of the respondent's case; jurisdiction once acquired, continues to exist until the final resolution of the case. In *Layao, Jr. v. Caube*, we held that the death of the respondent in an administrative case does not preclude a finding of administrative liability: This jurisdiction that was ours at the time of the filing of the

administrative complainant was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent public official innocent of the charges or declared him guilty thereof. A contrary rule would be fraught with injustice and pregnant with dreadful and dangerous implications . . . If innocent, respondent public official merits vindication of his name and integrity as he leaves the government which he has served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation. The above rule is not without exceptions, as we explained in the case of *Limliman v. Judge Ulat-Marrero*, where we said that death of the respondent necessitates the dismissal of the administrative case upon a consideration of any of the following factors: *first*, the observance of respondent's right to due process; *second*, the presence of exceptional circumstances in the case on the grounds of equitable and humanitarian reasons; and *third*, it may also depend on the kind of penalty imposed. None of these exceptional considerations are present in the case.

8. ID.; ID.; ID.; ID.; ADMINISTRATIVE PROCEEDINGS IS, BY ITS VERY NATURE, NOT STRICTLY PERSONAL SO THAT THE PROCEEDINGS CAN PROCEED BEYOND THE EMPLOYEE'S DEATH; CASE AT BAR. — The dismissal of an administrative case against a deceased respondent on the ground of lack of due process is proper under the circumstances of a given case when, because of his death, the respondent can no longer defend himself. Conversely, the resolution of the case may continue to its due resolution notwithstanding the death of the respondent if the latter has been given the opportunity to be heard, as in this case, or in instances where the continuance thereof will be more advantageous and beneficial to the respondent's heirs. In *Judicial Audit Report, Branches 21, 32 and 36*, we recognized the dismissal of an administrative case by reason of the respondent's death for equitable and humanitarian considerations; the liability was incurred by reason of the respondent's poor health. We had occasion, too, to take into account the imposable administrative penalty in determining whether an administrative case should be continued. We observed in several cases that the penalty of fine could still be imposed notwithstanding the death of the respondent,

enforceable against his or her estate. From another perspective, administrative liability is separate and distinct from criminal and civil liability which are governed by a different set of rules. In *Flecther v. Grinnel Bros., et al.*, the United States District Court of Michigan held that whether a cause of action survives the death of the person depends on the substance of the cause of action and not on the form of the proceeding to enforce it. Thus, unlike in a criminal case where the death of the accused extinguishes his liability arising thereon under Article 89 of the Revised Penal Code, or otherwise relieves him of both criminal and civil liability (arising from the offense) if death occurs before final judgment, the dismissal of an administrative case is not automatically terminated upon the respondent's death. The reason is one of law and public interest; a public office is a public trust that needs to be protected and safeguarded at all cost and even beyond the death of the public officer who has tarnished its integrity. Accordingly, we rule that the administrative proceedings is, by its very nature, not strictly personal so that the proceedings can proceed beyond the employee's death, subject to the exceptional considerations we have mentioned above. This, conclusion is bolstered up by *Sexton v. Casida*, where the respondent, who in the meantime died, was found guilty of act unbecoming a public official and acts prejudicial to the best interest of the service, and fined Five Thousand Pesos (₱5,000.00), deductible from his terminal leave pay.

APPEARANCES OF COUNSEL

Diomedes C, Tabao for complainant.

D E C I S I O N

BRION, *J.*:

This is a verified complaint for ***Conduct Prejudicial to the Best Interest of the Service*** and ***Grave Misconduct*** in connection with the enforcement of the writ of execution of the decision in Criminal Case No. 2150 (entitled *People of the Philippines versus Paterno Makipig, Jr.*, for Reckless

Imprudence Resulting in Homicide and Multiple Physical Injuries) filed with the Regional Trial Court (*RTC*), Branch 13, Carigara, Leyte. Respondent Atty. Joseph N. Escalona, now resigned, was the Branch Clerk of Court, while respondent Edgar V. Superada, now deceased, was the sheriff in the Office of the Clerk of Court of the same court.

The complaint showed that in convicting the accused in Criminal Case No. 2150, the RTC awarded damages to complainant Felisa L. Gonzales in the amount of ₱300,040.00 for the death of her son Bienvenido. The other victims were awarded damages in the total amount of ₱29,020.00. The RTC issued a writ of execution directing respondent Superada to enforce the judgment. Since the accused was insolvent, the judgment was enforced against the accused's employer, Serafica Enterprises (*Serafica*), owned and operated by Herminigildo Serafica who agreed to pay the damages awarded to the victims within a period of six months.

The complainant alleged that even before the writ of execution was issued by the RTC, respondent Superada approached her and demanded the amount of ₱27,500.00, allegedly for expenses in serving the writ. The complainant was able to give the respondent only ₱7,000.00.

The complainant further alleged that without her consent, both respondents accepted from Serafica twenty-four (24) postdated checks of Land Bank-Ormoc City, each in the amount of ₱13,710.85 (or a total of ₱329,060.00) in payment of the damages awarded to the victims of the vehicular accident. **All the checks were made payable to respondent Escalona.** The first check was dated April 7, 2000, while the last check was dated January 31, 2002.

When the first check was encashed, respondent Escalona deducted the amount of ₱3,000.00 for sheriff's fees and ₱1,400.00 allegedly for the use of his car in going to and from the Land Bank branch office in Ormoc City. Upon encashment of the second check dated April 17, 2000, respondent Escalona again deducted the same amounts of ₱3,000.00 and ₱1,400.00.

In his comment on the complaint, respondent Escalona denied the complainant's allegations claiming that he did not instruct nor propose to Serafica that he be made the payee of the postdated checks. It was Serafica's sole decision to make the checks payable to him. He had no idea why he was made the payee.

Respondent Superada adopted his co-respondent's comment. He further denied demanding the amount of ₱27,500.00 from the complainant. He admitted, however, that he received the amount of ₱7,000.00 after a conference was held among the accident victims; the latter all agreed to give this amount to defray the expenses for the apprehension of the accused.

On the recommendation of then Deputy Court Administrator Zenaida N. Elepaño (now retired Court Administrator), the complaint was referred to Executive Judge Lourdes G. Blanco of the RTC of Carigara, Leyte for investigation, report, and recommendation.

As directed, Executive Judge Blanco conducted the investigation and set the case for hearing.

In his Comment filed with the Investigating Judge, respondent Escalona contended that the complainant's allegation that he twice demanded the amount of ₱1,400.00, apparently implying bribery or extortion, is "patently absurd and feeble concoction of truth." He never demanded these amounts for the use of his vehicle in going to the Land Bank in Ormoc City which is more than 54 kilometers away from his office. He claimed that he accepted these amounts from the complainant based on his agreement with the accident victims. He further averred that "[h]ad undersigned been the private counsel for herein complainant, he could have demanded an amount more than five times than what they have [sic] given, considering the wear and tear, fuel, risks, and stress of travel."

In his Memorandum submitted to the Investigating Judge, respondent Superada insisted that he should not be adjudged guilty of misconduct. He claimed that although he was the one who received the amount of ₱7,000.00, "his act of receiving

it cannot be considered as unlawful as he was the assigned executing sheriff who, under the circumstance, may advance for the prevailing party (the complainant) an amount for the expenses that may be incurred relevant to the execution of judgment." As to the ₱3,000.00 he received from complainant, respondent Superada maintained that he has a right to receive it as reimbursement for the expenses he had incurred during the execution of the writ.

In her report submitted to the Court, the Investigating Judge found that respondent Superada failed to comply with the procedure laid down in Section 9, Rule 11 of the Rules of Court on the manner of implementing writs of execution. This section provides:

> [T]he party requesting the process of any court, preliminary, incidental, or final, shall pay the sheriff's expenses in serving or executing the process or safeguarding the property levied upon, attached or seized including kilometrage for each kilometer of travel, guard's fees, warehousing or similar charges, in an amount estimated by the sheriff subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and *ex-officio* sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to litigation within the same period for rendering a return on the process. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be fixed as costs against the judgment debtor.

With respect to respondent Escalona, the Investigating Judge observed that "if the checks were issued by the accused's employer in his (Escalona's) name, and there was no other way to help the complainant, all that Atty. Escalona could have done was to arrange or advice the complainant to open an account with the Land Bank Tacloban City Branch so that he could have just endorsed the checks on the due date x x x." The checks could have also been issued to the complainant as payee to be released by Escalona on their due dates.

Executive Judge Blanco, in her report submitted to this Court, recommended:

1. That Atty. Joseph N. Escalona, Branch Clerk of Court, and Edgar V. Superada, Sheriff IV, RTC Branch 13, Carigara, Leyte, are found guilty of violating R.A. 3019 as amended.[1] However, considering that Atty. Joseph N. Escalona has resigned from the service even before the filing of this case, it is recommended that this be placed in his record as a member of the Philippine Bar.

2. That Edgar V. Superada, Sheriff IV of RTC Branch 13, Carigara, Leyte be fined in the amount of Php 2,000.00 this being his first, with a warning that a similar violation will be dealt with more seriously.

The evidence on record and the admissions made by both respondents in their comments filed with this Court and with the investigating court sufficiently establish their culpability. Guilt, however, for violation of Republic Act (*R.A.*) No. 3019, as amended, is beyond the Investigating Judge's authority to determine and should be read merely as her view on what criminal offense the respondents may have violated if they were to be criminally prosecuted.

Those connected with the dispensation of justice bear a heavy burden in the performance of their duties. Their positions demand a very high level of moral rectitude and uprightness. Clerks of Court, in particular, must be individuals of competence, honesty, and probity, charged as they are with safeguarding the integrity of the court and its proceedings. For that matter, the behavior of everyone connected with an office charged with the dispensation of justice – from the presiding judge to the lowliest clerk – must always be beyond reproach. Like Caesar's wife, they must not only be faithful to the responsibilities of their position and the propriety and decorum these entail; they must, above all, be above suspicion.

Our laws are not lacking in providing guidance and mandates on the responsibilities of a public position and the burdens they

[1] Anti-Graft and Corrupt Practices Act.

impose on the office holder. Section 1 of Article XI of the 1987 Constitution declares that a public office is a public trust. It enjoins public officers and employees to serve with the highest degree of responsibility, integrity, loyalty and efficiency and, at all times, remain accountable to the people.[2]

The Code of Conduct and Ethical Standards for Public Officers and Employees[3] sets out a policy towards promoting a high standard of ethical responsibility in the public service.[4] It enjoins those in the government service to extend prompt, courteous, and adequate service to the public, and at all times, to respect the rights of others and refrain from doing acts contrary to law, good morals and good customs, among other ideals.[5]

Our examination of the records of the case tells us that there was connivance between the respondents on the manner of collecting and disbursing the amounts awarded to the accident victims so that they (the respondents) could personally benefit from the proceeds of the court's award. That their actions were concerted is plain from the manner they undertook the exactions; one took care of and complemented the other towards the same result – a share in the complainant's pie. Although both respondents denied that they instructed or proposed to the complainant or the paying employer that the 24 postdated checks be made payable to respondent Escalona, we stand unconvinced that the respondents had no active hand in the arrangement. For one, why the checks were made payable to Escalona was not sufficiently explained. To be sure, to pay checks whose proceeds are intended for a specific recipient, to someone other than the intended recipient is far from usual,[6]

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[2] *Geolingo v. Albayda,* A.M. No. P-02-1660 (Formerly A.M. OCA IPI 02-1290-P), January 31, 2006, 481 SCRA 32, citing *Abalde v. Roque, Jr.*, 400 SCRA 210 (2003).

[3] REPUBLIC ACT NO. 6713.

[4] *Opeña v. Luna,* A.M. No. P-02-1549 (Formerly A.M. OCA-IPI No. 01-1025-P), 476 SCRA 153, citing *Zipagan v. Tattao*, 365 SCRA 605 (2001) and *Arroyo v. Alcantara,* 368 SCRA 567 (2001).

[5] *Id*.

[6] *Flores v. Falcotelo,* A.M. No. P-05-2038, January 25, 2006, 480 SCRA 16, citing *Philippine Airlines Inc. v. Court of Appeals*, 181 SCRA 557 (1990).

and is an arrangement that has to be explained if the arrangement is claimed to be legitimate. No explanation from the respondents, however, came. We are simply asked to believe, perhaps on faith, that the arrangement simply came without the respondents' active intervention. We cannot accept what amounts to a plain denial given the patent irregularities that attended the arrangement.

Respondent Superada admits having received the amount of ₱7,000.00, but explained that the ₱7,000.00 was agreed upon by the complainant and the other victims of the vehicular accident to defray the expenses for the apprehension of the accused. Why Superada, a court sheriff, would participate in the apprehension of the accused escapes us. Likewise, the excuse, even if legitimate, will not completely exculpate him as he is mandated to act within defined limits in the performance of his duties as sheriff, particularly on the matter of expenses. For him, good faith is not a defense as he is charged with the knowledge of what his proper conduct should be. As an officer of the court involved in the implementation of court decisions, he is bound to observe the Rules of Court faithfully, not use them for his personal ends; sheriffs must perform their duties by the book.[7] Charging any amount to litigants for his services without the approval of the court constitutes grave misconduct and conduct prejudicial to the best interest of the service. While allowed to collect sums to cover his expenses in the service of summons and writs of execution, he can only charge and collect with the approval of the court as provided for in Section 9, Rule 141 of the Rules of Court. To do this by the book, an estimate has to be made of the projected expenses for approval by the court and the amounts paid should be deposited by the requesting party with the Clerk of Court and *Ex-Officio* Sheriff who shall disburse the amount to the executing sheriff. The latter shall liquidate his expenses within the same period for rendering a return on the writ.[8] Any amount received by the sheriff in excess of the lawful fees allowed by the Rules of Court is an unlawful exaction

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[7] *Id., Flores v. Falcotelo,* 480 SCRA 16 (2006).

[8] *Supra* note 2.

that renders him liable for grave misconduct and gross dishonesty.[9] Moreover, any unspent amount must be refunded to the paying party, the failure to refund is again a violation.

A misconduct is the violation of an established and definite rule of action, a forbidden act, a dereliction from duty, an unlawful behavior, willful in character, improper and wrong; while "gross" has been defined as "out of all measure; beyond allowance; flagrant; shameful."[10] In short, it is a level of conduct that is not to be excused.

In considering the present case, we are guided by the ruling of this Court in *Letter of Atty. Socorro M. Villamer-Basilla, Clerk of Court V, Regional Trial Court, Branch 4, Legaspi City*,[11] where we held that the sheriff's "act of receiving an amount for expenses to be incurred in the execution of the writ is clearly proscribed by the rule. Whether the amount was advanced to him by the counsel for the plaintiffs or he offered to return the excess to the plaintiff is beside the point; his mere acceptance of the amount without the prior approval of the court and without him issuing a receipt therefor is clearly a misconduct in office."

In *Danao v. Franco, Jr.*,[12] the Court ruled that the conduct of a sheriff in simply demanding from a party a particular sum without first furnishing her the estimate or detail of the expenses and without securing court approval is highly improper and erodes faith and confidence in the administration of justice; it brings the whole court to disrepute, and marks it as an institution to be approached warily and with caution.

While both cited cases involved sheriffs, their rulings apply, *mutatis mutandis*, to respondent Escalona. Not only is he guilty of his own specific gross misconduct against the complainant, but also, as we explained above, we find him guilty of having

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[9] *Id.,* citing *Alvares, Jr., v. Martin,* 411 SCRA 248 (2003).

[10] *Associate Justice Delilah Vidallon-Magtolis, Court of Appeals v. Cielito M. Salud, Clerk IV, Court of Appeals,* A.M. No. CA-05-20-P, 469 SCRA 439.

[11] A.M. No. P-06-2128 (Formerly A.M. No. 04-6-313-RTC), February 16, 2006, 482 SCRA 455.

[12] A.M. No. P-02-1569, November 13, 2002, 391 SCRA 515.

acted in concert with the respondent Superada in fleecing the complainant of a part of her awarded damages.

Under Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order 292, grave misconduct carries with it the penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and perpetual disqualification for reemployment in government service.

Respondent Escalona had already resigned from the service. His resignation, however, does not render this case moot, nor does it free him from liability. [13] In fact, the Court views respondent Escalona's resignation before the investigation as indication of his guilt, in the same way that flight by an accused in a criminal case is indicative of guilt. In short, his resignation will not be a way out of the administrative liability he incurred while in the active service.[14] While we can no longer dismiss him, we can still impose a penalty sufficiently commensurate with the offense he committed.

We treat respondent Superada no differently. While his death intervened after the completion of the investigation, it has been settled that the Court is not ousted of its jurisdiction over an administrative matter by the mere fact that the respondent public official ceases to hold office during the pendency of the respondent's case; [15] jurisdiction once acquired, continues to

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[13] *Re: Report on the Financial Audit Conducted on the Books of Accounts of Atty. Raquel G. Kho, Clerk of Court IV, RTC, Oras, Eastern Samar.*

[14] *Re: (1) Lost Checks Issued to the Late Rederick Roy P. Melliza, Former Clerk II, MCTC, Zarraga, Iloilo, and (2) Dropping from the Rolls of Ms. Esther T. Andres,* A.M. No. 2005-26-SC, November 22, 2006, 507 SCRA 478, citing *Withholding of the Salary and Benefits of Michael A. Latiza, Court Aide, Regional Trial Court, Branch 14, Cebu City, for Unexplained Absences and Involvement in the Loss of Evidence,* A.M. No. 03-3-179-RTC, and A.M. No. 03-10-576-RTC, *Re: Resignation of Michael Latiza, Utility Worker I, Regional Trial Court, Branch 14, Cebu City,* January 26, 2005, 449 SCRA 278; *Clerk of Court Marbas-Vizcarra v. Florendo,* 369 Phil. 840 (1999); *Judge Cajot v. Cledera,* 349 Phil. 907 (1998).

[15] *Re: Audit Report on Attendance of Court Personnel of Regional Trial Court, Branch 32, Manila,* A.M. No. P-04-1838 (formerly A.M. No. 03-11-

exist until the final resolution of the case.[16] In *Layao, Jr. v. Caube*,[17] we held that the death of the respondent in an administrative case does not preclude a finding of administrative liability:

> This jurisdiction that was ours at the time of the filing of the administrative complainant was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent public official innocent of the charges or declared him guilty thereof. A contrary rule would be fraught with injustice and pregnant with dreadful and dangerous implications ... If innocent, respondent public official merits vindication of his name and integrity as he leaves the government which he has served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation.

The above rule is not without exceptions, as we explained in the case of *Limliman v. Judge Ulat-Marrero*,[18] where we said that death of the respondent necessitates the dismissal of the administrative case upon a consideration of any of the following factors: *first*, the observance of respondent's right to due process; [19] *second*, the presence of exceptional circumstances in the case on the grounds of equitable and humanitarian reasons;[20] and *third*, it may also depend on the kind of penalty imposed.[21] None of these exceptional considerations are present in the case.

641-RTC), August 31, 2006, 500 SCRA 351, citing *Aquino, Jr. v. Miranda*, A.M. No. P-01-1453, May 27, 2004, 429 SCRA 230; *Boiser v. Aguirre*, A.M. No. RTJ-04-1886, May 16, 2005, 458 SCRA 430.

[16] *Opeña v. Luna*, *supra* note 4.

[17] A.M. No. P-02-1599, April 30, 2003, 402 SCRA 33, 37.

[18] A.M. No. RTJ-02-1739, January 22, 2003, 395 SCRA 607.

[19] *Id.*, citing *Camsa v. Judge Rendon*, 377 SCRA 271, 274 (2002), and *Apiag v. Judge Cantero*, 268 SCRA 47, 53 (1997).

[20] *Id.*, citing *Judicial Audit Report, Branches 21, 32 & 36, et al.*, 343 SCRA 427, 441 (2000), and *Hermosa v. Paraiso*, 62 SCRA 361, 362 (1975).

[21] *Id.*, citing *Report on the Judicial Audit Conducted in RTC, Br. 1, Bangued, Abra*, 332 SCRA 273, 284 (2000); *Apiag v. Judge Cantero*, *supra*

The dismissal of an administrative case against a deceased respondent on the ground of lack of due process is proper under the circumstances of a given case when, because of his death, the respondent can no longer defend himself.[22] Conversely, the resolution of the case may continue to its due resolution notwithstanding the death of the respondent if the latter has been given the opportunity to be heard, as in this case, or in instances where the continuance thereof will be more advantageous and beneficial to the respondent's heirs.[23]

In *Judicial Audit Report, Branches 21, 32 and 36,* we recognized the dismissal of an administrative case by reason of the respondent's death for equitable and humanitarian considerations; the liability was incurred by reason of the respondent's poor health.[24] We had occasion, too, to take into account the imposable administrative penalty in determining whether an administrative case should be continued. We observed in several cases that the penalty of fine could still be imposed notwithstanding the death of the respondent, enforceable against his or her estate.[25]

From another perspective, administrative liability is separate and distinct from criminal and civil liability which are governed by a different set of rules. In *Flecther v. Grinnel Bros., et. al*,[26] the United States District Court of Michigan held that whether a cause of action survives the death of the person depends on the substance of the cause of action and not on the form of the proceeding to enforce it. Thus, unlike in a criminal case where the death of the accused extinguishes his liability

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note 18; *Mañozca v. Judge Domagas,* 248 SCRA 625, 627-628 (1995); and *Loyao, Jr. v. Caube*, *supra* note 16, p.39.

[22] *Id.,* p. 611.

[23] *Hermosa v. Paraiso, supra* note 19.

[24] *Judicial Audit Report, Branch 21, 32 & 36, et. al., supra* note 19.

[25] *Mañozca vs. Judge Domagas, supra* note 20, p. 628; *Apiag v. Judge Cantero, supra* note 18, p. 64; and *Loyao, Jr. v. Caube, supra* note 16, p. 39.

[26] 64 F. Supp. 778, February 28, 1946.

arising thereon under Article 89 of the Revised Penal Code, or otherwise relieves him of both criminal and civil liability (arising from the offense) if death occurs before final judgment, the dismissal of an administrative case is not automatically terminated upon the respondent's death. The reason is one of law and public interest; a public office is a public trust that needs to be protected and safeguarded at all cost and even beyond the death of the public officer who has tarnished its integrity. Accordingly, we rule that the administrative proceedings is, by its very nature, not strictly personal so that the proceedings can proceed beyond the employee's death, subject to the exceptional considerations we have mentioned above. This, conclusion is bolstered up by *Sexton v. Casida*,[27] where the respondent, who in the meantime died, was found guilty of act unbecoming a public official and acts prejudicial to the best interest of the service, and fined Five Thousand Pesos (₱5,000.00), deductible from his terminal leave pay.

WHEREFORE, the Court finds both respondents guilty of gross misconduct and conduct prejudicial to the best interest of the service. Considering, however, that this is respondent Atty. Joseph N. Escalona's first administrative offense, we find the penalty of a fine of ₱10,000.00 just and reasonable. With respect to respondent Sheriff Edgar V. Superada, tempering his liability with compassion in light of his untimely demise, he is imposed a fine of ₱10,000.00. Both fines are to be taken from each of the respondents' terminal leave pay.

SO ORDERED.

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

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[27] A.M. No. P-05-2048, September 30, 2005, 471 SCRA 168.

SECOND DIVISION

[G.R. No. 153077. September 19, 2008]

DOLORES SALINAS, assisted by her husband, JUAN CASTILLO, *petitioner, vs.* **SPS. BIENVENIDO S. FAUSTINO and ILUMINADA G. FAUSTINO,** *respondents.*

SYLLABUS

CIVIL LAW; SPECIAL CONTRACTS; SALES; IN A CONTRACT OF SALE OF LAND IN A MASS, THE SPECIFIC BOUNDARIES STATED IN THE CONTRACT MUST CONTROL OVER ANY STATEMENT WITH RESPECT TO THE AREA CONTAINED WITHIN ITS BOUNDARIES.— Indeed, in a contract of sale of land in a mass, the specific boundaries stated in the contract must control over any statement with respect to the area contained within its boundaries. Thus, it is the boundaries indicated in a deed of absolute sale, and not the area in sq. m. mentioned therein — 300.375 sq. m. in the Deed of Sale in respondents' favor — that control in the determination of which portion of the land a vendee acquires.

APPEARANCES OF COUNSEL

Aguila & Aguila Law Office for petitioner.
Luchi Rico Gempis, Jr. for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

It appears that respondent Bienvenido S. Faustino (Faustino), by a Deed of Absolute Sale (Deed of Sale)[1] dated June 27, 1962, purchased from his several co-heirs, including his first cousins Benjamin Salinas and herein petitioner Dolores Salinas,

[1] Exhibit "B", records, pp. 6-9.

their respective shares to a parcel of land covered by Tax Declaration No. 14687, in the name of their grandmother Carmen Labitan, located in Subic, Zambales, with a "superficial area of **300.375 square meters [sq. m.] more or less**," and with boundaries "in the North: Carmen Labitan; in the South: Calle, in the East: Callejon and in the West: Roque Demetrio."

On March 15, 1982, respondent Faustino, joined by his wife, filed before the then Court of First Instance of Zambales a complaint for recovery of possession with damages against petitioner, assisted by her husband, docketed as Civil Case No. 3382-0, alleging that the parcel of land he bought *via* the June 27, 1962 Deed of Sale from his co-heirs consisted of **1,381 sq. m.** and is more particularly described as follows:

> A residential land located at Barrio Matain, Subic, Zambales now know as Lot 3, Block 5-K, Psd-8268 bounded on the NORTH by Road Lot 1, Block 5-1, PSD-8268; on the SOUTH by Road Lot 2, Block 5-1, Psd-8268; on the EAST by Road Lot 2, Block 5-1, Psd-8286; and, on the WEST by the property of Roque Demetrio Lot 2, Block 5-k, Psd 8268; containing an area of ONE THOSUAND THREE HUNDRED EIGHTY-ONE **(1,381)** SQUARE METERS, more or less. Declared for taxation purposes under Tax Declaration No. 1896 in the name of Spouses Bienvenido S. Faustino and Iluminada G. Faustino.[2] (Emphasis and underscoring supplied)

Respondent spouses further alleged that they allowed petitioner and co-heirs to occupy and build a house on a 627 sq. m. portion of the land, particularly described as follows:

> The northeastern portion of the land of the plaintiffs described in Paragraph 2 of this complaint; bounded on the NORTH by Road Lot 1, Block 5-1, Psd-8268; on the East by Road Lot 2, Block 5-1, Psd-8268; and on the SOUTH and WEST by the remaining portion of Lot 5, Block 5-1, PSD-8268 of herein plaintiffs which is the land described in Paragraph 2 of this complaint owned by the plaintiffs and that this portion in question has an area of SIX HUNDRED

[2] Records, p. 1. Tax Declaration No. 1896-Exh. "C" is a photocopy. It does not reflect an area of 1,381 sq. m., nor does it bear the signature of the owner. And it appears to have intercalations therein.

TWENTY-SEVEN **(627)** SQUARE METERS, more or less;[3] (Emphasis and underscoring supplied),

on the condition that they would voluntarily and immediately remove the house and vacate that portion of the land should they (respondents) need the land; and that when they asked petitioner and her co-heir-occupants to remove the house and restore the possession of the immediately-described portion of the land, they refused, hence, the filing of the complaint.

In her Answer,[4] petitioner claimed that she is the owner of a **628 sq. m**. lot covered by Tax Declaration No. 1017 in her name, particularly described as follows:

> A residential lot, together with the two (2) storey house thereon constructed, and all existing improvements thereon, situated at Matain, Subic, Zambales, containing an area of **628 square meters**, more or less. Bounded on the North, by Lot 12313 [*sic*]; on the East, by Lot 12413 (Road Lot); on the South, by Lot 12005-Cecilia Salinas; and on the West, by Lot 12006, Loreto Febre. **Declared under Tax No. 1017, in the name of Dolores Salinas Castillo.** (Emphasis and underscoring supplied);

that if respondents refer to the immediately described lot, then they have no right or interest thereon;[5] and that her signature in the June 27, 1962 Deed of Sale is forged.

After trial, Branch 73 of the Regional Trial Court (RTC) of Olongapo City, by Decision of August 31, 1993, found petitioner's claim of forgery unsupported. It nevertheless dismissed the complaint,[6] it holding that, *inter alia*, the Deed of Sale indicated that only 300.375 sq. m. was sold to petitioner.

> . . . [I]n the . . . Deed of Sale [dated June 27, 1962] (Exhibit "B"), the area of the land sold was only **300.375 square meters** while the plaintiffs[-herein respondents] in their complaint claim 1,381 square meters or the whole of the lot shown by exhibit "A" (Lot 3, Block

[3] *Id.* at 2.

[4] *Id.* at 11-12.

[5] *Id.* at 12.

[6] *Id.* at 126-130.

5-A, Psd-8268). Since the document is the best evidence, and the deed of sale indicates only 300.375 square meters, so then, **only the area as stated in the Deed of Sale should be owned by the plaintiffs**. The allegations [*sic*] that there might be a typographical error is again mere conjecture and not really supported by evidence.

The **boundaries** of the land indicated in the Deed of Sale (Exhibit "B") [are] **different** from that of Exhibit "A" claimed by the plaintiff[s-herein respondents] to be the plan of the lot which they allegedly bought. The Deed of Sale states [that the boundary of the lot in the] North is the lot of Carmen Labitan while Exhibit "A" indicated that North of the land is Lot 3, Block 5-A, Psd-8268 (Exhibit "A") is a Road Lot (Lot 1, Block 5-1, Psd-8268). This Court believes that after examining the documents presented, that the land bought by the plaintiff is only a **portion of the land** appearing in Exhibit "A" and not the whole lot. The land bought being situated at the southern portion of Lot 3, Block 5-K, Psd-8268. This explains why the northern portion of the lot sold indicated in the Deed of Sale is owned by Carmen Labitan, the original owner of the whole Lot 3, Block 5-K, Psd-8268 (Exhibit "C-1").

Even the tax declaration submitted by the plaintiff indicates different boundaries with that of the land indicated in the Deed of Sale. The law states in Art. 434 of the Civil Code:

> "Art. 434. In an action to recover, the property must be identified, and the plaintiff must rely on the weakness of the defendant's claim."
>
> x x x x x x x x x

Herein **plaintiffs[-respondents] only own the area of 300.375 square meters** of the said lot and not the whole area of 1,381 square meters as claimed by them. There is no evidence to substantiate the plaintiffs' claim for the area of 1,381 square meters.

x x x x x x x x x[7] (Emphasis and underscoring supplied)

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[7] *Id.* at 129-130.

On respondents' appeal,[8] the Court of Appeals, by Decision of December 20, 2001,[9] modified the RTC decision. It held that since respondents are claiming the whole lot containing 1,381 sq. m. but that petitioner is claiming 628 sq. m. thereof, then respondents are "entitled to the remaining portion . . . of 753 square meters." The appellate court explained:

> x x x [T]he Court agrees with the *court a quo* that **only a portion of the whole lot was indeed sold to the plaintiffs-appellants** by the heirs of deceased Isidro Salinas and Carmen Labitan. What remains to be determined is the particular portion of the area that was sold to the plaintiffs-appellants.
>
> x x x [W]hat really defines a piece of land is not the area calculated with more or less certainty mentioned in the description but the boundaries therein laid down as enclosing the land and indicating its limits. Where the land is sold for a lump sum and not so much per unit of measure or number, the boundaries of the land stated in the contract determine the effects and scope of the sale not the area thereof.
>
> Based on these rules, plaintiffs-appellants are not strictly bound by the area stated in the Deed of Sale which is merely 300.375 square meters, but by the metes and bounds stated therein. As found by the *court a quo*, the land bought by the plaintiffs-appellants is a portion of the land appearing in Exhibit "A", situated at the southern portion of Lot 3, Block 5-K, Psd 8268 where the northern portion of the land sold as indicated in the Deed of Sale is owned by Carmen Labitan, the original owner of the whole Lot 3, Block 5-K, Psd-8268 (*Exhibit "C-1"*.) None of the other heirs questioned the sale of the property as described in the Deed of Sale.
>
> Considering the foregoing, this Court believes that plaintiffs-appellants[-herein respondents] own more than 300.375 square meters of the land in question. However, said ownership does not extend to the northern portion of the land being claimed by the defendants-appellees, consisting of 628 **(erroneously stated in the decision of the *court a quo* as 268) square meters** and covered by Tax Declaration

[8] *Id.* at 133.

[9] Penned by Court of Appeals Associate Justice Juan Q. Enriquez, with the concurrence of Associate Justices Delilah Vidallon-Magtolis and Candido V. Rivera. *Rollo*, pp. 44-51.

No. 1017 in the name of defendant-appellee[-herein petitioner] Dolores Salinas. **Plaintiffs-appellants are[,] however, entitled to the remaining portion of the property consisting of seven hundred fifty-three (753) square meters, more or less**. (Emphasis and underscoring supplied)

The appellate court thus disposed:

WHEREFORE**,** based on the foregoing premises, the judgment appealed from is hereby **MODIFIED**, as follows:

1. Plaintiffs-appellants Bienvenido S. Faustino and Iluminada G. Faustin[o] are declared owners of seven hundred fifty-three (753) square meters, more or less, of the parcel of land subject of this case.

2. Plaintiffs-appellants and defendants-appellees are directed to cause the segregation of their respective shares in the property as determined by this Court, with costs equally shared between them.

x x x x x x x x x.[10] (Underscoring supplied)

Petitioner's motion for reconsideration having been denied,[11] she filed the present petition[12] faulting the Court of Appeals

a. x x x IN MODIFYING THE DECISION OF THE COURT *A QUO* DISMISSING THE COMPLAINT FOR INSUFFICIENCY OF EVIDENCE;

b. x x x IN DECLARING THE PRIVATE RESPONDENTS OWNERS OF 753 SQUARE METERS, MORE OR LESS, OF THE PARCEL OF LAND SUBJECT OF THE CASE[;]

c. x x x IN NOT AFFIRMING THE DECISION OF THE COURT *A QUO* AND XXX IN NOT DECLARING THE PETITIONER AS OWNER OF HER PROPERTY WHICH, SINCE THEN UP TO THE PRESENT, SHE HAD BEEN OCCUPYING AND DESPITE PREPONDERANCE OF EVIDENCE OF HER OWNERSHIP THERETO.[13] (Underscoring in the original)

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[10] *Id.* at 49-50.

[11] *Id.* at 41-42.

[12] *Id.* at 10-39.

[13] *Id.* at 22.

The petition is meritorious.

Indeed, in a contract of sale of land in a mass, the specific boundaries stated in the contract must control over any statement with respect to the area contained within its boundaries.[14] Thus, it is the boundaries indicated in a deed of absolute sale, and not the area in sq. m. mentioned therein – 300.375 sq. m. in the Deed of Sale in respondents' favor – that control in the determination of which portion of the land a vendee acquires.

In concluding that respondents acquired *via* the June 27, 1962 Deed of Sale the total land area of 753 sq. m., the Court of Appeals ***subtracted*** from the total land area of 1,381 sq. m. reflected in Exh. "A", which is "Plan of Lot 3, Block 5-k, Psd-8268, as prepared for Benjamin R. Salinas" containing an area of 1,381 sq. m. and which was prepared on February 10, 1960 by a private land surveyor, the 628 sq. m. area of the lot claimed by petitioner as reflected in Tax Declaration No. 1017 in her name. As will be shown shortly, however, the basis of the appellate court's conclusion is erroneous.

As the immediately preceding paragraph reflects, the "Plan of Lot 3, Bk 5-K, Psd-82" was prepared for respondent Faustino's and petitioner's first cousin co-heir Benjamin Salinas on February 10, 1960.

Why the appellate court, after excluding the 628 sq. m. lot covered by a Tax Declaration in the name of petitioner from the 1,381 sq. m. lot surveyed for Benjamin P. Salinas in 1960, concluded that what was sold *via* the 1962 Deed of Sale to respondent Faustino was the remaining 753 sq. m., *despite the clear provision of said Deed of Sale that what was conveyed was 300.375 sq. m.*, escapes comprehension. It defies logic, given that respondents base their claim of ownership of the questioned 628 sq. m. occupied by petitioner on that June 27, 1962 Deed of Sale covering a 300.375 sq. m. lot.

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[14] *Rudolf Lietz, Inc. v. Court of Appeals*, G.R. No. 122463, December 19, 2005, 478 SCRA 451, 459.

The trial court in fact noted in its Pre-trial Order that "the parties cannot agree as to the **identity of the property** sought to be recovered by the plaintiff."[15] (Emphasis and underscoring supplied.) Indeed, in her Answer to the Complaint, petitioner alleged "[t]hat ***if*** the plaintiffs refer to [the lot covered by Tax Declaration No. 1017], then they have no right or interest or participation whatsoever over the same x x x."[16] (Emphasis and italics supplied.)

Even the boundaries of the 628 sq. m. area covered by Tax Declaration No. 1017 in petitioner's name and those alleged by respondents to be occupied by petitioner are different. Thus, the boundaries of the lot covered by Tax Declaration No. 1017 are: Lot No. 12302 on the North; Lot No. 12005 (Cecilia Salinas) on the South; Lot No. 12413 (road lot) on the East; and Lot No. 12006 (Loreto Febre) on the West.[17] Whereas, following respondents' claim, the 627 sq. m. area occupied by petitioner has the following boundaries, *viz*:

> The northeastern portion of the land of the plaintiffs described in Paragraph 2 of this complaint; bounded on the **NORTH** by Road Lot 1, Block 5-1, Psd-8268; on the **EAST** by Road Lot 2, Block 5-1, Psd-8268; and on the **SOUTH** and **WEST** by the remaining portion of Lot 5, Block 5-1, PSD-8268 of herein plaintiffs which is the land described in Paragraph 2 of this complaint owned by the plaintiffs and that this portion in question has an area of SIX HUNDRED TWENTY-SEVEN (627) SQUARE METERS, more or less.[18] (Emphasis and underscoring supplied)

The Court of Appeals thus doubly erred in concluding that 1) what was sold to respondents via the June 27, 1962 Deed of Sale was the 1,381 sq. m. parcel of land reflected in the Plan-Exh. "A" prepared in 1960 for Banjamin Salinas, and 2) petitioner occupied 628 sq. m. portion thereof, hence respondents own the remaining 753 sq. m.

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[15] Records, p. 22.

[16] *Id.* at 12.

[17] Exhibit "1",

[18] Records, p. 2.

WHEREFORE, the petition is *GRANTED*. The Decision of the Court of Appeals dated December 20, 2001 is *REVERSED* and *SET ASIDE,* and the Decision of Branch 73 of the Regional Trial Court of Olongapo City dated August 31, 1993 DISMISSING Civil Case No. 3382-0 is *REINSTATED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 157125. September 19, 2008]

ILUMINADA "LUMEN" R. POLICARPIO, *petitioner, vs.* **ACTIVE BANK (formerly Maunlad Savings and Loan Bank),** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; WRIT OF POSSESSION; ISSUANCE THEREOF CEASES TO BE MINISTERIAL ONCE IT APPEARS THAT THERE IS A THIRD PARTY IN POSSESSION OF THE PROPERTY CLAIMING A RIGHT ADVERSE TO THAT OF THE DEBTOR/MORTGAGOR. — Ordinarily, a purchaser of property in an extrajudicial foreclosure sale is entitled to possession of the property. Thus, whenever the purchaser prays for a writ of possession, the trial court has to issue it as a matter of course. However, the obligation of the trial court to issue a writ of possession ceases to be ministerial once it appears that there is a third party in possession of the property claiming a right adverse to that of the debtor/mortgagor. Where such third party exists, the trial court should conduct a hearing to determine the nature of his adverse possession. In this case, the trial court conducted the

required hearing but neither petitioner nor her counsel appeared. We cannot therefore fault the trial court for evaluating the only documentary evidence submitted by petitioner, the Deed of Sale dated April 22, 1998 and the certified true copy of TCT No. 207131 which Septem gave her.

2. CIVIL LAW; SPECIAL CONTRACTS; SALES; FAILURE TO REGISTER THE DEED OF SALE OF THE PROPERTY IS A FATAL DEFECT. — There is nothing objectionable with the summary manner by which the trial court resolved petitioner's claim. As it is, the trial and appellate courts found the validity of the sale in petitioner's favor questionable since only Septem signed the Deed of Sale and it was not shown that he was authorized by Grelita to sell the conjugal property. In our view, however, even if both Ricaza spouses had signed, the result would still be the same, given the circumstances in this case. In any event, we note that the deed was not even registered, a truly fatal defect in this case.

3. ID.; ID.; MORTGAGE; RULING IN THE PNB CASE (G.R. NO. 135219, JANUARY 17, 2002) NOT APPLICABLE TO CASE AT BAR. — Finally, petitioner relies on *Philippine National Bank v. Court of Appeals*, to support her claim. In *PNB*, the third party possessor had been occupying the property even prior to the mortgage in favor of the bank. More importantly, the bank was aware that there was a third party possessor before it granted the loan to the original owners of the property. Such is not the case here. The mortgage in favor of respondent preceded the sale in favor of petitioner. There was no allegation either that respondent was at any point of time aware that petitioner occupied the property. Thus, we are in agreement that no reversible error was committed by the appellate court nor by the trial court. Respondent has no legal obligation to honor petitioner's possession of the property. Rather conversely, it is petitioner who has the legal obligation to honor respondent's prior ownership and existing right to possess the property.

4. ID.; LAND REGISTRATION; A PERSON DEALING WITH REGISTERED PROPERTY IS CHARGED WITH NOTICE ONLY OF SUCH BURDENS AND CLAIMS WHICH ARE ANNOTATED ON THE TITLE. — Petitioner's reliance on the certified true copy of TCT No. 207131, which was given to her by Septem, is misplaced. It is settled that a person dealing with registered

property is charged with notice only of such burdens and claims which are annotated on the title. Yet, petitioner simply believed Septem's assurance that the title was clean and accepted a copy consisting only of the first page *sans* the dorsal page where respondent's mortgage was annotated. What is more, we find it hard to believe that petitioner did not compel the spouses Ricaza to register the sale in her favor and to have the proper title issued in her name. As a lawyer, petitioner should have been more circumspect in protecting her interests.

APPEARANCES OF COUNSEL

Policarpio Pangulayan Azura Law Office for petitioner.
Raymundo Santos Señga & Associates for respondent.

D E C I S I O N

QUISUMBING, *J.*:

For review on *certiorari* are the Decision[1] dated August 21, 2002 and the Resolution[2] dated February 6, 2003 of the Court of Appeals in CA-G.R. SP No. 68939. The Court of Appeals affirmed the Resolution[3] dated January 18, 2002 of the Regional Trial Court (RTC) of Muntinlupa City, Branch 276 in LRC Case No. 00-058, which had ordered the issuance of a Writ of Possession[4] dated January 24, 2002 in favor of respondent.

The relevant facts are as follows:

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[1] *Rollo*, pp. 24-30. Penned by Associate Justice Conchita Carpio Morales (now a member of this Court), with Associate Justices Martin S. Villarama, Jr. and Mariano C. Del Castillo concurring.

[2] *Id.* at 66. Penned by Associate Justice Mariano C. Del Castillo, with Associate Justices Buenaventura J. Guerrero and Martin S. Villarama, Jr. concurring.

[3] CA *rollo*, p. 19.

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

The spouses Septem and Grelita Ricaza are the registered owners of a parcel of land located at Ayala Alabang, Muntinlupa City, covered by Transfer Certificate of Title (TCT) No. 207131[5] of the Registry of Deeds of Makati City.

On October 2, 1996, they mortgaged the property to respondent Active Bank (formerly Maunlad Savings and Loan Bank). For failure to settle their obligation, respondent foreclosed the mortgage. The spouses Ricaza also failed to redeem the property during the redemption period. Hence, respondent consolidated its ownership over the property.

Respondent subsequently filed a Petition for Issuance of Writ of Possession with the RTC of Muntinlupa City, Branch 276. Petitioner Iluminada "Lumen" R. Policarpio opposed it and submitted a Deed of Sale[6] of the property executed by Septem in her favor on April 22, 1998.

The trial court set the Opposition for hearing but neither petitioner nor her counsel appeared. On January 18, 2002, the trial court ordered the issuance of a Writ of Possession. It observed that the Deed of Sale appears to be void since only Septem signed it and it was not shown that he was authorized by Grelita to sell the conjugal property.

Thereafter, petitioner was served with the Resolution dated January 18, 2002, the Writ of Possession dated January 24, 2002 and the Notice to Vacate[7] dated January 25, 2002.

On February 1, 2002, the court sheriff together with respondent's employees entered the property and removed petitioner's personal belongings. However, respondent was able to occupy only a portion of the property due to the timely intervention of the Muntinlupa Police and the Ayala Alabang Village Security personnel.

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[5] *Id.* at 24.

[6] *Id.* at 22-23.

[7] *Rollo*, p. 57.

Petitioner filed a petition for *certiorari* and prohibition with the Court of Appeals. She sought the nullification of the trial court's Resolution dated January 18, 2002, the Writ of Possession dated January 24, 2002 and the Notice to Vacate dated January 25, 2002.

Petitioner argued that the trial court could not issue the Writ of Possession in favor of respondent since she was a third party in possession of the property contemplated under Section 33, Rule 39 of the Rules of Court.

Respondent countered that the Deed of Sale in petitioner's favor was void since it was executed without Grelita's consent. It added that the sale, unlike the mortgage, had not been registered. It also contended that petitioner's possession came only after the mortgage was constituted and registered.

On August 21, 2002, the Court of Appeals denied the petition. It ruled that the validity of the sale in petitioner's favor was questionable since only Septem signed the deed. It also noted that unlike the mortgage, the Deed of Sale was not registered. Finally, while petitioner opposed the petition for issuance of Writ of Possession, she never pursued nor prosecuted her claim. Laches may be said to have worked against her, given the urgency and grave consequences that the writ entailed.

Petitioner moved for reconsideration which the appellate court denied. Hence, this recourse where petitioner assigns the following errors:

I.

THE COURT OF APPEALS ERRED IN NOT APPLYING SECTION 33, RULE 39 OF THE REVISED RULES OF CIVIL PROCEDURE TO THIS CASE.

II.

THE COURT OF APPEALS ERRED IN FINDING THAT THE DEED OF SALE BETWEEN PETITIONER AND SPOUSES RICAZA WERE QUESTIONABLE AND/OR VOID.

III.

THE COURT OF APPEALS ERRED IN FINDING THAT PETITIONER'S RIGHT OF ACTION WAS BARRED BY LACHES.[8]

The basic issue to be resolved is whether petitioner is a third party in possession of the property contemplated under Section 33, Rule 39 of the Rules of Court such as to preclude the trial court from issuing a Writ of Possession in favor of respondent.

Section 33, Rule 39 of the Rules of Court which relates to the right of possession of a purchaser of property in an extrajudicial foreclosure sale provides:

> SEC. 33. …
>
> Under the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment obligor.

Ordinarily, a purchaser of property in an extrajudicial foreclosure sale is entitled to possession of the property. Thus, whenever the purchaser prays for a writ of possession, the trial court has to issue it as a matter of course.[9] However, the obligation of the trial court to issue a writ of possession ceases to be ministerial once it appears that there is a third party in possession of the property claiming a right adverse to that of the debtor/mortgagor.[10] Where such third party exists, the trial

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[8] *Id.* at 9-10.

[9] *China Banking Corporation v. Ordinario*, G.R. No. 121943, March 24, 2003, 399 SCRA 430, 434.

[10] *Philippine National Bank v. Court of Appeals*, G.R. No. 135219, January 17, 2002, 374 SCRA 22, 30.

court should conduct a hearing to determine the nature of his adverse possession.[11]

In this case, the trial court conducted the required hearing but neither petitioner nor her counsel appeared. We cannot therefore fault the trial court for evaluating the only documentary evidence submitted by petitioner, the Deed of Sale dated April 22, 1998 and the certified true copy of TCT No. 207131 which Septem gave her.

There is nothing objectionable with the summary manner by which the trial court resolved petitioner's claim. As it is, the trial and appellate courts found the validity of the sale in petitioner's favor questionable since only Septem signed the Deed of Sale and it was not shown that he was authorized by Grelita to sell the conjugal property. In our view, however, even if both Ricaza spouses had signed, the result would still be the same, given the circumstances in this case. In any event, we note that the deed was not even registered, a truly fatal defect in this case.

Petitioner's reliance on the certified true copy of TCT No. 207131, which was given to her by Septem, is misplaced. It is settled that a person dealing with registered property is charged with notice only of such burdens and claims which are annotated on the title.[12] Yet, petitioner simply believed Septem's assurance that the title was clean and accepted a copy consisting only of the first page *sans* the dorsal page where respondent's mortgage was annotated. What is more, we find it hard to believe that petitioner did not compel the spouses Ricaza to register the sale in her favor and to have the proper title issued in her name. As a lawyer, petitioner should have been more circumspect in protecting her interests.

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[11] *Unchuan v. Court of Appeals (Fifth Division)*, G.R. No. 78775, May 31, 1988, 161 SCRA 710, 716.

[12] *Du v. Stronghold Insurance Co., Inc.*, G.R. No. 156580, June 14, 2004, 432 SCRA 43, 51.

Finally, petitioner relies on *Philippine National Bank v. Court of Appeals*,[13] to support her claim. In *PNB*, the third party possessor had been occupying the property even prior to the mortgage in favor of the bank. More importantly, the bank was aware that there was a third party possessor before it granted the loan to the original owners of the property. Such is not the case here. The mortgage in favor of respondent preceded the sale in favor of petitioner. There was no allegation either that respondent was at any point of time aware that petitioner occupied the property.

Thus, we are in agreement that no reversible error was committed by the appellate court nor by the trial court. Respondent has no legal obligation to honor petitioner's possession of the property. Rather conversely, it is petitioner who has the legal obligation to honor respondent's prior ownership and existing right to possess the property.

WHEREFORE, the instant petition is *DENIED* for lack of merit. The Decision dated August 21, 2002 and the Resolution dated February 6, 2003 of the Court of Appeals in CA-G.R. SP No. 68939 are *AFFIRMED*.

SO ORDERED.

Tinga, Chico-Nazario,[*] *Velasco, Jr.*, and *Brion, JJ.*, concur.

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[13] *Supra* note 10, at 22.

[*] Additional member in place of Associate Justice Conchita Carpio Morales who took no part due to prior action in the Court of Appeals.

SECOND DIVISION

[G.R. No. 165896. September 19, 2008]

RUSTICO ABAY, JR. and REYNALDO DARILAG, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; EXTRAJUDICIAL ADMISSION; WHEN THE EXTRAJUDICIAL ADMISSION OF A CONSPIRATOR IS CONFIRMED AT THE TRIAL, IT CEASES TO BE HEARSAY. — At the outset, we note that it was not Aban's extrajudicial confession but his court testimony reiterating his declarations in his extrajudicial admission, pointing to petitioners as his co-participants, which was instrumental in convicting petitioners of the crime charged. Settled is the rule that when the extrajudicial admission of a conspirator is confirmed at the trial, it ceases to be hearsay. It becomes instead a judicial admission, being a testimony of an eyewitness admissible in evidence against those it implicates. Here, the extrajudicial confession of Aban was affirmed by him in open court during the trial. Thus, such confession already partook of judicial testimony which is admissible in evidence against the petitioners.

2. ID.; ID.; ADMISSIBILITY; PHYSICAL EVIDENCE IS MERELY CORROBORATIVE WHERE THERE ARE CREDIBLE WITNESSES WHO TESTIFIED ON THE COMPLICITY OF THE ACCUSED IN THE CRIME CHARGED. — Petitioners claim that no physical evidence was presented by the prosecution linking the petitioners to the crime charged. But in this case, the alleged failure of the prosecution to present physical evidence does not adversely affect the over-all weight of the evidence actually presented. Physical evidence would be merely corroborative because there are credible witnesses who testified on the complicity of petitioners in the crime charged.

3. ID.; ID.; ALIBI; CANNOT PREVAIL OVER THE POSITIVE IDENTIFICATION OF THE ACCUSED. — Additionally, petitioners claim that the trial court and the Court of Appeals

erred in disregarding their defense of alibi. However, we are in agreement with the OSG that the defense of alibi cannot prevail over the positive identification of the accused in this case.

4. ID.; ID.; ID.; CANNOT PREVAIL OVER THE POSITIVE IDENTIFICATION OF THE ACCUSED BY CREDIBLE WITNESSES WHO HAVE NO MOTIVE TO TESTIFY FALSELY. — Worth stressing, this Court has consistently ruled that the defense of alibi must be received with suspicion and caution, not only because it is inherently weak and unreliable, but also because it can be easily fabricated. Alibi is a weak defense that becomes even weaker in the face of the positive identification of the accused. An alibi cannot prevail over the positive identification of the petitioners by credible witnesses who have no motive to testify falsely.

5. ID.; ID.; ID.; TO PROSPER, THE ACCUSED MUST CLEARLY AND INDISPUTABLY DEMONSTRATE THAT IT WAS PHYSICALLY IMPOSSIBLE TO HAVE BEEN AT, OR NEAR, THE SCENE OF THE CRIME AT THE TIME OF ITS COMMISSION. — In this case, petitioners' defense of alibi rested solely upon their own self-serving testimonies. For their defense of alibi to prosper, it should have been clearly and indisputably demonstrated by them that it was physically impossible for them to have been at, or near, the scene of the crime at the time of its commission. But as the trial court correctly ruled, it was not impossible for the petitioners to be at the scene of the crime since petitioners' place of detention is less than an hour ride from the crime scene. Moreover, no dubious reason or improper motive was established to render the testimonies of Andrade, Tolentino and Aban false and unbelievable. Absent the most compelling reason, it is highly inconceivable why Andrade, Tolentino and Aban would openly concoct a story that would send innocent men to jail.

6. CRIMINAL LAW; HIGHWAY ROBBERY/BRIGANDAGE; ELEMENTS; ESTABLISHED IN CASE AT BAR. — Considering the testimonies of witnesses and the evidence presented by the parties, we are in agreement that the crime of Highway Robbery/Brigandage was duly proven in this case. As defined under Section 2(e) of Presidential Decree No. 532, Highway Robbery/Brigandage is the seizure of any person for ransom, extortion or other unlawful purposes, or the taking away of the

property of another by means of violence against or intimidation of person or force upon things or other unlawful means, committed by any person on any Philippine highway. Also, as held in *People v. Puno:* In fine, the purpose of brigandage is, *inter alia*, **indiscriminate highway robbery.** If the purpose is only a particular robbery, the crime is only robbery, or robbery in band if there are at least four armed participants. . . Further, that Presidential Decree No. 532 punishes as highway robbery or brigandage **only acts of robbery perpetrated by outlaws indiscriminately against any person or persons on Philippine highways** as defined therein, and not acts of robbery committed against only a predetermined or particular victim. . . The elements of the crime of Highway Robbery/Brigandage have been clearly established in this case. First, the prosecution evidence demonstrated with clarity that the petitioners' group was organized for the purpose of committing robbery in a highway. Next, there is no predetermined victim. The Kapalaran bus was chosen indiscriminately by the accused upon reaching their agreed destination — Alabang, Muntinlupa.

APPEARANCES OF COUNSEL

R.Z. Calabio Law Office for petitioners.
The Solicitor General for respondent.

D E C I S I O N

QUISUMBING, *J.*:

This petition for review assails the Decision[1] dated October 27, 2003 and the Resolution[2] dated October 14, 2004 of the Court of Appeals in CA G.R. CR No. 25212. The Court of Appeals had affirmed the Decision[3] of the Regional Trial Court (RTC) of San Pedro, Laguna, Branch 31, finding petitioners

[1] *Rollo*, pp. 36-57. Penned by Associate Justice Perlita J. Tria Tirona, with Associate Justices Portia Aliño-Hormachuelos and Rosalinda Asuncion-Vicente concurring.

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

[3] Dated November 29, 2000. CA *rollo*, pp. 105-118. Penned by Judge Stella Cabuco-Andres.

guilty of the crime of Highway Robbery in Criminal Case No. 9045-B.

The facts are as follows:

On January 13, 1995, an Information was filed charging Rustico Abay, Jr., Reynaldo Darilag, Ramoncito Aban, Ernesto Ricalde, Ramon Punzalan, Ariston Reyes, Isagani Espeleta, Cesar Camacho, Leonardo Perello and Danilo Pascual with the crime of Highway Robbery/Brigandage. Said information reads:

xxx xxx xxx

That on or about 7:30 o'clock in the evening of February 17, 1994, at the South Luzon Expressway, Municipality of Biñan, Province of Laguna, and within the jurisdiction of this Honorable Court, accused Ramoncito Aban *y* Casiano, Ernesto Ricalde *y* Jovillano, Rustico Abay, Jr. *y* Serafico, Ramon Punzalan *y* Carpena, Reynaldo Darilag *y* Apolinario, Leonardo Perello *y* Esguerra and Danilo Pascual *y* Lagata, who are principals by direct participation, conspiring and confederating together with Ariston Reyes *y* Plaza, Isagani Espeleta *y* Arguelles and Cesar Camacho *y* Deolazo, who are principals by indispensable cooperation and mutually helping each other, form themselves as band of robbers and conveniently armed with handguns and deadly bladed weapons, and while on board a Kapalaran Bus Line with plate number DVT-527 bound for Sta. Cruz, Laguna and a semi stainless owner type jeep with plate number PJD-599 as backup vehicle, accused with the use of the aforesaid handguns and bladed weapons with intent to gain and taking the passengers of the bus by surprise, did then and there wilfully, unlawfully and feloniously divest and take away personalties of the passengers and/or occupants therein, among them were:

a) Thelma Andrade *y* Lorenzana, ₱3,500.00 cash;
b) Gloria Tolentino *y* Pamatmat, ₱30,000.00 cash, $2,000.00 dollars and eyeglasses (Perare) worth ₱5,000.00;
c) Lilian Ojeda *y* Canta, ₱120.00 cash;
d) Paul Masilang *y* Reyes, assorted used clothes of undetermined amount;

and by reason or on occasion of the said robbery, accused shot passenger Rogelio Ronillo *y* Lumboy, inflicting upon him gunshot wounds on the neck, thus, accused performed all the acts of execution that would produce the crime of homicide, but nevertheless, did not

produce by reason of causes independent of the will of the accused, that is by the timely medical assistance rendered to Rogelio Ronillo *y* Lumboy, and to his damage and prejudice and to the damages and prejudices of the following:

a) Thelma Andrade *y* Lorenzana in the sum of ₱3,500.00;
b) Gloria Tolentino *y* Pamatmat in the sum of ₱30,000.00;
c) Lilian Ojeda *y* Canta in the sum of ₱120.00

That the commission of the offense was attended with the aggravating circumstances of nighttime, by a band and with the use of motor vehicle.

With the additional aggravating circumstance that accused Isagani Espeleta *y* Arguelles and Cesar Camacho *y* Deolazo, being prison guards, have taken advantage of their public position by bringing out prison inmates and equipped them with deadly weapons and were utilized in the commission of robbery:

With the further additional aggravating circumstance on the following accused/inmates, as follows:

1) Ramoncito Aban *y* Casiano with prison number 121577 as recidivist, having been convicted by final judgment on June 15, 1984 by the RTC, Branch VI, Malolos, Bulacan, in Criminal Case No. 3874-M for Robbery with Homicide;

2) Ariston Reyes *y* Plaza with prison number 115906-P, as recidivist, having been convicted by final judgment on March 11, 1982 by the CFI, Manila in Criminal Case No. 82-3001 for Robbery; having been convicted by final judgment on September 2, 1987 by the RTC Branch 94, Quezon City, in Criminal Case No. 37432 for Robbery; and for Reiteracion or habituality for having served sentence for Homicide, convicted on March 25, 1991 by the RTC, Branch 34, Quezon City;

3) Reynaldo Darilag *y* Apolinario with prison number 129552-P for reiteracion or habituality for having been previously punished for an offense of murder in Criminal Case No. 039 by the RTC, Branch 5, Tuguegarao, Cagayan and as a recidivist for having been previously convicted by final judgment on July 8, 1987 by the same Court in Criminal Case No. 040 for Robbery;

4) Rustico Abay, Jr. *y* Serafico with prison number 132566-P as a recidivist for having been previously convicted by final judgment on August 31, 1988 by the RTC, Branch 163 Manila, in Criminal Case No. 71060 for Theft;

5) Ramon Punzalan *y* Carpena with prison number 113605-P as recidivist for having been previously convicted by final judgment by the RTC, Branch 111, San Pablo City on the following dates, to wit:
January 8, 1981 in Criminal Case No. 2454-SP, for Robbery in Band;
December 8, 1981, in Criminal Case No. 2549 for Theft;
October 7, 1983 in Criminal Case No. 2550-SP for Carnapping; and
Having been previously convicted by final judgment by the City Court of San Pablo City on March 30, 1981 in Criminal Case No. 17738 for simple theft;

6) Ernesto R[i]calde *y* Jov[i]llano with prison number N92P-2735, as a recidivist for having been previously convicted by final judgment on August 2, 1992 by the RTC, Branch 54, Lucena City in Criminal Case No. 91-679 for simple theft.

CONTRARY TO LAW.[4]

When arraigned, all the accused pleaded not guilty. However, upon motion filed by accused Ramoncito Aban, with the conformity of the public prosecutor and private complainants Thelma Andrade and Gloria Tolentino, he was allowed to withdraw his earlier plea of "not guilty." Thus, on September 11, 1997, Ramoncito Aban, with the assistance of his counsel, pleaded "guilty" to the crime of simple robbery and on even date, the trial court sentenced him. Meanwhile, trial proceeded with respect to the other accused.

The prosecution presented the following witnesses: Thelma Andrade, Gloria Tolentino and Ramoncito Aban.

Thelma Andrade, a conductress of the Kapalaran Bus Line, testified that in the evening of February 17, 1994, the bus she was on was held-up. She said that Ramoncito Aban took from

[4] Records (Vol. I), pp. 1-4.

her, at gunpoint, the fares she collected from the passengers of the bus. She also identified Rustico Abay, Jr. and Ernesto Ricalde as two of the other companions of Aban.[5]

Gloria Tolentino, a passenger of the bus, testified that someone shouted "hold-up" and ordered them to bow their heads. She obeyed the order but once in a while she would raise her head. According to Tolentino, the man seated beside her, Ariston Reyes, took her money and pieces of jewelry and handed them over to Reynaldo Darilag. She also identified Rustico Abay, Jr. as one of the companions of the robbers.[6]

Ramoncito Aban, the last witness, testified that on February 22, 1994, Camacho and Espeleta, who were both prison guards of the New Bilibid Prison (NBP), took him and his companions, Ricalde, Abay, Jr., Punzalan, Darilag, Reyes, Perello and Pascual, on board the owner-type jeepney of Camacho to stage a hold-up. He said they held-up a Kapalaran bus and it was Punzalan and Darilag who took the money and other belongings of the passengers in the bus. He further testified that the February 22, 1994 hold-up was the fourth staged by their group. According to Aban, the other hold-ups were carried out on February 11, 13 and **17**, and all four hold-ups were staged by the same persons.[7]

The defense, for its part, presented the testimony of petitioners Rustico Abay, Jr., and Reynaldo Darilag, the other co-accused, and Genaro Alberto.

All the accused denied participation in the robbery that happened on February 17, 1994. Abay, Jr., Darilag, Reyes and Ricalde, who were detention prisoners, testified that they were confined in the NBP at the time the incident happened.[8] Pascual

[5] *Id.* at 15-16, 26-28; TSN, May 7, 1996, pp. 3, 5-6, 10-13.

[6] *Id.* at 21-23; TSN, July 24, 1996, pp. 3-10, 20.

[7] TSN, October 3, 1997, pp. 12-13, 16-22; TSN, October 30, 1997, pp. 8, 13, 15, 27-28; TSN, December 17, 1997, pp. 8-13.

[8] TSN, April 22, 1999, pp. 9-10, 12; TSN, June 17, 1999, p. 5; TSN, July 22, 1999, pp. 3-4; TSN, October 18, 1999, pp. 2-5; TSN, May 10, 2000, pp. 2-3, 5; TSN, June 14, 2000, pp. 3-4.

and Perello, both civilians, testified that they were at home then.[9] Genaro Alberto, a prison guard at the Bureau of Corrections, testified that during the headcount of the inmates conducted at 5:00 p.m. and 8:00 p.m. on February 17, 1994, no inmate was found to be missing.[10]

In a Decision dated November 29, 2000, the RTC of San Pedro, Laguna, Branch 31 found petitioners Abay, Jr. and Darilag, as well as the other accused guilty of the crime charged. The trial court decreed as follows:

> WHEREFORE, this Court hereby renders judgment convicting accused Ernesto Ricalde *y* Jovillano, Rustico Abay, Jr. *y* Serafico, Ramon Punzalan *y* Carpena, Reynaldo Darilag *y* Apolicario, Ariston Reyes *y* Plaza, Isagani Espeleta *y* Arguelles, Cesar Camacho *y* Deolazo, Leonardo Perello *y* Esguerra and Danilo Pascual *y* Lagata of the crime of highway robbery/holdup attended by the aggravating circumstance of a band only and hereby sentences each of them:
>
> 1) to suffer an indeterminate penalty of imprisonment [of] … twelve (12) years and one (1) day as minimum to thirteen (13) years, nine (9) months and eleven (11) days as maximum, both of *reclusion temporal* in its minimum period;
>
> 2) to indemnify Thelma Andrade, the amount of ₱3,500 and Gloria Tolentino, the amount of ₱30,000 and US$2,000; and
>
> 3) to pay the costs.
>
> SO ORDERED.[11]

The Court of Appeals on appeal acquitted Espeleta, Camacho and Punzalan of the crime charged but affirmed the conviction of petitioners Abay, Jr. and Darilag, Ricalde and Reyes. The dispositive portion of the Decision dated October 27, 2003 states:

> WHEREFORE, the assailed decision of the Regional Trial Court of San Pedro, Laguna, Branch 31, in Criminal Case No. 9045-B, is **REVERSED** and **SET ASIDE**, but only insofar as accused-appellants

[9] TSN, September 4, 2000, pp. 3-4.

[10] TSN, October 15, 1999, pp. 3-5, 8.

[11] *Rollo*, p. 75.

Isagani Espeleta, Cesar Camacho and Ramon Punzalan, are concerned, for insufficiency of evidence. Isagani Espeleta, Cesar Camacho and Ramon Punzalan are hereby **ACQUITTED**. Unless held for any other charge/charges their immediate release is hereby ordered.

With respect to accused-appellants Rustico Abay, Jr., Ernesto Ricalde, Reynaldo Darilag and Ariston Reyes, the said decision of the Regional Trial Court of San Pedro, Laguna, Branch 31, in Criminal Case No. 9045-B, finding them guilty beyond reasonable doubt of the crime of highway robbery/hold-up is hereby **AFFIRMED *IN TOTO***.

SO ORDERED.[12]

Petitioners Abay, Jr. and Darilag moved for a reconsideration of the aforesaid decision, but their motion was denied. Hence, they filed the instant petition raising a single issue:

WHETHER OR NOT PETITIONERS MAY BE CONVICTED ON THE BASIS OF THE TESTIMONIES OF RAMONCITO ABAN, THELMA ANDRADE AND GLORIA TOLENTINO.[13]

Stated simply, did the Court of Appeals err in affirming on the basis of the testimonies of said three witnesses the conviction of petitioners Abay, Jr. and Darilag?

In their petition,[14] petitioners Abay, Jr. and Darilag assert that their guilt has not been proven beyond reasonable doubt. They argue that Ramoncito Aban is not a credible witness and that he testified on an incident which happened on February 22, 1994 and not on February 17, 1994 as alleged in the information. Petitioners also claim that no physical evidence linking petitioners to the crime was presented. They likewise point to a related case filed against them wherein they were acquitted. They fault the trial court and Court of Appeals for disregarding their defense of alibi and in giving credence to the testimonies of Andrade and Tolentino, contending that these testimonies were incredible and unsubstantiated. They likewise

[12] *Id.* at 57.

[13] *Id.* at 16.

[14] *Id.* at 9-35.

contend that the lower courts erred in relying on Aban's extrajudicial confession which was coerced.

The Office of the Solicitor General (OSG) challenges the petition on the ground that the petition raises a question of fact. It also maintains that Aban is a credible witness and that petitioners' defense of alibi cannot prevail over the positive testimonies of the prosecution witnesses.[15]

After a thorough examination of the evidence presented, we are in agreement that the appeal lacks merit.

At the outset, we note that it was not Aban's extrajudicial confession but his court testimony reiterating his declarations in his extrajudicial admission, pointing to petitioners as his co-participants, which was instrumental in convicting petitioners of the crime charged. Settled is the rule that when the extrajudicial admission of a conspirator is confirmed at the trial, it ceases to be hearsay. It becomes instead a judicial admission, being a testimony of an eyewitness admissible in evidence against those it implicates.[16] Here, the extrajudicial confession of Aban was affirmed by him in open court during the trial. Thus, such confession already partook of judicial testimony which is admissible in evidence against the petitioners.

We likewise agree in finding without merit the petitioners' argument that, since Aban's testimony is not credible as to Espeleta, Camacho and Punzalan who were acquitted, then it should also be held not credible as to them. But in our considered view, the petitioners are not similarly situated as their aforementioned co-accused. Other than the testimony of Aban, there were no other witnesses who testified on the participation of Espeleta, Camacho and Punzalan. In contrast, anent the herein petitioners' participation in the crime, not only is their conviction based on the testimony of Aban, but it was also

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[15] *Id.* at 125-135.

[16] *People v. Silan*, G.R. No. 116011, March 7, 1996, 254 SCRA 491, 503; *People v. Victor*, G.R. Nos. 75154-55, February 6, 1990, 181 SCRA 818, 830.

established by the eyewitness testimony of Andrade and Tolentino who identified positively the petitioners in open court.

Petitioners further aver that Aban testified on a robbery which took place on February 22, 1994, not February 17, 1994. Granted that Ramoncito Aban in fact testified on the details of the robbery which happened on February 22, 1994. However, it is also worth stressing as part of the prosecution evidence that Aban testified that malefactors used the same route and strategy in the perpetration of the robberies which happened on four occasions — February 11, 13, **17** and 22, 1994. What happened on February 22 was but a replication, so to speak, of the robbery scenarios earlier perpetrated by the same gang on three previous dates. It is very clear, however, that Aban, on the witness stand was testifying specifically also about the offense that took place on February 17 in the Expressway, Biñan, Laguna.

Petitioners claim that no physical evidence was presented by the prosecution linking the petitioners to the crime charged. But in this case, the alleged failure of the prosecution to present physical evidence does not adversely affect the over-all weight of the evidence actually presented. Physical evidence would be merely corroborative because there are credible witnesses who testified on the complicity of petitioners in the crime charged.[17]

Further, petitioners assert that in a similar case filed against them, they were acquitted by the trial court of Imus, Cavite. As correctly observed by the OSG, there is no showing that the amount and quality of evidence in the present case and those in the case where petitioners were allegedly acquitted are the same. Indeed, if petitioners truly believed that the prosecution evidence is deficient to establish their guilt, their defense could have earlier filed a demurrer to evidence in this case. But, they did not.[18]

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[17] *Rollo*, p. 132.

[18] *Id.* at 132-133.

Additionally, petitioners claim that the trial court and the Court of Appeals erred in disregarding their defense of alibi.[19] However, we are in agreement with the OSG that the defense of alibi cannot prevail over the positive identification of the accused in this case.

Worth stressing, this Court has consistently ruled that the defense of alibi must be received with suspicion and caution, not only because it is inherently weak and unreliable, but also because it can be easily fabricated.[20] Alibi is a weak defense that becomes even weaker in the face of the positive identification of the accused. An alibi cannot prevail over the positive identification of the petitioners by credible witnesses who have no motive to testify falsely.[21]

In this case, petitioners' defense of alibi rested solely upon their own self-serving testimonies. For their defense of alibi to prosper, it should have been clearly and indisputably demonstrated by them that it was physically impossible for them to have been at, or near, the scene of the crime at the time of its commission. But as the trial court correctly ruled, it was not impossible for the petitioners to be at the scene of the crime since petitioners' place of detention is less than an hour ride from the crime scene. Moreover, no dubious reason or improper motive was established to render the testimonies of Andrade, Tolentino and Aban false and unbelievable. Absent the most compelling reason, it is highly inconceivable why Andrade, Tolentino and Aban would openly concoct a story that would send innocent men to jail.[22]

Similarly, petitioners assert that the testimonies of Andrade and Tolentino are incredible and unsubstantiated. They question

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

[20] *People v. Tuppal*, G.R. Nos. 137982-85, January 13, 2003, 395 SCRA 72, 80.

[21] *Vergara v. People*, G.R. No. 128720, January 23, 2002, 374 SCRA 313, 325.

[22] CA *rollo*, p. 116.

the failure of Tolentino to identify Punzalan in court, and stress that Andrade and Tolentino were not able to identify all the accused. The OSG, on the other hand, maintains that the testimonies of Andrade and Tolentino are credible since the facts testified to by them and Aban support each other.

We find petitioners' allegations untenable. The testimonies given by Andrade, Tolentino and Aban corroborate each other. Their testimonies agree on the essential facts and substantially corroborate a consistent and coherent whole. The failure of Tolentino to point to Punzalan in court does not dent her credibility as a witness. It must be noted that it took years before Tolentino was placed on the witness stand. As to the allegation that the testimony of Andrade and Tolentino are incredible because they were not able to identify all the accused deserves scant consideration. During the robbery, they were told to bow their heads and hence, they were only able to raise their heads from time to time. It is but logical that the witnesses would not be able to identify all of the accused.

Considering the testimonies of witnesses and the evidence presented by the parties, we are in agreement that the crime of Highway Robbery/Brigandage was duly proven in this case. As defined under Section 2(e) of Presidential Decree No. 532,[23] Highway Robbery/Brigandage is the seizure of any person for ransom, extortion or other unlawful purposes, or the taking away of the property of another by means of violence against or intimidation of person or force upon things or other unlawful means, committed by any person on any Philippine highway. Also, as held in *People v. Puno*: [24]

> In fine, the purpose of brigandage is, *inter alia*, **indiscriminate highway robbery**. If the purpose is only a particular robbery, the crime is only robbery, or robbery in band if there are at least four armed participants…

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[23] "*Anti-Piracy and Anti-Highway Robbery Law of 1974*" effective August 8, 1974.

[24] G.R. No. 97471, February 17, 1993, 219 SCRA 85, 97.

Further, that Presidential Decree No. 532 punishes as highway robbery or brigandage **only acts of robbery perpetrated by outlaws indiscriminately against any person or persons on Philippine highways** as defined therein, and not acts of robbery committed against only a predetermined or particular victim…[Emphasis supplied.]

The elements of the crime of Highway Robbery/Brigandage have been clearly established in this case. First, the prosecution evidence demonstrated with clarity that the petitioners' group was organized for the purpose of committing robbery in a highway. Next, there is no predetermined victim. The Kapalaran bus was chosen indiscriminately by the accused upon reaching their agreed destination — Alabang, Muntinlupa.

All told, we rule that petitioners Rustico Abay, Jr. and Reynaldo Darilag are guilty beyond reasonable doubt of the crime of Highway Robbery/Brigandage.

WHEREFORE, the Decision dated October 27, 2003 and the Resolution dated October 14, 2004 of the Court of Appeals in CA G.R. CR No. 25212, affirming the Decision dated November 29, 2000 of the Regional Trial Court of San Pedro, Laguna, Branch 31 in Criminal Case No. 9045-B, are hereby *AFFIRMED*.

No pronouncement as to costs.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and *Brion, JJ.*, concur.

SECOND DIVISION

[G.R. No. 167709. September 19, 2008]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **HEIRS OF PASCUAL OCARIZA, represented by CO-HEIR REMEDIOS BACALSO,** *respondents.*

SYLLABUS

CIVIL LAW; LAND REGISTRATION; DISMISSAL OF THE PETITION FOR RECONSTITUTION OF LOST CERTIFICATE OF TITLE, WARRANTED. — The Court finds the petition meritorious not on the ground advanced by the Solicitor General but on the ground that there is no evidence to show that the alleged Decree No. 99211, and an Original Certificate of Title, was issued to Pascual Ocariza, respondents' alleged predecessor-in-interest. Assuming *arguendo* that there was indeed a Decree No. 99211 issued on November 23, 1920 which is, however, "not among the salvaged decrees on file in the [Land Registration Authority]," there is no statement, as shown in the above-quoted September 17, 1993 Report of the LRA, that the decree was issued in the name of Pascual Ocariza. That even respondents were not aware of any such decree is shown by the fact that, as reflected above, before filing their Petition for Reconstitution in 1997, they had years earlier filed an application for original registration covering the lot, which application was deemed withdrawn by Branch 17 of the RTC Cebu on November 5, 1993, on their motion, after the LRA recommended its dismissal. It was thus palpably wrong for Branch 5 of the RTC Cebu to credit respondents' attorney-in-fact Remedios Bacalso's testimony that the decree was issued in the name of Pascual Ocariza "per" LRA Report dated September 17, 1993.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Emmanuel I. Seno & Manolito M. Seno for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

In 1993, Remedios Bacalso, in representation of the Heirs of Pascual Ocariza, filed before the Regional Trial Court (RTC) of Cebu an **Application for Original Registration** of a parcel of land, identified as Lot No. 4147 of the Cebu Cadastre 12, situated in Inayawan, Cebu City.

In a Report dated September 17, 1993 submitted to the Cebu RTC Branch 17 to which the application for original registration was lodged, Silverio Perez, Director of the Department of Registration of the Land Registration Authority (LRA), recommended the dismissal of the application for original registration in light of the following statements:

x x x x x x x x x

2. Upon verification of our "Record Books of Cadastral Lots" on file in this Authority, it was found that "**lot 4147, Cebu Cadastre was issued Decree No. 99211, on November 23, 1920** in the Cadastral proceeding, Cadastral Case No. 13, LRC Cadastral Record No. 9469 pursuant to the decision rendered thereon. Copy of said decree **is not** among the salvaged decrees on file in this Authority;"

3. Letter of this Authority of even date (September 17, 1993), a copy is attached hereto as Annex "A", was sent to the Register of Deeds, Cebu City, requesting for a certified xerox copy of the certificate of title issued to lot 4147, Cebu Cadsatre 12, pursuant to Decree No. 99211, issued on November 23, 1920 in Cadastral Case No. 13, LRC Cadastral Record No. 9469 be furnished to the Honorable Court.

WHEREFORE, the foregoing are respectfully submitted to the Honorable Court for its information & guidance, with the **recommendation that the application in the instant proceedings be *dismissed*.**

x x x x x x x x x [1] (Italics, emphasis and underscoring supplied)

[1] Records, p. 3.

On November 5, 1993, Branch 17 of the RTC Cebu, on motion of herein respondents, issued an order considering the application of the Heirs of Pascual Ocariza "deemed withdrawn."

Years later or in 1997, respondents filed, this time, **a Petition for the Reconstitution of Lost Certificate of Title** covering the same lot before the RTC of Cebu, alleging, *inter alia,*

x x x x x x x x x

4. That pursuant to the said DECREE No. 99211, **an original certificate of title** to said Lot No. 4147 had been **issued** by the Register of Deeds of Cebu, **in the name of Pascual Ocariza**, but the owner's duplicate and original copy of which on file in the office of the Register of Deeds of Cebu, were **lost during the last World War**; and **a certificate to the effect** that the original copy of said certificate of title on file in the office of the Register of Deeds of Cebu was indeed either lost or destroyed during the Last World War, which certificate is hereto attached and marked as **Annex "B"**;

x x x x x x x x x[2] (Emphasis and underscoring supplied)

The Annex "B"[3] which respondents attached to their petition, which was later marked as Exhibit "M",[4] was a Certification dated March 23, 1995 issued by the Deputy Register of the Registry of Deeds of Cebu City reading:

x x x x x x x x x

IT IS HEREBY CERTIFIED that records on file with this office do **not show that there is an existing OCT/TCT** covering Lot. No. 4147 situated at Bulacao, Pardo, Cebu City claimed to be owned by PASCUAL OCARIZA. However, this office is **not in position to certify as to whether a title is issued or not** as verified by the undersigned personnel.

This certification is issued upon the request of MARIA QUIMADA for whatever legal purpose it may serve.

x x x x x x x x x (Emphasis and underscoring supplied)

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[2] *Id.* at 1.

[3] *Id.* at 4.

[4] *Ibid.*

The Office of the Solicitor General, which was notified of the petition, entered its appearance and deputized the City Prosecutor of Cebu City to render assistance in the case.[5]

After respondents rested their case, the Cebu City Prosecutor did not present any evidence against the petition.[6]

Branch 5 of the Cebu City RTC to which the petition was lodged, by Decision[7] of February 27, 2001, ordered the reconstitution of the "lost original certificate of title in the name of Pascual Ocariza," upon payment of the required fees.

In granting respondents' petition for reconstitution, the trial court synthesized their evidence as follows:

> Remedios Bacalso, 60 years old, single, government employee and a resident of Inayawan, Pardo, Cebu City, **testified** that she is one of the petitioners in this petition; that she is familiar with subject parcel of land known as Lot No. 4147, Cebu Cadastre 12, described on Plan Ap-072217-001065 situated in the Barangay of Inayawan, Cebu City with an area of 438 square meters which is decreed in the name of Pascual Ocariza pursuant to Decree No. 99211 **per Report dated September 29, 1998** (Exh. "K") from Alfredo R. Enriquez, Administrator and signed by Benjamin M. Bustos, Reconstituting Officer and Chief Reconstitution Division and another **Report dated September 17, 1993** (Exh. "L" and "L-1" from Silverio Perez, Director, Department of Registration Land Registration Authority; that she knows Pascual Ocariza because he is the cousin of her father and her grandfather; that Pascual Ocariza is already dead; that she **knows that a title of this land was issued to Pascual Ocariza based on Decree No. 99211** but the owner's duplicate copy of said title was lost; that the **original copy of the certificate of title in the possession of the Register of Deeds, Cebu City was also lost per Certification dated March 23, 1995** (Exh. "M") issued by the Register of Deeds, Cebu City x x x.
>
> On cross-examination, witness testified that Pascual Ocariza was her grandfather who died single; that the brothers and sisters of

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

[6] *Id.* at 72.

[7] *Ibid.*

Pascual Ocariza died already long time ago; that her father, Alejandro Bacalso, is the nephew of Pascual Ocariza; that there are plenty of other persons who are related to Pascual Ocariza; that she is the one who represented her grandfather Pascual Ocariza because they were plenty and that is the reason why the title should be issued in the name of Pascual Ocariza because they are going to subdivide this lot; that they have been in possession of this land for fifteen (15) years; that the tax declaration of said land was registered in the name of Pascual Ocariza.[8] (Emphasis and underscoring supplied)

The Solicitor General appealed[9] the trial court's decision, arguing that respondents failed to prove their interest in Lot No. 4147,[10] he citing *Heirs of Pedro Pinote v. Dulay*[11] which held that

> x x x Courts x x x should not only require strict compliance with the requirements of R.A. 26 but, in addition, should ascertain the identity of every person who files a petition for reconstitution of title to land. If the petition is filed by someone other than the registered owner, the court should spare no effort to assure itself of the authenticity and due execution of the petitioner's authority to institute the proceeding.[12] (Underscoring supplied)

By Decision[13] of April 6, 2005, the Court of Appeals affirmed the RTC decision, reasoning as follows:

> It must be emphasized that the instant case involves a petition to reconstitute the **lost** certificate of title covering Lot 4147, Cebu Cadastre **in the name of the decreed owner Pascual Ocariza**. As such, no right has been prejudiced for the fact that the reconstituted certificate of title is in the name of the decreed owner Pascual Ocariza.

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[8] *Id.* at 70-72.

[9] *Id.* at 74.

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

[11] G.R. No. 56694, July 2, 1990, 187 SCRA 12.

[12] *Id.* at 20. *Vide* CA *rollo*, pp. 20-21.

[13] Penned by Court of Appeals Associate Justice Mercedes Gozo-Dadole, with the concurrence of Associate Justices Pampio A. Abarintos and Ramon M. Bato, Jr. *Id.* at 58-64.

Since Pascual Ocariza is already dead, suffice it to state that his heirs are the most interested in the property, who are considered the assigns and/or successors-in-interest, including Remedios Bacalso whose relationship with Pascual Ocariza has been substantially established and never been questioned by the appellant before the trial court.

Indeed, courts must proceed with extreme caution in proceedings for reconstitution of title to land under R.A. No. 26 and to ascertain the identity of the person who files the petition. However, record shows and reflected in the assailed judgment dated February 27, 2001 that **nobody oppose[d] the petition** during the initial hearing. Regrettably, not even the appellant or his deputies attended the initial hearing and present[ed] evidence against the petition. More importantly, **appellant did not even challenge the authority of the appellee to file and prosecute the Petition** for Reconstitution of Title while the same [was] pending. Nevertheless, the reliance of the appellant on the Dulay[14] case is misplaced. The ruling in the said case emphasized that:

> *The court could not receive evidence proving that Petra Pinote, instead of Pedro, is a registered co-owner of Lot 2381. The reconstitution or reconstruction of a certificate of title literally and within the meaning of R.A. 26 denotes restoration of the instrument which is supposed to have been lost or destroyed in its original form and condition.*[15]

The case at bar however is different since the **lost** original title will be reconstituted in the name of Pascual Ocariza based on Decree No. 99211, and not in the name of petitioner Remedios Bacalso.[16] (Italics in the original; emphasis and underscoring supplied)

Hence, the present Petition for Review on *Certiorari*[17] filed by the Solicitor General, arguing that "not being legally authorized to institute the Petition for Reconstitution below, Remedios

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[14] *Heirs of Pedro Pinote v. Dulay*, G.R. No. 56694, July 2, 1990, 187 SCRA 12.

[15] *Id.* at 19.

[16] CA *rollo*, pp. 62-63.

[17] *Rollo*, pp. 7-20.

Bacalso cannot act for or on behalf of her supposed principals in filing the same and obtaining the relief prayed for."[18]

The Court finds the petition meritorious not on the ground advanced by the Solicitor General but on the ground that there is no evidence to show that the alleged Decree No. 99211, and an Original Certificate of Title, was issued to Pascual Ocariza, respondents' alleged predecessor-in-interest.

Assuming *arguendo* that there indeed a Decree No. 99211 issued on November 23, 1920 which is, however, "not among the salvaged decrees on file in the [Land Registration Authority]," there is no statement, as shown in the above-quoted September 17, 1993 Report of the LRA, that the decree was issued in the name of Pascual Ocariza.

That even respondents were not aware of any such decree is shown by the fact that, as reflected above, before filing their Petition for Reconstitution in 1997, they had years earlier filed an application for original registration covering the lot, which application was deemed withdrawn by Branch 17 of the RTC Cebu on November 5, 1993, on their motion, after the LRA recommended its dismissal.

It was thus palpably wrong for Branch 5 of the RTC Cebu to credit respondents' attorney-in-fact Remedios Bacalso's testimony that the decree was issued in the name of Pascual Ocariza "per" LRA Report dated September 17, 1993.

Just as it was palpably wrong for the trial court to credit Remedios Bacalso's testimony that the decree was issued in the name of Pascual Ocariza "per" the LRA Report dated September 29, 1998. For nothing in said Report is there any statement that the decree was issued in the name of Pascual Ocariza.

Finally, it was just as palpably wrong for the trial court to credit Remedios Bacalso's testimony that a title was issued covering the lot in the name of Pascual Ocariza, the duplicate

[18] *Id.* at 15.

copy of which was lost as well as the original copy in the possession of the Cebu Registry of Deeds "per Certification dated March 23, 1995 (Exhibit 'M') issued by the Register of Deeds." For as the earlier-quoted Exhibit "M"-March 23, 1995 Certification of the Cebu Register of Deeds states, "records on file with this office do not show that there is an existing OCT/TCT covering Lot No. 4147 . . . claimed to be owned by PASCUAL OCARIZA," and that "this office is not in [a] position to certify as to whether a title is issued or not."

The foregoing discussion leaves it unnecessary to pass upon petitioner's sole argument that Remedios Bacalso, not being legally authorized, cannot act for her supposed principals to file the Petition for Review.

In fine, the affirmance by the appellate court of the trial court's decision must fail.

WHEREFORE, the challenged April 6, 2005 Decision of the Court of Appeals is *REVERSED* and *SET ASIDE*. The "Petition for Reconstitution of Lost Certificate of Title" of Lot No. 4147, Cebu Cadastre, Cebu City is *DISMISSED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 167962. September 19, 2008]

ANTAM PAWNSHOP CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

CHAMBER OF PAWNBROKERS OF THE PHILIPPINES, INC., *petitioner-in-intervention.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; PLEDGE; DEFINED; PAWNSHOP, DEFINED. — A pledge may be defined as an accessory, real, and unilateral contract by virtue of which the debtor or a third person delivers to the creditor or third person movable property as security for the performance of the principal obligation, upon fulfillment of which the thing pledged with all its accessions and accessories shall be returned to the debtor or third person. Section 3 of P.D. No. 114 defines a pawnshop as a person or entity engaged in the business of lending money on personal property delivered as security for loans. Thus, in essence, a pawnshop enters into a contract of pledge with the pawner or the borrower.

2. ID.; ID.; ID.; PAWN TICKET IS A PROOF OF A CONTRACT OF PLEDGE; THE PRIVILEGE OF ENTERING INTO A CONTRACT OF PLEDGE IS SUBJECT TO DOCUMENTARY STAMP TAX NOT THE PAWN TICKET ITSELF. — At the time of every loan or pledge, the pawnbroker or the pawnshop is required to deliver to each person pawning or pledging a ticket signed by the pawnbroker containing, among others: (1) the amount of the loan; (2) the date the loan was granted; (3) rate of interest; and (4) the name and residence of the pawnee. Failure to do so shall subject the pawnshop to penalties under Section 18 of said law. Considering that the pawn ticket issued by the pawnshop should contain the foregoing, the pawn ticket is evidently a proof of a contract of pledge. We agree with petitioner that the law does not consider the pawn ticket as a security nor a

printed evidence of indebtedness. However, what is subject to DST is not the ticket itself but the privilege of entering into a contract of pledge.

3. TAXATION; EXCISE TAX; DOCUMENTARY STAMP TAX; AN EXCISE UPON THE FACILITIES USED IN THE TRANSACTION OF THE BUSINESS SEPARATE AND APART FROM THE BUSINESS ITSELF. — A documentary stamp tax is in the nature of an excise tax. It is not imposed upon the business transacted but is an excise upon the privilege, opportunity or facility offered at exchanges for the transaction of the business. It is an excise upon the facilities used in the transaction of the business separate and apart from the business itself. In general, documentary stamp taxes are levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments. Examples of such privileges, the exercise of which, as effected through the issuance of particular documents, are subject to the payment of documentary stamp taxes are leases of lands, mortgages, pledges, and trusts and conveyances of real property. Thus, there is no basis for petitioner's assertion that a DST is literally a tax on the document and that no tax may be imposed on the pawn ticket.

4. ID.; ID.; ID.; A PAWN TICKET IS PROOF OF AN EXERCISE OF A TAXABLE PRIVILEGE OF CONCLUDING A CONTRACT OF PLEDGE AND THUS SUBJECT TO DOCUMENTARY STAMP TAX. — In the 2006 case of *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*, the Court held that for purposes of taxation, a pawn ticket is proof of an exercise of a taxable privilege of concluding a contract of pledge and thus subject to DST under Section 195 in relation to Section 173 of the NIRC, xxx. In the motion for reconsideration, the Court further ruled in ***Lhuillier*** that for purposes of Section 195 of the NIRC, pawnshop ticket need not be an evidence of indebtedness nor a debt instrument because it is taxed as pledge instrument. xxx Significantly, the Court notes that BIR Ruling No. 325-88 which held that the pawn ticket is not a printed evidence of indebtedness and thus not subject to DST imposed by Section 195 of the NIRC was revoked by BIR Ruling No. 221-91.

5. ID.; ID.; ID.; GOOD FAITH AND HONEST BELIEF THAT ONE IS NOT SUBJECT TO TAX ON THE BASIS OF PREVIOUS INTERPRETATION OF THE TAX LAW ARE SUFFICIENT JUSTIFICATION FOR A TAXPAYER TO BE SPARED OF INTEREST AND SURCHARGES. — Nonetheless, all is not lost for petitioner. Good faith and honest belief that one is not subject to tax on the previous interpretation of the government instrumentality tasked to implement the tax law are sufficient justification for petitioner to be spared of interest and surcharges. The dispute as to the tax liability of petitioner for DST on pawn tickets arose not simply because of ordinary divergence of views in the interpretation of the law. Petitioner's position was founded on the previous interpretation of the BIR that a pawn ticket is not a printed evidence of indebtedness, hence, not subject to DST. That the posture of petitioner is plausible is supported by the fact that even the CTA, the specialized body handling tax cases, sustained its position. It was only recently, in ***Lhuillier***, that the Court made a categorical pronouncement that pawn tickets are subject to DST. Under the said circumstances, the surcharges and delinquency interest imposed on the disputed assessment for DST on pawn tickets must be deleted.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.
The Solicitor General for respondent.

D E C IS I O N

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

ARE pawn tickets subject to documentary stamp tax? We resolve the question in this petition for review on *certiorari* of the Decision[1] of the Court of Appeals (CA) subjecting pawn

[1] *Rollo*, pp. 26-34. Dated January 31 , 2005. Penned by Associate Justice Mariano C. Del Castillo, with Associate Justices Romeo A. Brawner and Magdangal M. De Leon, concurring.

tickets issued by petitioner Antam Pawnshop Corporation (Antam) to documentary stamp tax (DST).[2]

Facts

Petitioner Antam is a duly organized corporation engaged in the pawnshop business. Respondent Commissioner of Internal Revenue (CIR) is the head of the Bureau of Internal Revenue (BIR) whose principal duty is to assess and collect internal revenue taxes.

On October 27, 1999, respondent issued Letter of Authority No. 1998 00001631 authorizing BIR-Revenue District Office No. 32, Quiapo, Manila to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period covering January 1 to December 31, 1998.[3]

On October 2, 2001, respondent issued a pre-assessment notice for deficiency value added tax (VAT), DST, and minimum corporate income tax (MCIT) for taxable year 1998.

On November 23, 2001, respondent issued Assessment Notices, all bearing the number 32-1-98, with corresponding Demand Letters for petitioner's (a) deficiency VAT in a total amount of ₱382,445.01;[4] (b) deficiency MCIT in the amount

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[2] The Court of Appeals reversed the decision of the Court of Tax Appeals (CTA) dated May 14, 2003 ruling that pawnshop tickets are not subject to documentary stamp tax.

[3] The letter was received by petitioner's representative on October 28, 1999.

[4] Computed as follows:

Unpaid VAT:		
Taxable Sales/Receipts	₱2,437,508.00	
Output Tax Due (10%)		243,750.80
Less allowable tax credits/taxes already Paid		
Add: 25% surcharge (non-filing and payment)		
20% interest per annum until 11-29-01		138,694.21
Total Amount Due & Collectible		₱ 382,445.01

of ₱687.69;[5] (c) deficiency DST in the amount of ₱78,590.00;[6] and (d) compromise penalties in the total amount of ₱28,200, all for the taxable year 1998.

Meanwhile, on November 15, 2001, prior to the issuance of the above Assessment Notices, petitioner paid ₱451.24[7] for MCIT due for taxable year 1998.

On December 21, 2001, petitioner filed its written protest with the BIR. On July 19, 2002, due to the inaction of the BIR, Antam went up, on petition for review, to the Court of Tax Appeals (CTA).

CTA Disposition

In a Decision dated May 14, 2003, the CTA ordered Antam to pay (1) deficiency VAT in the amount of ₱382, 445.01;[8] (2) deficiency interest of ₱233.74 for late payment of MCIT;[9] and (3) deficiency DST assessment on subscribed capital stock

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[5] Computed as follows:

Unpaid MCIT:		
Total Income	₱2,437,508.00	
Less Direct Cost	2,297,934.54	
Gross Income	₱ 139,573.46	
2% MCIT due (Sec.27e)		2,791.47
Less paid per return		2,340.23
Deficiency MCIT due		₱ 451.24
Add 25% surcharge		
20% interest until 11-29-01		236.45
Total Amount Due & Collectible		₱ 687.69

[6] Computed as follows:

Pledge Loan (₱15,898,350/5,000)	₱ 63,590.00
Subscribed Capital Stock, Sec. 175	15,000.00
Deficiency Tax Due and Collectible	₱ 78,590.00

[7] Evidenced by Metrobank Official Receipt No. 091-0014593 dated November 15, 2001 and BIR Payment Form No. 0605 which was received by the BIR on November 15, 2001.

[8] Inclusive of 20% deficiency interest, plus delinquency interest from December 28, 2001 until fully paid pursuant to Sections 248 and 249(B) and (C) of the NIRC.

[9] Pursuant to Section 249(B) of the NIRC, plus delinquency interest from December 28, 2001 until fully paid pursuant to Section 249(C) of the NIRC.

in the amount of ₱15,000. However, it cancelled the compromise penalty for late payment as there is no compromise to speak of in the case.

The CTA opined that Antam was liable to pay VAT pursuant to Section 102(a)[10] (now renumbered as Section 108[A] of the National Internal Revenue Code [NIRC]). The phrase "sale or exchange of services" encompasses the performance of all kinds of services for a fee, remuneration or consideration. The enumeration of persons performing services for a fee is not exclusive. Other persons such as pawnshops which perform services for a fee and which are not expressly mentioned are also subject to VAT. The act of lending money at interest by

[10] Section 102(a) provides:

Sec. 102. *Value-added tax on sale of services and use or lease of properties*. — (a) Rate and base of tax. — There shall be levied assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

The phrase "sale or exchange of services" means the performance of all kinds of services in the Philippines for others for a fee, remuneration, or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs, and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing, or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes, and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air, and water relative to their transport of goods or cargoes; services of franchise grantees of telephone and telegraph, radio and television broadcasting, and all other franchise grantees except those under Section 117 of this Code; services of banks, non-bank financial intermediaries, and finance companies; and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. The phrase "sale or exchange of services" shall likewise include: x x x

the pawnshops and selling of pawned items constitute the performance of a service for a fee, remuneration or consideration. The word "including" referring to use or lease of properties should be construed merely as an enlargement and not a limitation.

Further, the CTA held that pawnshop transactions are not among those exempt from VAT under Section 103 (now Section 109) of the NIRC. Neither are there any express provisions of law exempting pawnshops from VAT.

Anent the assessment for deficiency MCIT, since petitioner already paid the basic deficiency MCIT of ₱451.24,[11] it is liable only for the payment of deficiency interest for late payment in the amount of ₱233.74.[12]

Apropos the assessment for DST on pawn tickets, the CTA ruled that pursuant to Section 3 of Presidential Decree (P.D.) No. 114,[13] a pawn ticket is neither security nor a printed evidence of indebtedness. Consequently, it cannot be considered as a document subject to DST under Section 195 of the NIRC. However, for failure to present proof of payment of tax, Antam was held liable for DST on subscribed capital stock in the amount of ₱15,000.00.

Both parties filed their respective motions for reconsideration which were subsequently denied by the CTA.

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[11] Payment was evidenced by Metrobank Official Receipt No. 091-0014593 and Payment Form (BIR Form No. 0605), both dated November 15, 2001.

[12] Twenty percent (20%) deficiency interest from April 15, 1999 up to the date of actual payment on November 15, 2001 computed as follows:

₱451.24 x 20% x 945/365 days = ₱233.74

[13] Otherwise known as the Pawnshop Regulation Act issued on January 29, 1973. Section 3 provides:

"Pawn ticket" is the pawnbrokers' receipt for a pawn. It is neither a security nor a printed evidence of indebtedness.

On October 7, 2003, the CIR filed with the CA a petition for partial review to assail the cancellation by the CTA of deficiency DST on pawn tickets. On October 9, 2003, Antam also petitioned the CA for review of the CTA decision in so far as it orders Antam to pay VAT on its pawnshop business, DST on subscribed capital stock and deficiency interest for late payment of MCIT.

CA Decision

In its Decision dated January 21, 2005, the CA ruled that pawn tickets are subject to DST. The decretal portion of the decision provides:

WHEREFORE, the decision of the Court of Tax Appeals is **REVERSED** insofar as the cancellation of the deficiency documentary tax assessment on the pledge loans is concerned. Respondent is **ORDERED** to **PAY** ₱31,810.00,[14] inclusive of surcharge and interest thereon for the year 1998, plus 20% delinquency interest from December 28, 2001 until fully paid pursuant to Section 249(C) of the NIRC.[15]

The CIR contended that a pawn ticket is an evidence of the contract of pledge thus subject to DST pursuant to Section 195 of the NIRC. A pawn ticket is issued upon receipt of a pawn and should be presented upon redemption.

Antam, on the other hand, argued that for a document to be taxable under Section 195 of the NIRC, the document must show on its face the existence of a debt.

The CA agreed with the dissenting opinion of CTA Justice Juanito Castañeda, Jr. that the pawn ticket is the logical document evidencing a contract of pledge and thus subject to DST pursuant to Section 195 of the NIRC in relation to Section 173.

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[14] Computed as follows:

Pledge loans:	₱15,898,350.00	
First ₱5,000		₱ 20.00
₱15,893,350.00/₱5,000 = ₱3,178.67		
equivalent to 3179 x ₱10.00		31,790.00
Deficient DST for 1998:		PhP31,810.00

[15] *Rollo*, p. 33.

The CA explained that the DST provided under Section 173 of the NIRC is levied on the documents but in respect to the transaction so had or accomplished. In general, documentary stamp taxes are levied on the exercise by persons of certain privileges conferred by law for the creation, revision or termination of specific legal relationships through the execution of specific instruments. Examples of such privileges include entering into a contract of pledge.[16]

The CA ratiocinated that although P.D. No. 114 defines a pawn ticket as neither a security nor printed evidence of indebtedness, the law also acknowledged that pawnshops enter into a contract of pledge.[17]

Dissatisfied with the decision of the CA, Antam is now before Us with a petition under Rule 45.

On May 30, 2006, the Chamber of Pawnbrokers of the Philippines (CPPI) filed its motion to intervene and to admit its petition for review in intervention. In a resolution dated July 10, 2006, the Court granted CPPI's motion.

Issue

Submitted for Our resolution is the issue of whether the CA erred in finding the petitioner liable for DST on pawn tickets. If so, what of the surcharges and delinquency interest?

Our Ruling

Pawn tickets are subject to payment of documentary stamp tax.

It is petitioner's contention, shared by the intervenor, that a pawn ticket, being merely a receipt for a pawn as defined in P.D. No. 114, is not subject to DST under Section 195 of the NIRC. The pawn ticket is neither a security nor a printed evidence

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[16] Citing *Philippine Home Assurance Corporation v. Court of Appeals,* G.R. No. 119446, January 21, 1999, 301 SCRA 443, 447.

[17] Presidential Decree No. 114 defined a pawn as a personal property delivered by the pawner to the pawnee as security for the loan.

of indebtedness. The document to be taxed should be the pledge agreement, if any is issued, and not the pawn ticket. To be subject to DST, they posit that the document must be one of those enumerated under Sections 174 to 198 of the NIRC. In the alternative, should the Court rule otherwise, intervenor CPPI contends that Antam should not be held liable for deficiency interest on DST as it is akin to a mistake in the application and interpretation of a difficult or doubtful question of law.

Respondent CIR, however, argue that a pawn ticket is proof of a contract of pledge. Thus, pawn tickets issued by Antam are subject to DST under Section 195 of the NIRC.

On the prime issue, We rule for respondent.

Focal to this ruling is the correct interpretation of Section 195 in relation to 173 of the NIRC.

Section 195. *Stamp Tax on Mortgages, Pledges and Deeds of Trust.* — On every mortgage or pledge of lands, estate, or property, real or personal, heritable or movable, whatsoever, where the same shall be made as a security for the payment of any definite and certain sum of money lent at the time or previously due and owing or forborne to be paid, being payable, and on any conveyance of land, estate, or property whatsoever, in trust or to be sold, or otherwise converted into money which shall be and intended only as security, either by express stipulation or otherwise, there shall be collected a documentary stamp tax at the following rates: x x x.

Section 173. *Stamp Taxes Upon Documents, Loan Agreements, Instruments and Papers*. — Upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp tax prescribed in the following sections of this Title, by the person making, signing, issuing, accepting, or transferring the same wherever the document is made, signed, issued, accepted, or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines, and at the same time such act is done or transaction had: *Provided,* That whenever one party to the taxable document enjoys exemption from the tax herein

imposed, the other party thereto who is not exempt shall be the one directly liable for the tax.

Section 195 of the NIRC imposes, among others, a DST on pledge of personal property made as a security for the payment of a sum of money.

A pledge may be defined as an accessory, real, and unilateral contract by virtue of which the debtor or a third person delivers to the creditor or third person movable property as security for the performance of the principal obligation, upon fulfillment of which the thing pledged with all its accessions and accessories shall be returned to the debtor or third person.[18]

Section 3 of P.D. No. 114 defines a pawnshop as a person or entity engaged in the business of lending money on personal property delivered as security for loans. Thus, in essence, a pawnshop enters into a contract of pledge with the pawner or the borrower.

At the time of every loan or pledge, the pawnbroker or the pawnshop is required to deliver to each person pawning or pledging a ticket signed by the pawnbroker containing, among others: (1) the amount of the loan; (2) the date the loan was granted; (3) rate of interest; and (4) the name and residence of the pawnee.[19] Failure to do so shall

[18] See Civil Code, Arts. 2085, 2087 & 2093.

[19] Section 12 in relation to Sec. 11 of Presidential Decree No. 114 provide:

SECTION 12. *Pawn ticket*. — Every pawnbroker shall, at the time of every such loan or pledge, deliver to each person pawning or pledging any article or thing a memorandum or ticket signed by such pawnbroker and containing the substance of the record required to be kept in such pawnbroker's memorandum book in section eleven hereof, excluding the description of the person so pawning or pledging such article or thing, and no compensation of any kind whatsoever shall be received by any pawnbroker for any such memorandum or ticket.

SECTION 11. *Maintenance of records*. — Every pawnbroker shall keep a memorandum book in which shall be entered, in ink, at the time of each loan or pledge, an accurate account and description, in Pilipino or English with corresponding translation in the local dialect of every pawn, the amount of money loaned thereon, the date of pawning or pledging the same, the

subject the pawnshop to penalties under Section 18[20] of said law.

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rate of interest to be paid on the loan, and the name and residence of each pawner, together with a particular description of such pawner, including his or her nationality, sex, and general appearance, and no pawnbroker or other person shall alter or erase any entry made in such book. Every person pawning or pledging any article or thing with a pawnbroker shall sign his name and give his address to said pawnbroker and such name and address shall be made part of the record heretofore described in this section: Provided, That a person who is unable to write shall imprint his thumbmark, and his name shall be written by a competent person, who shall sign his own name as witness to said thumbmark.

The 2000 Manual of Regulations of Non-Bank Financial Institutions (New Manual) comprises substantially the regulatory issuances of the BSP, as well as those of its predecessor agency, the Central Bank of the Philippines, as they were amended or revised through the years, up to December 31, 1996. Section 4322P provides:

SECTION 4322P. *Pawn Ticket*. — Pawnshops shall at the time of the loan, deliver to each pawner a pawn ticket which shall contain the following:

a. Name and residence of the pawner;
b. Date the loan is granted;
c. Amount of the principal loan;
d. Interest rate in percent;
e. Period of maturity;
f. Description of the pawn;
g. Expiry date of redemption period;
h. Signature of the pawnshop's authorized representative;
i. Signature or thumbmark of the pawner or his authorized representative; and
j. Such other terms and conditions as may be agreed upon between the pawnshop and the pawner.

[20] SECTION 18. *Penalties*. – A fine of not less than one hundred pesos (₱100.00) and not more than one thousand pesos (₱1,000.00) or imprisonment for not less than thirty days and not more than one year, or both, at the discretion of the court, shall be imposed for violations of the provisions of this Decree and its implementing rules and regulations: Provided, That if the violation is committed by a corporation, partnership or an association, the penalty provided for in this Decree shall be imposed upon the directors, officers, employees or persons therein responsible for the offense, without prejudice to civil liabilities arising from the criminal offense.

Considering that the pawn ticket issued by the pawnshop should contain the foregoing, the pawn ticket is evidently a proof of a contract of pledge. We agree with petitioner that the law does not consider the pawn ticket as a security nor a printed evidence of indebtedness. However, what is subject to DST is not the ticket itself but the privilege of entering into a contract of pledge.

A documentary stamp tax is in the nature of an excise tax. It is not imposed upon the business transacted but is an excise upon the privilege, opportunity or facility offered at exchanges for the transaction of the business. It is an excise upon the facilities used in the transaction of the business separate and apart from the business itself.[21]

In general, documentary stamp taxes are levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments. Examples of such privileges, the exercise of which, as effected through the issuance of particular documents, are subject to the payment of documentary stamp taxes are leases of lands, mortgages, pledges, and trusts and conveyances of real property.[22]

Thus, there is no basis for petitioner's assertion that a DST is literally a tax on the document and that no tax may be imposed on the pawn ticket.

2000 Manual of Regulations of Non-Bank Financial Institutions also provides:

SUBSECTION 4322P.2. *Sanctions*. — Any pawnshop which violates or fails to comply with the requirements of Subsec. 4322P.1 shall pay a fine of ₱500 and shall be liable for such other administrative sanctions as the BSP may impose. The owner, partner, manager, or officer-in-charge of the pawnshop responsible for the violation or non-compliance shall be jointly liable with the pawnshop.

[21] *Thomas v. U.S.*, 192 US 363; *Nicol v. Ames*, 173 US 509; *Du Pont v. U.S.*, 300 US 150, as cited in *Philippine Home Assurance Corporation v. Court of Appeals*, *supra* note 16, at 448, and *Lincoln Philippine Life Insurance Company, Inc. v. Court of Appeals*, G.R. No. 118043, July 23, 1998, 293 SCRA 92, 99.

[22] *Philippine Home Assurance Corporation v. Court of Appeals*, *supra* note 16, at 447.

In the 2006 case of *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*,[23] the Court held that for purposes of taxation, a pawn ticket is proof of an exercise of a taxable privilege of concluding a contract of pledge and thus subject to DST under Section 195 in relation to Section 173 of the NIRC, *viz.*:

> Pledge is among the privileges, the exercise of which is subject to DST. A pledge may be defined as an accessory, real, and unilateral contract by virtue of which the debtor or a third person delivers to the creditor or to a third person movable property as security for the performance of the principal obligation, upon the fulfillment of which the thing pledged, with all its accessions and accessories, shall be returned to the debtor or to the third person. This is essentially the business of pawnshops which are defined under Section 3 of Presidential Decree No. 114, or the Pawnshop Regulation Act, as persons or entities engaged in lending money on personal property delivered as security for loans.
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> Section 12 of the Pawnshop Regulation Act and Section 21 of the Rules and Regulations For Pawnshops issued by the Central Bank to implement the Act, require every pawnshop or pawnbroker to issue, at the time of every such loan or pledge, a memorandum, or ticket signed by the pawnbroker and containing the following details: (1) name and residence of the pawner; (2) date the loan is granted; (3) amount of principal loan; (4) interest rate in percent; (5) period of maturity; (6) description of pawn; (7) signature of pawnbroker or his authorized agent; (8) signature or thumb mark of pawner or his authorized agent; and (9) such other terms and conditions as may be agreed upon between the pawnbroker and the pawner. In addition, Central Bank Circular No. 445, prescribed a standard form of pawn tickets with entries for the required details on its face and the mandated terms and conditions of the pledge at the dorsal portion thereof.
>
> Section 3 of the Pawnshop Regulation Act defines a pawn ticket as follows:
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> > "Pawn ticket" is the pawnbrokers' receipt for a pawn. It is neither a security nor a printed evidence of indebtedness.

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[23] G.R. No. 166786, May 3, 2006, 489 SCRA 147.

True, the law does not consider said ticket as an evidence of security or indebtedness. **However, for purposes of taxation, the same pawn ticket is proof of an exercise of a taxable privilege of concluding a contract of pledge. At any rate, it is not said ticket that creates the pawnshop's obligation to pay DST but the exercise of the privilege to enter into a contract of pledge. There is therefore no basis in petitioner's assertion that a DST is literally a tax on a document and that no tax may be imposed on a pawn ticket**.

The settled rule is that tax laws must be construed in favor of the taxpayer and strictly against the government; and that a tax cannot be imposed without clear and express words for that purpose. Taking our bearing from the foregoing doctrines, we scrutinized Section 195 of the NIRC, but there is no way that said provision may be interpreted in favor of petitioner. Section 195 unqualifiedly subjects all pledges to DST. It states that "[o]n every x x x pledge x x x there shall be collected a documentary stamp tax x x x." It is clear, categorical, and needs no further interpretation or construction. The explicit tenor thereof requires hardly anything than a simple application.

The onus of proving that pawnshops are not subject to DST is thus shifted to petitioner. In establishing tax exemptions, it should be borne in mind that taxation is the rule, exemption is the exception. Accordingly, statutes granting tax exemptions must be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. One who claims an exemption from tax payments rests the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted.

In the instant case, there is no law specifically and expressly exempting pledges entered into by pawnshops from the payment of DST. Section 199 of the NIRC enumerated certain documents which are not subject to stamp tax; but a pawnshop ticket is not one of them. Hence, petitioner's nebulous claim that it is not subject to DST is without merit. It cannot be over-emphasized that tax exemption represents a loss of revenue to the government and must, therefore, not rest on vague inference. Exemption from taxation is never presumed. For tax exemption to be recognized, the grant must be clear and express; it cannot be made to rest on doubtful implications.[24] (Emphasis supplied)

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[24] *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue, id.* at 153-155.

In the motion for reconsideration,[25] the Court further ruled in ***Lhuillier*** that for purposes of Section 195 of the NIRC, a pawnshop ticket need not be an evidence of indebtedness nor a debt instrument because it is taxed as a pledge instrument. Said the Court:

> Section 195 of the National Internal Revenue Code (NIRC) imposes a DST on every pledge regardless of whether the same is a conventional pledge governed by the Civil Code or one that is governed by the provisions of P.D. No. 114. All pledges are subject to DST, unless there is a law exempting them in clear and categorical language. This explains why the Legislature did not see the need to explicitly impose a DST on pledges entered into by pawnshops. These pledges are already covered by Section 195 and to create a separate provision especially for them would be superfluous.
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> Then too, it is the exercise of the privilege to enter into an accessory contract of pledge, as distinguished from a contract of loan, which gives rise to the obligation to pay DST. If the DST under Section 195 is levied on the loan or the exercise of the privilege to contract a loan, then there would be no use for Section 179 of the NIRC, to separately impose stamp tax on all debt instruments, like a simple loan agreement. **It is for this reason why the definition of pawnshop ticket, as not an evidence of indebtedness, is inconsequential to and has no bearing on the taxability of contracts of pledge entered into by pawnshops. For purposes of Section 195, pawnshop tickets need not be an evidence of indebtedness nor a debt instrument because it taxes the same as a pledge instrument. Neither should the definition of pawnshop ticket, as not a security, exempt it from the imposition of DST. It was correctly defined as such because the ticket itself is not the security but the pawn or the personal property pledged to the pawnbroker.**
>
> The law is clear and needs no further interpretation. No law on legal hermeneutics could change the fact that the entries contained in a pawnshop ticket spell out a contract of pledge and that the exercise of the privilege to conclude such a contract is taxable under Section 195 of the NIRC. The rationale for the issuance of and the

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[25] *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue,* G.R. No. 166786, September 11, 2006, 501 SCRA 450.

spirit that gave rise to the Pawnshop Regulation Act cannot justify an interpretation that obviously supplies an exemption which is simply and clearly not found in the law. Nothing in P.D. No. 114 exempts pawnshops or pawnshop tickets from DST. There is no ambiguity in the provisions thereof; any vagueness arises only from the circuitous construction invoked by petitioner. If then President Ferdinand E. Marcos intended to exempt pawnshops or pawnshop tickets from DST, he would have expressly so provided for said exemption in P.D. No. 114. Since no such exemption appears in the decree, the only logical conclusion is that no such exemption is intended and that pawnshops or pawnshop tickets are subject to DST.[26] (Emphasis supplied)

Significantly, the Court notes that BIR Ruling No. 325-88[27] which held that the a pawn ticket is not a printed evidence of indebtedness and thus not subject to DST imposed by Section 195 of the NIRC was revoked by BIR Ruling No 221-91.[28]

Petitioner not liable for delinquency interest and surcharges.

Nonetheless, all is not lost for petitioner. Good faith and honest belief that one is not subject to tax on the previous interpretation of the government instrumentality tasked to implement the tax law are sufficient justification for petitioner to be spared of interest and surcharges.[29]

The dispute as to the tax liability of petitioner for DST on pawn tickets arose not simply because of ordinary divergence of views in the interpretation of the law. Petitioner's position was founded on the previous interpretation of the BIR that a pawn ticket is not a printed evidence of indebtedness, hence,

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[26] *Id.* at 454-456.

[27] Dated July 13, 1988.

[28] Dated October 30, 1991.

[29] *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue, supra* note 25, at 460.

not subject to DST. That the posture of petitioner is plausible is supported by the fact that even the CTA, the specialized body handling tax cases, sustained its position. It was only recently, in ***Lhuillier***, that the Court made a categorical pronouncement that pawn tickets are subject to DST.

Under the said circumstances, the surcharges and delinquency interest imposed on the disputed assessment for DST on pawn tickets must be deleted.

WHEREFORE, the petition is *PARTLY GRANTED*. The appealed Decision is *AFFIRMED* WITH MODIFICATION in that surcharges and delinquency interest imposed against petitioner Antam are *DELETED*.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Carpio Morales,[*] and *Chico-Nazario, JJ.,* concur.

EN BANC

[G.R. No. 168050. September 19, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BERNARDINO GAFFUD, JR.,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; CONSPIRACY; FAILURE TO PROVE CONSPIRACY NOT FATAL WHERE THE DIRECT PARTICIPATION OF ACCUSED IN THE KILLING OF THE VICTIMS WAS ESTABLISHED BEYOND DOUBT BY THE EVIDENCE. — On the first assigned error, we concur with the

[*] Designated as additional member vice Associate Justice Antonio Eduardo B. Nachura. Justice Nachura participated as Solicitor General in the present case.

CA that the failure to prove conspiracy in this case is not fatal. The rule is that in the absence of evidence showing the direct participation of the accused in the commission of the crime, conspiracy must be established by clear and convincing evidence in order to convict the accused. In the case at bar, however, we hold that the direct participation of accused-appellant in the killing of the victims, Manuel Salvador and Analyn Salvador, was established beyond doubt by the evidence of the prosecution. Hence, a finding of conspiracy in this instance is not essential for the conviction of accused-appellant.

2. REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT TO SUSTAIN A CONVICTION. — On the second assigned error, we uphold the finding of both courts *a quo* that the evidence proffered by the prosecution, although circumstantial in nature, leads to the conclusion that accused-appellant is the perpetrator of the act resulting in the death of the victims. It is well-settled that circumstantial evidence is sufficient to sustain a conviction if (i) there is more than one circumstance; (ii) the facts from which the inference is derived are proven; and (iii) the combination of all circumstances is such as to produce conviction beyond reasonable doubt.

3. CRIMINAL LAW; COMPLEX CRIME; KINDS. — In a complex crime, although two or more crimes are actually committed, they constitute only one crime in the eyes of the law as well as in the conscience of the offender. Hence, there is only one penalty imposed for the commission of a complex crime. There are two kinds of complex crime. The first is known as compound crime, or when a single act constitutes two or more grave or less grave felonies. The second is known as complex crime proper, or when an offense is a necessary means for committing the other. The classic example of the first of kind is when a single bullet results in the death of two or more persons. A different rule governs where separate and distinct acts result in a number killed. Deeply rooted is the doctrine that when various victims expire from separate shots, such acts constitute separate and distinct crimes.

4. ID.; ID.; THE SINGLE ACT OF BURNING THE HOUSE OF THE VICTIMS RESULTING IN THEIR DEATHS CONSTITUTE THE COMPLEX CRIME OF DOUBLE MURDER; IMPOSABLE PENALTY.— In light of these precedents, we hold that the single act of accused-appellant — burning the house of Manuel

Salvador, with the main objective of killing the latter and his daughter, Analyn Salvador, resulting in their deaths — resulted in the complex crime of double murder. Under Article 248 of the RPC, murder is committed by means of fire. Since the maximum penalty imposed for murder was death, when the case was pending in the CA, the CA correctly imposed the penalty of death for the complex crime of double murder instead of the two death penalties imposed by the RTC for two counts of murder. In view, however, of the passage of Republic Act No. 9346 (otherwise known as "*An Act Prohibiting the Imposition of Death Penalty in the Philippines*"), we reduce the penalty of death to *reclusion perpetua* with no eligibility for parole.

5. ID.; COMPLEX CRIME OF DOUBLE MURDER; CIVIL LIABILITIES OF THE ACCUSED-APPELLANT.— Anent the award of damages, we increase the award of civil indemnity by the CA for the death of the victims from ₱100,000 or ₱50,000 for each victim, to ₱150,000 or ₱75,000 for each victim in accordance with prevailing jurisprudence. As to the deletion of exemplary damages by the CA, we reinstate the award by the RTC of exemplary damages in the amount of ₱50,000, or ₱25,000 for each victim. We sustain the award by the CA of moral damages in the amount of ₱100,000, or ₱50,000 for each victim, in view of the grief and sorrow suffered by the heirs of the victims. We likewise affirm the award of nominal damages in the amount of ₱10,000 for the value of the burned house as sufficiently explained by the RTC and affirmed by the CA.

6. ID.; AGGRAVATING CIRCUMSTANCES; NIGHTTIME; WHEN AGGRAVATING. — By and of itself, nighttime is not an aggravating circumstance. It becomes aggravating only when: (1) it is especially sought by the offender; or (2) it is taken advantage of by him; or (3) it facilitates the commission of the crime by ensuring the offender's immunity from capture. In this case, the RTC correctly appreciated nighttime as aggravating considering that nighttime was especially sought by accused-appellant to carry out his evil plan. Evidence shows that accused-appellant waited for nighttime to consummate his plan. It should be noted that accused-appellant was seen lurking near the house of the victims earlier in the evening. The fact that he brought with him a flashlight clearly shows that he intended to commit the crime in darkness.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Manolo M. Beltran, Jr. for accused-appellant.

D E C I S I O N

PUNO, *C.J.*:

For review before this Court is the Decision[1] of the Court of Appeals (CA) dated March 31, 2005 in CA-G.R. CR-HC No. 00060 finding the accused-appellant Bernardino Gaffud, Jr. guilty of the complex crime of double murder and sentencing him to death, affirming with modification the Decision[2] of the Regional Trial Court (RTC) dated August 28, 2002 in Criminal Case No. 1125.

The facts of this case were aptly summarized by the CA as follows:

> Records show that accused-appellant Bernardino Gaffud, Jr., along with two John Does were indicted for Double Murder for the killing of Manuel Salvador and Analyn Salvador, under the following Information:
>
> **"The undersigned 2nd Assistant Provincial Prosecutor accuses Bernardino Gaffud, Jr. and two (2) JOHN DOES of the crime of DOUBLE MURDER defined and penalized under Article 248 of the Revised Penal Code, committed as follows:**
>
> **'That on or about 8:00 o'clock in the evening of May 10, 1994 at Sitio Biton, Barangay Wasid, Municipality of Nagtipunan, Province of Quirino, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill and motivated by long standing grudge, after conspiring, confederating and mutually helping one another,**

[1] *Rollo*, pp. 3-14, penned by Justice Rodrigo V. Cosico, concurred in by Justices Danilo B. Pine and Arcangelita Romilla-Lontok.

[2] Records, pp. 358-372; penned by Executive Judge Menrado V. Corpuz, Regional Trial Court, Second Judicial Region, Branch 38, Maddela, Quirino.

by means of fire, did then and there, willfully, unlawfully, and feloniously, shot and burn Manuel Salvador and Analyn Salvador which caused their instantaneous death.'

CONTRARY TO LAW." (p. 15, Records)

It appears that Manuel Salvador and his daughter Analyn Salvador were killed when the house they were staying in located at Sitio Biton, Barangay Wasid, Nagtipunan, Quirino was burned down while they were inside. An eyewitness pointed to accused-appellant Bernardino Gaffud, Jr. as one of the arsonists.

Upon preliminary investigation, where appellant Gaffud, Jr. failed to appear despite being subpoenaed to submit his counter-affidavit, Assistant Provincial Prosecutor Ferdinand Orias resolved that charges for double murder by means of fire be filed against herein appellant and two John Does, (p.14, Records).

When arraigned on June 6, 1995, accused-appellant Gaffud, Jr. entered a plea of Not Guilty, (p. 48, Records), paving the way for his trial.

The prosecution presented six (6) witnesses against appellant Gaffud, Jr., namely Dominga Salvador, common-law wife of Manuel Salvador and mother of Analyn Salvador, Orly Salvador, nephew of Manuel Salvador, Potado Ballang, Barangay Captain of Wasid, Nagtipunan, Quirino, Dan Dangpal, a neighbor of the deceased, SPO2 Dominador Tabal, the investigating police, and Dr. Teodomiro Hufana who conducted the autopsy on the deceased Manuel Salvador.

Evidence for the prosecution tended to prove that on the night of May 10, 1994, Orly Salvador was on his way to the house of his uncle Manuel Salvador to fetch the latter as they were going to attend a wedding at the nearby barangay hall. He suddenly heard two gunshots. Thereafter, he saw the house of his uncle burning. Because of the glow emanating therefrom, he saw three persons within the vicinity of the burning house. He saw them hurriedly leaving the place towards the direction of the Cagayan river. One of the three was holding a flashlight, whom he identified as appellant Gaffud, Jr. He could not identify the two other persons. After the house was burned, Orly went towards the barangay hall to see if his uncle Manuel Salvador was there, but he met Brangay (sic) Captain Potado Ballang who informed him that his uncle was not at the barangay hall. They then proceeded to the burned house, and found the charred remains

of Manuel Salvador and Analyn Salvador. (TSN, October 10, 1995, pp. 3-8)

Barangay Captain Potado Ballang testified that he saw appellant Gaffud, Jr. on the fateful day at around 6:30 PM, along the riverbank, a few meters away from the house of Manuel Salvador. When Potado asked what he was doing there, Gaffud, Jr. said he was looking for his boat. However, Potado knew that the appellant did not own a boat. After a few minutes, Potado left to attend the wedding party being held at the barangay hall. (TSN, November 4, 1996, pp. 2-5)

Dan Dangpal's testimony was dispensed with, but the defense agreed to the nature of the testimony he would have given, which tended to show that sometime at about 8:00 PM on the fateful evening, while inside his house, he heard successive gunshots, and when he went out of his house, he saw the deceased's house burning about 200 meters away. He heard persons laughing and saw the light of a flashlight and persons moving away from the burning house. He could not recognize any of them. (TSN, February 24, 1997; Exhibit "D", p. 8, Records)

Dominga Salvador's testimony tended to show that the appellant Gaffud, Jr. was their neighbor. In the morning of May 10, 1994, she went to the house of the appellant to see him about her husband's share in the construction of the barangay hall, which was contracted to the appellant. Gaffud, Jr. told her that he would go to her house that afternoon to introduce his in-law Balbino Bravo to her husband. Thereafter, she went home, and left again at around 11:00 AM, leaving behind her husband Manuel Salvador and their daughter Analyn. Later that night, she was at Natipunan, Quirino attending a seminar for "hilot", (TSN, July 4, 1995, pp. 3-15). In her *sinumpaang salaysay*, offered in evidence as Exhibit "A", Dominga also related that she had earlier filed a complaint in the barangay against the appellant and his brother for slaughtering her pig.

SPO2 Dominador Tabal was a police investigator who investigated the killing of Manuel and Analyn Salvador. Thereat, he saw two dead bodies hanging from a Melina tree. They were put there so that they would not be reached by the dogs. He saw that one of the victims had a fractured head, while the other had a wound on the side. Pictures of the victims including the scene of the incident were taken by them. Among those interviewed the appellant Gaffud, Jr. and his brother, (TSN, June 5, 1997, pp. 2-7).

Dr. Teodomiro Hufana's testimony was also dispensed with, (p. 127, Records) in view of the defense counsel's admission of the contents of his Autopsy Report on Manuel Salvador, (Exhibit "C"), which reads in pertinent part:

FINDINGS

-Cremated charcoaled, about 3 ft. long, stomach and intestine (Large) protruding from the abdomen.

-Presence of semi-burned rattan about 1 inch long about 1 cm. in diameter on the burned hand.

-Presence of a peculiar hole from the thoracic cavity directed downward to the body, probably gunshot wound.

CAUSE OF DEATH:

-CREMATION (Burned)

REMARKS: Cannot be identified if male or female

For the appellant's defense, the defense presented the appellant himself. His defense of alibi was corroborated by his wife Juanita Gaffud and in-law Balbino Bravo.

Appellant denied the accusation leveled against him, and testified that the approximate time of the burning of the victims' house, he was at home, entertaining his in-laws, Balbino Bravo and Rufina Bravo, who was there for a visit. After eating dinner, he and Balbino Bravo talked. At around 7:00 to 8:00 PM, he and Balbino Bravo saw a blaze coming from the other side of the Cagayan River, about 50 to 80 meters away from the house of the Bravos. They did not mind the blaze, and instead went to sleep. The next morning, they heard news about somebody being burned, and because of this, he and Balbino Bravo hiked to the place of the incident. That's where he found that his "pare" Manuel Salvador and his daughter were burned in their house. After seeing the dead bodies, appellant went home. He went back later, and was even designated by the Barangay Captain to guard the bodies of the deceased. Thereafter, he was forced to evacuate his family from Nagtipunan, because the Ilongot tribe was forcing him to testify against someone but he didn't want to. He was told that something might happen to his family if he didn't leave, (TSN, June 3, 2002).

The appellant's defense was corroborated on its material points by the testimony of his wife, Juanita Gaffud, and his in-law, Balbino

Bravo, both of whom testified that on May 10, 1994, the accused was at his residence entertaining visiting Bravo spouses and stayed there the whole night, (TSN January 31, 2002 and March 18, 2002).

Juanita Gaffud also testified that during the pendency of the trial, she talked to Dominga Salvador about the settlement of the case and even offered a certain amount for the said purpose, (TSN, March 10, 2002, p. 12).[3]

After trial, the RTC rendered its Decision finding accused-appellant guilty of two (2) counts of murder, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing, the Court finds Bernardino Gaffud, Jr. GUILTY for two (2) counts of murder and hereby sentences him as follows, to wit:

a) Death penalty - for the death of Manuel Salvador;

b) Another death penalty - for the death of Analyn Salvador;

c) To pay the legal heirs of the victims:

c-1) SEVENTY FIVE THOUSAND PESOS (₱75,000.00) for each count or a total of ONE HUNDRED FIFTY THOUSAND PESOS (₱150,000.00) as death indemnities;

c-2) FIFTY THOUSAND PESOS (₱50,000.00) for each count or a total of ONE HUNDRED THOUSAND PESOS (₱100,000.00) as moral damages;

c-3) TWENTY-FIVE THOUSAND PESOS (₱25,000) for each count or a total of FIFTY THOUSAND PESOS (₱50,000.00) as exemplary damages;

c-4) TEN THOUSAND PESOS (P10,000.00) as nominal damages;

and

c-5) Costs.

xxx xxx xxx

[3] *Supra* note 1 at 4-7.

SO ORDERED.[4]

As the death penalty was imposed, the case was elevated to this Court for automatic review. In his Appellant's Brief,[5] accused-appellant argued that the RTC erred in: (i) failing to rule and resolve whether or not conspiracy existed, as the information charged him with conspiracy with two others in the commission of the crime; and (ii) convicting him despite the fact that conspiracy was not proven, and also despite the fact that there was no proof whatsoever as to what overt act he committed which would constitute the crime of murder.

The case was transferred to the CA for appropriate action and disposition per Resolution[6] of this Court dated August 24, 2004, in accordance with the ruling in ***People v. Mateo***.[7] In disposing of the assigned errors, the CA held that the lack of discussion of conspiracy among accused-appellant and his anonymous co-accused in the decision of the RTC was not antithetic to his conviction for the crime of murder, since the charge that he was a principal performer in the killing of the victims was spelled out in the Information[8] filed against him.[9] Moreover, in the absence of conspiracy, each of the malefactors is liable only for the act committed by him.[10] As to the sufficiency of the evidence presented by the prosecution, the CA held that the circumstantial evidence in this case established accused-appellant's guilt beyond reasonable doubt.[11] Accordingly, the CA affirmed the Decision of the RTC, finding accused-appellant guilty of the complex crime of double murder, with the following modifications:

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[4] *Supra* note 2 at 371-372.

[5] CA *rollo*, pp. 38-51.

[6] *Id.* at 107.

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

[8] Records, p. 15.

[9] *Supra* note 1 at 9.

[10] *Id*.

[11] *Id.* at 10.

WHEREFORE, premises considered, the appeal is hereby **DISMISSED**, although the decision of the lower court is hereby **MODIFIED**, in that: The accused Bernardino Gaffud, Jr. is hereby found **GUILTY** of the complex crime of double murder, and is hereby sentenced to the supreme penalty of Death. He is also ordered to pay the legal heirs of the victims: (1) 100,000.00 or ₱50,000.00 for each victim, as civil indemnity for the death of the victims; (2) ₱100,000.00 or ₱50,000.00 for each victim, as moral damages; and (3) ₱10,000.00 as nominal damages plus costs.

SO ORDERED.[12]

Pursuant to Section 13, Rule 124 of the Rules of Court, as amended by A.M. No. 00-5-03-SC dated September 28, 2004, the case was elevated to this Court for review.

On the first assigned error, we concur with the CA that the failure to prove conspiracy in this case is not fatal.

The rule is that in the absence of evidence showing the direct participation of the accused in the commission of the crime, conspiracy must be established by clear and convincing evidence in order to convict the accused.[13] In the case at bar, however, we hold that the direct participation of accused-appellant in the killing of the victims, Manuel Salvador and Analyn Salvador, was established beyond doubt by the evidence of the prosecution. Hence, a finding of conspiracy in this instance is not essential for the conviction of accused-appellant.

On the second assigned error, we uphold the finding of both courts *a quo* that the evidence proffered by the prosecution, although circumstantial in nature, leads to the conclusion that accused-appellant is the perpetrator of the act resulting in the death of the victims.

It is well-settled that circumstantial evidence is sufficient to sustain a conviction if (i) there is more than one circumstance; (ii) the facts from which the inference is derived are proven; and (iii) the combination of all circumstances is such as to produce conviction beyond reasonable doubt.[14]

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[12] *Id.* at 13-14.

[13] *People v. Agda, et al.*, 197 Phil. 306 (1982); *People v. Taaca, et al.*, G.R. No. L-35652, September 29, 1989, 178 SCRA 56.

[14] RULES OF COURT, Rule 133, Sec. 5.

In this case, the following facts or circumstances were proven:

(i) **Accused-appellant was near the place of the incident just a few minutes before the crime was committed.** Captain Potado Bollang testified that he saw the accused-appellant at the riverbank, about 100 meters from the house of the victims, coming to and fro, allegedly looking for his boat, when in fact, Captain Bollang knew that accused-appellant did not own one.[15]

(ii) **Accused-appellant, together with two unidentified persons, was near the house of the victims at the time it was on fire.** Accused-appellant was identified by Orly Salvador as one of the three men he saw about 5 meters from the house of his uncle, Manuel Salvador, while it was burning. Previously, he heard two gunshots as he was on his way towards the said house. He also saw appellant fleeing with the other malefactors, while holding a flashlight.[16] His testimony was corroborated by the admitted testimony of Dan Dangpal who said that he heard two gunshots while he was at his home, which was near that of the victims. When he went out, he also heard men laughing, and saw them fleeing from the burning house, illumined by a flashlight.[17]

(iii) **Accused-appellant was in a hurry to leave the place of the incident without giving any help to his *kumpare* Manuel Salvador and the latter's daughter, Analyn.** Orly Salvador testified that he saw accused-appellant holding a flashlight, in a hurry to leave the burning house of the victim, going towards the direction of the river.[18]

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[15] TSN, November 4, 1996, pp. 2-5.

[16] TSN, October 10, 1995, pp. 3-8.

[17] TSN, February 24, 1997; Exhibit "D", records, p. 8.

[18] *Supra* note 16 at 4-5.

(iv) Accused-appellant had a motive to kill the victims because of the complaint filed by Manuel Salvador's wife, Dominga Salvador, and the fact that he owed Manuel Salvador some money. Dominga Salvador testified that she had filed a complaint against accused-appellant and his brother in their *barangay* for their act of slaughtering her pig. Aside from this, in the morning of the same fateful day, she went to the house of accused-appellant aiming to collect her husband's share in the profits for the construction of the *barangay* hall they had built, but the accused-appellant only told her that he and his in-law would see her husband later that day.[19]

These circumstances, when taken together, are enough to produce the conclusion that accused-appellant was responsible for the killing of the victims by means of burning them inside their house.

Moreover, we sustain the following observation of the CA that against the convincing evidence of the prosecution, accused-appellant's defense of denial and alibi must fail:

> The Court finds incredible appellant's story that after seeing the blaze across his house, he merely slept with his in-laws without investigating. The Court finds it against human nature for one to sleep soundly during a fire occurring just 50-80 metes from one's house, even though the blaze is occurring across a river. Also, appellant muse know, after seeing the location of the blaze, that the house of his "pare", or close friend, was in danger, and his natural reaction at least was to verify the object of the conflagration. Appellant's story that he only slept soundly after seeing the blaze is therefore unbelievable, and taints the credibility of his alibi.
>
> Another telling factor on the appellant's defense is his flight. Appellant admitted that in his testimony that he fled Wasid, Nagtipunan, Quirino after he was investigated at the Municipal Hall, (TSN, June 3, 2002, p. 19). Appellant said he fled because of threats from the Ilongots. However, appellant said it never entered his mind

[19] TSN, July 4, 1995, pp. 3-15.

to report the threats on him. Appellant's explanation fails to convince. It bears stressing that appellant fled right after being investigated and questioned by police authorities, and during the time that the preliminary investigation of the case was ongoing. This is highly suspicious, as such time is the best time for him to defend his innocence, if he is indeed innocent. As it is, appellant was arrested in San Vicente, Jones, Isabela, a remote barangay by the elements of the NBI, (*Id*., at 23; reverse of p. 19, Records). Flight is consistently held as and indication of guilt, (*People v. Magaro*, 291 SCRA 601 [1998]). There is no showing why such conclusion should not be made in this case.[20]

We now go to whether or not accused-appellant should be held liable for two (2) separate counts of murder or for the complex crime of double murder.

Article 48 of the Revised Penal Code (RPC), as amended, reads:

ARTICLE 48. Penalty for complex crimes. — When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

In a complex crime, although two or more crimes are actually committed, they constitute only one crime in the eyes of the law as well as in the conscience of the offender. Hence, there is only one penalty imposed for the commission of a complex crime.[21]

There are two kinds of complex crime. The first is known as compound crime, or when a single act constitutes two or more grave or less grave felonies. The second is known as complex crime proper, or when an offense is a necessary means for committing the other.[22]

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[20] *Supra* note 1 at 11-12.

[21] LUIS B. REYES, *THE REVISED PENAL CODE*, REVISED FIFTEENTH EDITION, BOOK ONE, 650 (2001) citing *People v. Hernandez*, 99 Phil. 515.

[22] *Id*.

The classic example of the first of kind is when a single bullet results in the death of two or more persons. A different rule governs where separate and distinct acts result in a number killed. Deeply rooted is the doctrine that when various victims expire from separate shots, such acts constitute separate and distinct crimes.[23]

In the landmark case ***People v. Guillen***,[24] the Court held that the single act of throwing a grenade at President Roxas resulting in the death of another person and injuring four others produced the complex crime of murder and multiple attempted murders. Under Article 248 of the RPC, murder is committed when a person is killed by means of explosion. Applying Article 48 of the RPC, the penalty for the crime committed is death, the maximum penalty for murder, which is the graver offense.

More recently, in ***People v. Carpo et al.***,[25] we held that the single act of hurling a grenade into the bedroom of the victims causing the death of three persons and injuries to one person constituted the complex crime of multiple murder and attempted murder. Also, in ***People v. Comadre***,[26] we held:

The underlying philosophy of complex crimes in the Revised Penal Code, which follows the *pro reo* principle, is intended to favor the accused by imposing a single penalty irrespective of the crimes committed. The rationale being, that the accused who commits two crimes with single criminal impulse demonstrates lesser perversity than when the crimes are committed by different acts and several criminal resolutions.

The single act by appellant of detonating a hand grenade may quantitatively constitute a cluster of several separate and distinct offenses, yet these component criminal offenses should be considered only as a single crime in law on which a single penalty is imposed because the offender was impelled by a

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[23] *People v. Hon. Pineda, et al.*, 127 Phil. 150 (1967).

[24] 85 Phil. 307, 318 (1950).

[25] G.R. No. 132676, April 4, 2001, 356 SCRA 248.

[26] G.R. No. 153559, June 8, 2004, 431 SCRA 366, 384.

"single criminal impulse" which shows his lesser degree of perversity.

In light of these precedents, we hold that the single act of accused-appellant — burning the house of Manuel Salvador, with the main objective of killing the latter and his daughter, Analyn Salvador, resulting in their deaths — resulted in the complex crime of double murder. Under Article 248 of the RPC, murder is committed by means of fire. Since the maximum penalty imposed for murder was death, when the case was pending in the CA, the CA correctly imposed the penalty of death for the complex crime of double murder instead of the two death penalties imposed by the RTC for two counts of murder. In view, however, of the passage of Republic Act No. 9346 (otherwise known as "*An Act Prohibiting the Imposition of Death Penalty in the Philippines*"), we reduce the penalty of death to *reclusion perpetua* with no eligibility for parole.[27]

Anent the award of damages, we increase the award of civil indemnity by the CA for the death of the victims from ₱100,000 or ₱50,000 for each victim, to ₱150,000 or ₱75,000 for each victim in accordance with prevailing jurisprudence. [28]

As to the deletion of exemplary damages by the CA, we reinstate the award by the RTC of exemplary damages in the amount of ₱50,000, or ₱25,000 for each victim.

By and of itself, nighttime is not an aggravating circumstance. It becomes aggravating only when: (1) it is especially sought by the; or (2) it is taken advantage of by him; or (3) it facilitates the commission of the crime by ensuring the offender's immunity from capture.[29] In this case, the RTC correctly appreciated nighttime as aggravating considering that nighttime was especially sought by accused-appellant to carry out his evil plan. Evidence

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[27] Republic Act No. 9346 (2006), Sec. 2.

[28] *People v. Brodett*, G.R. No. 170136, January 18, 2008, 542 SCRA 88.

[29] *People v. Silva, et al.*, 435 Phil. 779 (2002).

shows that accused-appellant waited for nighttime to consummate his plan. It should be noted that accused-appellant was seen lurking near the house of the victims earlier in the evening. The fact that he brought with him a flashlight clearly shows that he intended to commit the crime in darkness.

We sustain the award by the CA of moral damages in the amount of ₱100,000, or ₱50,000 for each victim, in view of the grief and sorrow suffered by the heirs of the victims. We likewise affirm the award of nominal damages in the amount of ₱10,000 for the value of the burned house as sufficiently explained by the RTC and affirmed by the CA.

IN VIEW WHEREOF, we hereby *AFFIRM* the March 31, 2005 decision of the CA in CA-G.R. CR-HC No. 00060 with the following *MODIFICATIONS*:

(1) the penalty of death imposed on accused-appellant is *REDUCED* to *reclusion perpetua* without eligibility for parole;

(2) the civil indemnity for the death of the victims is increased to ₱150,000, or ₱75,000 for each victim; and

(3) accused-appellant is ordered to pay exemplary damages in the amount of ₱50,000, or ₱25,000 for each victim.

SO ORDERED.

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

Tinga, J., in the result.

Nachura, J., no part.

SECOND DIVISION

[G.R. No. 170415. September 19, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JESUS CASTRO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; CONDITIONS TO BE SUFFICIENT FOR CONVICTION. — For circumstantial evidence — which was what the prosecution presented in the present case against appellant — to be sufficient for conviction, the following conditions must be satisfied: (a) There is more than one circumstance; (b) The facts from which the circumstances are derived are proven; (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. Amplifying the above-listed conditions, this Court held that circumstantial evidence suffices to convict an accused only if the circumstances proved constitute an unbroken chain which leads to one fair and reasonable conclusion that points to the accused, to the exclusion of all others as the guilty person; the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with any other hypothesis except that of guilty. As a corollary to the constitutional precept that the accused is presumed innocent until the contrary is proved, a conviction based on circumstantial evidence must exclude each and every hypothesis consistent with his innocence.

2. ID.; ID.; ID.; ID.; NOT SATISFIED IN CASE AT BAR. — Given the length of time that had elapsed between the date of purchase (March, July and August 1993) of the spare parts, and the discovery of their loss (December 1993), the lack of claim that those spare parts were not used on broken down trucks that were repaired in March, July and August 1993, the lack of concrete proof that the missing spare parts and those eventually sold to Rosita were the same, the Court finds that the prosecution failed to satisfy the conditions for circumstantial evidence to suffice to prove its case against appellant.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Sanidad & Villanueva Law Offices for accused-appellant.

D E C I S I O N

CARPIO MORALES, *J.*:

Appellant, Jesus Castro (Castro), was charged and found guilty of Qualified Theft by the Regional Trial Court (RTC) of Baguio City, Branch 60 in Criminal Case No. 13963-R.

The accusatory portion of the Information filed against appellant reads:

> That sometime in the month of August 1993, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then the Shop Supervisor of the complainant ROMAN CRUZ and hence, has access to the shop of the latter, with grave abuse of trust and confidence, with the intent of gain and without the knowledge and consent of the owner thereof, did then and there willfully, unlawfully and feloniously take, steal and carry away the following:
>
> one (1) crank shaft (used for 0.9 liter)
> one (1) cylinder head (used)
> 8 pieces piston (one set and brand new)
> one (1) set over hauling gasket
> one (1) main bearing
> one (1) set piston ring
> one (1) set connecting rod bearing
>
> all having a total value of ₱64,000.00, belonging to ROMAN CRUZ, to the damage and prejudice of the owner thereof, in the aforementioned amount of SIXTY-FOUR THOUSAND PESOS (₱64,000.00), Philippine Currency.
>
> CONTRARY TO LAW.[1]

[1] Records, p. 1.

The private complainant Roman Cruz (Cruz) has, for decades, been operating a trucking business under the firm name Romy's Freight Services, with principal office and repair shop at Km. 3, Naguilian Road, Irisan, Baguio City. He hired appellant as a tinsmith-mechanic in 1975. In 1995, he promoted appellant to the position of shop supervisor whose duties included purchasing spare parts during emergencies, receiving deliveries of spare parts, and supervising the mechanics. As shop supervisor, appellant had access to the storeroom.

At the time material to the present case, Cruz maintained 28 trucks.

Cruz gave the following version of events that led to the filing of the information against appellant:[2]

On March 22, 1993, July 27, 1993, and August 23, 1993, Cruz purchased truck spare parts. In December 1993, he conducted an inventory of the spare parts in the storeroom and discovered that the following were missing: one crank shaft, one cylinder head assembly for a 0.9 liter engine, one set of eight brand new pistons for a 0.9 liter engine, one set of connecting rod bearings, one set of main bearings, one set of piston rings, and one set of overhauling gasket for a 0.9 liter engine, all of which were valued at ₱64,000.

When Cruz confronted appellant about the loss, the latter gave a "dubious remark"[3] and "an incredible explanation"[4] denying knowledge about those missing spare parts. The other workers denied too any knowledge about any such loss.

Sometime in November 1994, Cruz requested appellant to convey, and appellant complied therewith, two workers to his (Cruz's) house to do some repair work. As Cruz left his house on his way to the office, he saw appellant's service vehicle parked in front of the store of his (Cruz's) neighbor, Delfin

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[2] TSN, February 27, 1997, pp. 3-18; *id.* at 5-8.

[3] *Id.* at 6.

[4] *Ibid.*

Torres (Torres). On arrival at the office, Cruz inquired from appellant why his service vehicle was parked in front of Torres' house, to which appellant replied that he was collecting a $2,000 loan.

Cruz later talked with Torres about his reported loan from appellant. Torres denied, however, having secured any loan from appellant; instead, he informed Cruz that appellant was trying to collect the payment of spare parts supplied to him in August 1993. When Cruz asked what those spare parts were, Torres "was not cooperative" as he gave no answer.

In January 1995, Cruz discovered that appellant, without his knowledge and consent, ordered and obtained 150 bags of cement from Bacnotan Marketing Corporation worth ₱14,200 which appellant charged to Cruz's overhauling fee due the said corporation. Cruz thus confronted appellant but discussion on the matter was not concluded at the close of office hours. Appellant, who had worked for him for 19 years, never reported for work thereafter.

Subsequently or on June 9, 1995, Cruz discovered that appellant had authorized the hauling of two truckloads of cement from Bacnotan to Mangaldan, Pangasinan without him remitting the overhauling fee of ₱10,000. Remembering the spare parts lost in 1993, Cruz spoke with Torres again and asked about the spare parts appellant had supplied to him. This time, Torres divulged that appellant supplied him in 1993 a crank shaft, one cylinder head assembly, one set of pistons, one set of piston rings, one overhauling gasket, one set of main bearings, and one set of connecting rod bearings which his (Torres') business associate Romeo Inso (Inso) delivered to Rosita Crispin (Rosita), an operator and part-owner of a "*Greenland*" bus.

Inso admitted to Cruz having delivered those spare parts to Rosita, and Rosita confirmed that she had bought them, she adding that in September 1993, appellant negotiated with her the price of the spare parts; that after negotiation, she gave him a downpayment of ₱10,000; that in June 1994, she gave appellant's wife ₱500; and that as she was unable to pay the

balance of the purchase price, appellant retrieved all of the spare parts in February 1995 from the bus, No. 888, to which they were installed together with one lumber pulley and six nozzles.

Hence, Cruz's accomplishing of an Affidavit-Complaint on August 2, 1995[5] charging appellant of Qualified Theft. Torres and Inso also executed a Joint Affidavit[6] dated July 10, 1995 stating that appellant supplied them spare parts which were delivered to Rosita in August 1995 and that appellant had told them that the spare parts were ordered from a supplier of Cruz' firm, "a certain Doming."

For his part, appellant, admitting having sold spare parts to Rosita through Inso and Torres but claiming that the same did not come from Cruz's storeroom, gave the following version:[7]

In August 1993, Cruz asked him to help repair Torres' heavily damaged vehicle,[8] a 0.9 Series, International Harvester (IH). The spare parts needed for the repair were one cylinder head assembly with bulb, one set of eight pistons, one set connecting rod bearings, one set main bearings, and a head gasket.

As Torres requested him to look for secondhand spare parts, he contacted a supplier, Dominador Uson, if he had the needed spare parts, but Uson advised him days later that he had none.

In the first week of October 1993, he went to the shop of Angel Boleyley (Boleyley), a licensed contractor of the Department of Public Works and Highways, and inquired from him if he was selling the 0.9 series engine of his IH truck. Since Boleyley answered in the affirmative, he inquired from Torres if he wanted to buy the engine and the latter told him that he wanted to buy only the needed spare parts as it would be expensive

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[5] *Id.* at 5-8.

[6] *Id.* at 11-12.

[7] TSN, July 20, 1998, pp. 2-36; TSN, December 9, 1998, pp. 2-3.

[8] There is confusion in Castro's testimony whether Torres' vehicle is a truck or a bus. *Vide* TSN, July 20, 1998, pp. 13-14.

to buy the whole engine, hence, he bought only the cylinder assembly, the connecting rod bearings, the main bearings, eight pistons, the piston rings, and the head gasket, as well as the crank shaft from the disassembled engine. The parts cost ₱47,000, ₱20,000 of which were given by Torres and Inso, the balance to be paid in December 1993. In December 1993, Torres paid only ₱6,000, however.

As shop supervisor, he was in charge of dispatching the IH trucks of Cruz which were transporting cement.[9] On receiving a report from any of the mechanics that a truck needed repair, he would prepare a list of the needed parts which he brought to Cruz and Cruz would thereafter order them from suppliers. And after the ordered parts were delivered, he would turn them over to the mechanics who would install them and place the replaced/damaged or scrap parts in a drum.

Appellant went on to claim as follows:

There had been no inventory of any spare parts in Cruz's storeroom during his years of employment because any spare parts purchased were immediately installed in vehicles under repair. What were stocked were those which were immediately needed such as filter, spring and "undersize parts of motor," and it was only he (appellant) who conducted inventory thereof.

He stopped working for Cruz in January 1995 because he was treated at the St. Louis University Hospital of the Sacred Heart for what was later diagnosed to be "C5-6 Nerve root irritation."[10] Upon returning for work, he discovered that he had already been terminated from his job, drawing him to file a case in May 1995[11] against Cruz for illegal dismissal[12] before the National Labor Relations Commission (NLRC).

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[9] TSN, July 20, 1998, pp. 8-10.

[10] *Vide* Annex "3" to Exhibit "3", February 7, 1995 Medical Report, records, p. 328.

[11] TSN, July 20, 1998, p. 6.

[12] *Ibid*.

His complaint for illegal dismissal against Cruz was decided by the NLRC Baguio in his favor but, at the time he took the witness stand, was under appeal.

Boleyley and Dominador Viloria (Viloria), a mechanic who had worked as such with Cruz from 1977 to March 3, 1995, [13] executed separate Affidavits dated August 12, 1995 in defense of appellant. Boleyley corroborated at the witness stand appellant's testimony respecting his (Boleyley's) sale to him of those spare parts on or about the time claimed by appellant.[14] Viloria corroborated too appellant's testimony respecting the procedure in the purchase of spare parts and in the immediate installation thereof in Cruz's trucks.[15]

By Decision of December 23, 1999, Branch 60 of the Baguio City RTC found appellant guilty of qualified theft, disposing as follows:

> WHEREFORE, this Court finds the accused, Jesus Castro, GUILTY of the crime of qualified theft as defined and penalized under Article 310 of the Revised Penal Code and hereby sentences him to suffer an indeterminate penalty of 10 years and 1 day of *prision mayor* as minimum, to 14 years and 8 months of *reclusion temporal* as maximum. He is further ordered to pay Roman Cruz the amount of ₱64,000.00 plus interests at the legal rate from the filing of the Information for actual damages.[16]

Before the Court of Appeals, appellant assigned the errors of the trial court as follows:

> FIRST ASSIGNMENT OF ERROR
>
> . . . IN GIVING FULL FAITH AND CREDENCE TO THE INTERESTED, PARTIAL AND BIAS[ED] TESTIMONIES OF THE PROSECUTION WITNESSES NAMELY DELFIN TORRES, ROMEO INSO AND ROSITA CRISPIN.

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[13] TSN, April 21, 1998, pp. 3-4

[14] TSN, January 20, 1998, pp. 2-15; TSN, February 9, 1998, pp. 2-7.

[15] TSN, April 21, 1998, pp. 2-12; TSN, June 5, 1998, pp. 2-9.

[16] Records, p. 429. *Vide* pp. 433-435.

SECOND ASSIGNMENT OF ERROR

. . . IN GIVING FULL FAITH AND CREDENCE TO THE IMPROBABLE AND CONTRADICTORY TESTIMONY OF THE PRIVATE COMPLAINANT, ROMAN CRUZ.

THIRD ASSIGNMENT OF ERROR

. . . IN REFUSING TO GIVE FULL FAITH AND CREDENCE AND IN COMPLETELY **DISREGARDING THE EVIDENCE PRESENTED BY THE DEFENDANT** JESUS CASTRO PROVING HIS INNOCENCE OF THE CRIME IMPUTED TO HIM.

FOURTH ASSIGNMENT OF ERROR

. . . IN **[NOT] GIVING . . . WEIGHT TO THE TESTIMONIES OF DEFENSE WITNESSES** ANGEL BOLEYLEY AND DOMINADOR VELORIA.

FIFTH ASSIGNMENT OF ERROR

. . . IN NOT ACQUITTING THE ACCUSED-APPELLANT OF THE CRIME IMPUTED TO HIM, ON THE GROUND OF REASONABLE DOUBT.[17] (Emphasis and underscoring supplied)

The appellate court affirmed appellant's conviction but increased the penalty of imprisonment to *reclusion perpetua.*[18]

His Motion for Reconsideration[19] having been denied,[20] appellant brought the case to this Court.[21]

The Court finds the appeal meritorious.

For circumstantial evidence – which was what the prosecution presented in the present case against appellant – to be sufficient for conviction, the following conditions must be satisfied:

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[17] CA *rollo,* pp. 39-40.

[18] Decision of February 23, 2005, penned by Court of Appeals Associate Justice Vicente S.E. Veloso, with the concurrence of Associate Justices Roberto A. Barrios and Amelita G. Tolentino. *Id.* at 97-122.

[19] *Id.* at 125-132.

[20] *Id.* at 138.

[21] *Id.* at 141-143.

(a) There is more than one circumstance;
(b) The facts from which the circumstances are derived are proven;
(c) The combination of all the circumstances is such as to a conviction beyond reasonable doubt[22]

Amplifying the above-listed conditions, this Court held that circumstantial evidence suffices to convict an accused

only if the circumstances proved constitute an unbroken chain which leads to one fair and reasonable conclusion that points to the accused, to the exclusion of all others as the guilty person; the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with any other hypothesis except that of guilty. As a corollary to the constitutional precept that the accused is presumed innocent until the contrary is proved, a conviction based on circumstantial evidence must exclude each and every hypothesis consistent with his innocence.[23] (Underscoring supplied)

In the case at bar, the trial court based its conviction of appellant on the following circumstances as indicated in its decision:

x x x 1] Cruz bought the spare parts sometime on or before the third week of August, 1993 and [they] were kept in the storeroom; 2] In August, 1993, Torres sought the help of Castro to look for spare parts for a 0.9 liter engine; 3] The list of spare parts that Torres asked Castro to look for corresponded to some spare parts for 0.9 liter engine that were earlier bought by Cruz; 4] Inso received the spare part from Castro in the third week of August 1993, 5] In that same month, Inso delivered the spare parts to [Rosita], 6] In September 1993, [Rosita] negotiated with Castro about the cost of the spare parts; 7] In December 1993, Cruz discovered missing parts from his storerooms, that corresponded with the spare parts that Castro delivered to Inso and which [Rosita] negotiated for the price with Castro; and 8] Castro is the only holder of the keys, aside from Cruz, of the storeroom of

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[22] RULES OF COURT, Rule 133, Section 4.

[23] *People v. Calica*, G.R. No. 139178, April 14, 2004, 427 SCRA 336, 349-350.

the shop, which is also proof positive that Castro enjoyed the trust and confidence of his employer, Cruz.[24]

To the trial court, the foregoing circumstances were convincingly proven by the prosecution, whereas it found appellant to have failed to show proof "that the spare parts that Inso and Torres took from his residence which were delivered . . . [to Rosita], came from the 0.9 liter engine owned by Boleyley."[25]

The appellate court, in affirming the trial court's decision, first quoted the People's Brief, appellant's brief, the trial court's above-enumerated circumstances that "constitute an unbroken chain"-bases of the trial court's conviction of appellant.

In passing on appellant's assigned errors, the appellate court, holding that the credibility of witnesses and their testimonies is a matter best undertaken by the trial court, held that it had "carefully reviewed appellant's brief in search of substantial facts of circumstances that could have been overlooked by the [trial court] but . . . found none";[26] and that the circumstances listed by the trial court were "correctly found and invoked"[27] as the transcript of stenographic notes showed.

The Court at once notes that the trial court found that the spare parts delivered by appellant to Inso did "correspond" to the alleged missing spare parts. "Correspond" does not mean "the same." It means to "match" or "compare closely." Cruz himself admitted this when on cross examination he stated that the missing spare parts "**match[ed]** what [appellant had] sold to [Torres and Inso] as *described [by] them*."[28] Cruz in fact additionally admitted also during cross-examination that the

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[24] Records, p. 429.

[25] RTC Decision, p. 9, records, p. 429.

[26] CA *rollo*, pp. 113-114.

[27] *Id.* at 115.

[28] TSN, March 4, 1997, p. 16.

missing spare parts were not unique and were readily available in the market.[29]

The Court further notes that, by Cruz's own information, when any of his trucks needed repairs and the reserve spare parts served the purpose, they would be used right away;[30] and that some of his trucks broke down in March 1993 to August 1993.[31]

The prosecution had not, however, shown that Cruz's trucks which broke down and were repaired in March 1993 to August 1993 did not avail of those alleged reserve spare parts purchased in the same period.

Given the length of time that had elapsed between the date of purchase (March, July and August 1993) of the spare parts, and the discovery of their loss (December 1993), the lack of claim that those spare parts were not used on broken down trucks that were repaired in March, July and August 1993, the lack of concrete proof that the missing spare parts and those eventually sold to Rosita were the same, the Court finds that the prosecution failed to satisfy the conditions for circumstantial evidence to suffice to prove its case against appellant.

In fine, the prosecution failed to discharge the *onus* of *prima facie* proving appellant's guilt beyond reasonable doubt.

The burden of evidence did not thus even shift to the defense. Such notwithstanding, appellant by his evidence, proved that, contrary to the trial court's observation, he sourced the spare parts which were delivered to Torres and Inso from Boleyley who corroborated appellant's claim that he purchased spare parts from him on or about the time that appellant claimed. And appellant proved too, and this was corroborated by Viloria, that it was "only when there [was] a defective spare part that has to be replaced" that a new one would be bought by appellant,

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

[30] TSN, February 27, 1997, p. 22.

[31] *Id.* at 22-23.

who would give the newly bought ones to the mechanics which they would "immediately" install in the motor or engine of Cruz's trucks to replace the destroyed spare parts; and that there were no spare parts stored in the bodega of Cruz.

That Cruz executed a complaint-affidavit charging appellant on August 2, 1995 which resulted in the filing of the Information in Criminal Case No. 13963-R on August 31, 1995 because appellant had priorly filed a case for illegal dismissal against him, as theorized by the defense, is thus not far-fetched. Cruz himself admitted that a complaint for illegal dismissal had been priorly filed – "I think in June 1995."[32]

In fine, contrary to the trial court's decision, the prosecution failed to prove beyond reasonable doubt that appellant is guilty of the crime charged. The appellate court's affirmance of the trial court's decision must thus fail.

WHEREFORE, the assailed decision of the Court of Appeals is *REVERSED* and *SET ASIDE*. Accused-appellant, Jesus Castro, is *ACQUITTED* of qualified theft for failure of the prosecution to prove his guilt beyond reasonable doubt.

SO ORDERED.

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

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[32] *Vide* TSN, March 4, 1997, p. 7.

EN BANC

[A.M. No. P-03-1748. September 22, 2008]
(Formerly A.M. No. 03-8-472-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **LIBRADA PUNO, Cash Clerk III,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; PERSONAL PROBLEMS CANNOT JUSTIFY THE MISUSE BY ANY COURT EMPLOYEE OF JUDICIARY FUNDS IN THEIR CUSTODY. — There is no question with respect to the guilt of respondent as she herself admitted that she had misappropriated the amount of ₱600,051.81. To explain her misconduct, respondent reasoned that she was constrained to siphon off the amount to help her ailing sister. The Court finds this proffered excuse unsatisfactory. Public servants are mandated to uphold public interest over personal needs. Certainly, no less can be expected from those involved in the administration of justice. Everyone, from the highest official to the lowest rank employee must live up to the strictest norms of probity and integrity in the public service. Safekeeping of public and trust funds is essential to an orderly administration of justice. Personal problems cannot justify the misuse by any court employee of judiciary funds in their custody. Such are government funds, and public servants have absolutely no right to use them for their own purposes.

2. ID.; ID.; ID.; THE ACT OF MISAPPROPRIATION OF JUDICIARY FUNDS CONSTITUTES DISHONESTY AND GRAVE MISCONDUCT; IMPOSABLE PENALTY. — There is no doubt that respondent violated the trust reposed in her as a collecting officer of the judiciary. The fact that respondent is willing to pay her shortages does not free her from the consequences of her wrongdoing. The act of misappropriation of judiciary funds constitutes dishonesty and grave misconduct, which are grave offenses punishable by dismissal under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service.

Her acts may, moreover, subject her to criminal liability. Verily, her grave misdemeanor justifies her severance from the service, with forfeiture of all retirement benefits, excluding accrued leave credits pursuant to current jurisprudence.

3. ID.; ID.; ID.; DISHONESTY, PARTICULARLY THAT WHICH AMOUNTS TO MALVERSATION OF PUBLIC FUNDS, WILL NOT BE COUNTENANCED. — It is best to stress that dishonesty is a malevolent conduct that has no place in the judiciary. The Court has repeatedly warned that dishonesty, particularly that which amounts to malversation of public funds, will not be countenanced; or else, courts of justice may come to be regarded as mere havens of thievery and corruption.

APPEARANCES OF COUNSEL

Filibon Fabela Tacardon for respondent.

D E C I S I O N

***PER CURIAM*:**

This is an administrative complaint against respondent Librada Puno, Cash Clerk III of the Office of the Clerk of Court, Regional Trial Court (RTC) of Cabanatuan City, for dishonesty and grave misconduct.

The case stemmed from the formal complaint submitted by Executive Judge Rodrigo S. Caspillo of the RTC of Cabanatuan City. Judge Caspillo averred that Atty. Numeriano Galang, Clerk of Court of the Office of the Clerk of Court- RTC of Cabanatuan City, had reported apparent discrepancies between the original and the duplicate copies of the Judiciary Development Fund (JDF) and the Clerk of Court General Fund (COCGF) official receipts issued by respondent relative to payments of sheriff's commissions and notarial commission fees. Thereafter, an audit investigation of the accountabilities of respondent was conducted in which tampering of receipts was discovered, resulting to a partial shortage of ₱354,572.23. Respondent admitted sole

responsibility for the alterations which involved the sum of more or less ₱385,000.00.[1]

Subsequently, the Financial Audit Team of the Court Management Office submitted an initial report recommending, among others, that respondent be directed to restitute the partial shortage of ₱354,572.23 and to explain why she should not be criminally charged with falsification of public documents and malversation of public funds; that Atty. Numeriano Galang be directed to produce all the records and documents to determine once and for all the financial accountability of respondent; and for the Team to be directed to conduct a comprehensive detailed audit. The Court adopted the Team's recommendations in a Resolution[2] dated 10 September 2003.

In the intervening time, the resolution of the Office of the City Prosecutor of Cabanatuan City recommending the filing of informations for Malversation of Public Funds thru Falsification of Official and Public Documents[3] against respondent was referred for appropriate action to the Office of the Court Administrator (OCA) per the action dated 9 January 2004 of the Office of the Deputy Ombudsman for Luzon.[4]

Then, in a Letter dated 9 July 2004, Atty. Galang detailed the steps he had taken to trace the shortage and therewith submitted the photocopies of pertinent receipts.[5]

In her Comment/Explanation[6] dated 5 January 2005, respondent asserted that since she was able to immediately restitute to the JDF and the General Fund the amounts demanded, she could not be held liable for misappropriation of court funds.[7]

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[1] *Rollo*, p. 8-9.

[2] *Id.* at 36-37.

[3] *Id.* at 51.

[4] *Id.* at 235.

[5] *Id.* at 280-281.

[6] *Id.* at 443-448.

[7] *Id.* at 445.

The Court in a Resolution[8] dated 10 January 2005 adopted the recommendations submitted by the Financial Audit Team of the Court Management Office in its Memorandum dated 19 October 2004, as follows:

1. That Ms. LIBRADA S. PUNO be **DIRECTED to PAY** the amount of **₱600,051.81** (net amount restituted) pertaining to the Sheriff Judiciary Development Fund (SJDF) and **₱1,000.00** pertaining to the Sheriff General Fund (SGF) now to the Special Allowance of the Judiciary (SAJ) the total amount of shortages incurred by tampering official receipts issued in collecting extra-judicial foreclosures:

2. That Atty. NUMERIANO GALANG be **DIRECTED** to:

   a) **PRACTICE** the "No receipt, no solemnization" policy holding marriage solemnization. This is to avoid fixers and eliminate irregularity in the proper collection of solemnization fees;
   b) **PURSUE** the submission and compliance of the copies of original official receipts to all parties concerned which were altered by Ms. Puno, to strengthen the case against the latter both administrative and criminal;
   c) **STRICTLY ADHERE** to the implementation of directives and circulars issued by the Court;
   d) Explain within five (5) days from notice, the following **SHORTAGES** in this collections amounting to Four Hundred Thirty Eight Thousand Four Hundred Thirteen Pesos and Twenty Four Centavos **(₱438,413.24)**

Name of Fund	Amount
G.F.	**₱ 21.45**
S.G.F.	**400,880.04**
J.D.F.	**32,334.75**
Fiduciary Fund	**4,677.00**
S.T.F.	**500.00**
TOTAL	**438,413.24**

[8] *Id.* at 437-439.

and to pay the said amount by depositing to their respective accounts and **SUBMIT** to the Fiscal Monitoring Division the machine validated deposits slips as proof of compliance with the above directive;

e) **SUBMIT** within five (5) days from notice the validated deposit slip in the account of the Judiciary Development Fund the balance of forfeited bond amounting to ₱28,200.00 in Criminal Case No. 7785 and the action taken by the Sheriff of Branch 30 regarding the writ of execution the branch issued on June 15, 2004; and

f) **EXPLAIN** within five (5) days from notice his failure to withdraw and deposit to their respective accounts the unwithdrawn confiscated bonds amounting to ₱256,780.00;

That the Legal Office, OCA be **DIRECTED**:

(a) To **FILE** the appropriate criminal charges against Librada C. Puno, Cash Clerk III; and

(b) To make a study and submit guidelines in the proper management of demonetized exhibit monies.[9]

On 16 May 2005, the Court issued a Resolution[10] directing respondent to comment/explain why she should not be held administratively and criminally liable for misappropriating court funds.

In a Resolution[11] dated 22 March 2006, the Court noted the explanation dated 5 January 2006 of Atty. Galang (submitted in compliance with the Resolution dated 10 January 2005) stating, among others, that he had already deposited to the respective accounts the unwithdrawn confiscated bonds amounting to ₱256,780.00.

On 30 May 2007, respondent filed her Manifestation with Compliance praying, among others, that she be allowed to restitute the amount of ₱600,051.81 due to the Sheriff Judiciary

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[9] *Id.* at 437-438.

[10] *Id.* at 460.

[11] *Id.* at 466.

Development Fund (SJDF) in thirty-six (36) equal monthly installments starting 30 May 2007 or until 30 April 2008 and the amount of ₱1,000.00 due to the Sheriff General Fund (SGF, now Special Allowance for the Judiciary) in one payment.[12]

On 25 June 2007, the Court denied respondent's Manifestation with Compliance and reiterated its directive that she submit her Comment pursuant to the Resolution dated 28 February 2007.[13]

In her Comment/Explanation[14] dated 10 August 2007, respondent admitted her mistakes and assumed full responsibility for the restitution of the amount of ₱600,051.81. She offered no excuses for her acts and hoped that with her admission of guilt, the Court would extend its compassion and clemency to her. She sought an additional time of thirty (30) days to finally restitute the amount she had misappropriated. Respondent claimed that she was constrained to commit the misappropriation in order to finance the medical bills of her ailing sister who had been suffering from and eventually died of lung cancer.

On 8 January 2008, Atty. Galang filed with the Office of the Clerk of Court-2nd Division a letter addressed to the Chief Justice requesting that the former be cleared of money accountability to enable him to receive the salaries and benefits due him as Presiding Judge.

In a Memorandum[15] dated 22 May 2008, the OCA found respondent guilty of Dishonesty and Grave Misconduct and recommended that the penalty of dismissal with forfeiture of all benefits be meted out to her, with the application of any amount due her to the payment of the shortage. The OCA likewise recommended that: (1) respondent be directed to restitute the amounts of ₱600,051.81 (net of amount restituted) pertaining to the SJDF and ₱1,000.00 pertaining to the SGF

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[12] *Id.* at 476-478.

[13] *Id.* at 481-482.

[14] *Id.* at 516-521.

[15] *Id.* at 538-542.

per the Court's Resolution dated 10 January 2005; (2) the Financial Management Office, Office of the Court Administrator, be directed to compute all the benefits to which respondent is entitled and apply the same to the computed shortage; (3) the Legal Office, OCA, be directed to file the appropriate criminal charges against respondent; and 4) the request of Presiding Judge Numeriano Y. Galang of the Municipal Trial Court of Aliaga, Nueva Ecija that he be cleared of money accountability be denied pending the submission of his explanation for the shortage and the required proof of remittance/s.[16]

The Court agrees with the OCA that respondent should be dismissed from the service.

There is no question with respect to the guilt of respondent as she herself admitted that she had misappropriated the amount of ₱600,051.81. To explain her misconduct, respondent reasoned that she was constrained to siphon off the amount to help her ailing sister.

The Court finds this profferred excuse unsatisfactory. Public servants are mandated to uphold public interest over personal needs.[17] Certainly, no less can be expected from those involved in the administration of justice. Everyone, from the highest official to the lowest rank employee must live up to the strictest norms of probity and integrity in the public service. Safekeeping of public and trust funds is essential to an orderly administration of justice.[18] Personal problems cannot justify the misuse by

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[16] *Id.* at 542.

[17] The Code of Conduct and Ethical Standards for Public Officials and Employees provides thus: Public officials and employees shall always uphold the public interest over and above personal interest. See *Judge Dondiego v. Cuevas, Jr.*, 446 Phil. 514, 522 (2003); *Marasigan v. Buena*, 348 Phil. 1, 9 (1998).

[18] *Re: Financial Audit on the Accountabilities of Mr. Restituto A. Tabucon, Jr., Former Clerk of Court II of the MCTC, Ilog, Candoni, Negros Occidental*, A.M. No. 04-8-195-MCTC, 18 August 2005, 467 SCRA 246, 250; *Re: Misappropriation of the Judiciary Fund Collections by Ms. Juliet C. Banag, Clerk of Court, MTC, Plaridel, Bulacan*, 465 Phil. 24, 37-38 (2004).

any court employee of judiciary funds in their custody.[19] Such are government funds, and public servants have absolutely no right to use them for their own purposes.

There is no doubt that respondent violated the trust reposed in her as a collecting officer of the judiciary. The fact that respondent is willing to pay her shortages does not free her from the consequences of her wrongdoing. The act of misappropriation of judiciary funds constitutes dishonesty and grave misconduct, which are grave offenses punishable by dismissal under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service. Her acts may, moreover, subject her to criminal liability. Verily, her grave misdemeanor justifies her severance from the service,[20] with forfeiture of all retirement benefits, excluding accrued leave credits pursuant to current jurisprudence.[21]

It is best to stress that dishonesty is a malevolent conduct that has no place in the judiciary. The Court has repeatedly warned that dishonesty, particularly that which amounts to malversation of public funds, will not be countenanced; or else,

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[19] *Re: Report on the Examination of the Cash and Accounts of the Clerks of Court of the RTC and the MTC of Vigan, Ilocos Sur*, 448 Phil. 464, 467 (2003).

[20] *Re: Report on the Examination of the Cash and Accounts of the Clerks of Court of the RTC and the MTC of Vigan, Ilocos Sur*, *supra* note 19, at 468 citing Rule IV of the Uniform Rules on Administrative Cases in the Civil Service (Resolution No. 99-1936, which took effect on 27 September 1999), Sec. 52. *Classification of Offenses*.— Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. the following are grave offenses with their corresponding penalties:

1. Dishonesty-1st offense-Dismissal
2. Gross Neglect of Duty-1st offense-Dismissal
3. Grave Misconduct-1st offense-Dismissal

[21] *Office of the Court Administrator v. Nacuray*, A.M. No. 03-1739, 7 April 2006; 486 SCRA 532, 543; *Office of the Court Administrator v. Bernardino*, A.M. No. P-97-12581, 31 January 2005, 450 SCRA 88, 120.

courts of justice may come to be regarded as mere havens of thievery and corruption.[22]

WHEREFORE, in view of the foregoing, respondent Librada S. Puno, Cash Clerk III of the Office of the Clerk of Court-Regional Trial Court of Cabanatuan City is found *GUILTY* of *DISHONESTY* and *GRAVE MISCONDUCT*. She is *DISMISSED* from the service with forfeiture of all retirement benefits, excluding accrued leave credits, and with prejudice to reemployment in the Government or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations. She is further *ORDERED* to restitute the amounts of ₱600,051.81 (net of amount restituted) pertaining to the Sheriff Judiciary Development Fund (SJDF) and ₱1,000.00 pertaining to the Sheriff General Fund (SGF) (now the Special Allowance for the Judiciary), per Resolution of the Court dated 10 January 2005.

The Financial Management Office, Office of the Court Administrator, is *DIRECTED* to compute all the benefits to which respondent Puno is entitled to be included in the restitution of the computed shortages.

The OCA is also *ORDERED* to coordinate with the prosecution arm of the government to ensure the expeditious prosecution of respondent Puno for her criminal liability.

Finally, the request of Presiding Judge Numeriano Y. Galang of the Municipal Trial Court of Aliaga, Nueva Ecija that he be cleared of money accountability is *DENIED* pending the submission of his explanation for the shortage and the required proof of remittance/s.

SO ORDERED.

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

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[22] *Concerned Citizen v. Gabral, Jr.*, A.M. No. P-05-2098, 15 December 2005, 478 SCRA 13, 25.

EN BANC

[A.M. No. P-07-2335. September 22, 2008]
(Formerly A.M. No. 06-2-46-MeTC)

CIVIL SERVICE COMMISSION, *petitioner, vs.* **CARIDAD S. DASCO, STENOGRAPHER II, MeTC, BRANCH 63, MAKATI CITY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; DEFENSE OF DENIAL; TO BE BELIEVED, IT MUST BE BUTTRESSED BY STRONG EVIDENCE OF NON-CULPABILITY. — A close examination of respondent's pictures and signatures in her identification card presented before the CSC on 19 July 2005 and her Personal Data Sheet (PDS) filed before the OCA-OAS reveal their marked difference from those in the Picture Seat Plan (PSP) for the examinations held on 5 August 1990. Even by mere observation by the naked eye, it can easily be detected that the pictures and signatures in the identification card and PDS, on one hand, and those in the PSP, on the other, could not be of one and the same person, bearing little resemblance/similitude or none at all. Respondent's personal appearance before the Office of the Civil Service Commission on 19 July 2005 was very much different from her alleged picture in the PSP. Respondent merely denies the allegations against her. She attempts to escape liability by attributing the difference in the way she looked in the pictures to stress and fatigue; and the variance in her signatures to a physical malady resulting from her tedious work as a stenographer. These are all flimsy and lame excuses, which collapse in the face of the very obvious evidence to the contrary. It is settled that denial is inherently a weak defense. To be believed, it must be buttressed by strong evidence of non-culpability; otherwise, such denial is purely self-serving and is with nil evidentiary value. Like the defense of alibi, a denial crumbles in light of positive identification.

2. ID.; ID.; MERE ALLEGATION IS NOT EVIDENCE, AND IS NOT EQUIVALENT TO PROOF. — Respondent undeniably failed to substantiate the claims she made in her comment. She could

have easily submitted additional evidence to substantiate her allegations, such as pictures to show the gradual change in her appearance through the years or a medical certificate to prove that a physical ailment is affecting her ability to write. Unfortunately, other than filing her comment, respondent failed to submit any supporting proof. The basic rule is that mere allegation is not evidence, and is not equivalent to proof.

3. ID.; ID.; DISPUTABLE PRESUMPTION; OFFICIALS OF THE CIVIL SERVICE COMMISSION ENJOY THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF THEIR OFFICIAL DUTY. — We cannot even consider the possibility that the CSC officials who supervised the examinations committed a mistake in matching the pictures and signatures *vis-à-vis* the examinees as the said CSC officials enjoy the presumption of regularity in the performance of their official duty. And besides, such a mix-up is highly unlikely due to the strict procedures followed during civil service examinations, described in detail in *Cruz and Paitim v. Civil Service Commission*, to wit: It should be stressed that as a matter of procedure, the room examiners assigned to supervise the conduct of a Civil Service examination closely examine the pictures submitted and affixed on the Picture Seat Plan (CSC Resolution No. 95-3694, Obedencio, Jaime A.). The examiners carefully compare the appearance of each of the examinees with the person in the picture submitted and affixed on the PSP. In cases where the examinee does not look like the person in the picture submitted and attached on the PSP, the examiner will not allow the said person to take the examination (CSC Resolution No. 95-5195, Taguinay, Ma. Theresa).

4. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; DISHONESTY, DEFINED; IMPOSABLE PENALTY FOR DISHONESTY. — Dishonesty has been defined as intentionally making a false statement in any material fact, or practicing or attempting to practice any deception or fraud in securing his examination, registration, appointment or promotion. It is also understood to imply a disposition 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. Under the Civil Service Rules, dishonesty is a grave offense punishable by dismissal which carries the accessory

penalties of cancellation of eligibility, forfeiture of retirement benefits (except leave credits pursuant to Rule 140, Section 11[1]) and disqualification from reemployment in the government service.

5. ID.; ID.; ID.; LIKE ANY PUBLIC SERVANT, EVERY EMPLOYEE OF THE JUDICIARY MUST EXHIBIT THE HIGHEST SENSE OF HONESTY AND INTEGRITY NOT ONLY IN THE PERFORMANCE OF OFFICIAL DUTIES BUT IN THE PERSONAL AND PRIVATE DEALINGS WITH OTHER PEOPLE, TO PRESERVE THE COURT'S GOOD NAME AND STANDING. — The Code of Conduct for Court Personnel stresses that employees of the judiciary serve as sentinels of justice and any act of impropriety on their part immeasurably affects the honor and dignity of the Judiciary and the people's confidence in it. Although every office in the government service is a public trust, no position exacts a greater demand for moral righteousness and uprightness from an individual than in the judiciary. Every employee of the judiciary should be an example of integrity, uprightness and honesty. Like any public servant, he must exhibit the highest sense of honesty and integrity not only in the performance of his official duties but in his personal and private dealings with other people, to preserve the court's good name and standing. It cannot be overstressed that the image of a court of justice is mirrored in the conduct, official or otherwise, of the personnel who work thereat, from the judge to the lowest of its personnel. Court employees have been enjoined to adhere to the exacting standards of morality and decency in their professional and private conduct in order to preserve the good name and integrity of the courts of justice.

6. ID.; ID.; ID.; THE EMPLOYEE'S MISREPRESENTATION THAT SHE TOOK AND PASSED THE CAREER SERVICE PROFESSIONAL EXAMINATION WHEN, IN FACT, SOMEONE ELSE TOOK THE EXAMINATION FOR HER, CONSTITUTES DISHONESTY. — By her act of dishonesty, respondent failed to meet the stringent standards set for a judicial employee and does not, therefore, deserve to be part of the judiciary. In *Cruz and Paitim v. Civil Service Commission*, we found Cruz guilty of dishonesty when she misrepresented that she took the CSC Career Service Sub-Professional Examination when, in fact, it was her officemate, Paitim, the Municipal Treasurer of Norzagaray, Bulacan, who took the examination

for her. Because of such dishonesty, both employees were dismissed from the service. We find no reason to deviate from our previous ruling.

R E S O L U T I O N

***PER CURIAM*:**

For Resolution is an administrative case for Dishonesty and Grave Misconduct against respondent Caridad S. Dasco, Stenographer II, Metropolitan Trial Court (MeTC), Branch 63, Makati City, for misrepresenting that she took and passed the Career Service Professional Examination on 5 August 1990 when, in truth and in fact, someone else took the examination for her. The Civil Service Commission (CSC) found that the picture and signature in respondent's identification card were different from those in her application and in the Picture Seat Plan (PSP) both on file with the Examination and Placement Services Division (EPSD) of the CSC.

Respondent's misdeed was discovered when she went to the CSC Office in Diliman, Quezon City, on 19 July 2005, requesting the authentication of her Career Service Professional Certificate of Eligibility. She reportedly took the Career Service Professional Examination on 5 August 1990 at A. Roces Sr. Vocational High School. Upon verification, the CSC discovered that what was purported to be a picture of respondent in the Picture Seat Plan for the said examination was vastly different from how she looks in person and from her picture in the identification card she presented to CSC during her visit on 19 July 2005. The CSC also observed that petitioner's alleged signature on the same PSP was evidently dissimilar to the signatures petitioner executed personally before the CSC on 19 July 2005. Thus, the CSC suspected that it was highly probable that respondent was impersonated by a still unknown person for the purpose of taking the Career Service Professional Examination.[1]

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[1] *Rollo,* p. 2.

On 2 September 2005, Director Azucena Perez-Esleta of the Examination, Recruitment and Placement Office (ERPO) of the CSC, wrote respondent a letter informing her of its aforementioned findings and directing her to show cause within 72 hours why she should not be administratively held liable for the violation of civil service rules.[2]

In a letter dated 5 January 2006, CSC Commissioner Karina Constantino-David notified the Court, through then Chief Justice Artemio Panganiban, of the spurious certificate of eligibility of respondent.[3]

In a Resolution dated 19 June 2007, the Court referred the matter to the Office of the Court Administrator (OCA) for investigation, report and recommendation.

The OCA then required[4] respondent to submit her comment on the accusation against her within 10 days from receipt of the Indorsement.

In her Comment [5] dated 8 March 2006, respondent vehemently denied that her picture in the PSP for the examination on 5 August 1990 was very different from how she looked in person when she appeared before the CSC on 19 July 2005 to request for authentication of her Career Service Professional Certificate of Eligibility. She averred that stress and fatigue had already affected her present appearance. As to the disparity between her signature on the PSP of the examination on 5 August 1990 and that which she executed before the CSC on 19 July 2005, respondent reasoned that her work as a stenographer required her to type for the whole day using a manual typewriter, which made her hands "*pasmado*," such that she could not even write her signature properly.

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[2] *Id.* at 4.

[3] *Id.* at 2.

[4] *Id.* at 18.

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

On 11 May 2007, the OCA submitted its report,[6] thus:

> From a review of the records, we are convinced that the person who actually sat during the examinations matched the picture on the seat plan. Indeed, it was another person and not herein respondent who actually took the civil service examination on August 5, 1990.

CSC Memorandum Circular No. 15, series of 1991 provides:

> An act which includes the procurement and/or use of fake/spurious civil service eleigibility, the giving of assistance to endure 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, has been categorized as a grave offense of Dishonesty, Grave Misconduct or Conduct Prejudicial to the Best Interest of the Service (as cited in *CSC vs Cayobit*, G.R.No. 145737, Sept. 3, 2003, 410 SCRA 357).
>
> The acts of Dishonesty and Grave Misconduct are punishable by dismissal for the first offense. Such extreme punishment may be imposed in this case, because dishonesty reflects on the fitness of the employee to continue in office and on the discipline and morale of the service. Dishonesty is a serious offense which reflects on the person's character and exposes the moral decay which virtually destroys her honor, virtue and integrity.
>
> RECOMMENDATION: Respectfully submitted for the consideration of the Honorable Court are the following recommendations:
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> 1. That the instant case be RE-DOCKETED as a regular administrative case;
>
> 2. That respondent be asked to state whether she submits this case on the basis of the pleadings or have a formal investigation. If she opts to have a formal investigation, let this case be assigned to a consultant of the OCA for investigation, report and recommendation.

On 19 June 2007, the Court *En Banc* re-docketed the case as a regular administrative matter and required respondent to state whether she was willing to submit the case for resolution

[6] *Id.* at 21-23.

on the basis of the pleadings filed or to have a formal investigation conducted; and if respondent would opt to have the latter, the Court ordered that the case be assigned to a consultant of the OCA for investigation, report and recommendation.[7]

On 30 June 2008, respondent submitted her Manifestation[8] stating that she was already submitting the case for resolution based on the pleadings filed.

After thoroughly reviewing the records of this case, we agree in the valid observations of the OCA.

A close examination of respondent's pictures and signatures in her identification card presented before the CSC on 19 July 2005 and her Personal Data Sheet (PDS) filed before the OCA-OAS reveal their marked difference from those in the PSP for the examinations held on 5 August 1990. Even by mere observation by the naked eye, it can easily be detected that the pictures and signatures in the identification card and PDS, on one hand, and those in the PSP, on the other, could not be of one and the same person, bearing little resemblance/similitude or none at all. Respondent's personal appearance before the Office of the Civil Service Commission on 19 July 2005 was very much different from her alleged picture in the PSP.

Respondent merely denies the allegations against her. She attempts to escape liability by attributing the difference in the way she looked in the pictures to stress and fatigue; and the variance in her signatures to a physical malady resulting from her tedious work as a stenographer.

These are all flimsy and lame excuses, which collapse in the face of the very obvious evidence to the contrary.

It is settled that denial is inherently a weak defense. To be believed, it must be buttressed by strong evidence of non-culpability; otherwise, such denial is purely self-serving and is

[7] *Id.* at 24.

[8] *Id.* at 31.

with nil evidentiary value. Like the defense of alibi, a denial crumbles in light of positive identification.[9]

Respondent undeniably failed to substantiate the claims she made in her comment. She could have easily submitted additional evidence to substantiate her allegations, such as pictures to show the gradual change in her appearance through the years or a medical certificate to prove that a physical ailment is affecting her ability to write. Unfortunately, other than filing her comment, respondent failed to submit any supporting proof. The basic rule is that mere allegation is not evidence, and is not equivalent to proof.[10]

We cannot even consider the possibility that the CSC officials who supervised the examinations committed a mistake in matching the pictures and signatures *vis-à-vis* the examinees as the said CSC officials enjoy the presumption of regularity in the performance of their official duty. And besides, such a mix-up is highly unlikely due to the strict procedures followed during civil service examinations, described in detail in *Cruz and Paitim v. Civil Service Commission*,[11] to wit:

> It should be stressed that as a matter of procedure, the room examiners assigned to supervise the conduct of a Civil Service examination closely examine the pictures submitted and affixed on the Picture Seat Plan (CSC Resolution No. 95-3694, Obedencio, Jaime A.). The examiners carefully compare the appearance of each of the examinees with the person in the picture submitted and affixed on the PSP. In cases where the examinee does not look like the person in the picture submitted and attached on the PSP, the examiner will not allow the said person to take the examination (CSC Resolution No. 95-5195, Taguinay, Ma. Theresa).

The only logical scenario is that another person, who matched the picture in the Picture Seating Plan, actually took the

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[9] *Jugueta v. Estacio*, A.M. No. CA-04-17-P, 25 November 2004, 444 SCRA 10, 16.

[10] *Navarro v. Cerezo*, A.M. No. P-05-1962, 17 February 2005, 451 SCRA 626, 629.

[11] 422 Phil. 236, 245 (2001).

examination on 5 August 1990 in respondent's name. In the offense of impersonation, there are always two persons involved. In the instant case, the impersonation would not have been possible without the active participation of both the respondent and the other person who took the examination in her name. It must have only been with the permission and knowledge of respondent that the other person was able to use her name for the examinations. More importantly, respondent has been benefiting from the passing result in the said examination.

Given the foregoing, the Court finds that respondent is, indeed, guilty of dishonesty.

Dishonesty has been defined as intentionally making a false statement in any material fact, or practicing or attempting to practice any deception or fraud in securing his examination, registration, appointment or promotion. It is also understood to imply a disposition 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.[12]

Under the Civil Service Rules,[13] dishonesty is a grave offense punishable by dismissal which carries the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits (except leave credits pursuant to Rule 140, Section 11[1])[14] and disqualification from reemployment in the government service.[15]

The Code of Conduct for Court Personnel stresses that employees of the judiciary serve as sentinels of justice and any act of impropriety on their part immeasurably affects the honor and dignity of the Judiciary and the people's confidence in

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[12] *Re: Spurious Certificate of Eligibility of Tessie G. Quires, RTC, Office of the Clerk of Court, Quezon City*, A.M. No. 05-5-268-RTC, 4 May 2006, 489 SCRA 349, 356-357.

[13] Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order 292.

[14] *Cabanatan v. Molina*, 421 Phil. 664, 673 (2001).

[15] *Civil Service Commission v. Sta. Ana*, 450 Phil. 59, 69 (2003).

it. Although every office in the government service is a public trust, no position exacts a greater demand for moral righteousness and uprightness from an individual than in the judiciary.[16]

Every employee of the judiciary should be an example of integrity, uprightness and honesty. Like any public servant, he must exhibit the highest sense of honesty and integrity not only in the performance of his official duties but in his personal and private dealings with other people, to preserve the court's good name and standing. It cannot be overstressed that the image of a court of justice is mirrored in the conduct, official or otherwise, of the personnel who work thereat, from the judge to the lowest of its personnel. Court employees have been enjoined to adhere to the exacting standards of morality and decency in their professional and private conduct in order to preserve the good name and integrity of the courts of justice.[17]

By her act of dishonesty, respondent failed to meet the stringent standards set for a judicial employee and does not, therefore, deserve to be part of the judiciary. In *Cruz and Paitim v. Civil Service Commission*,[18] we found Cruz guilty of dishonesty when she misrepresented that she took the CSC Career Service Sub-Professional Examination when, in fact, it was her officemate, Paitim, the Municipal Treasurer of Norzagaray, Bulacan, who took the examination for her. Because of such dishonesty, both employees were dismissed from the service. We find no reason to deviate from our previous ruling.

WHEREFORE, respondent Caridad S. Dasco is hereby found *GUILTY* of dishonesty and is hereby *DISMISSED* as Court Stenographer II, MeTC of Makati City, Branch 63, with forfeiture of all her retirement benefits, except her accrued leave credits, and with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations.

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[16] *Rabe v. Flores*, 338 Phil. 919, 925-926 (1997).

[17] *Bucatcat v. Bucatcat*, 380 Phil. 555, 567 (2000).

[18] *Supra* note 11; see also *Civil Service Commission v. Sta. Ana*, 435 Phil. 1 (2002).

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 123238. September 22, 2008]

PHILIPPINE AIRLINES, INCORPORATED, *petitioner, vs.* **COURT OF APPEALS and SPOUSES MANUEL S. BUNCIO and AURORA R. BUNCIO, Minors DEANNA R. BUNCIO and NIKOLAI R. BUNCIO, assisted by their Father, MANUEL S. BUNCIO, and JOSEFA REGALADO, represented by her Attorney-in-Fact, MANUEL S. BUNCIO,** *respondents*.

SYLLABUS

1. COMMERCIAL LAW; COMMON CARRIERS; MAY BE HELD LIABLE FOR BREACH OF CONTRACT OF CARRIAGE WHERE THE PASSENGER WAS NOT TRANSPORTED TO THE AGREED DESTINATION OR IN THE PROCESS OF TRANSPORTING, HE DIED OR IS INJURED. — When an airline issues a ticket to a passenger, confirmed for a particular flight on a certain date, a contract of carriage arises. The passenger has every right to expect that he be transported on that flight and on that date, and it becomes the airline's obligation to carry him and his luggage safely to the agreed destination without delay. If the passenger is not so transported or if in the process of transporting, he dies or is injured, the carrier may be held liable for a breach of contract of carriage.

2. ID.; ID.; RECOVERY OF MORAL DAMAGES IN CASE OF BREACH OF CONTRACT OF AIR CARRIAGE, WHEN PROPER. — In breach of contract of air carriage, moral damages

may be recovered where (1) the mishap results in the death of a passenger; or (2) where the carrier is guilty of fraud or bad faith; or **(3) where the negligence of the carrier is so gross and reckless as to virtually amount to bad faith**.

3. ID.; ID.; ID.; CARRIER'S INATTENTION TO AND LACK OF CARE FOR, THE INTEREST OF ITS PASSENGERS AMOUNT TO BAD FAITH AND ENTITLES THE PASSENGER TO AN AWARD OF MORAL DAMAGES. — Gross negligence implies a want or absence of or failure to exercise even slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. In *Singson v. Court of Appeals*, we ruled that a carrier's utter lack of care for and sensitivity to the needs of its passengers constitutes gross negligence and is no different from fraud, malice or bad faith. Likewise, in *Philippine Airlines, Inc. v. Court of Appeals*, we held that a carrier's inattention to, and lack of care for, the interest of its passengers who are entitled to its utmost consideration, particularly as to their convenience, amount to bad faith and entitles the passenger to an award of moral damages.

4. ID.; ID.; EXTRAORDINARY STANDARD OF CARE IS REQUIRED FROM COMMON CARRIERS. — It is worth emphasizing that petitioner, as a common carrier, is bound by law to exercise extraordinary diligence and utmost care in ensuring for the safety and welfare of its passengers with due regard for all the circumstances. The negligent acts of petitioner signified more than inadvertence or inattention and thus constituted a radical departure from the extraordinary standard of care required of common carriers.

5. CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES; AWARD THEREOF, WHEN WARRANTED. — Article 2232 of the Civil Code provides that exemplary damages may be awarded in a breach of contract if the defendant acted in a wanton, fraudulent, reckless, oppressive or malevolent manner. In addition, Article 2234 thereof states that the plaintiff must show that he is entitled to moral damages before he can be awarded exemplary damages. As we have earlier found, petitioner breached its contract of carriage with private respondents, and it acted recklessly and malevolently in transporting Deanna and Nikolai as unaccompanied minors and in handling their indemnity bond.

We have also ascertained that private respondents are entitled to moral damages because they have sufficiently established petitioner's gross negligence which amounted to bad faith. This being the case, the award of exemplary damages is warranted.

6. ID.; ID.; ATTORNEY'S FEES; LEGAL OR FACTUAL BASIS FOR THE AWARD THEREOF MUST BE STATED IN THE TEXT OF THE DECISION. — Current jurisprudence instructs that in awarding attorney's fees, the trial court must state the factual, legal, or equitable justification for awarding the same, bearing in mind that the award of attorney's fees is the exception, not the general rule, and it is not sound public policy to place a penalty on the right to litigate; nor should attorney's fees be awarded every time a party wins a lawsuit. The matter of attorney's fees cannot be dealt with only in the dispositive portion of the decision. The text of the decision must state the reason behind the award of attorney's fees. Otherwise, its award is totally unjustified. In the instant case, the award of attorney's fees was merely cited in the dispositive portion of the RTC decision without the RTC stating any legal or factual basis for said award. Hence, the Court of Appeals erred in sustaining the RTC's award of attorney's fees.

7. ID.; ID.; AMOUNT OF DAMAGES MUST BE FAIR, REASONABLE AND PROPORTIONATE TO THE INJURY SUFFERED. — The purpose of awarding moral damages is to enable the injured party to obtain means, diversion or amusement that will serve to alleviate the moral suffering he has undergone by reason of defendant's culpable action. On the other hand, the aim of awarding exemplary damages is to deter serious wrongdoings. Article 2216 of the Civil Code provides that assessment of damages is left to the discretion of the court according to the circumstances of each case. This discretion is limited by the principle that the amount awarded should not be palpably excessive as to indicate that it was the result of prejudice or corruption on the part of the trial court. Simply put, the amount of damages must be fair, reasonable and proportionate to the injury suffered.

8. ID.; ID.; MORAL DAMAGES AND EXEMPLARY DAMAGES; AWARD THEREOF PROPER IN CASE AT BAR. — The RTC and the Court of Appeals ordered petitioner to pay Deanna and Nikolai ₱50,000.00 each as moral damages. This amount is

reasonable considering the harrowing experience they underwent at their tender age and the danger they were exposed to when they were stranded in San Francisco. Both of them testified that they were afraid and were not able to eat and sleep during the time they were stranded in San Francisco. Likewise, the award of ₱25,000.00 each to Deanna and Nikolai as exemplary damages is fair so as to deter petitioner and other common carriers from committing similar or other serious wrongdoings. Both courts also directed petitioner to pay private respondent Aurora R. Buncio ₱75,000.00 as moral damages. This is equitable and proportionate considering the serious anxiety and mental anguish she experienced as a mother when Deanna and Nikolai were not allowed to take the connecting flight as scheduled and the fact that they were stranded in a foreign country and in the company of strangers. Private respondent Aurora R. Buncio testified that she was very fearful for the lives of Deanna and Nikolai when they were stranded in San Francisco, and that by reason thereof she suffered emotional stress and experienced upset stomach. Also, the award of ₱30,000.00 as moral damages to Mrs. Regalado is appropriate because of the serious anxiety and wounded feelings she felt as a grandmother when Deanna and Nikolai, whom she was to meet for the first time, did not arrive at the Los Angeles Airport. Mrs. Regalado testified that she was seriously worried when Deanna and Nikolai did not arrive in Los Angeles on 3 May 1980, and she was hurt when she saw the two crying upon arriving in Los Angeles on 4 May 1980. The omission of award of damages to private respondent Manuel S. Buncio was proper for lack of basis. His court testimony was rightly disregarded by the RTC because he failed to appear in his scheduled cross-examination.

9. ID.; ID.; INTEREST; 6% INTEREST ON THE AMOUNT OF DAMAGES IMPOSED SHALL BE IMPOSED FOR BREACH OF AN OBLIGATION NOT CONSTITUTING A LOAN OR FORBEARANCE OF MONEY. — On another point, we held in *Eastern Shipping Lines, Inc. v. Court of Appeals*, that 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 rate of 6% per annum. We further declared that when the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether it is a loan/forbearance of money or not, shall be 12% per annum

from such finality until its satisfaction, this *interim* period being deemed to be then equivalent to a forbearance of credit. In the instant case, petitioner's obligation arose from a contract of carriage and not from a loan or forbearance of money. Thus, an interest of 6% per annum should be imposed on the damages awarded, to be computed from the time of the extra-judicial demand on 17 July 1980 up to the finality of this Decision. In addition, the interest shall become 12% per annum from the finality of this Decision up to its satisfaction.

APPEARANCES OF COUNSEL

PAL Legal Affairs Department for petitioner.
Lacas Lao & Associates for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before Us is a Petition for Review[1] on *Certiorari* under Rule 45 of the Rules of Court seeking to set aside the Decision,[2] dated 20 December 1995, of the Court of Appeals in CA-G.R. CV No. 26921 which affirmed *in toto* the Decision,[3] dated 2 April 1990, of the Quezon City Regional Trial Court (RTC), Branch 90, in Civil Case No. Q-33893.

The undisputed facts are as follows:

Sometime before 2 May 1980, private respondents spouses Manuel S. Buncio and Aurora R. Buncio purchased from petitioner Philippine Airlines, Incorporated, two plane tickets[4] for their two minor children, Deanna R. Buncio (Deanna), then 9 years of age, and Nikolai R. Buncio (Nikolai), then 8 years old. Since

[1] *Rollo*, pp. 24-31.

[2] Penned by Associate Justice Cancio C. Garcia (now a retired Associate Justice of this Court) with Associate Justices Eugenio S. Labitoria and Portia Alino-Hormachuelos, concurring; *rollo*, pp. 7-19.

[3] Penned by Presiding Judge Abraham P. Vera; Records, pp. 332-337.

[4] Exhibit A, records p. 311.

Deanna and Nikolai will travel as unaccompanied minors, petitioner required private respondents to accomplish, sign and submit to it an indemnity bond.[5] Private respondents complied with this requirement. For the purchase of the said two plane tickets, petitioner agreed to transport Deanna and Nikolai on 2 May 1980 from Manila to San Francisco, California, United States of America (USA), through one of its planes, Flight 106. Petitioner also agreed that upon the arrival of Deanna and Nikolai in San Francisco Airport on 3 May 1980, it would again transport the two on that same day through a connecting flight from San Francisco, California, USA, to Los Angeles, California, USA, *via* another airline, United Airways 996. Deanna and Nikolai then will be met by their grandmother, Mrs. Josefa Regalado (Mrs. Regalado), at the Los Angeles Airport on their scheduled arrival on 3 May 1980.

On 2 May 1980, Deanna and Nikolai boarded Flight 106 in Manila.

On 3 May 1980, Deanna and Nikolai arrived at the San Francisco Airport. However, the staff of United Airways 996 refused to take aboard Deanna and Nikolai for their connecting flight to Los Angeles because petitioner's personnel in San Francisco could not produce the indemnity bond accomplished and submitted by private respondents. The said indemnity bond was lost by petitioner's personnel during the previous stop-over of Flight 106 in Honolulu, Hawaii. Deanna and Nikolai were then left stranded at the San Francisco Airport. Subsequently, Mr. Edwin Strigl (Strigl), then the Lead Traffic Agent of petitioner in San Francisco, California, USA, took Deanna and Nikolai to his residence in San Francisco where they stayed overnight.

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[5] This is a document wherein private respondents stated (1) that they made prior arrangements to have Deanna and Nikolai accompanied at the airport of departure which was Manila International Airport; (2) that upon the arrival of Deanna and Nikolai at the airport of destination which was Los Angeles Airport (California, USA), they would be met by their grandmother, Mrs. Josefa C. Regalado; and (3) that they would indemnify petitioner for losses it might sustain for the welfare of Deanna and Nikolai. (Exhibit B, records p. 325.)

Meanwhile, Mrs. Regalado and several relatives waited for the arrival of Deanna and Nikolai at the Los Angeles Airport. When United Airways 996 landed at the Los Angeles Airport and its passengers disembarked, Mrs. Regalado sought Deanna and Nikolai but she failed to find them. Mrs. Regalado asked a stewardess of the United Airways 996 if Deanna and Nikolai were on board but the stewardess told her that they had no minor passengers. Mrs. Regalado called private respondents and informed them that Deanna and Nikolai did not arrive at the Los Angeles Airport. Private respondents inquired about the location of Deanna and Nikolai from petitioner's personnel, but the latter replied that they were still verifying their whereabouts.

On the morning of 4 May 1980, Strigl took Deanna and Nikolai to San Francisco Airport where the two boarded a Western Airlines plane bound for Los Angeles. Later that day, Deanna and Nikolai arrived at the Los Angeles Airport where they were met by Mrs. Regalado. Petitioner's personnel had previously informed Mrs. Regalado of the late arrival of Deanna and Nikolai on 4 May 1980.

On 17 July 1980, private respondents, through their lawyer, sent a letter[6] to petitioner demanding payment of 1 million pesos as damages for the gross negligence and inefficiency of its employees in transporting Deanna and Nikolai. Petitioner did not heed the demand.

On 20 November 1981, private respondents filed a complaint[7] for damages against petitioner before the RTC. Private respondents impleaded Deanna, Nikolai and Mrs. Regalado as their co-plaintiffs. Private respondents alleged that Deanna and Nikolai were not able to take their connecting flight from San Francisco to Los Angeles as scheduled because the required indemnity bond was lost on account of the gross negligence and malevolent conduct of petitioner's personnel. As a consequence thereof, Deanna and Nikolai were stranded in

[6] Records, pp. 326-327.

[7] *Id.* at 10-17.

San Francisco overnight, thereby exposing them to grave danger. This dilemma caused Deanna, Nikolai, Mrs. Regalado and private respondents to suffer serious anxiety, mental anguish, wounded feelings, and sleepless nights. Private respondents prayed the RTC to render judgment ordering petitioner: (1) to pay Deanna and Nikolai ₱100,000.00 each, or a total of ₱200,000.00, as moral damages; (2) to pay private respondents ₱500,000.00 each, or a total of ₱1,000,000.00, as moral damages; (3) to pay Mrs. Regalado ₱100,000.00 as moral damages; (4) to pay Deanna, Nikolai, Mrs. Regalado and private respondents ₱50,000.00 each, or a total of ₱250,000.00 as exemplary damages; and (5) to pay attorney's fees equivalent to 25% of the total amount of damages mentioned plus costs of suit.

In its answer[8] to the complaint, petitioner admitted that Deanna and Nikolai were not allowed to take their connecting flight to Los Angeles and that they were stranded in San Francisco. Petitioner, however, denied that the loss of the indemnity bond was caused by the gross negligence and malevolent conduct of its personnel. Petitioner averred that it always exercised the diligence of a good father of the family in the selection, supervision and control of its employees. In addition, Deanna and Nikolai were personally escorted by Strigl, and the latter exerted efforts to make the connecting flight of Deanna and Nikolai to Los Angeles possible. Further, Deanna and Nikolai were not left unattended from the time they were stranded in San Francisco until they boarded Western Airlines for a connecting flight to Los Angeles. Petitioner asked the RTC to dismiss the complaint based on the foregoing averments.

After trial, the RTC rendered a Decision on 2 April 1990 holding petitioner liable for damages for breach of contract of carriage. It ruled that petitioner should pay moral damages for its inattention and lack of care for the welfare of Deanna and Nikolai which, in effect, amounted to bad faith, and for the agony brought by the incident to private respondents and Mrs. Regalado. It also held that petitioner should pay exemplary

[8] *Id.* at 25-30.

damages by way of example or correction for the public good under Article 2229 and 2232 of the Civil Code, plus attorney's fees and costs of suit. In sum, the RTC ordered petitioner: (1) to pay Deanna and Nikolai ₱50,000.00 each as moral damages and ₱25,000.00 each as exemplary damages; (2) to pay private respondent Aurora R. Buncio, as mother of Deanna and Nikolai, ₱75,000.00 as moral damages; (3) to pay Mrs. Regalado, as grandmother of Deanna and Nikolai, ₱30,000.00 as moral damages; and (4) to pay an amount of ₱38,250.00 as attorney's fees and the costs of suit. Private respondent Manuel S. Buncio was not awarded damages because his court testimony was disregarded, as he failed to appear during his scheduled cross-examination. The dispositive portion of the RTC Decision reads:

> ACCORDINGLY, judgment is hereby rendered:
>
> 1. Ordering defendant Philippines Airlines, Inc. to pay Deanna R. Buncio and Nikolai R. Buncio the amount of ₱50,000.00 each as moral damages; and the amount of ₱25,000.00 each as exemplary damages;
>
> 2. Ordering said defendant to pay the amount of ₱75,000.00 to Aurora R. Buncio, mother of Deanna and Nikolai, as moral damages; and the amount of ₱30,000.00 to Josefa Regalado, grandmother of Deanna and Nikolai, as moral damages; and
>
> 3. Ordering said defendant to pay ₱38,250.00 as attorney's fees and also the costs of the suit.[9]

Petitioner appealed to the Court of Appeals. On 20 December 1995, the appellate court promulgated its Decision affirming *in toto* the RTC Decision, thus:

> WHEREFORE, the decision appealed is hereby AFFIRMED *in toto* and the instant appeal DISMISSED.[10]

Petitioner filed the instant petition before us assigning the following errors [11]:

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[9] Records, p. 337.

[10] *Id.* at 19.

[11] *Rollo*, p. 168.

I.

THE COURT OF APPEALS ERRED IN SUSTAINING THE RTC AWARD OF MORAL DAMAGES.

II.

THE COURT OF APPEALS ERRED IN SUSTAINING THE RTC AWARD OF EXEMPLARY DAMAGES.

III.

THE COURT OF APPEALS ERRED IN SUSTAINING THE RTC AWARD OF ATTORNEY'S FEES AND ORDER FOR PAYMENT OF COSTS.

Anent the first assigned error, petitioner maintains that moral damages may be awarded in a breach of contract of air carriage only if the mishap results in death of a passenger or if the carrier acted fraudulently or in bad faith, that is, by breach of a known duty through some motive of interest or ill will, some dishonest purpose or conscious doing of wrong; if there was no finding of fraud or bad faith on its part; if, although it lost the indemnity bond, there was no finding that such loss was attended by ill will, or some motive of interest, or any dishonest purpose; and if there was no finding that the loss was deliberate, intentional or consciously done.[12]

Petitioner also claims that it cannot be entirely blamed for the loss of the indemnity bond; that during the stop-over of Flight 106 in Honolulu, Hawaii, USA, it gave the indemnity bond to the immigration office therein as a matter of procedure; that the indemnity bond was in the custody of the said immigration office when Flight 106 left Honolulu, Hawaii, USA; that the said immigration office failed to return the indemnity bond to petitioner's personnel before Flight 106 left Honolulu, Hawaii, USA; and that even though it was negligent in overlooking the indemnity bond, there was still no liability on its part because mere carelessness of the carrier does not per se constitute or justify an inference of malice or bad faith.[13]

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[12] Records, pp. 169-170.

[13] *Id.* at 170-171.

When an airline issues a ticket to a passenger, confirmed for a particular flight on a certain date, a contract of carriage arises. The passenger has every right to expect that he be transported on that flight and on that date, and it becomes the airline's obligation to carry him and his luggage safely to the agreed destination without delay. If the passenger is not so transported or if in the process of transporting, he dies or is injured, the carrier may be held liable for a breach of contract of carriage.[14]

Private respondents and petitioner entered into a contract of air carriage when the former purchased two plane tickets from the latter. Under this contract, petitioner obliged itself (1) to transport Deanna and Nikolai, as unaccompanied minors, on 2 May 1980 from Manila to San Francisco through one of its planes, Flight 106; and (2) upon the arrival of Deanna and Nikolai in San Francisco Airport on 3 May 1980, to transport them on that same day from San Francisco to Los Angeles *via* a connecting flight on United Airways 996. As it was, petitioner failed to transport Deanna and Nikolai from San Francisco to Los Angeles on the day of their arrival at San Francisco. The staff of United Airways 996 refused to take aboard Deanna and Nikolai for their connecting flight to Los Angeles because petitioner's personnel in San Francisco could not produce the indemnity bond accomplished and submitted by private respondents. Thus, Deanna and Nikolai were stranded in San Francisco and were forced to stay there overnight. It was only on the following day that Deanna and Nikolai were able to leave San Francisco and arrive at Los Angeles *via* another airline, Western Airlines. Clearly then, petitioner breached its contract of carriage with private respondents.

In breach of contract of air carriage, moral damages may be recovered where (1) the mishap results in the death of a passenger; or (2) where the carrier is guilty of fraud or bad

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[14] *Japan Airlines v. Asuncion*, G.R. No. 161730, 28 January 2005, 449 SCRA 544, 548.

faith; or **(3) where the negligence of the carrier is so gross and reckless as to virtually amount to bad faith.**[15]

Gross negligence implies a want or absence of or failure to exercise even slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[16]

In *Singson v. Court of Appeals*,[17] we ruled that a carrier's utter lack of care for and sensitivity to the needs of its passengers constitutes gross negligence and is no different from fraud, malice or bad faith. Likewise, in *Philippine Airlines, Inc. v. Court of Appeals*,[18] we held that a carrier's inattention to, and lack of care for, the interest of its passengers who are entitled to its utmost consideration, particularly as to their convenience, amount to bad faith and entitles the passenger to an award of moral damages.

It was established in the instant case that since Deanna and Nikolai would travel as unaccompanied minors, petitioner required private respondents to accomplish, sign and submit to it an indemnity bond. Private respondents complied with this requirement. Petitioner gave a copy of the indemnity bond to one of its personnel on Flight 106, since it was required for the San Francisco-Los Angeles connecting flight of Deanna and Nikolai. Petitioner's personnel lost the indemnity bond during the stop-over of Flight 106 in Honolulu, Hawaii. Thus, Deanna and Nikolai were not allowed to take their connecting flight.

Evidently, petitioner was fully aware that Deanna and Nikolai would travel as unaccompanied minors and, therefore, should be specially taken care of considering their tender age and

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[15] *Singson v. Court of Appeals*, 346 Phil. 831, 838-839 (1997); *China Airlines v. Chiok*, 455 Phil. 169, 193 (2003); *Villanueva v. Salvador*, G.R. No. 139436, 25 January 2006, 480 SCRA 39, 49.

[16] *BPI Investment Corporation v. D.G. Carreon Commercial Corporation*, 422 Phil. 367, 379 (2001).

[17] *Supra* note 15 at 163.

[18] 326 Phil. 823 (1996).

delicate situation. Petitioner also knew well that the indemnity bond was required for Deanna and Nikolai to make a connecting flight from San Francisco to Los Angeles, and that it was its duty to produce the indemnity bond to the staff of United Airways 996 so that Deanna and Nikolai could board the connecting flight. Yet, despite knowledge of the foregoing, it did not exercise utmost care in handling the indemnity bond resulting in its loss in Honolulu, Hawaii. This was the proximate cause why Deanna and Nikolai were not allowed to take the connecting flight and were thus stranded overnight in San Francisco. Further, petitioner discovered that the indemnity bond was lost only when Flight 106 had already landed in San Francisco Airport and when the staff of United Airways 996 demanded the indemnity bond. This only manifests that petitioner did not check or verify if the indemnity bond was in its custody before leaving Honolulu, Hawaii for San Francisco.

The foregoing circumstances reflect petitioner's utter lack of care for and inattention to the welfare of Deanna and Nikolai as unaccompanied minor passengers. They also indicate petitioner's failure to exercise even slight care and diligence in handling the indemnity bond. Clearly, the negligence of petitioner was so gross and reckless that it amounted to bad faith.

It is worth emphasizing that petitioner, as a common carrier, is bound by law to exercise extraordinary diligence and utmost care in ensuring for the safety and welfare of its passengers with due regard for all the circumstances.[19] The negligent acts of petitioner signified more than inadvertence or inattention and thus constituted a radical departure from the extraordinary standard of care required of common carriers.

Petitioner's claim that it cannot be entirely blamed for the loss of the indemnity bond because it gave the indemnity bond to the immigration office of Honolulu, Hawaii, as a matter of procedure during the stop-over, and the said immigration office failed to return the indemnity bond to petitioner's personnel

[19] Articles 1733 and 1755 of the New Civil Code.

before Flight 106 left Honolulu, Hawaii, deserves scant consideration. It was petitioner's obligation to ensure that it had the indemnity bond in its custody before leaving Honolulu, Hawaii for San Francisco. Petitioner should have asked for the indemnity bond from the immigration office during the stop-over instead of partly blaming the said office later on for the loss of the indemnity bond. Petitioner's insensitivity on this matter indicates that it fell short of the extraordinary care that the law requires of common carriers.

Petitioner, nonetheless, insists that the following circumstances negate gross negligence on its part: (1) Strigl requested the staff of United Airways 996 to allow Deanna and Nikolai to board the plane even without the indemnity bond; (2) Strigl took care of the two and brought them to his house upon refusal of the staff of the United Airways 996 to board Deanna and Nikolai; (3) private respondent Aurora R. Buncio and Mrs. Regalado were duly informed of Deanna and Nikolai's predicament; and (4) Deanna and Nikolai were able to make a connecting flight *via* an alternative airline, Western Airlines.[20] We do not agree. It was petitioner's duty to provide assistance to Deanna and Nikolai for the inconveniences of delay in their transportation. These actions are deemed part of their obligation as a common carrier, and are hardly anything to rave about.[21]

Apropos the second and third assigned error, petitioner argues that it was not liable for exemplary damages because there was no wanton, fraudulent, reckless, oppressive, or malevolent manner on its part. Further, exemplary damages may be awarded only if it is proven that the plaintiff is entitled to moral damages. Petitioner contends that since there was no proof that private respondents were entitled to moral damages, then they are also not entitled to exemplary damages.[22]

Petitioner also contends that no premium should be placed on the right to litigate; that an award of attorney's fees and

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[20] Records, pp. 171-175.

[21] *Philippine Airlines, Inc. v. Court of Appeals, supra* note 18 at 837.

[22] *Rollo*, pp. 175-176.

order of payment of costs must be justified in the text of the decision; that such award cannot be imposed by mere conclusion without supporting explanation; and that the RTC decision does not provide any justification for the award of attorney's fees and order of payment of costs.[23]

Article 2232 of the Civil Code provides that exemplary damages may be awarded in a breach of contract if the defendant acted in a wanton, fraudulent, reckless, oppressive or malevolent manner. In addition, Article 2234 thereof states that the plaintiff must show that he is entitled to moral damages before he can be awarded exemplary damages.

As we have earlier found, petitioner breached its contract of carriage with private respondents, and it acted recklessly and malevolently in transporting Deanna and Nikolai as unaccompanied minors and in handling their indemnity bond. We have also ascertained that private respondents are entitled to moral damages because they have sufficiently established petitioner's gross negligence which amounted to bad faith. This being the case, the award of exemplary damages is warranted.

Current jurisprudence[24] instructs that in awarding attorney's fees, the trial court must state the factual, legal, or equitable justification for awarding the same, bearing in mind that the award of attorney's fees is the exception, not the general rule, and it is not sound public policy to place a penalty on the right to litigate; nor should attorney's fees be awarded every time a party wins a lawsuit. The matter of attorney's fees cannot be dealt with only in the dispositive portion of the decision. The text of the decision must state the reason behind the award of attorney's fees. Otherwise, its award is totally unjustified.[25]

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[23] *Id.* at 176-177.

[24] *Serrano v. Gutierrez*, G.R. No. 162366, 10 November 2006, 506 SCRA 712, 724; *Buñing v. Santos*, G.R. No. 152544, 19 September 2006, 502 SCRA 315, 321-323; *Ballesteros v. Abion*, G.R. No. 143361, 9 February 2006, 482 SCRA 23, 39-40; *Villanueva v. Salvador*, *supra* note 15 at 51-52.

[25] *Ballesteros v. Abion*, *id.* at 40.

In the instant case, the award of attorney's fees was merely cited in the dispositive portion of the RTC decision without the RTC stating any legal or factual basis for said award. Hence, the Court of Appeals erred in sustaining the RTC's award of attorney's fees.

Since we have already resolved that the RTC and Court of Appeals were correct in awarding moral and exemplary damages, we shall now determine whether their corresponding amounts were proper.

The purpose of awarding moral damages is to enable the injured party to obtain means, diversion or amusement that will serve to alleviate the moral suffering he has undergone by reason of defendant's culpable action.[26] On the other hand, the aim of awarding exemplary damages is to deter serious wrongdoings.[27]

Article 2216 of the Civil Code provides that assessment of damages is left to the discretion of the court according to the circumstances of each case. This discretion is limited by the principle that the amount awarded should not be palpably excessive as to indicate that it was the result of prejudice or corruption on the part of the trial court.[28] Simply put, the amount of damages must be fair, reasonable and proportionate to the injury suffered.

The RTC and the Court of Appeals ordered petitioner to pay Deanna and Nikolai ₱50,000.00 each as moral damages. This amount is reasonable considering the harrowing experience they underwent at their tender age and the danger they were exposed to when they were stranded in San Francisco. Both of them testified that they were afraid and were not able to eat and sleep during the time they were stranded in San Francisco.[29] Likewise, the award of ₱25,000.00 each to Deanna and Nikolai

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[26] *Zenith Insurance Corporation v. Court of Appeals*, G.R. No. 85296, 14 May 1990, 185 SCRA 398, 402-403.

[27] *People v. Catubig*, 416 Phil. 102, 118 (2001).

[28] *Singson v. Court of Appeals*, *supra* note 15 at 163.

[29] TSN, 12 December 1982, pp. 2-5

as exemplary damages is fair so as to deter petitioner and other common carriers from committing similar or other serious wrongdoings.

Both courts also directed petitioner to pay private respondent Aurora R. Buncio ₱75,000.00 as moral damages. This is equitable and proportionate considering the serious anxiety and mental anguish she experienced as a mother when Deanna and Nikolai were not allowed to take the connecting flight as scheduled and the fact that they were stranded in a foreign country and in the company of strangers. Private respondent Aurora R. Buncio testified that she was very fearful for the lives of Deanna and Nikolai when they were stranded in San Francisco, and that by reason thereof she suffered emotional stress and experienced upset stomach.[30] Also, the award of ₱30,000.00 as moral damages to Mrs. Regalado is appropriate because of the serious anxiety and wounded feelings she felt as a grandmother when Deanna and Nikolai, whom she was to meet for the first time, did not arrive at the Los Angeles Airport. Mrs. Regalado testified that she was seriously worried when Deanna and Nikolai did not arrive in Los Angeles on 3 May 1980, and she was hurt when she saw the two crying upon arriving in Los Angeles on 4 May 1980.[31] The omission of award of damages to private respondent Manuel S. Buncio was proper for lack of basis. His court testimony was rightly disregarded by the RTC because he failed to appear in his scheduled cross-examination.[32]

On another point, we held in *Eastern Shipping Lines, Inc. v. Court of Appeals*,[33] that 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 rate of 6% per annum. We further declared that when the judgment of the court awarding a sum of money becomes final and

[30] TSN, 26 April 1985, p. 19.

[31] TSN, 23 May 1985, pp. 22-23.

[32] Records, pp. 55 & 131.

[33] G.R. No. 97412, 12 July 1994, 234 SCRA 78, 95-97.

executory, the rate of legal interest, whether it is a loan/ forbearance of money or not, shall be 12% per annum from such finality until its satisfaction, this *interim* period being deemed to be then equivalent to a forbearance of credit.

In the instant case, petitioner's obligation arose from a contract of carriage and not from a loan or forbearance of money. Thus, an interest of 6% per annum should be imposed on the damages awarded, to be computed from the time of the extra-judicial demand on 17 July 1980 up to the finality of this Decision. In addition, the interest shall become 12% per annum from the finality of this Decision up to its satisfaction.

Finally, the records[34] show that Mrs. Regalado died on 1 March 1995 at the age of 74, while Deanna passed away on 8 December 2003 at the age of 32. This being the case, the foregoing award of damages plus interests in their favor should be given to their respective heirs.

WHEREFORE, the Petition is *PARTLY* GRANTED. The Decision of the Court of Appeals, dated 20 December 1995, in CA-G.R. CV No. 26921, is hereby *AFFIRMED* with the following *MODIFICATIONS*: (1) the award of attorney's fees is deleted; (2) an interest of 6% per annum is imposed on the damages awarded, to be computed from 17 July 1980 up to the finality of this Decision; and (3) an interest of 12% per annum is also imposed from the finality of this Decision up to its satisfaction. The damages and interests granted in favor of deceased Mrs. Regalado and deceased Deanna are hereby awarded to their respective heirs. Costs against petitioner.

SO ORDERED.

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

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[34] *Rollo,* pp. 163 & 331.

FIRST DIVISION

[G.R. No. 158642. September 22, 2008]

THE ESTATE OF DON FILEMON Y. SOTTO, represented by its duly designated Administrator, SIXTO SOTTO PAHANG, JR., *petitioner, vs.* **MATILDE S. PALICTE, substituted by her heirs, VIDYA PALICTE BRIOL, JUSTICIA PALICTE JUMAMIL, PATRICIA PALICTE PEREZ, FIDES PALICTE, PLARIDEL PATRICIO PALICTE, CHRISTIAN MERITO P. ALEGADO, KRISHNAMURTI P. ALEGADO, and KRISTOFFER P. ALEGADO, and the HON. AGAPITO L. HONTANOSAS, JR., Presiding Judge, Regional Trial Court of Cebu City, Branch 16,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; *RES JUDICATA*; CONCEPT THEREOF, EXPLAINED. — We find the petition without merit. We hold that the present case is barred by prior judgments. The principle of *res judicata* in the concept of bar by prior judgment is provided under Section 47(a), Rule 39 of the Rules of Court. xxx *Res judicata* or bar by prior judgment means that when a right or fact had already been judicially tried on the merits and determined by a court of competent jurisdiction, the final judgment or order shall be conclusive upon the parties and those in privity with them and constitutes an absolute bar to subsequent actions involving the same claim, demand or cause of action. *Res judicata* promotes the public policy and sound practice that stability should be accorded to final judgments and orders; otherwise, there will be no end to litigation. Thus, even at the risk of occasional errors, judgments of courts should become final at some definite time fixed by law and that parties should not be allowed to litigate the same issues over again.

2. ID.; ID.; ID.; REQUISITES; PRESENT IN CASE AT BAR.— The requisites for *res judicata* or bar by prior judgment are: (1) The former judgment or order must be final; (2) It must

be a judgment on the merits; (3) It must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4) There must be between the first and second actions, identity of parties, subject matter, and cause of action. All the elements of *res judicata* are present in this case. The estate's motion in the probate court, to require Matilde to turn over to the estate the subject properties, involved the same properties which were the subject matter of previous judgments and final order.

3. ID.; ID.; ID.; IDENTITY OF PARTIES; ABSOLUTE IDENTITY OF PARTIES IS NOT REQUIRED. — There is substantial identity of parties considering that the present case and the previous cases involve the heirs of Filemon. There is identity of parties not only when the parties in the cases are the same, but also between those in privity with them, such as between their successors-in-interest. Absolute identity of parties is not required, and where a shared identity of interest is shown by the identity of relief sought by one person in a prior case and the second person in a subsequent case, such was deemed sufficient.

4. ID.; ID.; ID.; ID.; IDENTITY OF CAUSES OF ACTION, WHEN PRESENT.— There is identity of causes of action since the issues raised in all the cases essentially involve the claim of ownership over the subject properties. Even if the forms or natures of the actions are different, there is still identity of causes of action when the same facts or evidence support and establish the causes of action in the case at bar and in the previous cases.

5. ID.; ID.; ID.; A PARTY CANNOT EVADE THE APPLICATION OF THE PRINCIPLE BY THE MERE EXPEDIENCY OF VARYING THE FORM OF ACTION OR THE RELIEF SOUGHT, OR ADOPTING A DIFFERENT METHOD OF PRESENTING THE ISSUE, OR PLEADING JUSTIFIABLE CIRCUMSTANCES.— Hence, the probate court was correct in setting aside the motion to require Matilde to turn over the subject properties to the estate considering that Matilde's title and ownership over the subject properties have already been upheld in previous final decisions and order. This Court will not countenance the estate's ploy to countermand the previous decisions sustaining Matilde's right over the subject properties. A party cannot evade the

application of the principle of *res judicata* by the mere expediency of varying the form of action or the relief sought, or adopting a different method of presenting the issue, or by pleading justifiable circumstances.

APPEARANCES OF COUNSEL

M.B. Mahinay and Associates for petitioner.
J.B. Jovy C. Bernabe for Heirs of Late Matilde S. Palicte.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the Orders dated 20 December 2002 and 2 June 2003 issued by the Regional Trial Court of Cebu City, Branch 16, in SP. PROC. No. 2706-R.

The Facts

The late Filemon Y. Sotto (Filemon) had four children, namely, Marcelo Sotto (Marcelo), Pascuala Sotto Pahang (Pascuala), Miguel Barcelona (Miguel), and Matilde S. Palicte (Matilde). Marcelo was the administrator of the estate of Filemon (estate).

In June 1967, Pilar Teves and the other heirs of Carmen Rallos, the wife of Filemon, filed with the Regional Trial Court of Cebu City, Branch 16, a complaint against the estate for the recovery of properties which Filemon inherited from his wife. The complaint also prayed for payment of damages. The case was docketed as Civil Case No. R-10027. Judgment was rendered in favor of Pilar Teves and the other heirs of Carmen Rallos. The judgment included an award for damages in the amount of ₱233,963.65. To satisfy the judgment on damages, six parcels of land and two residential houses from the estate were levied upon and eventually sold at a public auction on 5

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

July 1979. Within the period for redemption, Matilde, as one of the heirs of Filemon, redeemed four lots, namely, Lot Nos. 1049, 1051, 1052, and 2179-C (subject properties). On 9 July 1980, the Deputy Provincial Sheriff executed a Deed of Redemption, which was approved by the Clerk of Court. Meanwhile, Pascuala redeemed one of the two residential houses which was located in Lahug, Cebu City.

On 24 July 1980, Matilde filed with the trial court a motion to transfer to her name the titles to the subject properties. However, the trial court denied the motion and declared the Deed of Redemption null and void. The trial court held that although Matilde is one of the declared heirs in SP. PROC. No. 2706-R, she does not qualify as a successor-in-interest who may redeem the subject properties. Matilde filed a petition for review with this Court. On 21 September 1987, this Court in *Palicte v. Ramolete and Sotto*[2] granted the petition and reversed the trial court's order declaring the Deed of Redemption null and void. This Court gave the other heirs a period of six months to join as co-redemptioners in the redemption made by Matilde before the motion to transfer titles to Matilde's name may be granted.

The other heirs failed to join as co-redemptioners within the six-month period granted. Thus, on 5 October 1989, the Regional Trial Court of Cebu City, Branch 16, issued an Order in Civil Case No. R-10027 granting Matilde's motion and directing the Register of Deeds to register the Deed of Redemption and issue new certificates of title for the subject properties in the name of Matilde.[3]

On 25 November 1992, Pascuala signed a document, renouncing her rights over the subject properties covered by the Deed of Redemption. However, on 23 September 1996, Pascuala filed a Complaint for Nullification of Waiver of Rights before the Regional Trial Court of Cebu City, Branch 8, which was docketed as Civil Case No. CEB-19338. The trial court

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[2] G.R. No. 55076, 21 September 1987, 154 SCRA 132; *rollo*, pp. 55-65.

[3] *Rollo*, pp. 192-193.

dismissed the complaint on the ground of laches. Pascuala filed a Petition for *Certiorari* with the Court of Appeals, docketed as CA-G.R. SP No. 44660, which was dismissed on 21 November 1997. Pascuala filed a petition for review with this Court, docketed as G.R. No. 131722, which was denied on 4 February 1998 for failure to pay docket fees and because the certification against forum shopping was merely signed by Pascuala's counsel.[4]

In November 1998, the heirs of Miguel filed with the Regional Trial Court of Cebu City, Branch 16, a Motion for Reconsideration of the Order dated 5 October 1989 in Civil Case No. R-10027, praying that the order be set aside in order to include them as co-redemptioners of the subject properties redeemed by Matilde. The trial court denied the motion in an Order dated 25 April 2000 on the grounds of laches and *res judicata*. The heirs of Miguel then filed a petition for *certiorari* and prohibition with the Court of Appeals, which was docketed as CA-G.R. SP No. 60225. On 10 January 2002, the Court of Appeals dismissed the petition and affirmed the trial court's order. The heirs of Miguel filed a petition for *certiorari* with this Court, docketed as G.R. No. 154585, which was dismissed on 23 September 2002 for failure to file petition within the period fixed and to show that the appellate court's judgment was tainted with grave abuse of discretion.

Meanwhile, on 10 September 1999, the heirs of Marcelo and the heirs of Miguel filed against Matilde an action for partition of the subject properties docketed as Civil Case No. CEB-24293, before the Regional Trial Court of Cebu City, Branch 20. The heirs of Pascuala did not join the complaint. On 15 November 1999, the trial court dismissed the case. On appeal, the Court of Appeals in CA-G.R. CV No. 68239 dismissed the appeal on 29 November 2002, holding that the case was barred by prior judgment.[5]

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[4] *Id.* at 194-195.

[5] *Id.* at 15-28.

This case originated from the motion filed by the estate, represented by estate's administrator in SP. PROC. No. 2706-R, entitled *Intestate Estate of the Deceased Don Filemon Sotto*, to require Matilde to turn over and account for the subject properties in her possession which were allegedly owned by the estate. On 23 July 2002, the probate court, Regional Trial Court of Cebu City, Branch 16, issued an Order[6] granting the estate's motion to require Matilde to turn over the subject properties to the estate. The probate court ruled that while the redemption of the subject properties was made under the name of Matilde, it was the estate which provided the funds to redeem the properties. The probate court held that Matilde redeemed the subject properties in behalf of all the heirs of Filemon. Citing Article 1455[7] of the Civil Code, the probate court held that as trustee of the subject properties, Matilde should return and account for the subject properties to the estate. Matilde filed a motion for reconsideration, which the probate court granted in its 20 December 2002 Order.[8] The estate moved for reconsideration, which the probate court denied in its 2 June 2003 Order[9] The

[6] *Id.* at 77-90. The dispositive portion of the 23 July 2002 Order reads:

WHEREFORE, Oppositor [Matilde], is hereby directed as follows:

(a) To turn over the possession of Lot Nos. 1049, 1051, and 1052 as described in the motion, to the estate, through its administrator;

(b) To execute a Deed of Conveyance with respect to Lot Nos. 1049 and 1052, whose titles were already transferred to the name of Oppositor, in favor of the estate;

(c) To account all the rentals collected or received from the tenants or occupants of Lot Nos. 1049, 1051, and 1052;

(d) To account the proceeds of the sale over Lot No. 2179-C.

SO ORDERED.

[7] Article 1455 of the Civil Code reads:

Art. 1455. When any trustee, guardian or other person holding a fiduciary relationship uses trust funds for the purchase of property and causes the conveyance to be made to him or to a third person, a trust is established by operation of law in favor of the person to whom the funds belong.

[8] *Rollo*, pp. 51-52.

[9] *Id.* at 54.

estate then filed with this Court a petition for review, seeking to set aside the orders dated 20 December 2002 and 2 June 2003 issued by the probate court.

The Probate Court's Ruling

In setting aside its Order dated 23 July 2002, the probate court explained:

> The Court takes judicial notice of the Decision of the Court of Appeals in CA-G.R. CV No. 68239 promulgated on November 29, 2002 and which involves the same four (4) parcels of land subject matter of the questioned Order of July 23, 2002. The said CA decision favored Matilde G. Palicte.
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> x x x x x x x x x
>
> According to the Court of Appeals, any action contesting the rights of Matilde Palicte to the subject properties is barred by prior judgment namely: the judgment of the Supreme Court in CA-G.R. No. 55076 which is an offshoot of Civil Case No. R-10027 as well as the judgment in CA-G.R. No. 44660 and G.R. No. 131722. All these judgments have affirmed the rights of Matilde Palicte to the subject properties.
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> xxx xxx xxx
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> This Court agrees with the observation that one and the same cause of action shall not be twice litigated. Moreover, the trial court should respect the orders or decisions of the Appellate Court.
>
> WHEREFORE, premises considered, the order dated July 23, 2002 is hereby RECONSIDERED and SET ASIDE. Consequently, the motion to require Matilde S. Palicte to turn over subject properties to the estate of Filemon Sotto filed by the estate, thru counsel, is hereby DENIED for lack of merit.[10]

The Issues

The estate raises the following issues:

1. Whether the decision of this Court, in G.R. No. 55076 is *res judicata* to the issues raised in the motion for accounting or surrender of properties filed by petitioner in the probate court; and

[10] *Id.* at 51-52.

2. Whether the decision of the Court of Appeals, in the case docketed as CA-G.R. CV No. 68239, where petitioner is not a party, and which decision is still the subject of a pending motion for reconsideration by the losing party, constitutes *res judicata* to the issues raised in the motion for accounting or surrender of properties filed by petitioner in the probate court.[11]

The Ruling of the Court

We find the petition without merit. We hold that the present case is barred by prior judgments. The principle of *res judicata* in the concept of bar by prior judgment is provided under Section 47(a), Rule 39 of the Rules of Court, thus:

> Sec. 47. Effect of judgments and final orders. – The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
>
> (a) **In case of a judgment or a final order against a specific thing,** or in respect to the probate of a will, or the administration of the estate of a deceased person, or in respect to the personal, political, or legal condition or status of a particular person or his relationship to another, **the judgment or final order is conclusive upon the title to the thing**, the will or administration, or the condition, status or relationship of the person; however, the probate of a will or granting of letters of administration shall only be *prima facie* evidence of the death of the testator or intestate; x x x (Emphasis supplied)

Res judicata or bar by prior judgment means that when a right or fact had already been judicially tried on the merits and determined by a court of competent jurisdiction, the final judgment or order shall be conclusive upon the parties and those in privity with them and constitutes an absolute bar to subsequent actions involving the same claim, demand or cause of action.[12] *Res judicata*

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[11] *Id.* at 41-42.

[12] *Heirs of Panfilo F. Abalos v. Bucal*, G.R. No. 156224, 19 February 2008, 546 SCRA 252; *Anillo v. Commission on the Settlement of Land Problems*, G.R. No. 157856, 27 September 2007, 534 SCRA 228; *Presidential Commission on Good Government v. Sandiganbayan*, G.R. No. 124772, 14 August 2007, 530 SCRA 13.

promotes the public policy and sound practice that stability should be accorded to final judgments and orders; otherwise, there will be no end to litigation.[13] Thus, even at the risk of occasional errors, judgments of courts should become final at some definite time fixed by law and that parties should not be allowed to litigate the same issues over again.[14]

The requisites[15] for *res judicata* or bar by prior judgment are:

(1) The former judgment or order must be final;

(2) It must be a judgment on the merits;

(3) It must have been rendered by a court having jurisdiction over the subject matter and the parties; and

(4) There must be between the first and second actions, identity of parties, subject matter, and cause of action.

All the elements of *res judicata* are present in this case. The estate's motion in the probate court, to require Matilde to turn over to the estate the subject properties, involved the same properties which were the subject matter of previous judgments and final order.

In G.R. No. 55076, where Matilde was the petitioner and Marcelo, the administrator of the estate, was one of the respondents, this Court upheld the validity of Matilde's redemption of the subject properties and gave the other heirs a period of six months to join as co-redemptioners. After the period lapsed and the other heirs failed to join as co-redemptioners, the trial court

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[13] *Heirs of Maura So v. Obliosca*, G.R. No. 147082, 28 January 2008, 542 SCRA 406.

[14] *Crucillo v. Office of the Ombudsman*, G.R. No. 159876, 26 June 2007, 525 SCRA 636.

[15] *Heirs of Marcelino Doronio v. Heirs of Fortunato Doronio*, G.R. No. 169454, 27 December 2007, 541 SCRA 479; *Estate of the Late Jesus Yujuico v. Republic*, G.R. No. 168661, 26 October 2007, 537 SCRA 513; *Estate of the Late Encarnacion Vda. de Panlilio v. Dizon*, G.R. No. 148777, 18 October 2007, 536 SCRA 565; *PCI Leasing & Finance, Inc. v. Dai*, G.R. No. 148980, 21 September 2007, 533 SCRA 611.

in Civil Case No. R-10027 issued an Order directing the Register of Deeds to issue new certificates of title for the subject properties in Matilde's name.

In Civil Case No. CEB-19338 for Nullification of Waiver of Rights, filed by Pascuala against Matilde, the trial court dismissed the complaint involving the subject properties, holding that Pascuala was guilty of laches and could no longer claim her right as co-redemptioner. The decision was affirmed by the Court of Appeals in CA-G.R. SP No. 44660 and by this Court in G.R. No. 131722.

In Civil Case No. R-10027, the trial court denied the motion of the heirs of Miguel to include them as co-redemptioners of the subject properties on the grounds of laches and *res judicata*. The decision was affirmed by the Court of Appeals in CA-G.R. SP No. 60225 and by this Court in G.R. No. 154585.

In Civil Case No. CEB-24293, the trial court dismissed the action for partition over the subject properties filed by the heirs of Marcelo and Miguel against Matilde on the ground of *res judicata*. The decision was affirmed by the Court of Appeals in CA-G.R. CV No. 68239 and is pending appeal in this Court.

All these judgments and order upholding Matilde's exclusive ownership of the subject properties became final and executory except the action for partition which is still pending in this Court. The judgments were on the merits and rendered by courts having jurisdiction over the subject matter and the parties.

There is substantial identity of parties considering that the present case and the previous cases involve the heirs of Filemon. There is identity of parties not only when the parties in the cases are the same, but also between those in privity with them, such as between their successors-in-interest.[16] Absolute identity of parties is not required, and where a shared identity of interest is shown by the identity of relief sought by one person in a prior case and the second person in a subsequent case, such was deemed sufficient.[17]

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[16] *Crucillo v. Office of the Ombudsman, supra* note 14.

[17] *Valencia v. RTC of Quezon City, Br. 90,* G.R. No. 82112, 3 April 1990, 184 SCRA 80.

There is identity of causes of action since the issues raised in all the cases essentially involve the claim of ownership over the subject properties. Even if the forms or natures of the actions are different, there is still identity of causes of action when the same facts or evidence support and establish the causes of action in the case at bar and in the previous cases.[18]

Hence, the probate court was correct in setting aside the motion to require Matilde to turn over the subject properties to the estate considering that Matilde's title and ownership over the subject properties have already been upheld in previous final decisions and order. This Court will not countenance the estate's ploy to countermand the previous decisions sustaining Matilde's right over the subject properties. A party cannot evade the application of the principle of *res judicata* by the mere expediency of varying the form of action or the relief sought, or adopting a different method of presenting the issue, or by pleading justifiable circumstances.[19]

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Orders dated 20 December 2002 and 2 June 2003 issued by the Regional Trial Court of Cebu City, Branch 16, in SP. PROC. No. 2706-R. Costs against petitioner.

SO ORDERED.

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

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[18] *Khemani v. Heirs of Anastacio Trinidad,* G.R. No. 147340, 13 December 2007, 540 SCRA 83; *Heirs of Igmedio Maglaque and Sabina Payawal v. Court of Appeals,* G.R. No. 163360, 8 June 2007, 524 SCRA 234.

[19] *Del Rosario v. Far East Bank & Trust Company,* G.R. No. 150134, 31 October 2007, 537 SCRA 571.

FIRST DIVISION

[G.R. No. 159220. September 22, 2008]

MA. DARLENE DIMAYUGA-LAURENA, *petitioner, vs.* **COURT OF APPEALS and JESSE LAURO LAURENA,** *respondents.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; ARTICLE 36 THEREOF; DECLARATION OF NULLITY OF MARRIAGE; PSYCHOLOGICAL INCAPACITY, ELABORATED. — The petition for declaration of nullity of marriage is anchored on Article 36 of the Family Code which provides that "[a] marriage contracted by any party who, at the time of celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization." In *Santos v. Court of Appeals*, the Court first declared that psychological incapacity must be characterized by (a) gravity; (b) judicial antecedence; and (c) incurability. It should refer to "no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage." It must be confined to "the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage." Finally, the "psychologic condition must exist at the time the marriage is celebrated." The Court explained: (a) Gravity — It must be grave and serious such that the party would be incapable of carrying out the ordinary duties required in a marriage; (b) Judicial Antecedence — It must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and (c) Incurability — It must be incurable, or even if it were otherwise, the cure would be beyond the means of the party involved.

2. ID.; ID.; GUIDELINES IN THE INTERPRETATION AND APPLICATION THEREOF; NOT SATISFIED IN THE CASE AT BAR. — In *Republic v. Court of Appeals* (Molina case),

the Court laid down the guidelines in the interpretation and application of Article 36 of the Family Code as follows: 1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Thus, our Constitution devotes an entire Article on the Family, recognizing it "as the foundation of the nation. It decrees marriage as legally inviolable," thereby protecting it from dissolution at the whim of the parties. Both the family and marriage are to be "protected" by the state. The Family Code echoes this constitutional edict on marriage and the family and emphasizes their permanence, inviolability and solidarity. 2) The *root cause* of the psychological incapacity must be: (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological not physical, although its manifestations and/or symptoms may be physical. The evidence must convince the court that the parties, or one of them, was mentally or physically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *ejusdem generis*, nevertheless such root cause must be identified as a psychological illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists. 3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage. The evidence must show that the illness was existing when the parties exchanged their "I do's." The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto. 4) Such incapacity must also be shown to be medically or clinically permanent or incurable. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, such incapacity must be relevant to the assumption of marriage obligations, not necessarily to those not related to marriage, like the exercise of a profession or

employment in a job. Hence, a pediatrician may be effective in diagnosing illnesses of children and prescribing medicine to cure them but not be psychologically capacitated to procreate, bear and raise his/her own children as an essential obligation of marriage. 5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, "mild characteriological peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as root causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage. 6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision. 7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. It is clear that Article 36 was taken by the Family Code Revision Committee from Canon 1095 of the New Code of Canon Law, which became effective in 1983 and which provides: "The following are incapable of contracting marriage: Those who are unable to assume the essential obligations of marriage due to causes of psychological nature." Since the purpose of including such provision in our Family Code is to harmonize our civil laws with the religious faith of our people, it stands to reason that to achieve such harmonization, great persuasive weight should be given to decisions of such appellate tribunal. Ideally — subject to our law on evidence — what is decreed as canonically invalid should also be decreed civilly void. Both the trial court and the Court of Appeals found that petitioner failed to satisfy the guidelines in the Molina case.

3. ID.; ID.; DECLARATION OF NULLITY OF MARRIAGE; SEXUAL INFIDELITY, REPEATED PHYSICAL VIOLENCE, HOMOSEXUALITY, MORAL PRESSURE TO COMPEL PETITIONER TO CHANGE RELIGIOUS AFFILIATION, AND

ABANDONMENT ARE NOT GROUNDS FOR DECLARING A MARRIAGE VOID.— As found by the Court of Appeals, petitioner anchored her petition on respondent's irresponsibility, infidelity, and homosexual tendencies. Petitioner likewise alleged that respondent tried to compel her to change her religious belief, and in one of their arguments, respondent also hit her. However, sexual infidelity, repeated physical violence, homosexuality, physical violence or moral pressure to compel petitioner to change religious affiliation, and abandonment are grounds for legal separation but not for declaring a marriage void.

4. ID.; ID.; ID.; ACTUAL MEDICAL, PSYCHIATRIC, OR PSYCHOLOGICAL EXAMINATION IS NOT A *CONDITION SINE QUA NON* TO A FINDING OF PSYCHOLOGICAL INCAPACITY. — In *Marcos v. Marcos*, the Court ruled that if the totalities of the evidence presented are enough to sustain a finding of psychological incapacity, there is no need to resort to the actual medical examination of the person concerned. However, while an actual medical, psychiatric, or psychological examination is not a *condition sine qua non* to a finding of psychological incapacity, an expert witness would have strengthened petitioner's claim of respondent's psychological incapacity. While the examination by a physician of a person to declare him or her psychologically incapacitated is not required, the root cause of psychological incapacity must be medically or clinically identified. In this case, the testimony of Dr. Lapuz on respondent's psychological incapacity was based only on her two-hour session with petitioner. Her testimony was characterized by the Court of Appeals as vague and ambiguous. She failed to prove psychological incapacity or identify its root cause. She failed to establish that respondent's psychological incapacity is incurable.

5. ID.; ID.; CONJUGAL PARTNERSHIP OF GAINS; PROPERTIES OF THE PARENTS OF EITHER SPOUSE DO NOT FORM PART OF A CONJUGAL PARTNERSHIP OF GAINS.— Petitioner assails the Court of Appeals' exclusion of the properties of respondent's parents from their conjugal partnership of gains. In particular, the Court of Appeals excluded the ancestral house and lot in Tanauan, Batangas; the duplex house and lot on Dayap Street, Makati City; and the properties acquired through the operations of the Jeddah Caltex Station and Jeddah Trucking. We sustain in part the Court of Appeals'

Decision. As early as 15 July 1978, respondent's parents already executed a General Power of Attorney in favor of respondent covering all their properties and businesses. Several Special Powers of Attorney were also executed by respondent's parents in favor of respondent. On 14 April 1987, respondent's parents executed a Deed of Absolute Sale covering two parcels of land located in Tanauan, Batangas, with a total area of 966 square meters, for ₱40,000. We agree with the Court of Appeals that the transfer was merely an accommodation so that petitioner, who was then working at the *Bangko Sentral ng Pilipinas* (BSP), could acquire a loan from BSP at a lower rate using the properties as collateral. The loan proceeds were used as additional capital for the Jeddah Caltex Station. As found by the Court of Appeals, the loan was still being paid from the income from the Jeddah Caltex Station. The Lease Contract on the Jeddah Caltex Station was signed by respondent as attorney-in-fact of his mother Juanita Laurena, leaving no doubt that it was the business of respondent's parents. Jeddah Trucking was established from the proceeds and income of the Jeddah Caltex Station.

APPEARANCES OF COUNSEL

Ongkiko Kalaw Manhit and Acorda Law Offices for petitioner.

Leon L. Asa for private respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review[1] assailing the 6 June 2003 Decision[2] and 1 August 2003 Resolution[3] of the Court

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 59-70. Penned by Associate Justice Josefina Guevara-Salonga with Associate Justices Roberto A. Barrios and Lucas P. Bersamin, concurring.

[3] *Id.* at 72.

of Appeals in CA-G.R. CV No. 58458. The Court of Appeals affirmed with modification the 25 March 1997 Decision of the Regional Trial Court of Makati City, Branch 140 (trial court) in Civil Case No. 93-3754.

The Antecedent Facts

Ma. Darlene Dimayuga-Laurena (petitioner) and Jesse Lauro Laurena (respondent) met in January 1983.[4] They were married on 19 December 1983 at the Church of Saint Augustine in Intramuros, Manila. They have two children, Mark Jordan who was born on 2 July 1985 and Michael Joseph who was born on 11 November 1987.

On 19 October 1993, petitioner filed a petition for declaration of nullity of marriage against respondent. Petitioner alleged that respondent was psychologically incapable of assuming the essential obligations of marriage, and the incapacity existed at the time of the celebration of the marriage although she discovered it only after the marriage.

Petitioner alleged that after their wedding, she and respondent went to Baguio City for their honeymoon. They were accompanied by a 15-year old boy, the son of one of respondent's house helpers, who respondent invited to sleep in their hotel suite. After their honeymoon, they settled in respondent's house in Better Living Subdivision, Parañaque City. Petitioner became pregnant in March 1984 but suffered a miscarriage. According to petitioner, she almost bled to death while respondent continued watching a television show at the foot of their matrimonial bed.

Petitioner alleged that respondent gave priority to the needs of his parents; would come home past midnight; and even tried to convert her to his religion. In addition, respondent was a womanizer. Petitioner lived in Batangas for three years while she tended to their gasoline station while respondent remained in Parañaque City. She discovered that respondent had been living a bachelor's life while she was away. Petitioner also noticed that respondent had feminine tendencies. They would

[4] Not 1980 as stated in the trial court's Decision.

frequently quarrel and one time, respondent hit her face. Petitioner alleged that in September 1990, respondent abandoned their conjugal home and stopped supporting their children. Petitioner alleged that respondent's psychological incapacity was manifested by his infidelity, utter neglect of his family's needs, irresponsibility, insensitivity, and tendency to lead a bachelor's life.

Petitioner further alleged that during their marriage, she and respondent acquired the following properties which were all part of their conjugal partnership of gains:

1. duplex house and lot located at 4402 Dayap Street, Palanan, Makati City;
2. house and lot on Palaspas Street, Tanauan, Batangas;
3. dealership of Jeddah Caltex Service Station in Pres. Laurel Highway, Tanauan, Batangas (Jeddah Caltex Station);
4. Personal vehicles consisting of a Mitsubishi Lancer, Safari pick-up, L-300 van and L-200 pick-up; and
5. Jeddah Trucking.

Petitioner prayed for the dissolution of the conjugal partnership of gains, for custody of their children, and for monthly support of ₱25,000.

Respondent denied petitioner's allegations. He asserted that petitioner was emotionally immature, stubborn, unstable, unreasonable, and extremely jealous. Respondent alleged that some of the properties claimed by petitioner were not part of their conjugal partnership of gains. Respondent prayed for the dismissal of the petition.

The Ruling of the Trial Court

In its Decision [5] dated 25 March 1997, the trial court denied the petition for declaration of nullity of marriage. The trial court found that the manifestations of respondent's psychological incapacity alleged by petitioner were not so serious as to consider

[5] CA *rollo*, pp. 48-57. Penned by Judge Leticia P. Morales.

respondent psychologically incapacitated. The trial court ruled that petitioner's evidence only showed that she could not get along with respondent.

The dispositive portion of the trial court's Decision reads:

> WHEREFORE, judgment is hereby rendered:
>
> a) DENYING the petition for declaration of nullity of marriage filed by Ma. Darlene Dimayuga-Laurena on the ground of psychological incapacity;
>
> b) DECLARING the conjugal partnership of gains between petitioner and respondent Dissolved with all the effects provided by law; and further AFFIRMING the petitioner's claim that all the properties acquired during the marriage are conjugal properties;
>
> c) AWARDING the custody of the children to the parent chosen by the said minors considering that they are over seven (7) years of age;
>
> Support of said minors shall be borne by the parents in proportion to their respective incomes.
>
> After this decision becomes final, let copies thereof be furnished the Register of Deeds of Tanauan, Batangas and Makati City for their information.
>
> SO ORDERED.[6]

Petitioner appealed from the trial court's Decision insofar as the trial court denied her petition for declaration of nullity of marriage. Respondent appealed from the trial court's Decision insofar as the trial court declared some of his parents' properties as part of the conjugal partnership of gains.

The Ruling of the Court of Appeals

In its 6 June 2003 Decision, the Court of Appeals affirmed with modification the trial court's Decision.

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[6] *Id.* at 57.

The Court of Appeals ruled that petitioner failed to prove that the root cause of respondent's psychological incapacity was medically or clinically identified and sufficiently proven by experts. The Court of Appeals noted that Dr. Lourdes Lapuz (Dr. Lapuz), the psychiatrist presented by petitioner, was not able to talk to respondent and simply based her conclusions and impressions of respondent from her two-hour session with petitioner. The Court of Appeals ruled that Dr. Lapuz's testimony was vague and ambiguous on the matter of respondent's personality disorder which would render him psychologically incapacitated. The Court of Appeals further ruled that petitioner was not able to prove that respondent's alleged psychological incapacity was existing at the time of the celebration of their marriage. The Court of Appeals further ruled that in her complaint, petitioner's bases were respondent's irresponsibility, insensitivity, and infidelity. During the trial, she claimed that the root of her husband's incapacity was his homosexuality. The Court of Appeals ruled that petitioner's allegations in her complaint and during the trial lacked factual and evidentiary bases. The Court of Appeals ruled that the totality of respondent's acts could not lead to the conclusion that he was psychologically incapacitated; that his incapacity was existing at the time of the celebration of the marriage; and that it was incurable.

The Court of Appeals also sustained the dissolution of the conjugal partnership of gains between petitioner and respondent. The Court of Appeals rejected respondent's argument that the dissolution of the conjugal partnership of gains should also be denied because of the denial of the petition for declaration of nullity of marriage. The Court of Appeals ruled that respondent's abandonment of his family and the fact that petitioner and respondent had been separated for more than a year prior to the filing of the petition for declaration of nullity of marriage were sufficient grounds for the dissolution of the conjugal partnership of gains.

However, the Court of Appeals found that the trial court included as part of the conjugal partnership of gains properties and businesses, particularly the ancestral house and lot in

Tanauan, Batangas; the duplex house and lot on Dayap Street, Makati City; the Jeddah Caltex Station; and Jeddah Trucking, which all belonged to respondent's parents. The Court of Appeals found that the rentals derived from the properties and the income from the businesses were deposited in the account of respondent's parents. The Court of Appeals excluded the properties and businesses derived from the operations of the Jeddah Caltex Station and Jeddah Trucking from the conjugal partnership of gains.

The dispositive portion of the Court of Appeals' Decision reads:

> WHEREFORE, the foregoing considered, the assailed decision is AFFIRMED with regard to the denial of the petition for annulment of marriage and the dissolution of the conjugal partnership of gains. The adjudication respecting the properties which comprise the conjugal partnership is MODIFIED to exclude the properties belonging to the parents of respondent, *i.e.*, the ancestral house and lot in Tanauan, Batangas, the duplex house and lot at Dayap Street, Makati, as well as the properties acquired through the operation of the Caltex station and Jeddah Trucking. No costs.
>
> SO ORDERED.[7]

Petitioner filed a motion for reconsideration.

In its 1 August 2003 Resolution, the Court of Appeals denied the motion.

Hence, the petition before this Court.

The Issues

The issues in this case are the following:

1. Whether respondent is psychologically incapacitated to comply with the essential marital obligations; and
2. Whether the properties excluded by the Court of Appeals form part of the conjugal partnership of gains between petitioner and respondent.

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[7] *Rollo*, p. 70.

The Ruling of this Court

The petition has no merit.

Petitioner Failed to Prove Respondent's Psychological Incapacity

The petition for declaration of nullity of marriage is anchored on Article 36 of the Family Code which provides that "[a] marriage contracted by any party who, at the time of celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization." In *Santos v. Court of Appeals*,[8] the Court first declared that psychological incapacity must be characterized by (a) gravity; (b) judicial antecedence; and (c) incurability.[9] It should refer to "no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage."[10] It must be confined to "the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage."[11] Finally, the "psychologic condition must exist at the time the marriage is celebrated."[12] The Court explained:

(a) Gravity – It must be grave and serious such that the party would be incapable of carrying out the ordinary duties required in a marriage;

(b) Judicial Antecedence – It must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and

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[8] 310 Phil. 21 (1995).

[9] *Id.* at 39.

[10] *Id.* at 40.

[11] *Id*.

[12] *Id*.

(c) Incurability – It must be incurable, or even if it were otherwise, the cure would be beyond the means of the party involved.[13]

In *Republic v. Court of Appeals*[14] (Molina case), the Court laid down the guidelines in the interpretation and application of Article 36 of the Family Code as follows:

1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Thus, our Constitution devotes an entire Article on the Family, recognizing it "as the foundation of the nation. It decrees marriage as legally inviolable," thereby protecting it from dissolution at the whim of the parties. Both the family and marriage are to be "protected" by the state.

   The Family Code echoes this constitutional edict on marriage and the family and emphasizes their permanence, inviolability and solidarity.

2) The *root cause* of the psychological incapacity must be: (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological not physical, although its manifestations and/or symptoms may be physical. The evidence must convince the court that the parties, or one of them, was mentally or physically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *ejusdem generis*, nevertheless such root cause must be identified as a psychological illness and its incapacitating nature fully

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[13] *Republic v. Cabantug-Baguio*, G.R. No. 171042, 30 June 2008.

[14] G.R. No. 108763, 13 February 1997, 268 SCRA 198.

explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists.

3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage. The evidence must show that the illness was existing when the parties exchanged their "I do's." The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto.

4) Such incapacity must also be shown to be medically or clinically permanent or incurable. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, such incapacity must be relevant to the assumption of marriage obligations, not necessarily to those not related to marriage, like the exercise of a profession or employment in a job. Hence, a pediatrician may be effective in diagnosing illnesses of children and prescribing medicine to cure them but not be psychologically capacitated to procreate, bear and raise his/her own children as an essential obligation of marriage.

5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, "mild characteriological peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as root causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.

7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the

> Philippines, while not controlling or decisive, should be given great respect by our courts. It is clear that Article 36 was taken by the Family Code Revision Committee from Canon 1095 of the New Code of Canon Law, which became effective in 1983 and which provides:
>
> "The following are incapable of contracting marriage: Those who are unable to assume the essential obligations of marriage due to causes of psychological nature."

Since the purpose of including such provision in our Family Code is to harmonize our civil laws with the religious faith of our people, it stands to reason that to achieve such harmonization, great persuasive weight should be given to decisions of such appellate tribunal. Ideally — subject to our law on evidence — what is decreed as canonically invalid should also be decreed civilly void.[15]

Both the trial court and the Court of Appeals found that petitioner failed to satisfy the guidelines in the Molina case.

As found by the Court of Appeals, petitioner anchored her petition on respondent's irresponsibility, infidelity, and homosexual tendencies. Petitioner likewise alleged that respondent tried to compel her to change her religious belief, and in one of their arguments, respondent also hit her. However, sexual infidelity, repeated physical violence, homosexuality, physical violence or moral pressure to compel petitioner to change religious affiliation, and abandonment are grounds for legal separation[16] but not for declaring a marriage void.

In *Marcos v. Marcos*,[17] the Court ruled that if the totalities of the evidence presented are enough to sustain a finding of

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[15] *Id.* at 209-213. The 8th requirement in the Molina case, the issuance by the Office of the Solicitor General of a certification stating its reasons for its agreement or opposition to the petition, was dispensed with upon the implementation of A.M. No. 02-11-10-SC, the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages which took effect on 15 March 2003. See *Zamora v. Court of Appeals*, G.R. No. 141917, 7 February 2007, 515 SCRA 19 citing *Antonio v. Reyes*, G.R. No. 155800, 10 March 2006, 484 SCRA 353.

[16] Article 55 of the Family Code.

[17] 397 Phil. 840 (2000).

psychological incapacity, there is no need to resort to the actual medical examination of the person concerned. However, while an actual medical, psychiatric, or psychological examination is not a *condition sine qua non* to a finding of psychological incapacity, an expert witness would have strengthened petitioner's claim of respondent's psychological incapacity.[18] While the examination by a physician of a person to declare him or her psychologically incapacitated is not required, the root cause of psychological incapacity must be medically or clinically identified.[19] In this case, the testimony of Dr. Lapuz on respondent's psychological incapacity was based only on her two-hour session with petitioner. Her testimony was characterized by the Court of Appeals as vague and ambiguous. She failed to prove psychological incapacity or identify its root cause. She failed to establish that respondent's psychological incapacity is incurable. Dr. Lapuz testified:

Q- What, in your opinion are the causes of this incapacity?
A- I feel, your Honor, that there is some personality agenda on his part that I do not know because he has not come to see me but there are such men who can be very ardent lovers but suddenly will completely turn over...

Q- Is this a sort of personality disorder?
A- Yes, your Honor.

Q- Is that inherited or could have been acquired even before marriage?
A- It was there on the time of the inception of his personality, it was there. And my feeling is that these things do not happen overnight, one does not change spot overnight but that thing, like marriage, can completely turn-table his behavior.

Q- Doctora, do you think this kind of incapacity, this personality disorder, is there any possibility of curing it?
A- Very little at this time and sometimes, when they become

[18] *Republic v. Cuison-Melgar*, G.R. No. 139676, 31 March 2006, 486 SCRA 177.

[19] *Republic v. Cabantug-Baguio, supra* note 13.

older, like when they reach the age of 50's or 60's, they may settle down and finally give out and reveal interest in their families.

Q- In short, there is possibility that this incapacity of the respondent could be cured?
A- Only respondent's physical decline of sexual urge, if the sexual urge would not decline, the incapacity will continue.

Q- Is there no medicine or is there any kind of medicine that can cure this kind of disorder?
A- None to my knowledge, your Honor. There is no magic feather in the psychiatric treatment. Perhaps, if the person would be willing and open enough and interested enough...[20]

Even the recommendation in the Social Case Study Report submitted by Social Welfare Officer Marissa P. Obrero-Ballon, who was assigned by the trial court to conduct a social case study on the parties, failed to show the existence of respondent's psychological incapacity. The Social Welfare Officer instead found that petitioner was immature while respondent was responsible.[21] She also found that the couple separated because of respondent's infidelity.[22]

Petitioner also failed to prove that respondent's psychological incapacity was existing at the time of the celebration of their marriage. Petitioner only cited that during their honeymoon, she found it strange that respondent allowed their 15-year old companion, the son of one of respondent's house helpers, to sleep in their room. However, respondent explained that he and petitioner already stayed in a hotel for one night before they went to Baguio City and that they had sexual relations even before their marriage. Respondent explained that the boy was with them to take pictures and videos of their stay in Baguio City and had to stay with them in the room due to monetary constraints.

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[20] TSN, 9 February 1995, pp. 30-32.

[21] Records, p. 151.

[22] *Id*.

In sum, the totality of the evidence presented by petitioner failed to show that respondent was psychologically incapacitated and that such incapacity was grave, incurable, and existing at the time of the solemnization of their marriage.

Properties of Respondent's Parents Do Not Form Part of Conjugal Partnership of Gains

Petitioner assails the Court of Appeals' exclusion of the properties of respondent's parents from their conjugal partnership of gains. In particular, the Court of Appeals excluded the ancestral house and lot in Tanauan, Batangas; the duplex house and lot on Dayap Street, Makati City; and the properties acquired through the operations of the Jeddah Caltex Station and Jeddah Trucking.

We sustain in part the Court of Appeals' Decision.

As early as 15 July 1978, respondent's parents already executed a General Power of Attorney[23] in favor of respondent covering all their properties and businesses. Several Special Powers of Attorney were also executed by respondent's parents in favor of respondent. On 14 April 1987, respondent's parents executed a Deed of Absolute Sale[24] covering two parcels of land located in Tanauan, Batangas, with a total area of 966 square meters, for ₱40,000. We agree with the Court of Appeals that the transfer was merely an accommodation so that petitioner, who was then working at the *Bangko Sentral ng Pilipinas* (BSP), could acquire a loan from BSP at a lower rate[25] using the properties as collateral. The loan proceeds were used as additional capital for the Jeddah Caltex Station. As found by the Court of Appeals, the loan was still being paid from the income from the Jeddah

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[23] *Id.* at 205-206.

[24] *Id.* at 391-392. Another Deed of Absolute Sale covering the same properties for the amount of ₱200,000 was not notarized (*id.* at 489-490).

[25] *Id.* at 393-395. Petitioner was able to obtain a loan at 3% interest per annum for the first ₱100,000, and 10% per annum for the amount in excess of ₱100,000.

Caltex Station. The Lease Contract[26] on the Jeddah Caltex Station was signed by respondent as attorney-in-fact of his mother Juanita Laurena, leaving no doubt that it was the business of respondent's parents. Jeddah Trucking was established from the proceeds and income of the Jeddah Caltex Station.

As regards the duplex house and lot in Makati City, the Deed of Absolute Sale[27] was executed by Manuela C. Felix in favor of respondent. Respondent claimed that the duplex house was purchased from the income of the Jeddah Caltex Station. However, we find no sufficient proof to sustain this allegation. In fact, respondent testified that he received a series of promotions during their marriage "until we can afford to buy that duplex [on] Dayap."[28] Hence, the duplex house on Dayap Street, Makati City should be included in the conjugal partnership of gains.

WHEREFORE, we *PARTLY GRANT* the petition. We *AFFIRM* the 6 June 2003 Decision and 1 August 2003 Resolution of the Court of Appeals in CA-G.R. CV No. 58458 with *MODIFICATION* by including the duplex house and lot on Dayap Street, Makati City in the conjugal partnership of gains. No costs.

SO ORDERED.

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

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[26] *Id.* at 630-635.

[27] *Id.* at 496-498.

[28] TSN, 5 February 1995, p. 58.

EN BANC

[G.R. No. 167383. September 22, 2008]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **AMADEO TINSAY,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF A TRIAL COURT, WHEN AFFIRMED BY THE COURT OF APPEALS, ARE ACCORDED GREAT WEIGHT. — As is the case in most rape proceedings, the crux of the matter revolves around the credibility of the victim and her testimony. The trial court found the victim's testimony to be "simple, free from any material inconsistency and clear, thus, bearing the stamp of absolute truth and candor." The CA found no reason to disturb such ruling on the credibility of AAA and her testimony. After a thorough scrutiny of the records, this Court likewise found no ground to deviate from the rule that the findings of a trial court, when affirmed by the Court of Appeals are accorded great weight and therefore the same should be deemed conclusive and binding on this Court.

2. ID.; ID.; ID.; AFFIDAVITS ARE GENERALLY GIVEN LESS EVIDENTIARY IMPORTANCE THAN THE TESTIMONY GIVEN IN OPEN COURT. — Besides, it should be borne in mind that affidavits or sworn statements are generally given less evidentiary importance than the testimony given in open court because sworn statements, which are usually taken *ex parte*, are almost always incomplete and inaccurate for lack of searching inquiries by the investigating officer or due to partial suggestions.

3. ID.; ID.; ID.; THE TESTIMONY OF A YOUNG VICTIM AGAINST HER VERY OWN PARENT IS ACCORDED GREAT WEIGHT AND CREDENCE. — Furthermore, in *Maglente*, the Court reiterated the oft-repeated rule that the testimony of a young victim against her very own parent is accorded great weight and credence. The Court elucidated thus: When the offended party is a young and immature girl testifying against a parent, courts are inclined to lend credence to her version of what

transpired. Youth and immaturity are given full weight and credit. **Incestuous rape is not an ordinary crime that can be easily invented because of its heavy psychological toll. It is unlikely that a young woman of tender years would be willing to concoct a story which would subject her to a lifetime of gossip and scandal among neighbors and friends and even condemn her father to death.** Undergoing all of the humiliating and invasive procedures for the case — the initial police interrogation, the medical examination, the formal charge, the public trial and the cross-examination — proves to be the litmus test for truth, especially when endured by a minor who gives her consistent and unwavering testimony on the details of her ordeal.

4. CRIMINAL LAW; RAPE; THE MERE INTRODUCTION OF THE PENIS INTO THE APERTURE OF THE FEMALE ORGAN, THEREBY TOUCHING THE LABIA OF THE PUDENDUM, CONSUMMATES THE CRIME. — The Court is convinced of the veracity of AAA's testimony that appellant had carnal knowledge of her. Even if only a portion of appellant's penis had entered the victim's vagina, it is settled that it is enough that the penis reaches the pudendum, or at the very least, the labia. **The mere introduction of the penis into the aperture of the female organ, thereby touching the labia of the pudendum, already consummates the crime of rape.**

5. ID.; ID.; THE QUALIFYING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP WERE ALLEGED AND PROVED IN CASE AT BAR; IMPOSABLE PENALTY. — With AAA's testimony and the documentary evidence on record, *i.e.*, AAA's Certificate of Live Birth, the Marriage Contract of AAA's parents, and the Medico-Legal Report, the prosecution successfully established the existence in this case of all the elements of rape under Article 266-A in relation to Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353. xxx. Verily, no reversible error was committed by the trial court and the CA in ruling that appellant was guilty beyond reasonable doubt of the crime charged. At the time (2005) the CA rendered judgment, the imposition of the penalty of death was proper. However, on June 30, 2006, Republic Act (R.A.) No. 9346, entitled *An Act Prohibiting the Imposition of Death Penalty in the Philippines,* took effect. xxx. It has also been held in *People v. Quiachon* that R.A. No. 9346 has retroactive

effect, to wit: The aforequoted provision of R.A. No. 9346 is applicable in this case pursuant to the principle in criminal law, *favorabilia sunt amplianda adiosa restrigenda.* Penal laws which are favorable to accused are given retroactive effect. This principle is embodied under Article 22 of the Revised Penal Code, which provides as follows: Retroactive effect of penal laws. — Penal laws shall have a retroactive effect insofar as they favor the persons guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws, a final sentence has been pronounced and the convict is serving the same. However, appellant is not eligible for parole because Section 3 of R.A. No. 9346 provides that "persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua* by reason of the law, shall not be eligible for parole." **Hence, in accordance with the foregoing, appellant should only be sentenced to suffer *reclusion perpetua* without eligibility for parole**.

6. ID.; ID.; CIVIL LIABILITIES OF ACCUSED-APPELLANT. — With regard to appellant's question on the propriety of the award for civil indemnity, the CA has corrected the trial court's error by modifying the RTC decision's monetary award. The Court finds proper, for being in accord with the latest jurisprudence, the CA's award of ₱75,000.00 as civil indemnity, which is mandatory upon establishing the fact of rape; ₱75,000.00 as moral damages, even without need of proof, since it is assumed that the victim has suffered moral injuries; and ₱25,000.00 as exemplary damages to curb incidences of incestuous rape and to set an example for the public good.

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 for review is the Decision[1] of the Court of Appeals (CA) promulgated on February 9, 2005, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, the assailed Decision dated 28 March 2003, promulgated on 03 April 2003, of the Regional Trial Court of Malolos, Bulacan, Branch 13 in Crim. Case No. 1266-M-00 convicting appellant **AMADEO TINSAY** of qualified rape penalized under Article 266-A, in relation to Article 266-B of the Revised Penal Code, as amended by R.A. No. 8353 and sentencing him to suffer the capital penalty of **DEATH** is **AFFIRMED**, with the **MODIFICATION** that appellant is ordered to pay the victim **AAA**[2] the amounts of Php75,000.00 for civil indemnity, Php75,000.00 for moral damages and Php25,000.00 for exemplary damages.

In accordance with Section 13, Rule 124 of the Amended Rules to Govern Review of Death Penalty Cases (A.M. No. 00-5-03-SC, effective 15 October 2004, this case is **CERTIFIED** to the Supreme Court for review.

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[1] Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Andres B. Reyes, Jr. and Lucas P. Bersamin, concurring, *rollo*, p. 4.

[2] In line with the ruling in *People v. San Antonio*, G.R. No. 176633, September 5, 2007, 532 SCRA 411, citing *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, wherein the Court 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 or household members, shall not be disclosed. The names of such victims, and their immediate family members other than the accused, shall appear as "AAA", "BBB", "CCC", and so on. Addresses shall appear as "x x x" as in "No. "x x x Street, x x x District, City of x x x."

The Court took note of the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Sec. 29 of Republic Act No. 7610, otherwise known as, Anti-Violence Against Women and Their Children Act of 2004; and Sec. No. 40 of A.M. No. 04-10-11-SC, known as, Rule on Violence against Women and Their Children effective November 15, 2004.

Let the entire record of this case be elevated to the Supreme Court.

SO ORDERED.[3]

A thorough examination of the records reveals that the CA's narration of facts[4] is accurate, and thus, reproduced hereunder.

The appellant was charged before the Regional Trial Court, Third Judicial Region, Malolos, Bulacan, in Criminal Case No. 1266-M-2000 with the crime of rape, in an Information dated 17 April 2000 which reads:

The undersigned Asst. Provincial Prosecutor accuses Amadeo Tinsay of the crime of rape, penalized under the provisions of Art. 266-A in relation to Art. 266-B of the Revised Penal Code, as amended by R.A. 8353, committed as follows:

> That on or about the 22nd day of January 2000, in the municipality of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the father of the offended party AAA, an 11-year-old-minor, did then and there willfully, unlawfully and feloniously, with lewd designs, have carnal knowledge of said AAA against her will and without her consent. Contrary to law.

x x x x x x x x x (Emphasis supplied)

During the arraignment and pre-trial of the case conducted on 05 April 2001, the appellant, assisted by the designated counsel *de oficio*, Atty. Nicasio Perona, pleaded not guilty to the offense charged.

Trial on the merits ensued.

The prosecution presented three (3) witnesses, namely, BBB, wife of the appellant and mother of the victim; Dr. Ivan Richard A. Viray, Medico-Legal Officer of the Philippine National Police (PNP) Regional Crime Laboratory, Malolos, Bulacan and the victim herself AAA.

The defense presented two witnesses, namely, the appellant himself and Captain Ralph Apilado, appellant's flight instructor at the Omni Aviation in Clark Field, Pampanga.

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[3] *Rollo*, p. 39-40

[4] CA Decision, *id.* at 6-16.

The prosecution presented BBB as its first witness. She testified that she married the appellant on 23 October 1985, offering in evidence the certified true copy of their Marriage Contract issued by the Office of the Civil Registrar General. She and the appellant have three (3) children and the victim is their second child who was born on 25 September 1988. She presented the certified true copy of the victim's Certificate of Live Birth issued by the Office of the Civil Registrar-General. She testified that the name Amadeo Roxas Tinsay appearing on the Certificate of Live Birth as the father of the victim is the accused in this case. She also identified the appellant in court.[5]

BBB recalled that on 22 January 2000 she arrived at their house in Malolos coming from her office in Kaunlaran Credit Cooperative in Atlag, Malolos, Bulacan and saw the appellant and the victim went out of their bedroom together. The victim did not immediately tell her what happened. She later learned that the victim was raped by the appellant when the victim's teacher, Mrs. Concepcion Morales, asked her to go to school and there, her daughter told her what happened on 22 January 2000. The victim did not tell her everything that happened but only the words, "Kung ano ang ginagawa sa iyo ng Papa, ginagawa niya sa akin." She talked to the appellant in her office and the latter told her that he did it and that he was sorry and asked for her forgiveness. She did not report it immediately to the police. But on 10 February 2000, after thinking it over, she went to the police station to find out the truth of what happened to her daughter.[6]

She and her daughter went to a doctor for her daughter's medical examination. She stated that the result of the medical examination showed that her daughter was raped. Because of the incident, she incurred expenses for transferring to another residence and in going to and from the Department of Social Welfare and Development in the amount of Php30,000.00. She also resigned from her work as a result of the incident. She cried in the witness stand and testified that what happened was very painful to her as a mother; that she did not expect it to happen; that she is the family bread winner as her husband has no job and yet he did it. She cannot sleep and work because of what happened; her daughter could not sleep and always cried and her two other children do not want to get out of

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[5] TSN of May 17, 2001, records, pp. 176-180.

[6] TSN of May 17, 2001, records, pp. 181-187.

the house as they were ashamed; and that her husband did it to her daughter in their bedroom in the house in Balite, Malolos, Bulacan where she and her husband sleep.[7]

The prosecution's second witness was Dr. Ivan Richard Viray, the medico-legal officer of the PNP Regional Crime Laboratory Office in Malolos, Bulacan who conducted the examination on the victim. x x x He reduced his examination in writing with the conclusion: "Subject is in non-virgin state physically. There are no external signs of application of any form of trauma." He arrived at the conclusion that the victim is in "non-virgin state" based on his findings that: "Hymen: Elastic Fleshy type with the presence of deep healed laceration at 6 & 9 o'clock positions." He explained that deep healed laceration means that the laceration in the hymen is more than a week old; that if the lacerations were less than a week, it would still be fresh or in healing process; that the alleged time and date of the commission of the offense which is, 22 January 2000 at about 11:00 a.m. is compatible with the findings of his physical examination conducted on the victim. He explained that the possible cause of laceration in the hymen of the victim is the insertion of a hard object which may be an erect penis or a bottle or any other hard object.[8]

The prosecution's third witness is the victim herself AAA. She testified that she was born on 25 September 1988 as shown in her Certificate of Live Birth that was previously marked as Exhibit "A". Her mother is BBB and her father is Amadeo Tinsay whom she identified as the accused in the case and positively identified in open court.[9]

The victim testified that on 22 January 2000 she was residing in Balite, Malolos, Bulacan and stayed in the house with her father, mother and brothers; that on 22 January 2000, at about 11:00 and 12:00 noon, she was molested by her father, referring to the appellant which happened in the bedroom of her mother and father. At that time, the appellant was carrying a bag and told her that it was given to him by her mother's friend and was intended to be given to her. The appellant removed her shorts, after that her panty and afterwards, her father inserted his penis inside her vagina. The appellant was

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[7] TSN of May 17, 2001, records, pp. 187-193.

[8] TSN of September 6, 2001, records, pp. 210-216.

[9] TSN of September 13, 2001, records, pp. 225-226.

holding his penis and he would point it to her vagina and insert it to her vagina. When the appellant inserted his penis to her vagina, she was lying face upward on the bed in the room and the appellant was laying face down inserting his penis to her vagina. She was hurt when the appellant was inserting his penis to her vagina and she was trying to move backward but the appellant was pulling her legs. The appellant told her that it would only take a while. She told the appellant to stop because she did not want anymore after which the appellant stopped and the latter put on her shorts and her panty. The appellant was wearing maong shorts and sando at that time. The appellant removed first his sando then, he removed his shorts and then, his brief. After the appellant put on to [sic] her panty and shorts, she returned to her room. She then, told her cousin, CCC, what happened to her. She also recalled having examined by the PNP Crime Laboratory and having executed a sworn statement before the police which she identified before the trial court. In par. 7 of her sworn statement, she stated that her answer to the question, *"Pumasok ba ang ari niya sa ari mo?"* was *"Hindi po"* because she said, *"Kasi di eksaktong pasok sa ari ko"* and *"Di naman pasok na pasok yong ari niya sa ari ko."* She stated that she felt pain at that time even though she said, *"di naman pasok na pasok,"* because she said *"kasi po pinipilit ipasok pero ayaw ko."* When asked how deep the appellant entered his penis to her vagina, she demonstrated with her two fingers a length of about 2 inches. Then, she said she felt *"medyo nalungkot po"* because of what happened because she still loved her father at that time.[10]

During her cross-examination, the victim testified that between the hours of 11:00 and 12:00 noon on 22 January 2000, she was at home in their living room; that the appellant and her lola were also at home; that her lola was in the terrace; and that at around 12:30 p.m. on 22 January 2000, she was watching television. On re-direct examination, she testified that while watching television, she was called by appellant to come to the room while her lola was still in the sala; that in the room, she was asked by the appellant to sit beside him.[11]

x x x x x x x x x

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[10] TSN of September 13, 2001, records, pp. 229-237.

[11] TSN of November 8, 2001, records, pp. 244-248.

The defense presented two (2) witnesses, namely, the appellant himself and Captain Ralph Apilado.

Appellant testified that during the alleged commission of the offense, he had no job but that he was training as a student pilot in Aviation Corporation at Clark Field, Pampanga. He presented a pilot logbook showing that he attended the training from October 1999 up to February 2000. On 16 January 2000, he went to Angeles, Pampanga and stayed there up to 02 February 2000. On 22 January 2000, he was at Clark Pampanga but he was not on training and only stayed in his boarding house located at Angeles, Pampanga. In his pilot logbook, there were several entries on various dates but no entry was made on 22 January 2000. The appellant testified that no entry was made because he did not have a scheduled flight on that date. The appellant testified that the probable reason why the private complainant filed a case against him for rape was because of some family problems. These problems pertained to his being unemployed and because he told his wife that he had a girlfriend. He said he has already asked forgiveness from his wife and he was already forgiven. There was also a problem regarding his training as a student pilot because his wife did not approve of his training after she learned that he had a girlfriend and because it would entail substantial financial expenses.[12]

During his cross-examination, the appellant said that there were cut leaves in his pilot logbook because there were so many errors in it but he was not the one who cut the leaves. He also confirmed that there was no entry in the logbook pertaining to the date 22 January 2000. He also testified that Angeles City is only 45 minutes away from Balite, Malolos, Bulacan. He stated that the entries in the logbook signified that one is in the barracks and at the same time has a scheduled flight. On 22 January 2000, he was only in the barracks but he had no scheduled flight that is why there was no entry in his logbook for that date.[13]

The second defense witness was Captain Ralph Apilado who testified that he was the flight instructor of the appellant in Omni Aviation located at Clark Field, Pampanga. On 22 January 2000, he was not at the office because it was his day off and he did not see the appellant. He testified that even if the students are housed in

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[12] TSN of March 7, 2002, records, pp. 253-259.

[13] TSN of March 7, 2002, records, pp. 259-261.

the barracks, they are free to go if they want to and they can go home to visit their family and return again to the barracks.[14]

xxx xxx xxx

On 03 April 2003, the Decision dated 28 March 2003 was promulgated by the trial court, finding the appellant guilty beyond reasonable doubt of the crime of rape punished under Article 266-A in relation to Article 266-B of the Revised Penal Code, as amended by R.A. No. 8353, and directing the accused to indemnify the victim in the amount of Php150,000.00 x x x.

The case was elevated to this Court for automatic review in view of the penalty of death imposed on appellant. However, in accordance with the ruling in *People v. Mateo*,[15] and the amendments made to Sections 3 and 10 of Rule 122, Section 13 of Rule 124, and Section 3 of Rule 125 of the Revised Rules on Criminal Procedure, the Court transferred this case to the CA for intermediate review.

On February 9, 2005, the CA promulgated the herein assailed Decision, affirming the RTC Decision.

The prosecution filed a Supplemental Brief alleging that the CA Decision should be affirmed subject to modification regarding the amount of moral and exemplary damages awarded to the victim by the CA.

Appellant opted not to file a supplemental brief with this Court, but in his appeal brief, he argued that his guilt was not proven beyond reasonable doubt because of inconsistencies in the testimony of AAA and her sworn statement. He contends that the award of indemnity in the amount of ₱150,000.00 was improper.

The appeal has no merit.

As is the case in most rape proceedings, the crux of the matter revolves around the credibility of the victim and her

[14] TSN of April 11, 2002, records, pp. 266-271.

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

testimony.[16] The trial court found the victim's testimony to be "simple, free from any material inconsistency and clear, thus, bearing the stamp of absolute truth and candor."[17] The CA found no reason to disturb such ruling on the credibility of AAA and her testimony.

After a thorough scrutiny of the records, this Court likewise found no ground to deviate from the rule that the findings of a trial court, when affirmed by the Court of Appeals are accorded great weight and therefore the same should be deemed conclusive and binding on this Court.[18]

Appellant harps on the fact that in AAA's sworn statement,[19] when asked if appellant's penis entered her vagina, she answered "*Hindi po*," but when she testified in court, she stated that appellant inserted his penis into her vagina. The supposed inconsistencies between AAA's testimony and her sworn statement are more apparent than real.

Her testimony regarding said matter is as follows:

Q - You said your father was able to insert his penis to your vagina at that incident?
A - Yes, sir.

Q - I have noticed in this paragraph 7, "Q - *Pumasok ba ang ari niya sa ari mo. A - Hindi po*." Can you tell to the Honorable Court why did you say in this sworn statement he was not able to insert his penis?
A - "*Kasi di eksaktong pasok sa ari ko,*" sir.

Q - That is why you said that "*hindi po pumasok*"?
A - Yes, sir.

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[16] *People v. Maglente*, G.R. No. 179712, June 27, 2008.

[17] Records, p. 117.

[18] *People v. Maglente*, *supra* note 16.

[19] Records, p. 61.

Q - Ms. Witness, why did you say that it was not *"eksaktong pumasok"?*
A - *"Di naman pasok na pasok yong ari niya sa ari ko,"* sir.

Q - Why did you say that you feel pain at that time, considering that when you say *"di naman pasok na pasok"?*
A - *"Kasi po pinipilit ipasok pero ayaw ko,"* sir.

Q - You have felt his penis?
A - Yes, sir.

Q - When you said *"di po eksakto nakapasok,"* you mean a little enter [sic] into your vagina?

xxx xxx xxx

Q - Can you tell the Honorable Court how much or percentage of the accused enter his penis to your vagina? Or how deep the accused enter his penis to your vagina?
A - (witness demonstrating with her two fingers a length of about 2 inches)

xxx xxx xxx[20]

In appellant's view, the foregoing testimony shows that AAA was confused as to what actually transpired. The Court strongly disagrees with appellant.

It is clear from a reading of AAA's testimony, that by answering "*Hindi po*" in her sworn statement, what AAA actually meant was that appellant only succeeded in inserting a 2-inch portion of his penis into her vagina since she was able to resist and stop appellant from fully inserting his penis, albeit, she already felt pain. The truth of AAA's testimony is further bolstered by the medico-legal's testimony that the victim was in non-virgin state based on his findings that AAA's hymen had deep healed lacerations at the 6 & 9 o'clock positions; and

[20] TSN of September 13, 2001, records, pp. 14-15.

that the alleged time and date of the commission of the offense, which was January 22, 2000 at about 11:00 a.m., is compatible with the findings from the physical examination conducted on the victim.[21] Thus, the trial court was correct, as affirmed by the CA, in concluding that AAA's testimony sufficiently explained the variance in the answer given in her sworn statement and her categorical answer in court that appellant inserted his penis into her vagina.

The Court is convinced of the veracity of AAA's testimony that appellant had carnal knowledge of her. Even if only a portion of appellant's penis had entered the victim's vagina, it is settled that it is enough that the penis reaches the pudendum, or at the very least, the labia. **The mere introduction of the penis into the aperture of the female organ, thereby touching the labia of the pudendum, already consummates the crime of rape**.[22]

Besides, it should be borne in mind that affidavits or sworn statements are generally given less evidentiary importance than the testimony given in open court because sworn statements, which are usually taken *ex parte*, are almost always incomplete and inaccurate for lack of searching inquiries by the investigating officer or due to partial suggestions.[23]

Furthermore, in *Maglente*,[24] the Court reiterated the oft-repeated rule that the testimony of a young victim against her very own parent is accorded great weight and credence. The Court elucidated thus:

> When the offended party is a young and immature girl testifying against a parent, courts are inclined to lend credence to her version of what transpired. Youth and immaturity are given full weight and credit. **Incestuous rape is not an ordinary crime that can be easily invented because of its heavy psychological toll. It is unlikely that**

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[21] TSN of September 6, 2001, records, pp. 210-216.

[22] *People v. Pangilinan*, G.R. No. 171020, March 14, 2007, 518 SCRA 358, 386-387.

[23] *People v. Pangilinan, id.* at 384-385.

[24] *Supra*.

a young woman of tender years would be willing to concoct a story which would subject her to a lifetime of gossip and scandal among neighbors and friends and even condemn her father to death.

Undergoing all of the humiliating and invasive procedures for the case—the initial police interrogation, the medical examination, the formal charge, the public trial and the cross-examination—proves to be the litmus test for truth, especially when endured by a minor who gives her consistent and unwavering testimony on the details of her ordeal. (Emphasis supplied)

With AAA's testimony and the documentary evidence on record, *i.e.*, AAA's Certificate of Live Birth,[25] the Marriage Contract of AAA's parents,[26] and the Medico-Legal Report,[27] the prosecution successfully established the existence in this case of all the elements of rape under Article 266-A in relation to Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353, which provides:

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:

x x x x x x x x x

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.

x x x x x x x x x

Article 266-B. *Penalties.* –

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

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[25] Exh. "A", records, p. 59.

[26] Exh. "B", records, pp. 77 & 60.

[27] Exh. "C", records, p. 62.

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

Verily, no reversible error was committed by the trial court and the CA in ruling that appellant was guilty beyond reasonable doubt of the crime charged. At the time (2005) the CA rendered judgment, the imposition of the penalty of death was proper.

However, on June 30, 2006, Republic Act (R.A.) No. 9346, entitled *An Act Prohibiting the Imposition of Death Penalty in the Philippines*, took effect.[28] Pertinent provisions thereof provide as follows:

Section 1. The imposition of the penalty of death is hereby prohibited. Accordingly, Republic Act No. Eight Thousand One Hundred Seventy-Seven (R.A. No. 8177), otherwise known as the Act Designating Death by Lethal Injection is hereby repealed. Republic Act No. Seven Thousand Six Hundred Fifty-Nine (R.A. No. 7659) otherwise known as the Death Penalty Law and all other laws, executive orders and decrees insofar as they impose the death penalty are hereby repealed or amended accordingly.

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

x x x x x x x x x

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.

It has also been held in *People v. Quiachon*[29] that R.A. No. 9346 has retroactive effect, to wit:

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[28] *People v. Tubongbanua*, G.R. No. 171271, August 31, 2006, 500 SCRA 727, 741.

[29] G.R. No. 170236, August 31, 2006, 500 SCRA 704.

The aforequoted provision of R.A. No. 9346 is applicable in this case pursuant to the principle in criminal law, *favorabilia sunt amplianda adiosa restrigenda*. Penal laws which are favorable to accused are given retroactive effect. This principle is embodied under Article 22 of the Revised Penal Code, which provides as follows:

> Retroactive effect of penal laws. – Penal laws shall have a retroactive effect insofar as they favor the persons guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws, a final sentence has been pronounced and the convict is serving the same.

However, appellant is not eligible for parole because Section 3 of R.A. No. 9346 provides that "persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua* by reason of the law, shall not be eligible for parole."[30]

Hence, in accordance with the foregoing, appellant should only be sentenced to suffer *reclusion perpetua* without eligibility for parole.

With regard to appellant's question on the propriety of the award for civil indemnity, the CA has corrected the trial court's error by modifying the RTC decision's monetary award. The Court finds proper, for being in accord with the latest jurisprudence, the CA's award of ₱75,000.00 as civil indemnity, whic is mandatory upon establishing the fact of rape; ₱75,000.00 as moral damages, even without need of proof, since it is assumed that the victim has suffered moral injuries; and ₱25,000.00 as exemplary damages to curb incidences of incestuous rape and to set an example for the public good.[31]

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR No. 00084, promulgated on February 9, 2005, is hereby *AFFIRMED* with the *MODIFICATION* that the

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[30] *Id*. at 718-719.

[31] *People v. Lantano,* G.R. No. 176734, January 28, 2008, 542 SCRA 640-655.

penalty of death imposed on appellant is *REDUCED* to *reclusion perpetua* without possibility of parole in accordance with Republic Act No. 9346.

SO ORDERED.

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

EN BANC

[G.R. No. 174312. September 22, 2008]

CAPT. ERNESTO S. CABALLERO, *petitioner, vs.* **PHILIPPINE COAST GUARD EFFICIENCY AND SEPARATION BOARD (PCG-ESB), COMM. ELPIDIO B. PADAMA, CAPT. ALEJANDRO N. FLORA, CAPT. ANTONIO LALISAN, CAPT. CESAR A. SARILE, CDR. EDUARDO DUMLAO, CDR. LUIS TUASON, JR., and LT. LAZARO ERNESTO C. VALDEZ, JR., in their capacity as members of the PCG-ESB, PHILIPPINE COAST GUARD (PCG), DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS (DOTC) and JENNIFER G. LIWANAG,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1087; PHILIPPINE COAST GUARD (PCG); SUBJECT TO THE ADMINISTRATIVE SUPERVISION OF THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS (DOTC); UNIFORMED PERSONNEL OF THE PCG IS SUBJECT TO THE DISCIPLINARY AUTHORITY OF THE PCG-EFFICIENCY AND SEPARATION BOARD

WHILE THE NON-UNIFORMED OR CIVILLIAN COMPLEMENT THEREOF ARE COVERED BY THE CIVIL SERVICE RULES. — EO No. 477 vested the DOTC with **administrative supervision** over the PCG. Pursuant to this authority, the DOTC via Memorandum Circular No. 2000-61 created the PCG-Efficiency and Separation Board to oversee the promotion, discharge or separation from the service of PCG uniformed personnel. The memorandum circular likewise prescribed the rules, regulations and the procedures to be adopted by the ESB in the performance of its functions. It bears stressing that the authority of the ESB extends only to the promotion, discharge or separation from the service of uniformed personnel. The non-uniformed or civilian complement of the PCG became subject to the disciplinary rules pervading in the mother department of DOTC, which of course are the pertinent civil service laws, rules and regulations. That the ESB rules of procedure are akin to the rules permeating administrative proceedings adopted by the Armed Forces of the Philippines and the Philippine Navy does not remove the PCG from the ambit of a civilian agency. It remains a civilian component of the DOTC regardless of the nature of the rules of procedure of the ESB. This is because the PCG is a distinct instrumentality performing an essential function – that of enforcing the country's maritime laws. As such, its officers are not similarly situated as ordinary civil service employees. The adoption of a distinctive administrative disciplinary mechanism different from that of other government agencies is clearly justified.

2. ID.; ID.; ID.; ID.; UNIFORMED PERSONNEL THEREOF SHOULD NOT BE TREATED IN THE SAME MANNER AS OTHER CIVIL SERVANTS. — In the recent *Manalo v. Calderon*, this Court recognized that the Philippine National Police has an administrative disciplinary system distinct from that of ordinary agencies. Its personnel are different from ordinary civil service employees. We held then: Lastly, petitioners contend that by placing them under restrictive custody, they are made to suffer lesser rights than those enjoyed by private citizens. On this score, the Court's pronouncement in *Canson, et al. v. Hidalgo, et al*. is categorical. It was held there that although the PNP is civilian in character, its members are subject to the disciplinary authority of the Chief, Philippine National Police, under the National Police Commission. Courts cannot by injunction,

review, overrule, or otherwise interfere with valid acts of police officials. The police organization must observe self-discipline and obey a chain of command under civilian officials. Elsewise stated, police officers are not similarly situated with ordinary civil service employees. The PNP has its own administrative disciplinary mechanism different from those of other government employees. *Sa ibang salita, ang kapulisan ay hindi katulad ng karaniwang kawani ng pamahalan. Ang PNP ay may sariling mekanismo ng pagdisiplina na kaiba sa ipinatutupad sa ibang empleyado ng gobyerno.* xxx. We take the same position here. The Philippine Coast Guard is a distinct agency. Its uniformed personnel ought not to be treated in the same manner as other civil servants.

3. ID.; ID.; ID.; ID.; RULING ON *LISTA* CASE (G.R. No. 153881, MARCH 24, 2003) NOT APPLICABLE TO CASE AT BAR. — Too, petitioner's reliance on *Soriano III v. Lista* is misplaced. There is nothing in the said case that would indicate that the administration and discipline of PCG uniformed personnel should be patterned after pertinent civil service laws and rules. xxx The issue in *Lista* was the legality of the PCG officers' appointments by the President in the absence of confirmation by the Commission on Appointments. The case did **not** tackle discipline and order among PCG uniformed personnel. As aptly observed by the OSG, nowhere in the said decision did the Court rule that PCG officers should be covered by civil service rules.

4. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; ABSENT ANY PROOF TO THE CONTRARY, PUBLIC OFFICERS ENJOY THE PRESUMPTION OF REGULARITY IN THE EXERCISE OF THEIR FUNCTIONS. — Anent the imputation of prejudice and bias on the part of the PCG-ESB Board, We rule in the negative. Public officers enjoy the presumption of regularity in the exercise of their functions. Absent any proof to the contrary, We cannot sustain the bare allegation of petitioner that the Board acted with prejudice.

5. ID.; ID.; FINDINGS OF FACTS OF ADMINISTRATIVE BODIES ARE CONCLUSIVE AND NOT SUBJECT TO REVIEW BY THE SUPREME COURT. — The general rule is that the findings of facts of administrative bodies are conclusive and not subject to review by the Court. In proceedings before administrative and quasi-judicial bodies, substantial evidence is sufficient to

establish a fact in issue. Said quantum of evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. Contrary to the assertion of petitioner, We find that the evidence on record overwhelmingly establishes his administrative liability. In addition to the affidavit submitted by Dr. Liwanag, the complaint against petitioner was duly supported by the individual sworn statements of Dr. Donna B. Dinglasan, Dr. Angelita P. Costa, and Lt. Rodolfo S. Ingel, who were all detailed in the PCG Dental Detachment, where the incident complained of transpired.

CARPIO., ***J. , separate concurring opinion:***

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCY; PHILIPPINE COAST GUARD (PCG); CEASED TO BE A PART OF THE MILITARY ESTABLISHMENT AND HAS ALREADY ASSUMED A CIVILIAN CHARACTER. — The paramount effect of the transfer of the PCG from the Department of National Defense to the Office of the President and eventually to the DOTC is the transformation of the PCG into a **non-military agency**. Thus, the PCG is already **civilian in character**. By removing the PCG under the control and supervision of the military, the PCG ceased to be a part of the military establishment, and has already assumed civilian character. Thus, in *Soriano III v. Lista*, the Court held that the promotions and appointments of PCG officers do not require confirmation by the Commission on Appointments since the constitutional provision on "officers of the armed forces from the rank of colonel or naval captain" requiring such confirmation refers only to military officers.

2. ID.; ID.; ID.; THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS (DOTC) EXERCISES ADMINISTRATIVE SUPERVISION OVER THE PHILIPPNE COAST GUARD. — The DOTC's creation of PCG-ESB patterned after the Efficiency and Separation Board established under EO 337 for the Armed Forces of the Philippines and its major services does not mean that the PCG is still covered by the military rules on administrative discipline. It should be emphasized that **the PCG-ESB was created under DOTC Department Order No. 2000-61, which was issued by the DOTC Secretary in the exercise of his power of administrative supervision over the PCG**. Under Section 38 (2), Chapter 7, Book IV of Executive Order No. 292 (EO 292),

administrative supervision includes the authority of the Department to take such action as may be necessary for the proper performance of official functions, including rectification of violations, abuses and other forms of maladministration. Section 7 (5), Chapter 2, Book IV of EO 292 provides that among the powers and functions of a Department Secretary is to **exercise disciplinary powers over officers and employees under the Secretary in accordance with law, including their investigation and the designation of a committee or officer to conduct such investigation**. The Secretary is also mandated to *promulgate not* **only rules and regulations necessary to carry out department objectives, policies, functions, plans, programs and projects, but also administrative issuances necessary for the efficient administration of the offices under the Secretary and for proper execution of the laws relative thereto**. xxx Thus, the DOTC's administrative supervision over PCG includes the authority to adopt policies and implement appropriate measures to regulate the conduct and discipline of the PCG personnel. Clearly, the DOTC Secretary, exercising administrative supervision over PCG pursuant to EO 477, acted within his jurisdiction and authority under EO 292 when he issued Department Order No. 2000-61, Memorandum Circular No. 2000-64, and Department Order No. 2002-76. Thus, I submit that the creation of the PCG-ESB is valid and that the PCG-ESB has jurisdiction to conduct administrative disciplinary proceedings against Capt. Ernesto Caballero.

APPEARANCES OF COUNSEL

Regidor C. Caringal for petitioner.
The Solicitor General for respondents.

D E C I S I O N

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

BROUGHT to fore is the administrative disciplinary system of the Philippine Coast Guard (PCG) for erring members. We trace the transition of the PCG from a component of the Armed Forces of the Philippines (AFP) to an adjunct of the Department

of Transportation and Communications (DOTC). We also set straight questions on administrative disciplinary procedures for **uniformed** personnel of the PCG.

Before the Court is a petition for review on *certiorari* of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 92951. The CA reversed the judgment[2] of the Regional Trial Court (RTC), Branch 37, Manila in Civil Case No. 03-107563 granting the petition for *certiorari* and prohibition lodged before it by PCG Captain Ernesto S. Caballero.

The Facts

In August 2002, petitioner Captain Ernesto S. Caballero, Commander of the Internal Affairs and Service Headquarters Group of the PCG, became the subject of a sexual harassment complaint filed by Dr. Jennifer Liwanag. Dr. Liwanag is a dentist and a civilian employee of the PCG assigned at the dental detachment of the PCG Headquarters located in Port Area, Manila. In her affidavit-complaint, Dr. Liwanag alleged:

> 3. On or about February, 2002, at around 2 o'clock in the afternoon, Capt. Caballero entered the dental detachment of the Philippine Coast Guard to obtain a treatment with Dr. Donna B. Dinglasan, a dentist and also a civilian employee of the Philippine Coast Guard;
>
> 4. While he was in the receiving area waiting for Dr. Dinglasan, he was talking to me and other personnel of such clinic/ detachment;
>
> 5. As I was sitting at the bench listening to him, he walked towards me and, he suddenly touched my thighs. I was shocked and was not able to react with his advancement;
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> 6. He sat beside and very close to me on my right side and put his left hand at the side of my leg, touching and rubbing

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[1] *Rollo,* pp. 30-49. Penned by Associate Justice Martin S. Villarama, Jr., with Associate Justices Lucas P. Bersamin and Celia C. Librea-Leagogo, concurring.

[2] Penned by Judge Vicente A. Hidalgo.

it in a back and forth motion. I was surprised that I immediately stood up and walk (*sic*) away from him;

7. I went directly to the treatment room and talked about the incident to Lt. Rodolfo S. Ingel, Jr., but he just told me to forget about it and said, "*Hayaan mo na, matanda na yon*";

8. At around three o'clock in the afternoon, that same day, on my way to my locker room, which is located at the far end of the hallway to get something, I chanced upon Capt. Caballero who came from the toilet which is also located near the locker room;

9. He noticed me. Since the locker room is open, he entered such room and said, "*Patingin naman ng locker mo*." He closed the door and suddenly embraced and pulled me towards him. He kissed me on the cheek, then he forcefully moved his lips towards my lips;

10. I right away pushed him and drove him back and resisted his advances. Then, he left me;

11. I was stunned, shocked and trembling;

12. I really felt insulted, disgusted, humiliated and sickened of what Captain Caballero did to me; afterwards I went to Lt. Ingel crying. I told him what transpired in the locker room;

13. I can hardly sleep for so many nights after the incident;

14. Since May 2002, there were already bad rumors going on at the headquarters, which put me on the (*sic*) bad light and the center of the controversy and mockery;

15. I am executing this affidavit-complaint to attest to the truth of the foregoing facts for the purpose of instituting formal criminal and administrative charges against CAPTAIN ERNESTO S. CABALLERO PCG (CSG) with postal address at Philippine Coast Guard Headquarters Support Group, 139 25th Street, Port Area, Manila for the acts described above.[3]

Liwanag's complaint was eventually referred to the Office of the Coast Guard Judge Advocate (OCGJA). However, despite the issuance of a subpoena directing him to appear before the

[3] Records, pp. 280-281; Exhibits "1" to "1-A".

investigating officers and submit his counter-affidavit and any evidence on his behalf, petitioner failed to appear. Instead, petitioner questioned the proceedings, claiming that the OCGJA was not the proper office to conduct the investigation. Despite his protest, the investigation proceeded in due course, based mainly on Dr. Liwanag's evidence.

The investigating officers, Lt. Fedelyn A. Santos and Ens. Mitzie S. Silva, recommended that petitioner be tried before the Philippine Coast Guard Efficiency and Separation Board (PCG-ESB) for misconduct on the ground of sexual harassment.[4] Acting Coast Guard Advocate Lt. Lazaro Ernesto C. Valdez, Jr. endorsed the investigation report to PCG Commandant Reuben Lista. Lt. Valdez recommended that petitioner be tried before the PCG-ESB, despite the pendency of a criminal complaint against petitioner for acts of lasciviousness before the Department of Justice. On April 11, 2003, PCG Commandant Lista approved the recommendation. Petitioner's administrative case was then referred to the PCG-ESB.

In April 2003,[5] the PCG-ESB submitted its report with the following observations, among others:

> 3. Capt. Ernesto S. Caballero was holding a very sensitive position and a member of the PCG Promotions Board B when the incident happened. His acts constitutes misconduct as he abused his authority and moral ascendancy over a female Civilian Employee who has been working in the PCG organization for the last four (4) years and the wife of a PCG Junior Officer whose promotion falls under the jurisdiction of the said Board.
>
> 4. Pursuant to DOTC Department Order No. 2000-61 and Memorandum Circular No. 2000-64, this case is submitted to this Board to determine the respondent Officer's fitness and suitability to remain in the service.[6]

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[4] *Id.* at 260-265; Exhibit "D".

[5] From the records, it is unclear when the report was executed. What appears is that it was served on the parties in April 2003.

[6] *Rollo,* pp. 247-248; Exhibit "A".

On August 14, 2003, petitioner filed before the RTC in Manila a petition for *certiorari* and prohibition with an application for a temporary restraining order (TRO) against respondents PCG-ESB, its members and Dr. Liwanag. Petitioner sought to nullify and set aside the orders[7] issued by the PCG-ESB in relation to ESB Case No. 003-03, entitled "*Re: Capt. Ernesto S. Caballero*," for misconduct. He also sought the nullification of DOTC Department Order (DO) Nos. 2000-61[8] and 2002-76[9] as well as Memorandum Circular No. 2000-64.[10] The DOs were the basis for the constitution of the PCG-ESB. In essence, petitioner argued that the PCG-ESB acted without or in excess of jurisdiction in taking cognizance of the administrative complaint for sexual harassment filed by Dr. Liwanag.

RTC Judgment

On September 9, 2003, the RTC issued an Order granting petitioner's application for a writ of preliminary injunction. On August 2, 2005, a Decision[11] was rendered in favor of petitioner, with the following *fallo*:

> WHEREFORE, premises considered, the petition for *Certiorari* and Prohibition is GRANTED. The creation of ESB and its procedure are hereby declared IMPROPER and IRREGULAR and the proceeding had thereon against petitioner is declared NULL and VOID as such Board has no jurisdiction over the complaint of Dra. Jennifer G. Liwanag.
>
> The preliminary injunction is hereby made PERMANENT, and the respondent board and all its members as well as private respondent

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[7] Orders dated July 10, 2003 and July 31, 2003.

[8] Creation of the Philippine Coast Guard Efficiency Separation Board (DOTC Department Order No. 2000-61).

[9] Re-composition of the Philippine Coast Guard Efficiency and Separation Board (DOTC Department Order No. 2002-76), December 9, 2002.

[10] Discharge or Separation by Administrative Action of PCG Officers (DOTC Memorandum Circular No. 2000-64).

[11] Records, pp. 611-620.

Dra. Jennifer G. Liwanag are hereby directed to cease and desist from continuing the questioned proceedings.[12]

Following are pertinent segments of discussion by the RTC:

The primordial issues to be resolved in this case are as follows:

1. Whether or not the Court has jurisdiction over the instant petition;
2. Whether or not the petitioners are guilty of estoppel;
3. Whether or not the validity of DOTC Department Order Nos. 2000-61 and 2002-76 and Memo Circular No. 2000-64 was seasonably raised to this Court; and
4. Whether respondent board has committed grave abuse of discretion amounting to lack or in excess of jurisdiction.

The first issue has been squarely passed upon by this Court in its order dated September 9, 2003. To reiterate, the jurisdiction of this Court over the subject case springs from Section 4 Rule 65 of the Revised Rules of Court on Civil Procedure which unequivocally provides that petition shall be filed in the Regional Trial Court exercising jurisdiction over the territorial area if it relates to the acts or omissions of a board, among others.

What is involved in this case is a board exercising administrative discipline over the PCG officers created by the DOTC. While it is true that petitioner alleged that ESB is a quasi-judicial body exercising quasi-judicial function, such allegation is not sufficient to confer or loss jurisdiction. The crucial matter is the real import of such board to determine which court has jurisdiction. This is so because the legal precept is that jurisdiction is conferred by law and cannot be acquired by mere acquiescence of the parties. Respondent board not being co-equal body of the Regional Trial Court, the instant petition is validly filed to this Court.

Anent the second issue, the Supreme Court has frequently declared a long standing rule that jurisdiction over the subject matter is conferred only by the Constitution or law. It cannot be fixed by the will of the parties; it cannot be acquired through waiver, enlarged or diminished by any act or omission of the parties (*Mun. of Sogod v. Rosal*, G.R. No. L-38204, Sept. 24, 1991, 201 SCRA 632). Thus, the fact that petitioner had once sat as member of ESB, by itself,

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[12] *Id.* at 620.

could not prevent him from questioning the jurisdiction of respondent board.

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Department Order No. 2000-61, creating the PCG-ESB, was issued on November 6, 2000 by the DOTC pursuant to the Executive Order No. 477, series of 1998 promulgated by then President Fidel V. Ramos. It is undisputed, however, that with the advent of said EO 477, the PCG has ceased to exist as a major unit of the Philippine Navy and they were, as a consequence, separated from the command of the Armed Forces of the Philippines (AFP). Not being part of Phil. Navy or AFP, PCG loses its military character and civilianized in the process.

However, subsequently, the DOTC issued the questioned circular, Memorandum Circular No. 2000-64, which outlined the rules and regulations on the discharge or separation by administrative action of all PCG officers. This circular was made and adopted pursuant to Executive Order No. 337, series of 1998.

x x x x x x x x x

Thereafter, on December 9, 2002, the DOTC issued Department Order No. 2002-76 regarding re-composition of PCG-ESB pursuant to Department Order No 2000-61, which created the PCG-ESB.

x x x x x x x x x

As borne out by the records, it is no less than the General Headquarters of the AFP, through the Deputy Chief of Staff of Personnel (J-1) who categorically stated and confirmed that PCG has ceased to be a major unit of the Philippine Navy, AFP.

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Moreover, in the cited case of *ELPIDIO SORIANO v. REUBEN S. LISTA, et al.*, G.R. No. 153881, March 24, 2003, the Supreme Court has made an express pronouncement that the PCG is under the DOTC and no longer part of the Philippine Navy or the Armed Forces of the Philippines. And while public respondents may argue that such ruling refers to the promotion of PCG Officers, this court could not see any reason why such pronouncement could not be applied on the appropriateness of continuous adaptation of military system in the PCG notwithstanding the irreversible fact that it is no longer part of the military establishment.

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This Court is not saying that the DOTC cannot issue a Department Order or Circular for the discipline of PCG officers. The DOTC has all the rights to do so being tasked of the administrative supervision over PCG. But as manifested by private respondent's counsel on their comment, it is the Civil Service Administrative Disciplinary Rules on Sexual Harassment that should govern because DOTC is a civilian component of government such that the DOTC Secretary should create the Committee on Decorum and Investigation (CODI) of the PCG, which should handle all cases of sexual harassment pursuant to CSC Resolution No. 01-0940.

This Court does not agree with public respondent's view that PCG-ESB could proceed independently of another PCG Administrative proceeding. As there is only one act complained of, there must be only one administrative proceeding in the PCG against petitioner, which regrettably, ESB, a military type proceeding is not appropriate.[13]

Public respondents moved for reconsideration.[14] The motion was, however, denied in an Order[15] dated October 28, 2005.

Representing public respondents, the Office of the Solicitor General (OSG) appealed to the CA, submitting the following issues:

(I) Does the trial court have jurisdiction to pass upon PCG-ESB orders dated July 10, 2003 and July 31, 2003 and to enjoin the administrative proceedings being conducted by the PCG-ESB which, according to Capt. Caballero's judicial admission, is a quasi-judicial body exercising quasi-judicial functions?;

(II) Was the petition below questioning the validity of DOTC Department Orders Nos. 2000-61 and 2002-76, as well as Memorandum Circular No. 2000-64 filed seasonably?;

(III) Are DOTC Department Order No. 2000-61, which created the PCG-ESB, and DOTC Department Order No. 2002-76, which recomposed the PCG-ESB lawful?;

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[13] *Id.* at 614-619.

[14] *Id.* at 622-651.

[15] *Id.* at 671.

(IV) Is DOTC Memorandum Circular No. 2000-64, which prescribes the rules and regulations for the discharge or separation by administrative action of PCG uniformed personnel lawful?; and,

(V) Does the PCG-ESB have jurisdiction to conduct administrative proceedings against Capt. Caballero?[16]

CA Disposition

On June 19, 2006, the CA gave judgment in favor of public respondents, disposing as follows:

WHEREFORE, premises considered, the present appeal is hereby GRANTED and the appealed Decision dated August 2, 2005 of the Regional Trial Court of Manila, Branch 37 in Civil Case No. 03-107563 is hereby REVERSED and SET ASIDE. A new judgment is hereby entered DISMISSING the petition for *certiorari* and prohibition for lack of merit.

No pronouncement as to costs.

SO ORDERED.[17]

Issues

His motion for reconsideration having been denied, petitioner has resorted to the present recourse under Rule 45, raising twin issues:

I. WHETHER THE HONORABLE COURT OF APPEALS RULED IN ACCORDANCE WITH THE PREVAILING LAWS AND JURISPRUDENCE, PARTICULARLY THE RULING OF THIS COURT IN THE CASE OF *SORIANO III VS. LISTA*, (399 SCRA 437), WHEN IT HELD THAT UNIFORMED PERSONNEL OF THE PHILIPPINE COAST GUARD (PCG) ARE STILL COVERED BY THE MILITARY LAW ON ADMINISTRATIVE DISCIPLINE, THEREBY VESTING JURISDICTION TO PCG-ESB.

II. WHETHER THE MANIFEST BIAS OF THE MEMBERS OF THE PCG-ESB AGAINST THE PETITIONER HAS OUSTED THEM

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[16] *Rollo*, p. 40.

[17] *Id.* at 49.

OF ITS JURISDICTION TO TRY AND DECIDE THE CASE OF THE PETITIONER.[18] (Underscoring supplied)

Our Ruling

Before discussing at length the issues hoisted by petitioner, it would be instructive to look into the background relating to the establishment of the PCG.

The PCG was established by virtue of Republic Act (RA) No. 5173.[19] This Republic Act institutionalized the PCG as a major unit of the Philippine Navy. The relevant provisions of the said law read:

SECTION 1. *Coast Guard Objectives*. – There is hereby created in the Philippine Navy a major unit to be known as Philippine Coast Guard which shall have the following general objectives:

xxx xxx xxx

SECTION 4. *Organization; Administration.* – The Philippine Coast Guard shall be headed by a Commandant who shall be a Flag Officer. Subject to the approval of the Secretary of National Defense, the Flag Officer-in-Command, Philippine Navy, shall organize the Philippine Coast Guard into operational units of subordinate commands and equip the same as may be necessary for effective exercise of the functions and duties vested upon it by law, and shall promulgate rules and regulations necessary for its administration. The Philippine Coast Guard shall be administered and maintained as a separate unit of the Philippine Navy, and it shall be specially trained and equipped for the effective discharge of police duties at sea.[20] (Underscoring supplied)

On March 30, 1998, President Fidel V. Ramos issued **Executive Order (EO) No. 475**[21] which transferred the PCG

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[18] *Id.* at ____.

[19] An Act Creating a Philippine Coast Guard, Prescribing Its Powers and Functions, Appropriating the Necessary Funds Therefor, and For Other Purposes. Approved on August 4, 1967.

[20] Republic Act No. 5173, Secs. 1 & 4.

[21] Transferring the Philippine Coast Guard from the Department of National Defense to the Office of the President and For Other Purposes.

from the Department of National Defense (DND) to the Office of the President. The transfer was made pursuant to the President's authority under Section 31, Chapter 10, Title III, Book III of EO No. 292 (Administrative Code of 1987) to reorganize the Office of the President through the transfer of any agency or function to the Office of the President. EO No. 475 contains a third "whereas" clause,[22] which states that the Philippine Coast Guard remains a subordinate unit of the Philippine Navy. Further, Sections 3 and 6 of EO No. 475 states:

SECTION 3. *Implementing Requirements*. – There is hereby created a Transition and Liquidation Committee to be composed of the DOTC as Chairman, the Philippine Navy, PCG, Department of Budget and Management and the Office of the President as members. These agencies shall designate their respective representatives to this Committee which shall recommend to the President the necessary plans and measures to effect the transfer within 30 days from the signing of this EO. The Committee shall likewise, undertake the appropriate inventory and disposition of all PCG properties.

xxx xxx xxx

SECTION 6. *Pay, Allowances, and Retirement of Uniformed Personnel*. – PCG uniformed personnel shall continue to receive the same base bay, longevity pay, and other allowances and benefits as authorized for corresponding grades and ranks in the AFP. PCG uniformed personnel shall continue to be covered by PD 1638 (AFP Retirement Law), as amended, until such time as the PCG is able to establish its own retirement system under a regime and timetable agreed upon by the Committee.[23]

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[22] Executive Order No. 475 –

"WHEREAS, PCG remains a major subordinate unit of the Philippine Navy by virtue of Section 54, Chapter 8, Subtitle II, Title VIII, Book IV of EO No. 292 dated 25 July 1987, otherwise known as the Administrative Code of 1987, and assigned functions pertaining to the promotion of safety of life at sea and the protection of this marine environment. x x x."

[23] *Id.*, Secs. 3 & 6.

Subsequently, President Ramos issued **EO No. 477** on April 15, 1998 transferring the PCG to the DOTC. Section 1 of EO No. 477 states:

> Section 1. *Transfer*. – The PCG is hereby transferred from the Office of the President to the DOTC. The DOTC shall exercise administrative supervision over the PCG. (Underscoring supplied)

EO No. 477 also provided that the Transition and Liquidation Committee (TLC) created pursuant to EO No. 475 shall continue to exercise its functions. Section 3 of EO No. 477 specifically provided:

> The Committee shall likewise prepare plans and measures to ensure the smooth transfer of personnel from the PN to the PCG. Such plans and measures shall include the rules and guidelines covering matters pertaining to the transfer of commissionship of PCG officers, the administration and discipline and order during the transition period and appointments and promotions and benefits of officers and enlisted men of the PCG, among others.[24] (Underscoring supplied)

Section 6 of EO No. 477 further provided that PCG uniformed personnel shall continue to receive the same base pay, longevity pay and other allowances and benefits authorized for corresponding grades and ranks in the AFP. The same section likewise declared that PCG uniformed personnel shall continue to be covered by the AFP Retirement Law until such time as the PCG is able to establish its own retirement system as provided for by the transition committee.[25]

On May 15, 1998, in accordance with the directives contained in both EO Nos. 475 and 477, Arturo T. Valdez, DOTC Undersecretary and Chairman of the PCG Transition and Liquidation Committee (PCG-TLC), submitted to then President Ramos a report on the plans and measures to effect the implementation of PCG's transfer to DOTC. Noteworthy is Section A(5) and (6) of the said report which states:

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[24] Executive Order No. 477, Sec. 3.

[25] *Id.*, Sec. 6.

PHILIPPINE COAST GUARD TRANSITION AND LIQUIDATION COMMITTEE
(EO 475 & EO 477)

PLANS AND MEASURES TO IMPLEMENT EXECUTIVE ORDERS 475 & 477

CONCERN	PLAN/MEASURE	IMPLEMENTING DOCUMENT
A. PERSONNEL MANAGEMENT		
	xxx xxx	xxx
5. Administration of Discipline and Order	Under Section 4 of RA No. 5173, the PCG shall, "*subject to the approval of the Secretary of the National Defense, promulgate rules and regulations necessary for its administration.*" Since Section 1 of EO No. 477 transfers administrative supervision over the PCG to the DOTC, approval for the promulgation of such rules and regulations now rests upon the Secretary, DOTC. A PCG Code of Discipline for Uniformed Personnel shall therefore be formulated and promulgated subject to the Secretary's approval.	By DOTC (being formulated)
6. Procurement, Promotion, Separation and Attrition	Under Section 4 of RA No. 5173, the PCG shall "*subject to the approval of the Secretary of National Defense x x x promulgate rules and regulations necessary for its administration.*" Since Section 1 of EO No. 477 transfers administrative supervision over the PCG to the DOTC, approval for the promulgation of such rules and regulations now rests upon the Secretary, DOTC. Coast Guard/DOTC guidelines covering procurement, promotion, separation and attrition shall therefore be formulated and promulgated subject to the Secretary's approval. Until such guidelines are promulgated, however, the PCG shall remain covered by pertinent AFP/PN rules and regulations.	PCG/DOTC guidelines (being formulated by the PCG for the approval of the Secretary, DOTC)

Subsequently, the DOTC issued the following DOs relative to the exercise of its administrative supervision over the PCG:

First, on November 6, 2000, the DOTC issued **DO No. 2000-61** creating the PCG-ESB. DO No. 2000-61 was issued by the DOTC by virtue of EO No. 477 which provided for the transfer of the PCG to the DOTC and DND Memorandum Circular No. 30 which provided that all applicable laws pertaining to discipline, law and order shall remain applicable to the PCG.

Second, the DOTC issued **Memorandum Circular No. 2000-64** which provided for the discharge or separation by administrative action of PCG officers. Pertinent provisions of the said order are as follows:

> 1. *Purpose*. – Pursuant to paragraph 12 of Executive Order No. 337 dated 13 September 1998 hereby prescribed are the rules and regulations as well as the procedures governing the discharge or separation from the Coast Guard service of PCG Officers.
>
> 2. *Discharge or Separation from the Service*. – PCG Officer shall be administratively discharged or separated from the service as provided in EO# 337, series of 1998 and these implementing rules and regulations.
>
> a. *Referral of Case for Misconduct*. – When a PCG Officer commits any act of misconduct of such a nature and gravity as to warrant his/her discharge or separation from the service, his/her name and record shall be referred by the Commandant, Philippine Coast Guard to the PCG Efficiency and Separation Board for the determination of his/her suitability or fitness for retention in the service.
>
> xxx xxx xxx
>
> 4. *PCG Efficiency and Separation Board*. –
>
> a. *Designation*. – The Efficiency and Separation Board established under Executive Order No. 337, s-88 shall be officially designated as the Philippine Coast Guard Efficiency and Separation Board.

I. Being now subject to the administrative supervision of the DOTC, the PCG has become a civilian agency with a distinct administrative disciplinary system for its uniformed personnel administered by the PCG-Efficiency and Separation Board.

Petitioner essentially argues that the PCG-ESB is devoid of any authority to conduct administrative disciplinary proceedings against him. According to petitioner, the transfer of the PCG to the DOTC has stripped the ESB, which adopts military rules of procedure in the conduct of its proceedings, of authority and jurisdiction over him. It is asserted that civil service law

and rules should be adopted in the conduct of any administrative disciplinary measures against PCG personnel, uniformed or non-uniformed.

We are not persuaded. EO No. 477 vested the DOTC with **administrative supervision** over the PCG. Under the Administrative Code of 1987, *administrative supervision* covers the following:

> (2) *Administrative Supervision*. – (a) Administrative supervision which shall govern the administrative relationship between a department or its equivalent and regulatory agencies or other agencies as may be provided by law, shall be limited to the authority of department or its equivalent to generally oversee the operations of such agencies and to insure that they are managed effectively, efficiently and economically but without interference with day-to-day activities; or management audit, performance evaluation and inspection to determine compliance with policies, standards and guidelines of the department; to take such action as may be necessary for the proper performance of official functions, including rectification of violations, abuses and other forms of maladministration; and to review and pass upon budget proposals of such agencies but may not increase or add to them;
>
> (b) Such authority shall not, however, extend to: (1) appointments and other personnel actions x x x.[26]

Pursuant to this authority, the DOTC via Memorandum Circular No. 2000-61 created the PCG-Efficiency and Separation Board to oversee the promotion, discharge or separation from the service of PCG uniformed personnel. The memorandum circular likewise prescribed the rules, regulations and the procedures to be adopted by the ESB in the performance of its functions.

It bears stressing that the authority of the ESB extends only to the promotion, discharge or separation from the service of uniformed personnel. The non-uniformed or civilian complement of the PCG became subject to the disciplinary rules pervading

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[26] Executive Order No. 292, Chapter 7, Sec. 38.

in the mother department, DOTC, which of course are the pertinent civil service laws, rules and regulations.

That the ESB rules of procedure are akin to the rules permeating administrative proceedings adopted by the Armed Forces of the Philippines and the Philippine Navy does not remove the PCG from the ambit of a civilian agency. It remains a civilian component of the DOTC regardless of the nature of the rules of procedure of the ESB. This is because the PCG is a distinct instrumentality performing an essential function – that of enforcing the country's maritime laws. As such, its officers are not similarly situated as ordinary civil service employees. The adoption of a distinctive administrative disciplinary mechanism different from that of other government agencies is clearly justified.

This is not a novel issue. In the recent *Manalo v. Calderon*,[27] this Court recognized that the Philippine National Police has an administrative disciplinary system distinct from that of ordinary agencies. Its personnel are different from ordinary civil service employees. We held then:

> Lastly, petitioners contend that by placing them under restrictive custody, they are made to suffer lesser rights than those enjoyed by private citizens. On this score, the Court's pronouncement in *Canson, et al. v. Hidalgo, et al.* is categorical. It was held there that although the PNP is civilian in character, its members are subject to the disciplinary authority of the Chief, Philippine National Police, under the National Police Commission. Courts cannot, by injunction, review, overrule, or otherwise interfere with valid acts of police officials. The police organization must observe self-discipline and obey a chain of command under civilian officials.
>
> Elsewise stated, police officers are not similarly situated with ordinary civil service employees. The PNP has its own administrative disciplinary mechanism different from those of other government employees. *Sa ibang salita, ang kapulisan ay hindi katulad ng karaniwang kawani ng pamahalaan. Ang PNP ay may sariling mekanismo ng pagdisiplina na kaiba sa ipinatutupad sa ibang empleyado ng gobyerno.*

[27] G.R. No. 178920, October 15, 2007, 536 SCRA 290.

In *Fianza v. The People's Law Enforcement Board, et al.*, we ruled:

> x x x although respondent policemen continue to be citizens, as public respondents contend, they are not the 'private citizens' referred to in the laws cited above. Clearly, the term 'private citizens' does not ordinarily include men in uniform, such as the respondent PNP men. This is particularly evident in the PNP law which uses the term 'members of the PNP' as well as 'private citizens' to refer to different groups of persons and not interchangeably. The 'plain meaning rule' or *verba legis* in statutory construction is applicable in this situation. When the words of a statute are clear, plain, and free from ambiguity, it must be given its interpretation. The term 'private citizen' in the PNP Law and PLEB Rules is used in its common signification and was not meant to refer to the members of the PNP, such as respondent policemen.[28]

We take the same position here. The Philippine Coast Guard is a distinct agency. Its uniformed personnel ought not to be treated in the same manner as other civil servants.

Too, petitioner's reliance on *Soriano III v. Lista*[29] is misplaced. There is nothing in the said case that would indicate that the administration and discipline of PCG uniformed personnel should be patterned after pertinent civil service laws and rules. Said the Court in *Lista*:

> x x x As aptly pointed out by the Solicitor General, the PCG used to be administered and maintained as a separate unit of the Philippine Navy under Section 4 of RA 5173. It was subsequently placed under the direct supervision and control of the Secretary of the Department of National Defense (DND) pursuant to Section 4 of PD 601. Eventually, it was integrated into the Armed Forces of the Philippines (AFP) as a major subordinate unit of the Philippine Navy under Section 54 of Chapter 8, Sub-title II, Title VIII, Book IV of EO 292, as amended.
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> However, on March 30, 1998, after the aforesaid changes in the charter of the PCG, then President Fidel V. Ramos, in the exercise of

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[28] *Manalo v. Calderon, id.* at 17-18.

[29] G.R. No. 153881, March 24, 2003, 399 SCRA 437.

his statutory authority to reorganize the Office of the President, issued EO 475 transferring the PCG from the DND to the Office of the President. He later on again transferred the PCG from the Office of the President to the Department of Transportation and Communications (DOTC).

Now that the PCG is under the DOTC and no longer part of the Philippine Navy or the Armed Forces of the Philippines, the promotions and appointments of respondent officers of the PCG, or any PCG officer from the rank of captain and higher for that matter, do not require confirmation by the CA.[30] (Underscoring supplied)

The issue in *Lista* was the legality of the PCG officers' appointments by the President in the absence of confirmation by the Commission on Appointments. The case did **not** tackle discipline and order among PCG uniformed personnel.[31] As aptly observed by the OSG, nowhere in the said decision did the Court rule that PCG officers should be covered by civil service rules.

Incidentally, there were bills filed in the Thirteenth Congress **seeking to amend** the PCG Charter, like Senate Bills 1287 and 2081[32] and House Bill No. 5304.[33] As noted by the appellate court:

That the PCG uniformed personnel is treated as a separate class – insofar as the maintenance of discipline and efficiency within the said institution – from that of non-uniformed civilian employees, can be gleaned from those proposed bills still pending in both the Senate and House of Representatives. Senate Bills 1287 and 2081, for instance, categorically provide that in the investigation of administrative cases against PCG officers and enlisted personnel, the PCG shall adopt

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[30] *Soriano III v. Lista, id.* at 439-440.

[31] *Id*.

[32] Filed by Senators Rodolfo G. Biazon (SB 1287) and Luisa Ejercito Estrada (SB 2081). Thirteenth Congress.

[33] "An Act Transferring the Philippine Coast Guard to the Department of Transportation and Communications as an Attached Agency and Redefining Its Organization and Personnel Administration, Amending Republic Act No. 5173, and for Other Purposes." Thirteenth Congress.

the military justice system until such time that it has promulgated the provisions of the PCG Code of Discipline, Order, and Justice for PCG officers and enlisted personnel. On the other hand, the applicable rules, regulations, and guidelines promulgated by the Civil Service Commission shall govern the investigation of administrative cases against PCG non-uniformed/civilian employees. A similar provision is found in the proposed consolidated House Bill No. 5304. Significantly, HB No. 5304 and SB 1287 also contained a proviso that in times of war as declared by Congress, or the President, the PCG or parts thereof, shall be attached to the DND as a support unit.

Though indeed, the foregoing are just legislative proposals, it is an undeniable reality that the transfer of administrative supervision over PCG to the DOTC did not result in transferring jurisdiction over disciplinary actions or administrative cases involving PCG officers and enlisted personnel to the Civil Service Commission as in the case of its ordinary employees falling under the disciplinary jurisdiction of the Commission.[34]

Until these bills get approval and ripen into law, the jurisdiction and authority of the ESB over uniformed personnel, including its rules of procedure, should be respected. Otherwise, this Court would be jumping the gun on Congress. That would be indulging in impermissible judicial legislation.

II. There is no manifest bias or prejudice of the members of the PCG-ESB.

Anent the imputation of prejudice and bias on the part of the PCG-ESB Board, We rule in the negative. Public officers enjoy the presumption of regularity in the exercise of their functions. Absent any proof to the contrary, We cannot sustain the bare allegation of petitioner that the Board acted with prejudice.

The general rule is that the findings of facts of administrative bodies are conclusive and not subject to review by the Court. In proceedings before administrative and quasi-judicial bodies, substantial evidence is sufficient to establish a fact in issue.

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[34] *Rollo*, pp. 47-48.

Said quantum of evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[35]

Contrary to the assertion of petitioner, We find that the evidence on record overwhelmingly establishes his administrative liability. In addition to the affidavit submitted by Dr. Liwanag, the complaint against petitioner was duly supported by the individual sworn statements of Dr. Donna B. Dinglasan, Dr. Angelita P. Costa, and Lt. Rodolfo S. Ingel, who were all detailed in the PCG Dental Detachment, where the incident complained of transpired.

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

SO ORDERED.

Quisumbing, Ynares-Santiago, Corona, Chico-Nazario, Velasco, Jr., Leonardo-de Castro, and *Brion, JJ.,* concur.
Puno, C.J., concurs in the result.
Carpio, J., see separate concurring opinion.
Austria-Martinez, Carpio Morales, Azcuna, and *Tinga, JJ.,* join the concurring opinion of *Justice Carpio.*
Nachura,[*] *J.,* no part.

SEPARATE CONCURRING OPINION

CARPIO, *J.*:

I concur in the result of the majority opinion that the Philippine Coast Guard Efficiency and Separation Board (PCG-ESB) has jurisdiction to conduct administrative proceedings against Capt. Ernesto Caballero.

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[*] No part. Justice Nachura participated in the present case as Solicitor General.

[35] *Megascope General Services v. National Labor Relations Commission,* G.R. No. 109224, June 19, 1997, 274 SCRA 147.

The Philippine Coast Guard (PCG) was created under Republic Act No. 5173 (RA 5173)[1] as a major unit of the Philippine Navy. Under Section 4 of RA 5173, the PCG is administered and maintained as a separate unit of the Philippine Navy. Pursuant to Presidential Decree No. 601, issued on 9 December 1974, the PCG was placed under the direct supervision and control of the Secretary of National Defense.[2]

On 30 March 1998, then President Fidel V. Ramos issued Executive Order No. 475, transferring the PCG from the Department of National Defense to the Office of the President. Subsequently, Executive Order No. 477 (EO 477) was issued on 15 April 1998, transferring the PCG from the Office of the President to the Department of Transportation and Communication (DOTC). Under Section 1 of EO 477, the DOTC shall exercise administrative supervision over the PCG.

On 6 November 2000, the DOTC Secretary issued Department Order No. 2000-61, creating the PCG-ESB. **Subsequently, DOTC Memorandum Circular No. 2000-64 was issued which prescribed the rules and regulations, and the procedures governing the discharge or separation from the Coast Guard service of PCG Officers.** On 9 December 2002, the DOTC Secretary issued Department Order No. 2002-76 on the re-composition of the PCG-ESB. **In effect, the DOTC created PCG-ESB patterned after the Efficiency and Separation Board established under Executive Order No. 337 (EO 337),**[3] **and prescribed its implementing rules and regulations.**

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[1] An Act Creating the Philippine Coast Guard, Prescribing its Powers and Functions, Appropriating the Necessary Funds Therefor, and for Other Purposes.

[2] *See* Section 4, Presidential Decree No. 601.

[3] Prescribing Regulations Governing the Discharge or Separation by Administrative Action of Officers of the Regular Force and Reserve Officers on Extended Tour of Active Duty in the Armed Forces of the Philippines.

The paramount effect of the transfer of the PCG from the Department of National Defense to the Office of the President and eventually to the DOTC is the transformation of the PCG into a **non-military agency**. Thus, the PCG is already **civilian in character**. By removing the PCG under the control and supervision of the military, the PCG ceased to be a part of the military establishment, and has already assumed civilian character. Thus, in *Soriano III v. Lista*,[4] the Court held that the promotions and appointments of PCG officers do not require confirmation by the Commission on Appointments since the constitutional provision on "officers of the armed forces from the rank of colonel or naval captain" requiring such confirmation refers only to military officers.

The DOTC's creation of PCG-ESB patterned after the Efficiency and Separation Board established under EO 337 for the Armed Forces of the Philippines and its major services does not mean that the PCG is still covered by the military rules on administrative discipline. It should be emphasized that **the PCG-ESB was created under DOTC Department Order No. 2000-61, which was issued by the DOTC Secretary in the exercise of his power of administrative supervision over the PCG**. Under Section 38(2), Chapter 7, Book IV of Executive Order No. 292 (EO 292),[5] administrative supervision includes the authority of the Department to take such action as may be necessary for the proper performance of official functions, including rectification of violations, abuses and other forms of maladministration.[6] Section 7(5), Chapter 2, Book

[4] 447 Phil. 566 (2003).

[5] Otherwise known as the Administrative Code of 1987.

[6] Section 38(2), Chapter 7, Book IV of EO 292 reads:

(2) *Administrative Supervision.* – Administrative supervision which shall govern the administrative relationship between a department or its equivalent and regulatory agencies or other agencies as may be provided by law, shall be limited to the authority of the department or its equivalent to generally oversee the operations of such agencies and to ensure that they are managed effectively, efficiently and economically but without interference with day-to-day activities; or require the submission of reports and cause the conduct of management audit, performance evaluation and

IV of EO 292 provides that among the powers and functions of a Department Secretary is to **exercise disciplinary powers over officers and employees under the Secretary in accordance with law, including their investigation and the designation of a committee or officer to conduct such investigation**. The Secretary is also mandated to **promulgate not only rules and regulations necessary to carry out department objectives, policies, functions, plans, programs and projects, but also administrative issuances necessary for the efficient administration of the offices under the Secretary and for proper execution of the laws relative thereto**. Section 7, Chapter 2, Book IV of the Administrative Code of 1987 provides:

SEC. 7. *Powers and Functions of the Secretary*. – The Secretary shall:

x x x x x x x x x

(3) Promulgate rules and regulations necessary to carry out department objectives, policies, functions, plans, programs and projects;

(4) Promulgate administrative issuances necessary for the efficient administration of the offices under the Secretary and for proper execution of the laws relative thereto. These issuances shall not prescribe penalties for their violation, except when expressly authorized by law;

(5) Exercise disciplinary powers over officers and employees under the Secretary in accordance with law, including their investigation and the designation of a committee or officer to conduct such investigation;

x x x x x x x x x (Emphasis supplied)

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inspection to determine compliance with policies, standards and guidelines of the department; **to take such action as may be necessary for the proper performance of official functions, including rectification of violations, abuses and other forms of maladministration**; and to review and pass upon budget proposals of such agencies but may not increase or add to them.

Thus, the DOTC's administrative supervision over PCG includes the authority to adopt policies and implement appropriate measures to regulate the conduct and discipline of the PCG personnel.

Clearly, the DOTC Secretary, exercising administrative supervision over PCG pursuant to EO 477, acted within his jurisdiction and authority under EO 292 when he issued Department Order No. 2000-61, Memorandum Circular No. 2000-64, and Department Order No. 2002-76.

Thus, I submit that the creation of the PCG-ESB is valid and that the PCG-ESB has jurisdiction to conduct administrative disciplinary proceedings against Capt. Ernesto Caballero.

Accordingly, I vote to **DISMISS** the petition.

EN BANC

[A.C. No. 6737. September 23, 2008]

FLOCERFIDA S. LANUZO, *complainant, vs.* **ATTY. JESUS B. BONGON,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEY'S; NOTARY PUBLIC; MUST EXERCISE UTMOST DILIGENCE IN THE PERFORMANCE OF HIS FUNCTIONS. — That a notary public should not notarize a document unless the persons who signed it are the same persons who executed and personally appeared before him to attest to the contents and the truth of what are stated therein bears reiterating, the purpose being to enable the notary public to verify the genuineness of the signatures of the acknowledging parties and to ascertain that the document is the parties' free act. In this case, Atty. Bongon failed to ascertain the identities of the parties; he notarized

the Deed of Sale and stated that Primitiva Nangyo personally appeared before him yet she had long been dead. Respondent has clearly failed to exercise utmost diligence in the performance of his functions as a notary public. By notarizing the questioned deed, he engaged in unlawful, dishonest, immoral or deceitful conduct.

2. ID.; ID.; ID.; MUST OBSERVE THE BASIC REQUIREMENTS IN NOTARIZING DOCUMENTS. — Lawyers commissioned as notaries public are mandated to discharge with fidelity the duties of their offices, such duties being dictated by public policy and impressed with public interest. It must be remembered that notarization is not a meaningless routinary act. A notarized document is by law entitled to full credit upon its face and it is for this reason that notaries public must observe the basic requirements in notarizing documents. Otherwise, the confidence of the public in notarized documents will be undermined.

3. ID.; ID.; ID.; IMPOSABLE PENALTY THEREOF FOR FAILURE TO DISCHARGE THE DUTIES AS A NOTARY PUBLIC. — Respondent having thus failed to discharge his duties as a notary public, under the facts and circumstances of the case, the revocation of his notarial commission, disqualification from being commissioned as a notary public for a period of two years and suspension from the practice of law for one year are in order.

R E S O L U T I O N

QUISUMBING, *J.*:

Before us is a complaint for disbarment filed by Flocerfida S. Lanuzo against respondent Atty. Jesus B. Bongon for falsification of public documents and violation of notarial rules.

In her Complaint[1] filed on May 17, 2005, Flocerfida alleged that she is the wife of Francisco L. Lanuzo, Jr., who purchased from Fernando B. Nangyo a parcel of agricultural land covering 4,357 square meters, situated at Barrio Pinugay, Baras, Rizal, as evidenced by a Deed of Absolute Sale[2] dated November 6, 1996.

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

[2] *Id.* at 6.

Complainant alleged that sometime in December 2004, when she went to pay the real estate taxes of the land, she discovered that the land bought by her husband had been sold by Fernando Nangyo to Librada G. Santos. She was able to obtain from the Assessor's Office of Antipolo City a copy of the Deed of Sale[3] signed by the spouses Fernando and Primitiva Nangyo and by Librada G. Santos. Upon perusal, she noted that the Acknowledgment of the Deed of Sale was signed and verified on April 20, 2004 by respondent Atty. Bongon acting as Notary Public of Pasay City, notwithstanding the fact that Primitiva Nangyo, whose signature appeared thereon as co-vendor, had already died six years before, on August 10, 1997, as evidenced by a copy of her death certificate.[4]

Complainant further alleged that she obtained a copy of the same Deed from the Notarial Section of the Office of the Clerk of Court of the Regional Trial Court (RTC) of Pasay City and discovered that both instruments refer to different titles and to a parcel of land in Barrio San Roque, Municipality of Marikina (now Marikina City); whereas Nangyo's title refers to the land located in Barrio Pinugay, Baras, Rizal. Both instruments were signed on June 14, 1995, but notarized only on April 20, 2004.

In his Comment[5] filed on August 12, 2005, Atty. Bongon contended he had no part in the preparation of the subject deed of sale and the persons who prepared the same should be the subject of the complaint, not him. He further alleged that the Deed of Sale was presented to him for notarization by Librada Santos who should account for the discrepancies therein, and that he neither falsified the document nor conspired with Fernando Nangyo and Librada Santos in falsifying the same.

In his Report and Recommendation[6] dated January 4, 2008, Commissioner Acerey C. Pacheco of the Integrated Bar of

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

[4] *Id.* at 19.

[5] *Id.* at 23-26.

[6] *Id.* at 101-105.

the Philippines (IBP) found that respondent had violated the notarial law when he failed to require the parties to personally appear before him, thus failing to discover that one of the parties, Primitiva Nangyo, had already passed away. Nonetheless, Commissioner Pacheco found no evidence that the respondent conspired with the parties in falsifying the deed of sale. He recommended that respondent be reprimanded to be careful and extra cautious in ascertaining the identities of persons appearing before him as notary public.

In a Resolution dated January 17, 2008, the IBP Board of Governors approved the report and recommendation of Commissioner Pacheco and recommended Atty. Bongon's suspension from the practice of law for one year and disqualification from being commissioned as notary public for two years.

We sustain the IBP's findings and recommendations.

That a notary public should not notarize a document unless the persons who signed it are the same persons who executed and personally appeared before him to attest to the contents and the truth of what are stated therein bears reiterating, the purpose being to enable the notary public to verify the genuineness of the signatures of the acknowledging parties and to ascertain that the document is the parties' free act.[7]

In this case, Atty. Bongon failed to ascertain the identities of the parties; he notarized the Deed of Sale and stated that Primitiva Nangyo personally appeared before him yet she had long been dead. Respondent has clearly failed to exercise utmost diligence in the performance of his functions as a notary public. By notarizing the questioned deed, he engaged in unlawful, dishonest, immoral or deceitful conduct.[8]

Lawyers commissioned as notaries public are mandated to discharge with fidelity the duties of their offices, such duties being dictated by public policy and impressed with public interest.

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[7] *Lopena v. Cabatos*, A.C. No. 3441, August 11, 2005, 466 SCRA 419, 426.

[8] *Gonzales v. Ramos*, A.C. No. 6649, June 21, 2005, 460 SCRA 352.

It must be remembered that notarization is not a meaningless routinary act. A notarized document is by law entitled to full credit upon its face and it is for this reason that notaries public must observe the basic requirements in notarizing documents. Otherwise, the confidence of the public in notarized documents will be undermined.[9]

Respondent having thus failed to discharge his duties as a notary public, under the facts and circumstances of the case, the revocation of his notarial commission, disqualification from being commissioned as a notary public for a period of two years and suspension from the practice of law for one year are in order.[10]

As for the charge against respondent of having conspired with the parties in falsifying the subject deed of sale, we agree with the IBP Investigating Commissioner that there is no sufficient evidence to hold him liable therefor.

WHEREFORE, the notarial commission of the respondent Atty. Jesus B. Bongon, if still existing, is hereby *REVOKED*, he is *DISQUALIFIED* from being commissioned as notary public for a period of two (2) years and *SUSPENDED* from the practice of law for a period of one (1) year, effective upon receipt of a copy of this Decision. He is *WARNED* that a repetition of this offense or a similar violation by him shall be dealt with more severely.

Let copies of this Decision be furnished the Office of the Bar Confidant to be appended to respondent's personal record as attorney. Likewise, copies shall be furnished to the Integrated Bar of the Philippines and all courts in the country for their information and guidance.

SO ORDERED.

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

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[9] *Id*.

[10] *Lopena v. Cabatos, supra* at 426-427.

SECOND DIVISION

[G.R. No. 162525. September 23, 2008]

ASEAN PACIFIC PLANNERS, APP CONSTRUCTION AND DEVELOPMENT CORPORATION* and CESAR GOCO, *petitioners, vs.* **CITY OF URDANETA, CEFERINO J. CAPALAD, WALDO C. DEL CASTILLO, NORBERTO M. DEL PRADO, JESUS A. ORDONO, and AQUILINO MAGUISA,**** *respondents.*

SYLLABUS

1. POLITICAL LAW; TAXPAYERS' SUITS; WHEN ALLOWED. — The RTC properly allowed the taxpayers' suits. In *Public Interest Center, Inc. v. Roxas*, we held: In the case of taxpayers' suits, the party suing as a taxpayer must prove that he has sufficient interest in preventing the illegal expenditure of money raised by taxation. Thus, taxpayers have been allowed to sue where there is a claim that public funds are illegally disbursed or that public money is being deflected to any improper purpose, or that public funds are wasted through the enforcement of an invalid or unconstitutional law. xxx xxx xxx Petitioners' allegations in their Amended Complaint that the loan contracts entered into by the Republic and NPC are serviced or paid through a disbursement of public funds are not disputed by respondents, hence, they are invested with personality to institute the same. Here, the allegation of taxpayers Del Castillo, Del Prado, Ordono and Maguisa that ₱95 million of the ₱250 million PNB loan had already been paid for minimal work is sufficient allegation of overpayment, of illegal disbursement, that invests them with personality to sue. Petitioners do not dispute the allegation as they merely insist, albeit erroneously, that public funds are not involved. Under Article 1953 of the Civil Code, the city acquired ownership of the money loaned

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* Asean Pacific Planners and Development Corporation in some parts of the record.

** Public respondents Court of Appeals and Presiding Judge of the Regional Trial Court omitted as respondents per Section 4 (a), Rule 45.

from PNB, making the money public fund. The city will have to pay the loan by revenues raised from local taxation or by its internal revenue allotment. In addition, APP and APPCDC's lack of objection in their Answer on the personality to sue of the four complainants constitutes waiver to raise the objection under Section 1, Rule 9 of the Rules of Court.

2. ID.; LOCAL GOVERNMENT; IN THE ABSENCE OF THE CITY LEGAL OFFICER, THE CITY PROSECUTOR MUST REPRESENT THE CITY IN ALL CIVIL ACTIONS. — We cannot agree with the Lazaro Law Firm. Its appearance as Urdaneta City's counsel is against the law as it provides expressly who should represent it. The City Prosecutor should continue to represent the city. Section 481(a) of the Local Government Code (LGC) of 1991 mandates the appointment of a city legal officer. Under Section 481(b)(3)(i) of the LGC, the city legal officer is supposed to represent the city in all civil actions, as in this case, and special proceedings wherein the city or any of its officials is a party. In *Ramos v. Court of Appeals*, we cited that under Section 19 of Republic Act No. 5185, city governments may already create the position of city legal officer to whom the function of the city fiscal (now prosecutor) as legal adviser and officer for civil cases of the city shall be transferred. In the case of Urdaneta City, however, the position of city legal officer is still vacant, although its charter was enacted way back in 1998. Because of such vacancy, the City Prosecutor's appearance as counsel of Urdaneta City is proper. The City Prosecutor remains as the city's legal adviser and officer for civil cases, a function that could not yet be transferred to the city legal officer. Under the circumstances, the RTC should not have allowed the entry of appearance of the Lazaro Law Firm *vice* the City Prosecutor. Notably, the city's Answer was sworn to before the City Prosecutor by Mayor Perez. The City Prosecutor prepared the city's pre-trial brief and represented the city in the pre-trial conference. No question was raised against the City Prosecutor's actions until the Lazaro Law Firm entered its appearance and claimed that the city lacked adequate legal representation.

3. ID.; ID.; A LOCAL GOVERNMENT UNIT CANNOT BE REPRESENTED BY PRIVATE COUNSEL AND PUBLIC FUNDS SHOULD NOT BE SPENT TO HIRE PRIVATE LAWYERS. — Moreover, the appearance of the Lazaro Law

Firm as counsel for Urdaneta City is against the law. Section 481(b)(3)(i) of the LGC provides when a special legal officer may be employed, that is, in actions or proceedings where a component city or municipality is a party adverse to the provincial government. But this case is not between Urdaneta City and the Province of Pangasinan. And we have consistently held that a local government unit cannot be represented by private counsel as only public officers may act for and in behalf of public entities and public funds should not be spent to hire private lawyers. *Pro bono* representation in collaboration with the municipal attorney and prosecutor has not even been allowed.

4. ID.; ID.; ID.; REPRESENTATION BY PRIVATE COUNSEL, WHEN ALLOWED.— Neither is the law firm's appearance justified under the instances listed in *Mancenido* when local government officials can be represented by private counsel, such as when a claim for damages could result in personal liability. No such claim against said officials was made in this case. Note that before it joined the complainants, the city was the one sued, not its officials. That the firm represents Mayor Perez in criminal cases, suits in his personal capacity, is of no moment.

5. REMEDIAL LAW; PLEADINGS; AMENDMENT OF PLEADINGS; WHEN ALLOWED. — Section 5, Rule 10 of the Rules of Court pertinently provides that if evidence is objected to at the trial on the ground that it is not within the issues raised by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. Objections need not even arise in this case since the Pre-trial Order dated April 1, 2002 already defined as an issue whether the contracts are valid. Thus, what is needed is presentation of the parties' evidence on the issue. Any evidence of the city for or against the validity of the contracts will be relevant and admissible. Note also that under Section 5, Rule 10, necessary amendments to pleadings may be made to cause them to conform to the evidence.

6. ID.; EVIDENCE; ADMISSIONS; A PARTY'S TESTIMONY IN OPEN COURT MAY OVERRIDE ADMISSIONS IN THE ANSWER. — In addition, despite Urdaneta City's judicial admissions, the trial court is still given leeway to consider other

evidence to be presented for said admissions may not necessarily prevail over documentary evidence, *e.g.*, the contracts assailed. A party's testimony in open court may also override admissions in the Answer.

7. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; A LAWYER SHOULD OBSERVE AND MAINTAIN THE RESPECT DUE TO THE COURT OF APPEALS AND JUDICIAL OFFICERS AND ABSTAIN FROM OFFENSIVE LANGUAGE BEFORE THE COURTS. — Before we close, notice is taken of the offensive language used by Attys. Oscar C. Sahagun and Antonio B. Escalante in their pleadings before us and the Court of Appeals. They unfairly called the Court of Appeals a "court of technicalities" for validly dismissing their defectively prepared petition. They also accused the Court of Appeals of protecting, in their view, "an incompetent judge." In explaining the "concededly strong language," Atty. Sahagun further indicted himself. He said that the Court of Appeals' dismissal of the case shows its "impatience and readiness to punish petitioners for a perceived slight on its dignity" and such dismissal "smacks of retaliation and does not augur for the cold neutrality and impartiality demanded of the appellate court." Accordingly, we impose upon Attys. Oscar C. Sahagun and Antonio B. Escalante a fine of ₱2,000 each payable to this Court within ten days from notice and we remind them that they should observe and maintain the respect due to the Court of Appeals and judicial officers; abstain from offensive language before the courts; and not attribute to a Judge motives not supported by the record. Similar acts in the future will be dealt with more severely.

APPEARANCES OF COUNSEL

Sahagun Law Office for petitioners.

Baraan and Associates for W.C. del Castillo, N.M. del Prado, J.A. Ordono & A. Maguisa.

Jorito C. Peralta for C.J. Capalad.

D E C I S I O N

QUISUMBING, *J.*:

The instant petition seeks to set aside the Resolutions[1] dated April 15, 2003 and February 4, 2004 of the Court of Appeals in CA-G.R. SP No. 76170.

This case stemmed from a Complaint[2] for annulment of contracts with prayer for preliminary prohibitory injunction and temporary restraining order filed by respondent Waldo C. Del Castillo, in his capacity as taxpayer, against respondents City of Urdaneta and Ceferino J. Capalad doing business under the name JJEFWA Builders, and petitioners Asean Pacific Planners (APP) represented by Ronilo G. Goco and Asean Pacific Planners Construction and Development Corporation (APPCDC) represented by Cesar D. Goco.

Del Castillo alleged that then Urdaneta City Mayor Rodolfo E. Parayno entered into five contracts for the preliminary design, construction and management of a four-storey twin cinema commercial center and hotel involving a massive expenditure of public funds amounting to ₱250 million, funded by a loan from the Philippine National Bank (PNB). For minimal work, the contractor was allegedly paid ₱95 million. Del Castillo also claimed that all the contracts are void because the object is outside the commerce of men. The object is a piece of land belonging to the public domain and which remains devoted to a public purpose as a public elementary school. Additionally, he claimed that the contracts, from the feasibility study to management and lease of the future building, are also void because they were all awarded solely to the Goco family.

In their Answer,[3] APP and APPCDC claimed that the contracts are valid. Urdaneta City Mayor Amadeo R. Perez, Jr., who

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[1] *Rollo*, pp. 51-52 and 53-55. Penned by Associate Justice Rebecca De Guia-Salvador, with Associate Justices Marina L. Buzon and Rosmari D. Carandang concurring.

[2] *Id.* at 117-126. Dated September 6, 2001.

[3] *Id.* at 136-140. Dated September 20, 2001.

filed the city's Answer,[4] joined in the defense and asserted that the contracts were properly executed by then Mayor Parayno with prior authority from the *Sangguniang Panlungsod*. Mayor Perez also stated that Del Castillo has no legal capacity to sue and that the complaint states no cause of action. For respondent Ceferino J. Capalad, Atty. Oscar C. Sahagun filed an Answer[5] with compulsory counterclaim and motion to dismiss on the ground that Del Castillo has no legal standing to sue.

Respondents Norberto M. Del Prado, Jesus A. Ordono and Aquilino Maguisa became parties to the case when they jointly filed, also in their capacity as taxpayers, a Complaint-in-Intervention[6] adopting the allegations of Del Castillo.

After pre-trial, the Lazaro Law Firm entered its appearance as counsel for Urdaneta City and filed an Omnibus Motion[7] with prayer to (1) withdraw Urdaneta City's Answer; (2) drop Urdaneta City as defendant and be joined as plaintiff; (3) admit Urdaneta City's complaint; and (4) conduct a new pre-trial. Urdaneta City allegedly wanted to rectify its position and claimed that inadequate legal representation caused its inability to file the necessary pleadings in representation of its interests.

In its Order[8] dated September 11, 2002, the Regional Trial Court (RTC) of Urdaneta City, Pangasinan, Branch 45, admitted the entry of appearance of the Lazaro Law Firm and granted the withdrawal of appearance of the City Prosecutor. It also granted the prayer to drop the city as defendant and admitted its complaint for consolidation with Del Castillo's complaint, and directed the defendants to answer the city's complaint.

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[4] *Id.* at 141-143. Dated October 10, 2001.

[5] *Id.* at 131-135. Dated October 12, 2001.

[6] *Id.* at 127-130. Dated January 24, 2002.

[7] *Id.* at 168-195. Dated April 24, 2002.

[8] *Id.* at 56-76.

In its February 14, 2003 Order,[9] the RTC denied reconsideration of the September 11, 2002 Order. It also granted Capalad's motion to expunge all pleadings filed by Atty. Sahagun in his behalf. Capalad was dropped as defendant, and his complaint filed by Atty. Jorito C. Peralta was admitted and consolidated with the complaints of Del Castillo and Urdaneta City. The RTC also directed APP and APPCDC to answer Capalad's complaint.

Aggrieved, APP and APPCDC filed a petition for *certiorari* before the Court of Appeals. In its April 15, 2003 Resolution, the Court of Appeals dismissed the petition on the following grounds: (1) defective verification and certification of non-forum shopping, (2) failure of the petitioners to submit certified true copies of the RTC's assailed orders as mere photocopies were submitted, and (3) lack of written explanation why service of the petition to adverse parties was not personal.[10] The Court of Appeals also denied APP and APPCDC's motion for reconsideration in its February 4, 2004 Resolution.[11]

Hence, this petition, which we treat as one for review on *certiorari* under Rule 45, the proper remedy to assail the resolutions of the Court of Appeals.[12]

Petitioners argue that:

I.

THE APPELLATE COURT PALPABLY ERRED AND GRAVELY ABUSED ITS JUDICIAL PREROGATIVES BY SUMMARILY DISMISSING THE PETITION ON THE BASIS OF PROCEDURAL

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[9] *Id.* at 77-93.

[10] *Id.* at 51.

[11] *Id.* at 55.

[12] APP and APPCDC filed a petition for extension of 30 days to file a *petition for review*. Within the extension requested, they filed a *petition for certiorari under Rule 65* with Cesar Goco as additional petitioner. In their memorandum, petitioners stated that this petition is one *for review on certiorari*.

TECHNICALITIES DESPITE SUBSTANTIAL COMPLIANCE [THEREWITH]…

II.

THE TRIAL COURT PALPABLY ERRED AND GRAVELY ABUSED ITS JUDICIAL PREROGATIVES BY CAPRICIOUSLY

(a.) Entertaining the taxpayers' suits of private respondents del Castillo, del Prado, Ordono and Maguisa despite their clear lack of legal standing to file the same.

(b.) Allowing the entry of appearance of a private law firm to represent the City of Urdaneta despite the clear statutory and jurisprudential prohibitions thereto.

(c.) Allowing Ceferino J. Capalad and the City of Urdaneta to switch sides, by permitting the withdrawal of their respective answers and admitting their complaints as well as allowing the appearance of Atty. Jorito C. Peralta to represent Capalad although Atty. Oscar C. Sahagun, his counsel of record, had not withdrawn from the case, in gross violation of well settled rules and case law on the matter.[13]

We first resolve whether the Court of Appeals erred in denying reconsideration of its April 15, 2003 Resolution despite APP and APPCDC's subsequent compliance.

Petitioners argue that the Court of Appeals should not have dismissed the petition on mere technicalities since they have attached the proper documents in their motion for reconsideration and substantially complied with the rules.

Respondent Urdaneta City maintains that the Court of Appeals correctly dismissed the petition because Cesar Goco had no proof he was authorized to sign the certification of non-forum shopping in behalf of APPCDC.

Indeed, Cesar Goco had no proof of his authority to sign the verification and certification of non-forum shopping of the petition for *certiorari* filed with the Court of Appeals.[14] Thus, the

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[13] *Rollo,* pp. 546-547.

[14] CA *rollo,* pp. 30-32.

Court of Appeals is allowed by the rules the discretion to dismiss the petition since only individuals vested with authority by a valid board resolution may sign the certificate of non-forum shopping in behalf of a corporation. Proof of said authority must be attached; otherwise, the petition is subject to dismissal.[15]

However, it must be pointed out that in several cases,[16] this Court had considered as substantial compliance with the procedural requirements the submission in the motion for reconsideration of the authority to sign the verification and certification, as in this case. The Court notes that the attachments in the motion for reconsideration show that on March 5, 2003, the Board of Directors of APPCDC authorized Cesar Goco to institute the petition before the Court of Appeals.[17] On March 22, 2003, Ronilo Goco doing business under the name APP, also appointed his father, Cesar Goco, as his attorney-in-fact to file the petition.[18] When the petition was filed on March 26, 2003[19] before the Court of Appeals, Cesar Goco was duly authorized to sign the verification and certification except that the proof of his authority was not submitted together with the petition.

Similarly, petitioners submitted in the motion for reconsideration certified true copies of the assailed RTC orders and we may also consider the same as substantial compliance.[20] Petitioners

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[15] *Philippine Airlines, Inc. v. Flight Attendants and Stewards Association of the Philippines (FASAP)*, G.R. No. 143088, January 24, 2006, 479 SCRA 605, 608.

[16] *General Milling Corp. v. NLRC*, 442 Phil. 425, 427 (2002); *Novelty Philippines, Inc. v. Court of Appeals*, G.R. No. 146125, September 17, 2003, 411 SCRA 211, 216-220; *Philippine Airlines, Inc. v. Flight Attendants and Stewards Association of the Philippines (FASAP)*, *supra* at 609.

[17] CA *rollo*, p. 245.

[18] *Id.* at 246.

[19] *Id.* at 2.

[20] *Caingat v. National Labor Relations Commission*, G.R. No. 154308, March 10, 2005, 453 SCRA 142, 148-149; *Pinakamasarap Corporation v. National Labor Relations Commission*, G.R. No. 155058, September 26, 2006, 503 SCRA 128, 130.

also included in the motion for reconsideration their explanation[21] that copies of the petition were personally served on the Lazaro Law Firm and mailed to the RTC and Atty. Peralta because of distance. The affidavit of service[22] supported the explanation. Considering the substantial issues involved, it was thus error for the appellate court to deny reinstatement of the petition.

Having discussed the procedural issues, we shall now proceed to address the substantive issues raised by petitioners, rather than remand this case to the Court of Appeals. In our view, the issue, simply put, is: Did the RTC err and commit grave abuse of discretion in (a) entertaining the taxpayers' suits; (b) allowing a private law firm to represent Urdaneta City; (c) allowing respondents Capalad and Urdaneta City to switch from being defendants to becoming complainants; and (d) allowing Capalad's change of attorneys?

On the *first point at issue*, petitioners argue that a taxpayer may only sue where the act complained of directly involves illegal disbursement of public funds derived from taxation. The allegation of respondents Del Castillo, Del Prado, Ordono and Maguisa that the construction of the project is funded by the PNB loan contradicts the claim regarding illegal disbursement since the funds are not directly derived from taxation.

Respondents Del Castillo, Del Prado, Ordono and Maguisa counter that their personality to sue was not raised by petitioners APP and APPCDC in their Answer and that this issue was not even discussed in the RTC's assailed orders.

Petitioners' contentions lack merit. The RTC properly allowed the taxpayers' suits. In *Public Interest Center, Inc. v. Roxas*,[23] we held:

In the case of taxpayers' suits, the party suing as a taxpayer must prove that he has sufficient interest in preventing the illegal

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[21] CA *rollo*, pp. 240-241.

[22] *Id.* at 244.

[23] G.R. No. 125509, January 31, 2007, 513 SCRA 457.

expenditure of money raised by taxation. Thus, taxpayers have been allowed to sue where there is a claim that public funds are illegally disbursed or that public money is being deflected to any improper purpose, or that public funds are wasted through the enforcement of an invalid or unconstitutional law.

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Petitioners' allegations in their Amended Complaint that the loan contracts entered into by the Republic and NPC are serviced or paid through a disbursement of public funds are not disputed by respondents, hence, they are invested with personality to institute the same.[24]

Here, the allegation of taxpayers Del Castillo, Del Prado, Ordono and Maguisa that ₱95 million of the ₱250 million PNB loan had already been paid for minimal work is sufficient allegation of overpayment, of illegal disbursement, that invests them with personality to sue. Petitioners do not dispute the allegation as they merely insist, albeit erroneously, that public funds are not involved. Under Article 1953[25] of the Civil Code, the city acquired ownership of the money loaned from PNB, making the money public fund. The city will have to pay the loan by revenues raised from local taxation or by its internal revenue allotment.

In addition, APP and APPCDC's lack of objection in their Answer on the personality to sue of the four complainants constitutes waiver to raise the objection under Section 1, Rule 9 of the Rules of Court.[26]

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[24] *Id.* at 470.

[25] ART. 1953. A person who receives a loan of money … acquires the ownership thereof, and is bound to pay to the creditor an equal amount of the same kind and quality.

[26] SECTION 1. *Defenses and objections not pleaded*. – Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

On the *second point*, petitioners contend that only the City Prosecutor can represent Urdaneta City and that law and jurisprudence prohibit the appearance of the Lazaro Law Firm as the city's counsel.

The Lazaro Law Firm, as the city's counsel, counters that the city was inutile defending its cause before the RTC for lack of needed legal advice. The city has no legal officer and both City Prosecutor and Provincial Legal Officer are busy. Practical considerations also dictate that the city and Mayor Perez must have the same counsel since he faces related criminal cases. Citing *Mancenido v. Court of Appeals*,[27] the law firm states that hiring private counsel is proper where rigid adherence to the law on representation would deprive a party of his right to redress a valid grievance.[28]

We cannot agree with the Lazaro Law Firm. Its appearance as Urdaneta City's counsel is against the law as it provides expressly who should represent it. The City Prosecutor should continue to represent the city.

Section 481(a)[29] of the Local Government Code (LGC) of 1991[30] mandates the appointment of a city legal officer. Under Section 481(b)(3)(i)[31] of the LGC, the city legal officer is

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[27] G.R. No. 118605, April 12, 2000, 330 SCRA 419.

[28] *Id.* at 426.

[29] SECTION 481. *Qualifications, Terms, Powers and Duties. – ...*

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The appointment of legal officer shall be mandatory for the provincial and city governments and optional for the municipal government.

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[30] Under Republic Act No. 7160, effective on January 1, 1992.

[31] SECTION 481. *Qualifications, Terms, Powers and Duties. – …*

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(b) The legal officer, the chief legal counsel of the local government unit, shall take charge of the office of legal services and shall:

supposed to represent the city in all civil actions, as in this case, and special proceedings wherein the city or any of its officials is a party. In *Ramos v. Court of Appeals*,[32] we cited that under Section 19[33] of Republic Act No. 5185,[34] city governments may already create the position of city legal officer to whom the function of the city fiscal (now prosecutor) as legal adviser and officer for civil cases of the city shall be transferred.[35] In the case of Urdaneta City, however, the position of city legal officer is still vacant, although its charter[36] was enacted way back in 1998.

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(3) In addition to the foregoing duties and functions, the legal officer shall:

(i) Represent the local government unit in all civil actions and special proceedings wherein the local government unit or any official thereof, in his official capacity, is a party: *Provided*, That, in actions or proceedings where a component city or municipality is a party adverse to the provincial government or to another component city or municipality, a special legal officer may be employed to represent the adverse party;

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[32] G.R. No. 99425, March 3, 1997, 269 SCRA 34.

[33] SEC. 19. *Creation of positions of Provincial Attorney and City Legal Officer*.–To enable the provincial and city governments to avail themselves of the full time and trusted services of legal officers, the positions of provincial attorney and city legal officer may be created … For this purpose the functions hitherto performed by the provincial and city fiscals in serving as legal adviser and legal officer for civil cases of the province and city shall be transferred to the provincial attorney and city legal officer, respectively.

[34] AN ACT GRANTING FURTHER AUTONOMOUS POWERS TO LOCAL GOVERNMENTS, approved on September 12, 1967.

[35] *Ramos v. Court of Appeals, supra* at 46.

[36] Republic Act No. 8480 (AN ACT CONVERTING THE MUNICIPALITY OF URDANETA IN THE PROVINCE OF PANGASINAN INTO A COMPONENT CITY TO BE KNOWN AS THE CITY OF URDANETA) approved on February 10, 1998.

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Because of such vacancy, the City Prosecutor's appearance as counsel of Urdaneta City is proper. The City Prosecutor remains as the city's legal adviser and officer for civil cases, a function that could not yet be transferred to the city legal officer. Under the circumstances, the RTC should not have allowed the entry of appearance of the Lazaro Law Firm *vice* the City Prosecutor. Notably, the city's Answer was sworn to before the City Prosecutor by Mayor Perez. The City Prosecutor prepared the city's pre-trial brief and represented the city in the pre-trial conference. No question was raised against the City Prosecutor's actions until the Lazaro Law Firm entered its appearance and claimed that the city lacked adequate legal representation.

Moreover, the appearance of the Lazaro Law Firm as counsel for Urdaneta City is against the law. Section 481(b)(3)(i) of the LGC provides when a special legal officer may be employed, that is, in actions or proceedings where a component city or municipality is a party adverse to the provincial government. But this case is not between Urdaneta City and the Province of Pangasinan. And we have consistently held that a local government unit cannot be represented by private counsel[37] as only public officers may act for and in behalf of public entities and public funds should not be spent to hire private lawyers.[38] *Pro bono* representation in collaboration with the municipal attorney and prosecutor has not even been allowed.[39]

SEC. 37. *The City Legal Officer*. – (a) The city legal officer must be a citizen of the Philippines, a resident of the City of Urdaneta, of good moral character, and a member of the Philippine Bar. He must have practiced his profession for at least five (5) years immediately preceding the date of his appointment.

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[37] *Mancenido v. Court of Appeals, supra* note 27, at 425; *Ramos v. Court of Appeals*, *supra* at 47; *Alinsug v. RTC Br. 58, San Carlos City, Negros Occidental*, G.R. No. 108232, August 23, 1993, 225 SCRA 553, 557-558.

[38] *Ramos v. Court of Appeals*, *supra* at 48.

[39] *Alinsug v. RTC Br. 58, San Carlos City, Negros Occidental*, *supra* at 558-559.

Neither is the law firm's appearance justified under the instances listed in *Mancenido* when local government officials can be represented by private counsel, such as when a claim for damages could result in personal liability. No such claim against said officials was made in this case. Note that before it joined the complainants, the city was the one sued, not its officials. That the firm represents Mayor Perez in criminal cases, suits in his personal capacity,[40] is of no moment.

On the *third point*, petitioners claim that Urdaneta City is estopped to reverse admissions in its Answer that the contracts are valid and, in its pre-trial brief, that the execution of the contracts was in good faith.

We disagree. The court may allow amendment of pleadings.

Section 5,[41] Rule 10 of the Rules of Court pertinently provides that if evidence is objected to at the trial on the ground that it is not within the issues raised by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. Objections need not even arise in this case since the Pre-trial Order[42] dated April 1, 2002 already defined as an issue whether the contracts

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[40] *Urbano v. Chavez*, G.R. Nos. 87977 and 88578, March 19, 1990, 183 SCRA 347, 358.

[41] SEC 5. *Amendment to conform to or authorize presentation of evidence*.– When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made.

[42] *Rollo*, pp. 160-164.

are valid. Thus, what is needed is presentation of the parties' evidence on the issue. Any evidence of the city for or against the validity of the contracts will be relevant and admissible. Note also that under Section 5, Rule 10, necessary amendments to pleadings may be made to cause them to conform to the evidence.

In addition, despite Urdaneta City's judicial admissions, the trial court is still given leeway to consider other evidence to be presented for said admissions may not necessarily prevail over documentary evidence,[43] *e.g.*, the contracts assailed. A party's testimony in open court may also override admissions in the Answer.[44]

As regards the RTC's order admitting Capalad's complaint and dropping him as defendant, we find the same in order. Capalad insists that Atty. Sahagun has no authority to represent him. Atty. Sahagun claims otherwise. We note, however, that Atty. Sahagun represents petitioners who claim that the contracts are valid. On the other hand, Capalad filed a complaint for annulment of the contracts. Certainly, Atty. Sahagun cannot represent totally conflicting interests. Thus, we should expunge all pleadings filed by Atty. Sahagun in behalf of Capalad.

Relatedly, we affirm the order of the RTC in allowing Capalad's change of attorneys, if we can properly call it as such, considering Capalad's claim that Atty. Sahagun was never his attorney.

Before we close, notice is taken of the offensive language used by Attys. Oscar C. Sahagun and Antonio B. Escalante in their pleadings before us and the Court of Appeals. They unfairly called the Court of Appeals a "court of technicalities"[45] for

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[43] *National Power Corporation v. Court of Appeals*, G.R. Nos. 113103 and 116000, June 13, 1997, 273 SCRA 419, 445.

[44] *Atillo III v. Court of Appeals*, G.R. No. 119053, January 23, 1997, 266 SCRA 596, 604.

[45] CA *rollo*, p. 238.

validly dismissing their defectively prepared petition. They also accused the Court of Appeals of protecting, in their view, "an incompetent judge."[46] In explaining the "concededly strong language," Atty. Sahagun further indicted himself. He said that the Court of Appeals' dismissal of the case shows its "impatience and readiness to punish petitioners for a perceived slight on its dignity" and such dismissal "smacks of retaliation and does not augur for the cold neutrality and impartiality demanded of the appellate court."[47]

Accordingly, we impose upon Attys. Oscar C. Sahagun and Antonio B. Escalante a fine of ₱2,000[48] each payable to this Court within ten days from notice and we remind them that they should observe and maintain the respect due to the Court of Appeals and judicial officers;[49] abstain from offensive language before the courts;[50] and not attribute to a Judge motives not supported by the record.[51] Similar acts in the future will be dealt with more severely.

WHEREFORE, we (1) *GRANT* the petition; (2) *SET ASIDE* the Resolutions dated April 15, 2003 and February 4, 2004 of the Court of Appeals in CA-G.R. SP No. 76170; (3) *DENY* the entry of appearance of the Lazaro Law Firm in Civil Case

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[46] *Id*.

[47] *Rollo*, p. 550.

[48] *Nuñez v. Astorga*, A.C. No. 6131, February 28, 2005, 452 SCRA 353, 364.

[49] CODE OF PROFESSIONAL RESPONSIBILITY

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CANON 11 – A LAWYER SHALL OBSERVE AND MAINTAIN THE RESPECT DUE TO THE COURTS AND TO JUDICIAL OFFICERS AND SHOULD INSIST ON SIMILAR CONDUCT BY OTHERS.

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[50] Rule 11.03 – A lawyer shall abstain from scandalous, offensive or menacing language or behavior before the Courts.

[51] Rule 11.04 – A lawyer shall not attribute to a Judge motives not supported by the record or have no materiality to the case.

No. U-7388 and *EXPUNGE* all pleadings it filed as counsel of Urdaneta City; (4) *ORDER* the City Prosecutor to represent Urdaneta City in Civil Case No. U-7388; (5) *AFFIRM* the RTC in admitting the complaint of Capalad; and (6) *PROHIBIT* Atty. Oscar C. Sahagun from representing Capalad and *EXPUNGE* all pleadings that he filed in behalf of Capalad.

Let the records of Civil Case No. U-7388 be remanded to the trial court for further proceedings.

Finally, we *IMPOSE* a fine of ₱2,000 each on Attys. Oscar C. Sahagun and Antonio B. Escalante for their use of offensive language, payable to this Court within ten (10) days from receipt of this Decision.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and *Brion, JJ.*, concur.

SECOND DIVISION

[G.R. No. 165153. September 23, 2008]

CARLOS C. DE CASTRO, *petitioner, vs.* **LIBERTY BROADCASTING NETWORK, INC. and EDGARDO QUIOGUE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI;* THE SUPREME COURT IS NOT A TRIER OF FACTS AND CAN REVIEW QUESTIONS OF LAW ONLY; CASE AT BAR AN EXCEPTION. — As a rule, and as recently held in *Rudy A. Palecpec, Jr. v. Hon. Corazon C. Davis, et al.* (a 2007 case), this Court is not a trier of facts and can review a Rule 45 petition only on questions of law. We wade, however, into questions of facts when there are substantial conflicts in

the factual findings of the CA, on the one hand, and the trial court or government agency concerned, on the other. This is precisely the situation that we have before us since the NLRC and the CA have diametrically opposed factual findings leading to differing conclusions. Hence, we are left with no option but to undertake a review of the facts in this Rule 45 case.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; IN CONTROVERSIES BETWEEN A LABORER AND HIS MASTER, DOUBTS REASONABLY ARISING FROM THE EVIDENCE, OR IN THE INTERPRETATION OF AGREEMENTS AND WRITING, SHOULD BE RESOLVED IN THE FORMER'S FAVOR. — All these considerations, to our mind, render the cited causes for the petitioner's dismissal tenuous as the evidence supporting these grounds come from highly suspect sources: they come either from people who harbor resentment against the petitioner; those whose positions have inherent conflict points with that of the petitioner; or from people with business dealings with the company. xxx. Under the circumstances, we join the NLRC in concluding that the employer failed to prove a just cause for the termination of the petitioner's employment — a burden the company, as employer, carries under the Labor Code 31 — and the CA erred when it saw grave abuse of discretion in the NLRC's ruling. The evidentiary situation, at the very least, brings to the fore the dictum we stated in *Prangan v. NLRC* and in *Nicario v. NLRC* that "if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. It is a time-honored rule in controversies between a laborer and his master, doubts reasonably arising from the evidence, or in the interpretation of agreements and writing should be resolved in the former's favor."

APPEARANCES OF COUNSEL

Valentino V. Dionela for petitioner.

Eusebio P. Dulatas, Jr. & Mary Charlene V. Hernandez for respondents.

D E C I S I O N

BRION, *J.*:

Before us is the Petition for Review on *Certiorari*[1] filed by petitioner Carlos C. de Castro (*petitioner*) to annul, reverse and/or set aside the Decision[2] dated May 25, 2004 and the Resolution[3] dated August 30, 2004 of the Former Special Third Division of the Court of Appeals (*CA*) in CA-G.R. SP No. 79207 entitled *"Liberty Broadcasting Network, Inc. and Edgardo B. Quiogue v. National Labor Relations Commission and Carlos C. de Castro."*

FACTUAL BACKGROUND

The facts of the case as gathered from the records are briefly summarized below.

The petitioner commenced his employment with respondent Liberty Broadcasting Network, Inc. (*respondent company*) as Building Administrator on August 7, 1995. On May 16, 1996, the respondent company, through its HRM Senior Manager (*Personnel Manager*) Bernard Mandap, sent a notice to the petitioner requiring him to explain within forty-eight (48) hours why he should not be made liable for violation of the Company Code of Conduct for acts constituting serious misconduct, fraud and willful breach of the trust reposed in him as a managerial employee.[4]

In his answer, the petitioner denied the allegations against him contained in the affidavits of respondents' witnesses, Vicente Niguidula (*Niguidula*) and Gil Balais (*Balais*).[5] The petitioner

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[1] Filed under Rule 45 of the 1997 Revised Rules of Civil Procedure.

[2] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justice Mario L. Guariña III and Associate Justice Lucas P. Bersamin, concurring; *rollo*, pp. 190-199.

[3] *Id.*, pp. 200-201.

[4] *Id.*, p. 147.

[5] *Id.*, pp. 75-79.

labeled all of the respondents' accusations as completely baseless and sham, designed to protect Niguidula and Balais who were the favorite boys of respondent Edgardo Quiogue (*Quiogue*), the Executive Vice President of the respondent company. At the petitioner's request, the respondent company scheduled a formal hearing at 2:00 p.m. of May 28, 1996. However, the petitioner sent a notice that he would not participate when he learned through his wife that criminal cases for *estafa* and qualified theft had been filed against him at the Makati Prosecutor's Office. He felt that the hearing was a "*moro-moro*" investigation. On May 24, 1996, the respondent company further charged the petitioner with "Violation of Company Code of Conduct," based on the affidavits of Balais, Cristino Samarita (*Samarita*), and Jose Aying (*Aying*).[6]

On May 31, 1996, the respondent company issued a Notice of Dismissal to the petitioner based on the following grounds:[7]

1. Soliciting and/or receiving money for his own benefit from suppliers/dealers/traders Aying and Samarita, representing "commissions" for job contracts involving the repair, reconditioning and replacement of parts of the airconditioning units at the company's Antipolo Station, as well as the installation of fire exits at the Technology Centre;

2. Diversion of company funds by soliciting and receiving on different occasions a total of ₱14,000.00 in "commissions" from Aying for a job contract in the company's Antipolo Station;

3. Theft of company property involving the unauthorized removal of one gallon of Delo oil from the company storage room;

4. Disrespect/discourtesy towards a co-employee, for using offensive language against Niguidula;

5. Disorderly behavior, for challenging Niguidula to a fight during working hours within company premises, thereby creating

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[6] *Id.,* p. 149.

[7] *Id.,* pp. 150-151.

a disturbance that interrupted the normal flow of activities in the company;

6. Threat and coercion, for threatening to inflict bodily harm on the person of Niguidula and for coercing Balais, a subordinate, into soliciting money in his (the petitioner's) behalf from suppliers/contractors;

7. Abuse of authority, for instructing Balais to collect commissions from Aying and Samarita, and for requiring Raul Pacaldo (*Pacaldo*) to exact 2%-5% of the price of the contracts awarded to suppliers; and

8. Slander, for uttering libelous statements against Niguidula.

The petitioner filed a complaint for illegal dismissal against the respondents with the National Labor Relations Commission (*NLRC*) Arbitration Branch in the National Capital Region. At the arbitration, he denied committing the offenses charged. He maintained that: he could not encourage solicitation of commissions from suppliers considering that he was quite new in the company; the accusations are belated because the imputed acts happened in 1995; the one gallon of Delo oil he allegedly carted away was at the room of Balais at the time, which circumstance he immediately relayed to Mandap; the affidavits of Niguidula and Balais are not reliable because he had altercations with them; in the first week of May 1996, he reprimanded Balais for incurring unnecessary overtime work, which Balais resented; on May 9, 1996, Niguidula verbally assaulted and challenged him to a fight, which he reported to respondent Quiogue and to the Makati Police. Attached to the petitioner's position paper were the affidavits[8] of Aying and Ronalisa O. Rosana, a telephone operator of the company.

On April 30, 1999, Labor Arbiter Felipe Pati rendered a Decision in the petitioner's favor, holding the respondent company liable for illegal dismissal.[9] Arbiter Pati disbelieved the affidavits of Niguidula, Balais, Pacaldo, Samarita, and Aying

[8] *Id.,* pp. 152-155.

[9] *Id.,* pp. 46-55.

in view of the circumstances prior to their execution. The Arbiter noted that Niguidula and Balais had altercations with petitioner prior to the issuance of the notice of violation to the latter; the affidavit of Samarita showed that it was not petitioner who personally asked commission from him but Balais; Aying's credibility had been placed in serious doubt because he recanted his previous affidavit and issued another stating that the petitioner did not actually ask commission from him; and Pacaldo's affidavit should not also be believed because he was a subordinate of Niguidula who had an ax to grind against the petitioner.

On appeal, the NLRC reversed the Labor Arbiter's decision and adopted the findings of Labor Arbiter Tamayo who had reviewed the appeal on the NLRC's instructions.[10] It ruled that Arbiter Pati erred in disregarding the affidavits of the respondents' witnesses.

The petitioner filed a motion for reconsideration which the NLRC granted in a Resolution promulgated on September 20, 2002.[11] The NLRC held that the charges against petitioner "were never really substantiated other than by the 'bare allegations' in the affidavits of witnesses" who were the company's employees and who had altercations with petitioner prior to the execution of their affidavits.

The NLRC turned down the motion for reconsideration that the respondent company subsequently filed.[12] The respondent company thus elevated the case to the CA *via* a petition for *certiorari* under Rule 65 of the Rules of Court. The CA granted the petition in its Decision promulgated on May 25, 2004,[13] thereby effectively confirming the validity of the petitioner's dismissal. The appellate court found that the NLRC gravely abused its discretion when it disregarded the affidavits of all the respondents' witnesses, particularly those of Balais, Samarita,

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[10] *Id.*, pp. 56-72.

[11] *Id.*, pp. 73-85.

[12] *Id.*, p. 86.

[13] *Supra* note 2.

Niguidula, and Pacaldo who were one in saying that the petitioner demanded commissions from the company's job contractors. The CA observed that it could not have been possible that Balais and Niguidula (who had previous altercations with the petitioner), and Samarita (who did not previously know Quiogue) all committed perjury to execute respondent Quiogue's scheme of removing the petitioner from the company.

The petitioner moved but failed to secure a reconsideration of the CA Decision; hence, he came to us through the present petition.

THE PETITION

The petitioner submits that the CA erred when it acted as a trial court and interfered without sufficient basis with the NLRC's findings. Citing our ruling in *Cosmos Bottling Corporation v. NLRC, et al.*,[14] he points out that factual findings of the NLRC, particularly when they coincide with those of the Labor Arbiter, are accorded respect and finality and should not be disturbed if they are supported by substantial evidence.

The petitioner points out, too, that Rule 65 of the Rules of Court finds full application only when an administrative tribunal has acted with grave abuse of discretion amounting to lack of or in excess of jurisdiction, or when such finding is not supported by the evidence. He argues that the respondent company failed to raise any jurisdictional question of jurisdiction or grave abuse of discretion before the CA. What the respondent company effectively sought from the CA, citing our ruling in *Flores v. NLRC*,[15] was a judicial re-evaluation of the adequacy or inadequacy of the evidence on record – an improper exercise of power outside the scope of the extraordinary writ of *certiorari*.

The petitioner further argues that the CA erred when it substituted its judgment for that of the Labor Arbiter and the

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[14] G.R. No. 146397, July 1, 2003, 405 SCRA 258.

[15] G.R. No. 116419, February 9, 1996, 253 SCRA 494.

NLRC who were the "triers of facts" who had the opportunity to review the evidence extensively.

The petitioner theorizes that his termination from employment was a hatchet job maliciously concocted by the respondents, with Quiogue at the helm. He had offended Quiogue when he questioned the latter's award of the fire exit contract to Samarita; as a result, Quiogue fabricated charges against him, using his underlings Niguidula and Balais. He particularly questions the charge that he conspired with his fellow managers (such as Niguidula, Pacaldo and even Personnel Manager Mandap) in December 1995, and asks why his investigation and the supporting evidence came only in May 1996.

The petitioner likewise cites Aying's change of statement as evidence that the respondents' charges have been concoctions. He belies that he slandered and challenged Niguidula to a fight; it was in fact Niguidula who had defamed him. He stresses that he complained in writing to respondent Quiogue about the incident immediately after it happened, copy furnished B. P. Mandap, F. A. Domingo and R. M. Moreno, the Personnel Manager, Head of Human Relations and President of the company, respectively. He likewise reported the matter to the police and to the *barangay* covering the workplace, and lodged a complaint for grave oral defamation against Niguidula before the Makati Prosecutor's Office. His co-employee, Ronalisa Rosana, corroborated all these allegations. He points out that Niguidula never reported the incident to Quiogue or to anyone for that matter, thus, proving the falsity of his (Niguidula's) complaint.

Finally, the petitioner draws attention to Quiogue's failure to act on his complaint against Niguidula, only to resurrect it under the Notice of Violation served on him on May 16, 1996.[16] This time, however, Niguidula was already the victim. As to the notice of violation itself, the petitioner laments that although he was given 48 hours to explain, Quiogue, in bad faith,

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[16] *Supra* note 4.

immediately filed complaints for *estafa* and qualified theft against him. Mandap even went to his residence and warned his wife not to file charges against the company, or else, Quiogue would file cases against him in the regular courts.

THE CASE FOR THE RESPONDENTS

The respondents submit that the CA correctly ruled as the NLRC committed grave abuse of discretion when it flip-flopped in its factual findings. They further stress that the positive testimonies of Balais, Pacaldo, and Samarita should be given credence over the negative testimony of the petitioner. Even granting that the testimony of Niguidula was tainted with malice and bad faith, the affidavit of Balais should stand because no evidence supports the petitioner's claim that Balais also had altercations with him before he (Balais) executed his two affidavits.

With respect to the testimony of Samarita, the respondents point out that Samarita stated in no uncertain terms that he was forced to increase his quotation for the construction of the company fire exits from ₱70,091.00 to ₱87,000.00 because the petitioner had asked for commissions. The petitioner failed to rebut this. They brush aside the insinuation that Samarita and Pacaldo suffer from bias as the petitioner failed to show by evidence that their personal interests led them to favor the company.

The respondents lastly maintain that petitioner's claim – that Quiogue orchestrated the petitioner's dismissal after he (the petitioner) questioned Quiogue's award of a contract to Samarita Enterprises for a questionable price – is not supported by evidence. They reiterate the gravity of the charges the petitioner faces; they constitute serious misconduct and fraud or willful breach of trust reposed in him by his employer and are just causes for termination of employment under Article 282 of the Labor Code, as well as serious breaches of company rules and the trust reposed in him by the respondent company.

OUR RULING

As a rule, and as recently held in *Rudy A. Palecpec, Jr. v. Hon. Corazon C. Davis, et al.*[17] (a 2007 case), this Court is not a trier of facts and can review a Rule 45 petition only on questions of law. We wade, however, into questions of facts when there are substantial conflicts in the factual findings of the CA, on the one hand, and the trial court or government agency concerned, on the other. This is precisely the situation that we have before us since the NLRC and the CA have diametrically opposed factual findings leading to differing conclusions. Hence, we are left with no option but to undertake a review of the facts in this Rule 45 case.

We find the petition meritorious. To our mind, the CA erred in the appreciation of the evidence surrounding petitioner's termination from employment. The cited grounds are at best doubtful under the proven surrounding circumstances, and should have been interpreted in the petitioner's favor pursuant to Article 4 of the Labor Code.

1. The petitioner had not stayed long in the company and had not even passed his probationary period when the acts charged allegedly took place.[18] This fact carries several significant implications. *First*, being new, his natural motivation was to make an early positive impression on his employer. Thus, it is believable that as building administrator, he diligently, zealously, and faithfully performed his tasks, working in excess of eight hours per day to maintain the company buildings and facilities in excellent shape; he even lent the company his personal tools and equipment to facilitate urgent repairs and maintenance work on company properties.[19] *Second*, because of his natural motivation as a new employee and his lack of awareness of the dynamics of relationships within the company, he must have been telling the truth when he said that he objected to the way

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[17] G.R. No.171048, July 31, 2007, 528 SCRA 720.

[18] *Rollo*, p. 16.

[19] *Id.*, p. 270.

the contract for the installation of fire escapes was awarded to Samarita. *Third*, his being new somehow rendered doubtful the charge that he had already encouraged solicitation of commission from suppliers, especially if considered with the timing of the charges against him and the turnaround of witness Aying's testimony.

2. The relationships within the company at the time the charges were filed showed that he was a stranger who might not have known the dynamics of company inter-relationships and might have stepped on the wrong toes in the course of performing his duties.

Respondent Quiogue was the Executive Vice-President of the company,[20] a very powerful official with a lot of say in company operations. Since Samarita was doing the fabrication of steel balusters for Quiogue's home in New Manila, Quezon City,[21] there is a lot of hidden dynamics in their relationship and it is not surprising that Samarita testified against the petitioner. Both Samarita and Quioque have motives to resent the petitioner's comments about the irregular award of a contract to Samarita.

Mandap, as Personnel Manager, is a subordinate of Quiogue. The proposal to secure commissions from company suppliers reportedly took place in a very public gathering – a drinking session – in his house. Why Mandap did not take immediate action when he knew of the alleged plan as early as December 1995 was never explained although the petitioner raised the issue squarely.[22] The time gap – from December 1995 to May 1996 – is an incredibly long time under the evidence available and can be accounted for only by the fact that there was no intention to terminate the services of the petitioner in December; the motivation and the scheme to do this came only sometime in April – May 1996 as the discussions below will show.

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[20] *Id.,* p. 115.

[21] *Id.,* p. 181.

[22] *Id.,* p. 180.

Niguidula, as Purchasing Manager, occupies a position that deals with supplies and suppliers. He, not the petitioner, is one who might be expected to be in the middle of all the actions regarding supply deals. He would not welcome a new and over-zealous building administrator since the building facilities generate the need for supplies and the building administrator is the end-user who can see how supplies are procured and used. It is significant that Niguidula and the petitioner had a dispute regarding the accounting of company items and had a near-fight that "interrupted the normal flow of activities in the company."[23]

Pacaldo, a Purchasing Officer and a subordinate of Niguidula, under usual conditions would side with Niguidula. He and Niguidula, not the petitioner, occupy the positions critical in the purchase of supplies for the company and were the people who could exact commissions from suppliers.

Balais is an air-con maintenance man whom petitioner reprimanded for unauthorized overtime work on an air-conditioning unit; for failure to monitor a newly overhauled compressor unit contrary to standard practice; and for over-pricing his purchases; and thus, Balais had every reason to testify against the petitioner.[24]

As already mentioned, Aying – the contractor who had earlier testified against the petitioner – recanted his earlier statement that petitioner asked for commissions from him.[25] Aying, in his second statement, exonerated the petitioner.[26] This turnaround by itself is significant, more so if considered with other circumstances,[27] particularly the possibility that the charges might have been orchestrated owing to the confluence of the people who were allied against the petitioner, their respective motivations and the timing of events.

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[23] *Id.,* p. 152.

[24] *Id.,* pp. 178-179.

[25] *Id.,* p. 141.

[26] *Id.,* p. 154.

[27] *Ibid.*

3. The timing of the filing of charges was, as the petitioner pointed out, unusual. Indeed, if the proposal to solicit commissions had transpired in December, the charges were quite late when they came in May. Interestingly, it was in April 1996 that the petitioner questioned the soundness of respondent Quiogue's decision to award the fabrication and installation of six (6) units of fire escape to Samarita Enterprises without observing company procedure of requiring at least three quotations from suppliers and contractors.[28] The petitioner reprimanded air-con maintenance man Balais sometime in the first week of May 1996 for unnecessary overtime work and the two had a verbal altercation, an incident that the petitioner reported to Quiogue.[29] On May 9, 1996, petitioner also had an altercation with Niguidula, the company's Purchasing Manager, who verbally assaulted, slandered, and challenged him to a fight, another incident which he likewise reported to Quiogue and to the Makati Police.[30] All these strangely coincided with the time the charges were filed. The respondents never successfully accounted for the coincidences.

All these considerations, to our mind, render the cited causes for the petitioner's dismissal tenuous as the evidence supporting these grounds come from highly suspect sources: they come either from people who harbor resentment against the petitioner; those whose positions have inherent conflict points with that of the petitioner; or from people with business dealings with the company. Thus, it was not surprising for the NLRC to observe:

From the above, the Commission believes that the Motion for Reconsideration should be granted. Respondents' charges against complainant were never substantiated by any evidence other than the barefaced allegations in the affidavits of respondents' witnesses who are employees of the company and who had an altercation with complainant prior to the execution of their affidavits and charges. The other witnesses are contractors having business deals with

[28] *Id.*, p. 181.

[29] *Supra* note 21.

[30] *Ibid.*

respondent company and in fact, Jose Aying has made a turn around and denied the complainant has been asking commission from him.

Under the circumstances, we join the NLRC in concluding that the employer failed to prove a just cause for the termination of the petitioner's employment – a burden the company, as employer, carries under the Labor Code[31] – and the CA erred when it saw grave abuse of discretion in the NLRC's ruling. The evidentiary situation, at the very least, brings to the fore the dictum we stated in *Prangan v. NLRC*[32] and in *Nicario v. NLRC*[33] that "if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. It is a time-honored rule in controversies between a laborer and his master, doubts reasonably arising from the evidence, or in the interpretation of agreements and writing should be resolved in the former's favor."

WHEREFORE, premises considered, we hereby *GRANT* the petition. Accordingly, we *REVERSE* and *SET ASIDE* the Decision and Resolution of the CA promulgated on May 25, 2004 and August 30, 2004, respectively, and *REINSTATE* in all respects the Resolution of the National Labor Relations Commission dated September 20, 2002. Costs against the respondents.

SO ORDERED.

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

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[31] THE LABOR CODE, Article 277(a):

"x x x The burden of proving that the termination was for a valid or just cause shall rest on the employer x x x."

[32] G.R. No. 126529, April 15, 1998, 289 SCRA 142.

[33] G.R. No. 125340, September 17, 1998, 295 SCRA 619.

SECOND DIVISION

[G.R. No. 165275. September 23, 2008]

GORETTI ONG, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION; AN ACCUSED CANNOT BE CONVICTED OF AN OFFENSE UNLESS IT IS CLEARLY CHARGED IN THE COMPLAINT.— Section 14(2) of Article III of the Constitution grants the accused the right to be informed of the nature and cause of the accusation. This is to enable the accused to adequately prepare for his defense. An accused cannot thus be convicted of an offense unless it is clearly charged in the complaint or information. From the allegations in an information, the real nature of the crime charged is determined. In the case at bar, the Information alleged that petitioner **issued the questioned checks knowing that she had no funds in the bank and failing to found them despite notice that they were dishonored**. These allegations clearly constitute a charge, not under paragraph 2(a) as the lower courts found but, under paragraph 2(d) of Article 315 of the Revised Penal Code.

2. CRIMINAL LAW; ESTAFA; ESTAFA UNDER PARAGRAPH 2(A) AND 2(D), DISTINGUISHED.—Although the earlier quoted paragraph 2(a) and the immediately quoted paragraph 2(d) of Article 315 have a common element – false pretenses of fraudulent acts – the law treats Estafa under paragraph 2(d) by postdating a check or issuing a bouncing check differently. Thus, under paragraph 2(d), failure to fund the check **despite notice of dishonor** creates a *prima facie* presumption of deceit constituting false pretense of fraudulent act, which is not an element of a violation of paragraph 2(a). Under paragraph 2(d), if there is no proof of notice of dishonor, knowledge of insufficiency of funds cannot be presumed, and unless there

is *a priori* intent, which is hard to determine and may not be inferred from mere failure to comply with a promise, no Estafa can be deemed to exist. So holds the 2004 case of *People v. Ojeda*. xxx [**Notice of dishonor is required** under both **par. 2(d) Art. 315** of the R[evised] P[enal] C[ode] and Sec. 2 of BP 22. While the RPC prescribes that the drawer of the check must deposit the amount needed to cover his check within *three* days from receipt of notice of dishonor. BP 22, on the other hand, requires the maker or drawer to pay the amount of the check within *five* days from receipt of notice of dishonor. **Under both laws, notice of dishonor is necessary for prosecution (**for estafa and violation of BP 22). Without proof of notice of dishonor, knowledge of insufficiency of funds cannot be presumed and no crime **(whether *estafa* or violation of BP 22) can be deemed to exist.** Notice of dishonor being then an element of a charge under Article 2(d) under which petitioner was clearly charged, failure to prove it is a ground for acquittal thereunder.

3. ID.; ID.; ESTAFA UNDER PARAGRAPH 2(D); ABSENT PROOF OF NOTICE OF DISHONOR, THE *PRIMA FACIE* PRESUMPTION OF KNOWLEDGE OF INSUFFICIENCY OF FUNDS WILL NOT ARISE.— In the case at bar, as priorly stated, petitioner was charged under paragraph 2(d), but there is no evidence that petitioner received notice of dishonor of all, except one (Allied Bank Check No. 7600042 for ₱76,654), of the questioned checks. Hence, with respect to all but one of the checks, the *prima facie* presumption of knowledge of insufficiency of funds did not arise.

4. ID.; ID.; ID.; ELEMENTS THEREOF NOT ESTABLISHED IN CASE AT BAR.— IN FINE, the prosecution having failed to establish all the elements of Estafa under Article 315, paragraph 2(d) under which petitioner was clearly charged, her acquittal is in order. The judgment bearing on her civil liability stands, however.

APPEARANCES OF COUNSEL

The Solicitor General for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Goretti Ong (petitioner) was, by Information dated August 10, 1995, charged before the Regional Trial Court (RTC) of Manila for Estafa, without specification under what mode in Article 315 of the Revised Penal Code the offense was allegedly committed. The Information alleged as follows:

> That on or about December 12, 1994, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and feloniously **defraud** ROSA CABUSO in the following manner, to wit: the said accused, **well knowing that [s]he did not have sufficient funds** in the bank, and **without informing the said Rosa Cabuso of such fact**, drew, made out and **issued** to the latter the following **checks**, to wit:
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> Allied Bank Check No. 76000242 dated January 13, 1995 in the amount of ₱76,654.00;
>
> Banco de Oro Check No. 026265 dated January 15, 1995 in the amount of ₱76,654.00;
>
> PS Bank Check No. 000928 dated January 18, 1995 in the amount of ₱100,000.00;
>
> Banco de Oro Check No. 026270 dated January 15, 1995 in the amount of ₱100,000.00;
>
> Banco de Oro Check No. 026266 dated January 20, 1995 in the amount of ₱76,654.00;
>
> Banco de Oro Check No. 026267 dated January 25, 1995 in the amount of ₱96,494.00;
>
> PS Bank Check No. 000927 dated January 31, 1995 in the amount of ₱96,494.00;
>
> Banco de Oro Check No. 026271 dated January 31, 1995, in the amount of ₱100,000.00;

Banco de Oro Check No. 26268 dated January 31, 1995 in the amount of ₱76,654.00; and

PS Bank Check No. 000950 dated January 31, 1995 in the amount of ₱144,000.00.

all in the total amount of ₱923,110.00, in payment of assorted pieces of jewelry which the said accused ordered, purchased and received from the said complainant on the same day; that upon presentment of the said checks to the bank for payment, the same were dishonored and payment thereof refused for the reason "ACCOUNT CLOSED" and said accused, **notwithstanding due notice to her by said complainant of such dishonor of the said checks, failed and refused and still fail[s] and refuse[s] to deposit the necessary amount** to cover the amount of the checks, to the **damage and prejudice of the said Rosa Cabuso** in the aforesaid amount of ₱923,110.00, Philippine [c]urrency.[1] (Emphasis and underscoring supplied)

Petitioner had for years been buying jewelry from Gold Asia which is owned and operated by the family of Rosa Cabuso (the private complainant). While she normally bought jewelry on cash basis, she was allowed to issue postdated checks to cover the jewelry she bought in December 1994 up to February 1995, upon her assurance that the checks would be funded on their due dates. When, on maturity, the checks were deposited, they were returned with the stamp "Account Closed."

Hence, petitioner was indicted for Estafa. She was likewise indicted for 10 counts of violation of B.P. 22 before the RTC of Manila, docketed as Criminal Case Nos. 213645-CR to 213654-CR.

The evidence presented by the prosecution in the Estafa case consisted of, *inter alia*, the 10 dishonored checks and the transcript of stenographic notes[2] taken during the trial of the B.P. 22 cases, which transcripts included those of the testimonies of representatives of the drawee banks Allied Bank, PSBank and Banco de Oro.

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[1] Records, p. 1.

[2] Exhibit "A" -"L", *id.* at 162-212.

Petitioner, denying having intended to defraud the private complainant, gave her side of the case as follows:

On December 12, 1994, all the personal checks she had issued matured at the same time, but as her business was faring poorly, she was not able to fund those which she issued to the private complainant. On her request, however, the private complainant allowed her to pay on installment the amounts covered by the checks and she had in fact paid a total of ₱338,250, a fact admitted by the prosecution.

By Decision[3] of March 31, 2003, Branch 8 of the Manila RTC convicted petitioner of Estafa under Article 315, paragraph 2(a) of the Revised Penal Code in this wise:

> While the parties are of the impression that the accused is charged with and is being tried for the crime of estafa committed by means of the issuance of bouncing checks [Art. 315, 2(d) of the Revised Penal Code], this Court is of the opinion that **the Information sufficiently charges estafa through false pretenses under Paragraph 2(a)** of the same article which provides:
>
> "Art. 315. Swindling (estafa). – Any person who shall defraud another . . .
>
> xxx xxx xxx
>
> 2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:
>
> a) By using a fictitious name or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of similar deceits."[4] (Emphasis and underscoring supplied)

Thus the trial court disposed:

WHEREFORE, the Court hereby renders judgment finding accused Goretti Ong GUILTY BEYOND REASONABLE DOUBT of the crime

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[3] *Id.* at 400-405.

[4] *Id.* at 402-403.

of Estafa defined and penalized under Article 315, paragraph 2(a) of the Revised Penal Code and hereby imposes on said accused the penalty of TWELVE (12) YEARS imprisonment and to pay private complainant Rosa Cabuso the amount of FIVE HUNDRED EIGHTY-FOUR THOUSAND EIGHT HUNDRED SIXTY (₱584,860.00) PESOS and cost of suit.[5] (Underscoring supplied)

Petitioner challenged the trial court's decision before the Court of Appeals, raising the issue of whether she could be convicted of Estafa under Article 315, paragraph 2(a) of the Revised Penal Code when she was, in the Information, charged of Estafa under Article 315, paragraph 2(d) of the same Code. She additionally raised the following issues:

x x x x x x x x x

2. WHETHER OR NOT THE DECISION OF THE TRIAL COURT IS VALID EVEN IF IT FAILED TO COMPLY WITH THE PROVISIONS OF THE INDETERMINATE SENTENCE LAW;

3. WHETHER OR NOT THE ACCUSED-APPELLANT CAN BE CONVICTED OF THE CRIME OF ESTAFA DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HER GUILT BEYOND REASONABLE DOUBT[.][6] (Underscoring supplied)

The Court of Appeals affirmed the conviction on appeal but modified the penalty and the amount of indemnity,[7] disposing as follows:

WHEREFORE, premises considered, the present appeal is hereby DISMISSED for lack of merit. The appealed decision dated March 31, 2003 of the trial court in Criminal Case No. 95-144421 is hereby AFFIRMED with MODIFICATION in that the accused-appellant is hereby instead sentenced to suffer an indeterminate prison term of four (4) years and two (2) months of *prision correccional*, as

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[5] *Id.* at 405.

[6] CA *rollo*, p. 65.

[7] Decision of June 11, 2004, penned by Court of Appeals Associate Justice Martin S. Villarama, Jr. with the concurrence of Associate Justices Regalado E. Maambong and Lucenito N. Tagle, *id.* at 148-158.

minimum, to twenty (20) years of *reclusion temporal* as maximum, and to indemnify the complaining witness in the amount of ₱585,514.00.

With costs against the accused-appellant.[8]

Her Motion for Reconsideration[9] having been denied,[10] petitioner filed the present petition,[11] faulting the appellate court for convicting her of Estafa despite her good faith and lack of criminal intent, and violating her constitutional right to be informed of the nature and cause of the accusation against her by affirming the trial court's decision finding her guilty of Estafa under Article 315, paragraph 2(a), when she was charged under paragraph 2(d) of the same Article.[12]

The appeal is impressed with merit.

Section 14(2) of Article III of the Constitution grants the accused the right to be informed of the nature and cause of the accusation. This is to enable the accused to adequately prepare for his defense. An accused cannot thus be convicted of an offense unless it is clearly charged in the complaint or information.[13]

From the allegations in an information, the real nature of the crime charged is determined.[14] In the case at bar, the Information alleged that petitioner issued the questioned checks knowing that she had no funds in the bank and failing to fund them **despite notice** that they were dishonored. These allegations clearly constitute a charge, not under paragraph 2(a) as the

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[8] *Id.* at 157.

[9] *Id.* at 161-164.

[10] *Id.* at 177.

[11] *Rollo*, pp. 7-34.

[12] *Id.* at 16.

[13] *Vide People v. Almendral*, G.R. No. 126025, July 6, 2004, 433 SCRA 440, 450-451.

[14] *Garcia v. People*, 457 Phil. 713, 716 (2003).

lower courts found but, under paragraph 2(d) of Article 315 of the Revised Penal Code which is committed as follows:

x x x x x x x x x

2(d) By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover this check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be *prima facie* evidence of deceit constituting false pretense or fraudulent act.

x x x x x x x x x (Underscoring supplied)

Although the earlier quoted paragraph 2(a) and the immediately quoted paragraph 2(d) of Article 315 have a common element – false pretenses or fraudulent acts – the law treats Estafa under paragraph 2(d) by postdating a check or issuing a bouncing check differently. Thus, under paragraph 2(d), failure to fund the check despite notice of dishonor creates a *prima facie* presumption of deceit constituting false pretense or fraudulent act, which is not an element of a violation of paragraph 2(a).

Under paragraph 2(d), if there is no proof of notice of dishonor, knowledge of insufficiency of funds cannot be presumed, and unless there is *a priori* intent, which is hard to determine and may not be inferred from mere failure to comply with a promise, no Estafa can be deemed to exist. So holds the 2004 case of *People v. Ojeda*.[15]

x x x **[N]otice of dishonor is required** under both **par. 2(d) Art. 315** of the R[evised] P[enal] C[ode] and Sec. 2 of BP 22. While the RPC prescribes that the drawer of the check must deposit the amount needed to cover his check within *three* days from receipt of notice of dishonor, BP 22, on the other hand, requires the maker or drawer

[15] G.R. Nos. 104238-58, June 3, 2004, 430 SCRA 436.

to pay the amount of the check within *five* days from receipt of notice of dishonor. **Under both laws, notice of dishonor is necessary for prosecution** (for *estafa* and violation of BP 22). Without proof of notice of dishonor, knowledge of insufficiency of funds cannot be presumed and no crime (**whether *estafa* or violation of BP 22) can be deemed to exist**.[16] (Emphasis and underscoring supplied)

Notice of dishonor being then an element of a charge under Article 2(d) under which petitioner was clearly charged, failure to prove it is a ground for acquittal thereunder.

In affirming the trial court's decision, the Court of Appeals relied on the ruling in the 2003 case of *Garcia v. People*[17] wherein this Court upheld the appellate court's affirmance of the trial court's conviction of the accused for Estafa under Article 315, "Section 2(2) [*sic*] of the Revised Penal Code." In that case, the accused was charged as follows:

> That on or about and during the period comprised between June 20, 1995, and August 15, 1995, inclusive, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously defraud DOLORES S. APOLONIO in the following manner, to wit: the said accused by means of false manifestations and fraudulent representations which she made to said DOLORES S. APOLONIO to the effect that accused has three (3) checks which according to her have sufficient funds and if encashed, the same will not be dishonored; and by means of other deceits of similar import, induced and succeeded in inducing the said DOLORES S. APOLONIO to accept the following checks:
>
> | *Name of Bank* | *Check No.* | *Amount* | *Date* | *Payable to* |
> |---|---|---|---|---|
> | Phil. Nat'l. Bank | 046884 | ₱28,000.00 | 6-20-'95 | Cash |
> | - do - | 047416 | 34,000.00 | 8-15-'95 | - do - |
> | Pilipinas Bank | 60042087 | 25,000.00 | 7-25-'95 | Garcia Vegetable Dealer |
>
> as payments of assorted vegetables which accused purchased and received from said DOLORES S. APOLONIO in the amount of

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[16] *Id.* at 449.

[17] 457 Phil. 713 (2003).

₱87,000.00, said accused knowing fully well that the said manifestations and representations were all false and untrue as said checks when presented to the bank for payment were all dishonored for the reason "Drawn Against Insufficient Funds," and were made solely for the purpose of obtaining, as in fact she did obtain assorted vegetables in the amount of ₱87,000.00; which once in her possession and with intent to defraud, she willingly, unlawfully and feloniously misappropriated, misapplied and converted the said assorted vegetables or the value thereof to her own personal use and benefit, to the damage and prejudice of the said owner in the aforesaid amount of ₱87,000.00, Philippine Currency.[18] (Underscoring supplied)

The therein accused Garcia argued that since, under the above-quoted Information, she was charged of Estafa under Article 315, paragraph 2(a) of the Revised Penal Code, it was error for the appellate court to affirm her conviction by the trial court under Article 315, paragraph 2(d).

The Court in *Garcia* held that there is "no basis for [her] to conclude that she was convicted under Article 315, paragraph 2(d)," but that "[e]ven supposing that the trial court apparently discussed estafa under Article 315, paragraph 2(d), it was only pointing out the absurdity of [Garcia's] argument that she could not be held liable under Article 315 paragraph 2(d) as she was not the drawer of the therein involved checks." Reliance on *Garcia* is thus misplaced.

In the case at bar, as priorly stated, petitioner was charged under paragraph 2(d), but there is no evidence that petitioner received notice of dishonor of all, except one (Allied Bank Check No. 7600042 for ₱76,654), of the questioned checks. Hence, with respect to all but one of the checks, the *prima facie* presumption of knowledge of insufficiency of funds did not arise.

This leaves it unnecessary to pass on the evidence for the defense. Suffice it to state that petitioner's defenses of good faith and lack of criminal intent, defenses to a *malum in se* like

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[18] *Id.* at 716-717.

Estafa, are not difficult to credit. For, on notice of the lack of sufficient funds in her bank account, to cover the Allied Bank check, petitioner offered to pay in installment, to which the private complainant agreed, the amount covered by the said check, as well as the others. As reflected above, the prosecution stipulated that petitioner had made a total payment of ₱338,250, which amount is almost one-third of the total amount of the ten checks or more than the amount covered by the ₱76,654 Allied Bank check.

IN FINE, the prosecution having failed to establish all the elements of Estafa under Article 315, paragraph 2(d) under which petitioner was clearly charged, her acquittal is in order. The judgment bearing on her civil liability stands, however.

WHEREFORE, the petition is partly *GRANTED*. Petitioner, Goretti Ong, is *ACQUITTED* of the crime charged for failure of the prosecution to prove her guilt beyond reasonable doubt. The decision bearing on her civil liability is *AFFIRMED*, however.

Costs against petitioner.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 167691. September 23, 2008]

CAMARINES SUR IV ELECTRIC COOPERATIVE, INC., *petitioner, vs.* **EXPEDITA L. AQUINO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; CAUSE OF ACTION; ELEMENTS. — There is a cause of action when the following elements are present: (1) the legal right of the plaintiff; (2) the correlative obligation of the defendant; and (3) the act or omission of the defendant in violation of said legal right. In determining the presence of these elements, only the facts alleged in the complaint must be considered. The test is whether the court can render a valid judgment on the complaint based on the facts alleged and the prayer asked for, such that the facts alleged in the complaint, if true, would justify the relief sought. Only ultimate facts, not legal conclusions or evidentiary facts, are considered for purposes of applying the test.

2. ID.; ID.; ID.; ID.; ELEMENTS PRESENT. — Based on the allegations in the amended complaint, we hold that respondent stated a cause of action for damages. Respondent was in possession of the property supplied with electricity by petitioner when the electric service was disconnected. This resulted in the alleged injury complained of which can be threshed out in a trial on the merits.

3. ID.; ID.; ID.; ID.; PARTICIPATION IN A CONTRACT IS NOT AN ELEMENT IN CONSIDERING WHETHER OR NOT A COMPLAINT STATES A CAUSE OF ACTION. — Whether one is a party or not in a contract is not determinative of the existence of a cause of action. Participation in a contract is not an element in considering whether or not a complaint states a cause of action because even a third party outside the contract can have a cause of action against either or both contracting parties.

4. ID.; ID.; APPEALS; PERIOD; A FLAWED MOTION FOR RECONSIDERATION DID NOT TOLL THE REGLEMENTARY PERIOD TO APPEAL. — In its petition in this Court, petitioner

insisted that respondent mailed a copy of her motion for reconsideration (with notice of hearing) to its (petitioner's) counsel only on January 5, 2004, although the motion was already scheduled for hearing on January 9, 2004. Respondent should have foreseen that the registered mail, which originated from Naga City, would not be able to reach the law office of petitioner's counsel in Manila at least 3 days before said date. As expected, the mail did not reach petitioner's counsel on time. In fact, he received it only on the day of the hearing itself. Thus, respondent's motion for reconsideration was fatally flawed for failure to comply with the 3-day rule under Section 4, Rule 15 of the Rules of Court. It did not toll the reglementary period for respondent to appeal the RTC's decision.

5. ID.; ID.; ID.; EFFECT OF A DEFECTIVE MOTION FOR RECONSIDERATION ON A PARTY'S APPEAL. — Time and again, we have held that non-compliance with Section 4 of Rule 15 of the Rules of Court is a fatal defect. A motion which fails to comply with said Rule is a mere scrap of paper. If filed, such motion is not entitled to judicial cognizance. The fact that the RTC took cognizance of a defective motion, such as requiring the parties to set it for hearing and denying the same for lack of merit, did not cure the defect of said motion. It did not suspend the running of the period to appeal. Based on the foregoing, respondent's defective motion for reconsideration did not stop the running of her period to appeal. Thus, the appeal in the CA should have been dismissed outright as the decision of the RTC had by then already become final and executory.

APPEARANCES OF COUNSEL

Hao Dasal Dionola & Associates for petitioner.
Botor-Botor & Associates for respondent.

R E S O L U T I O N

CORONA, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court seeks to set aside the January 5, 2005

decision[1] and March 22, 2005 resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 81666.

Respondent Expedita L. Aquino bought several personal computers and leased a commercial building in Tigaon, Camarines Sur for purposes of establishing a computer gaming business. She had the electrical service in the building restored because the former tenant, a certain Mrs. Paglinawan,[3] had it disconnected when she gave up the occupancy thereof. Respondent paid the reconnection fee as well as the fee corresponding to the electric consumption covering the period of April 17, 2002 to May 16, 2002 to petitioner Camarines Sur IV Electric Cooperative, Inc. in Mrs. Paglinawan's name. However, respondent failed to pay the electric bills in the succeeding months.

Because of adverse reports, petitioner conducted an inspection of the electrical wiring of the leased building, took pictures thereof and gave respondent's overseer a report of pilferage of electricity with the notation:

"Disconnected w/light/illegal tapping."

Petitioner alleged that respondent violated RA 7832[4] and required her to pay the differential billing and penalty within 48 hours; otherwise, the electric service would be disconnected. A conciliatory conference between the parties was held where petitioner presented respondent with two options: deposit the differential billing of ₱3,367.00 to avoid disconnection during the pendency of the criminal action to be filed by petitioner or pay the amount of the differential billing and the penalty of ₱15,000.00, in which case the matter would be considered closed and the filing of a criminal case dispensed with.

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[1] Penned by Associate Justice (now Presiding Justice) Conrado M. Vasquez, Jr. and concurred in by Associate Justices Josefina Guevara-Salonga and Fernanda Lampas Peralta of the Former Sixth Division of the Court of Appeals. *Rollo*, pp. 20-28.

[2] *Id.*, p. 29.

[3] Not a party to this case.

[4] The Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994.

Respondent refused to choose any of the options as she felt that to do so would be tantamount to an admission of guilt. Consequently, her electrical service was permanently disconnected on January 23, 2003.

Respondent filed a complaint for damages against petitioner in the Regional Trial Court (RTC). She alleged that due to the disconnection of electrical services, her business operation was interrupted causing her damages in the form of unrealized income, rentals paid for the premises she was unable to use and renovation costs of the leased building.

Petitioner filed an answer with affirmative defenses. It alleged, among others, that the complaint failed to state a cause of action. According to petitioner, no contract to supply electricity was entered into between them. Thus, respondent's complaint had no basis and should be dismissed.

Respondent subsequently amended her complaint. Petitioner still insisted on moving for its dismissal, reiterating that the complaint stated no cause of action.

The trial court initially denied the motion to dismiss in an order dated July 10, 2003. It held that, as respondent was in possession of the premises to which petitioner supplied electricity, there was, in a way, a contract between the parties.

When petitioner moved for reconsideration, the court *a quo*, in its December 22, 2003 order, made a turnaround and ruled in petitioner's favor (second RTC order).[5] It stated that respondent's payment of the reconnection fee did not suffice to create a new contract between the parties as the same was made in Mrs. Paglinawan's name, whose contract with petitioner was terminated upon the disconnection of the electrical service.

Respondent received a copy of the second RTC order on December 23, 2003 and moved for reconsideration thereof on January 5, 2004. Respondent mailed a copy of her motion for reconsideration (with notice of hearing) to petitioner's counsel

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

only on the same date. The notice of hearing indicated that the hearing of the motion was set on January 9, 2004. Petitioner filed an opposition thereto, alleging, among others, that the motion should be denied as respondent did not comply with the 3-day rule (as provided in the Rules of Court).

On February 3, 2004, the trial court denied respondent's motion for reconsideration for lack of merit.[6] However, it was silent on the motion's non-compliance with the 3-day rule.

Respondent filed an appeal in the CA on February 5, 2004, insisting that the complaint sufficiently stated a cause of action for damages. For its part, petitioner reiterated its stand on the issue. It also called the CA's attention to the alleged flaw in respondent's motion for reconsideration in the RTC. It argued that the motion was a pro forma motion (since it violated the 3-day rule) which should have been dismissed outright by the trial court. Furthermore, it did not stop the running of the 15-day period for respondent to appeal which should have been reckoned from her receipt of the second RTC order on December 23, 2003. Consequently, her February 5, 2004 notice of appeal (which was filed 44 days after she received a copy of the second RTC order) was filed late.

The appellate court held that the RTC erred in dismissing the complaint as indeed a cause of action existed. The CA ruled that the matter of whether or not a contract, express or implied, existed between the parties was a matter of defense that must be resolved in a trial on the merits. It stated that such issue was not relevant in a motion to dismiss based on failure to state a cause of action. However, it did not pass upon the issue relative to the timeliness of respondent's appeal.

Petitioner filed a motion for reconsideration. It was denied. Hence, this petition.

The issues before us are: (1) whether or not respondent's complaint for damages stated a cause of action against petitioner

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[6] *Id.,* p. 52.

and (2) whether or not respondent's appeal in the CA was filed on time.

There is a cause of action when the following elements are present: (1) the legal right of the plaintiff; (2) the correlative obligation of the defendant; and (3) the act or omission of the defendant in violation of said legal right.[7] In determining the presence of these elements, only the facts alleged in the complaint must be considered. The test is whether the court can render a valid judgment on the complaint based on the facts alleged and the prayer asked for,[8] such that the facts alleged in the complaint, if true, would justify the relief sought. Only ultimate facts, not legal conclusions or evidentiary facts, are considered for purposes of applying the test.[9]

Based on the allegations in the amended complaint, we hold that respondent stated a cause of action for damages. Respondent was in possession of the property supplied with electricity by petitioner when the electric service was disconnected. This resulted in the alleged injury complained of which can be threshed out in a trial on the merits. Whether one is a party or not in a contract is not determinative of the existence of a cause of action. Participation in a contract is not an element in considering whether or not a complaint states a cause of action[10] because even a third party outside the contract can have a cause of action against either or both contracting parties.

Be that as it may, respondent's appeal in the CA should have been denied outright for having been filed out of time.

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[7] *Ilano v. Espanol*, G.R. No. 161756, 16 December 2005, 478 SCRA 365, 372.

[8] *Banco Filipino Savings and Mortgage Bank v. CA*, G.R. No. 143896, 8 July 2005, 463 SCRA 64, 73 and *Abacan, Jr. v. Northwestern University, Inc.*, G.R. No. 140777, 8 April 2005, 455 SCRA 136, 147, citing *Peltan Development, Inc. v. CA*, 336 Phil. 824, 833-34 (1997).

[9] *Id.*, citing *G & S Transport Corp. v. CA*, 432 Phil. 7, 17-18 (2002).

[10] *Sarming v. Dy, et al.*, 432 Phil. 685, 697 (2002).

In its petition in this Court, petitioner insisted that respondent mailed a copy of her motion for reconsideration (with notice of hearing) to its (petitioner's) counsel only on January 5, 2004, although the motion was already scheduled for hearing on January 9, 2004. Respondent should have foreseen that the registered mail, which originated from Naga City, would not be able to reach the law office of petitioner's counsel in Manila at least 3 days before said date. As expected, the mail did not reach petitioner's counsel on time. In fact, he received it only on the day of the hearing itself.[11] Thus, respondent's motion for reconsideration was fatally flawed for failure to comply with the 3-day rule under Section 4, Rule 15 of the Rules of Court. It did not toll the reglementary period for respondent to appeal the RTC's decision.

We note that respondent's comment did not even touch on the issues of the perceived deficiency in her motion for reconsideration and the timeliness of her appeal in the CA. Although her memorandum briefly discussed these issues, the same was insufficient as it merely reiterated the statement of facts in her appellant's brief in the CA (specifically, as to when she filed said motion in the RTC). No discussion was proffered regarding the date of mailing of a copy of the assailed motion to petitioner's counsel. Furthermore, as if admitting her failure to comply with the mandatory rule on notice of hearing, respondent invoked the much abused exhortation of losing litigants on the primacy of substantial justice over mere technicalities.

Respondent's arguments have no merit.

Section 4, Rule 15 of the Rules of Court provides:

> Sec. 4. *Hearing of Motion*. – Except for motions which the court may act upon without prejudicing the rights of the adverse party, every motion shall be set for hearing by the applicant.
>
> **Every written motion required to be heard and the notice of hearing thereof shall be served in such a manner as to ensure its receipt**

[11] Per the date stamped on counsel for petitioner's copy of respondent's motion for reconsideration. *Rollo*, pp. 45-51.

by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice. (Emphasis supplied)

Time and again, we have held that non-compliance with Section 4 of Rule 15 of the Rules of Court is a fatal defect. A motion which fails to comply with said Rule is a mere scrap of paper. If filed, such motion is not entitled to judicial cognizance.[12] The fact that the RTC took cognizance of a defective motion, such as requiring the parties to set it for hearing and denying the same for lack of merit, did not cure the defect of said motion.[13] It did not suspend the running of the period to appeal.[14]

Based on the foregoing, respondent's defective motion for reconsideration did not stop the running of her period to appeal. Thus, the appeal in the CA should have been dismissed outright as the decision of the RTC had by then already become final and executory.

WHEREFORE, the petition is hereby *GRANTED*. The January 5, 2005 decision and March 22, 2005 resolution of the Court of Appeals are *REVERSED and SET ASIDE* and CA-G.R. CV No. 81666 is ordered *DISMISSED*.

SO ORDERED.

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

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[12] *Garcia v. Sandiganbayan*, G.R. No. 167103, 31 August 2006, 500 SCRA 631, 639, citing *Cruz v. CA*, G.R. No. 123340, 29 August 2002, 388 SCRA 72, 80.

[13] *Garcia v. Sandiganbayan, supra*, at 640, citing *Andrada v. CA*, No. L-31791, 30 October 1974, 60 SCRA 379, 382 and *Pojas v. Gozo-Dadole*, G.R. No. 76519, 21 December 1990, 192 SCRA 575, citing *Filipinas Fabricators & Sales, Inc. v. Magsino*, No. L-47574, 29 January 1988, 157 SCRA 469, 475.

[14] *Garcia v. Sandiganbayan, supra*, at 639.

FIRST DIVISION

[G.R. No. 170943. September 23, 2008]

PEDRO T. SANTOS, JR., *petitioner, vs.* **PNOC EXPLORATION CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SUMMONS; WHEN SERVICE BY PUBLICATION CAN BE MADE; APPLICATION. — Since petitioner could not be personally served with summons despite diligent efforts to locate his whereabouts, respondent sought and was granted leave of court to effect service of summons upon him by publication in a newspaper of general circulation. Thus, petitioner was properly served with summons by publication.

2. ID.; ID.; ID.; RULE ON SUBSTITUTED SERVICE OF SUMMONS APPLIES TO ANY KIND OF ACTION.— Petitioner invokes the distinction between an action *in rem* and an action *in personam* and claims that substituted service may be availed of only in an action *in rem*. Petitioner is wrong. The *in rem/in personam* distinction was significant under the old rule because it was silent as to the kind of action to which the rule was applicable. Because of this silence, the Court limited the application of the old rule to *in rem* actions only. This has been changed. The present rule expressly states that it applies "*[i]n any action* where the defendant is designated as an unknown owner, or the like, or whenever his whereabouts are unknown and cannot be ascertained by diligent inquiry." Thus, it now applies to **any** action, whether *in personam*, *in rem* or *quasi in rem.*

3. ID.; ID.; ID.; SERVICE OF SUMMONS BY PUBLICATION, HOW PROVED.— Service of summons by publication is proved by the affidavit of the printer, his foreman or principal clerk, or of the editor, business or advertising manager of the newspaper which published the summons. The service of summons by *publication* is complemented by service of summons by *registered mail* to the defendant's last known address. This

complementary service is evidenced by an affidavit "showing the deposit of a copy of the summons and order for publication in the post office, postage prepaid, directed to the defendant by registered mail to his last known address." The rules, however, do not require that the affidavit of complementary service be executed by the clerk of court. While the trial court ordinarily does the mailing of copies of its orders and processes, the duty to make the complementary service by registered mail is imposed on the party who resorts to service by publication.

4. ID.; ID.; ID.; DESPITE DEFECTIVE SERVICE OF SUMMONS, THE COURT ACQUIRED JURISDICTION OVER THE PERSON BY VOLUNTARY APPEARANCE.— [E]ven assuming that the service of summons was defective, **the trial court acquired jurisdiction over the person of petitioner by his own voluntary appearance in the action** against him. x x x Petitioner voluntarily appeared in the action when he filed the "Omnibus Motion for Reconsideration and to Admit Attached Answer." This was equivalent to service of summons and vested the trial court with jurisdiction over the person of petitioner.

5. ID.; ID.; EFFECT OF FAILURE TO FILE ANSWER. — If the defendant fails to file his answer on time, he may be declared in default upon motion of the plaintiff with notice to the said defendant. In case he is declared in default, the court shall proceed to render judgment granting the plaintiff such relief as his pleading may warrant, unless the court in its discretion requires the plaintiff to submit evidence. The defaulting defendant may not take part in the trial but shall be entitled to notice of subsequent proceedings.

6. ID.; ID.; ID.; A PARTY WHO FAILED TO FILE AN ANSWER CANNOT BE DECLARED IN DEFAULT IF NO MOTION WAS FILED BY THE OTHER PARTY. — In this case, even petitioner himself does not dispute that he failed to file his answer on time. That was in fact why he had to file an "Omnibus Motion for Reconsideration and **to Admit Attached Answer**." But respondent moved only for the *ex parte* presentation of evidence, not for the declaration of petitioner in default. x x x As is readily apparent, the September 11, 2003 order did not limit itself to permitting respondent to present its evidence *ex parte* but in effect issued an order of default. But the trial court could not

validly do that as an order of default can be made only upon motion of the claiming party. Since no motion to declare petitioner in default was filed, no default order should have been issued.

7. ID.; ID.; ID.; IF A PARTY'S RESIDENCE OR WHEREABOUTS IS NOT KNOWN, HE COULD NOT DEMAND THAT COPIES OF ORDERS AND PROCESSES BE FURNISHED HIM. — To pursue the matter to its logical conclusion, if a party declared in default is entitled to notice of subsequent proceedings, all the more should a party who has not been declared in default be entitled to such notice. But what happens if the residence or whereabouts of the defending party is not known or he cannot be located? In such a case, there is obviously no way notice can be sent to him and the notice requirement cannot apply to him. The law does not require that the impossible be done. *Nemo tenetur ad impossibile*. The law obliges no one to perform an impossibility. Laws and rules must be interpreted in a way that they are in accordance with logic, common sense, reason and practicality. Hence, even if petitioner was not validly declared in default, he could not reasonably demand that copies of orders and processes be furnished him. Be that as it may, a copy of the September 11, 2003 order was nonetheless still mailed to petitioner at his last known address but it was unclaimed.

8. ID.; EQUITY APPLIES ONLY IN THE ABSENCE OF CLEAR AND EXPRESS LANGUAGE OF THE RULES OF PROCEDURE. — Petitioner's plea for equity must fail in the face of the clear and express language of the rules of procedure and of the September 11, 2003 order regarding the period for filing the answer. Equity is available only in the absence of law, not as its replacement. Equity may be applied only in the absence of rules of procedure, never in contravention thereof.

APPEARANCES OF COUNSEL

Government Corporate Counsel for respondent.

D E C I S I O N

CORONA, *J.*:

This is a petition for review[1] of the September 22, 2005 decision[2] and December 29, 2005 resolution [3] of the Court of Appeals in CA-G.R. SP No. 82482.

On December 23, 2002, respondent PNOC Exploration Corporation filed a complaint for a sum of money against petitioner Pedro T. Santos, Jr. in the Regional Trial Court of Pasig City, Branch 167. The complaint, docketed as Civil Case No. 69262, sought to collect the amount of ₱698,502.10 representing petitioner's unpaid balance of the car loan[4] advanced to him by respondent when he was still a member of its board of directors.

Personal service of summons to petitioner failed because he could not be located in his last known address despite earnest efforts to do so. Subsequently, on respondent's motion, the trial court allowed service of summons by publication.

Respondent caused the publication of the summons in Remate, a newspaper of general circulation in the Philippines, on May 20, 2003. Thereafter, respondent submitted the affidavit of publication of the advertising manager of Remate[5] and an affidavit

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

[2] Penned by Associate Justice Santiago Javier Ranada (retired) and concurred by Associate Justices Roberto A. Barrios (deceased) and Mario L. Guariña III of the Eighth Division of the Court of Appeals. *Rollo*, pp. 20-25.

[3] *Id.*, p. 27.

[4] The car loan was originally for ₱966,000 which was used to procure a Honda CRV for petitioner. The said loan was evidenced by a promissory note and further secured by a chattel mortgage on the vehicle. One of the conditions of the promissory note was that, in case of separation from the service, any unpaid balance shall immediately be paid in full. (See May 19, 2004 Regional Trial Court decision, *rollo*, pp. 82-83.)

[5] Allan Paul A. Plaza.

of service of respondent's employee[6] to the effect that he sent a copy of the summons by registered mail to petitioner's last known address.

When petitioner failed to file his answer within the prescribed period, respondent moved that the case be set for the reception of its evidence *ex parte*. The trial court granted the motion in an order dated September 11, 2003.

Respondent proceeded with the *ex parte* presentation and formal offer of its evidence. Thereafter, the case was deemed submitted for decision on October 15, 2003.

On October 28, 2003, petitioner filed an "Omnibus Motion for Reconsideration and to Admit Attached Answer." He sought reconsideration of the September 11, 2003 order, alleging that the affidavit of service submitted by respondent failed to comply with Section 19, Rule 14 of the Rules of Court as it was not executed by the clerk of court. He also claimed that he was denied due process as he was not notified of the September 11, 2003 order. He prayed that respondent's evidence *ex parte* be stricken off the records and that his answer be admitted.

Respondent naturally opposed the motion. It insisted that it complied with the rules on service by publication. Moreover, pursuant to the September 11, 2003 order, petitioner was already deemed in default for failure to file an answer within the prescribed period.

In an order dated February 6, 2004, the trial court denied petitioner's motion for reconsideration of the September 11, 2003 order. It held that the rules did not require the affidavit of complementary service by registered mail to be executed by the clerk of court. It also ruled that due process was observed as a copy of the September 11, 2003 order was actually mailed to petitioner at his last known address. It also denied the motion to admit petitioner's answer because the same was filed way beyond the reglementary period.

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[6] Vincent Panganiban.

Aggrieved, petitioner assailed the September 11, 2003 and February 6, 2004 orders of the trial court in the Court of Appeals via a petition for *certiorari*. He contended that the orders were issued with grave abuse of discretion. He imputed the following errors to the trial court: taking cognizance of the case despite lack of jurisdiction due to improper service of summons; failing to furnish him with copies of its orders and processes, particularly the September 11, 2003 order, and upholding technicality over equity and justice.

During the pendency of the petition in the Court of Appeals, the trial court rendered its decision in Civil Case No. 69262. It ordered petitioner to pay ₱698,502.10 plus legal interest and costs of suit.[7]

Meanwhile, on September 22, 2005, the Court of Appeals rendered its decision[8] sustaining the September 11, 2003 and February 6, 2004 orders of the trial court and dismissing the petition. It denied reconsideration.[9] Thus, this petition.

Petitioner essentially reiterates the grounds he raised in the Court of Appeals, namely, lack of jurisdiction over his person due to improper service of summons, failure of the trial court to furnish him with copies of its orders and processes including the September 11, 2003 order and preference for technicality rather than justice and equity. In particular, he claims that the rule on service by publication under Section 14, Rule 14 of the Rules of Court applies only to actions *in rem*, not actions *in personam* like a complaint for a sum of money. He also contends that the affidavit of service of a copy of the summons should have been prepared by the clerk of court, not respondent's messenger.

The petition lacks merit.

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[7] *See* May 19, 2004 Regional Trial Court decision, *rollo*, pp. 82-83. Petitioner's motion for reconsideration of the said decision remains pending.

[8] *Supra* note 2.

[9] *Supra* note 3.

PROPRIETY OF SERVICE BY PUBLICATION

Section 14, Rule 14 (on Summons) of the Rules of Court provides:

SEC. 14. *Service upon defendant whose identity or whereabouts are unknown*. – **In any action** where the defendant is designated as an unknown owner, or the like, or **whenever his whereabouts are unknown and cannot be ascertained by diligent inquiry, service may, by leave of court, be effected upon him by publication in a newspaper of general circulation** and in such places and for such times as the court may order. (emphasis supplied)

Since petitioner could not be personally served with summons despite diligent efforts to locate his whereabouts, respondent sought and was granted leave of court to effect service of summons upon him by publication in a newspaper of general circulation. Thus, petitioner was properly served with summons by publication.

Petitioner invokes the distinction between an action *in rem* and an action *in personam* and claims that substituted service may be availed of only in an action *in rem*. Petitioner is wrong. The *in rem/in personam* distinction was significant under the old rule because it was silent as to the kind of action to which the rule was applicable.[10] Because of this silence, the Court limited the application of the old rule to *in rem* actions only.[11]

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[10] The predecessor of this provision was Section 16, Rule 14 of the 1964 Rules of Procedure which provided:

SEC. 16. *Service upon an unknown defendant*. – Whenever the defendant is designated as an unknown owner, or the like, or whenever the address of a defendant is unknown and cannot be ascertained by diligent inquiry, service may, by leave of court, be effected upon him by publication in a newspaper of general circulation and in such places and for such time as the court may order.

[11] *Consolidated Plywood Industries, Inc. v. Breva*, G.R. No. 82811, 18 October 1988, 166 SCRA 519; *Asiavest Limited v. Court of Appeals*, 357 Phil. 536 (1998); *Valmonte v. Court of Appeals*, 322 Phil. 96 (1996).

This has been changed. The present rule expressly states that it applies "*[i]n any action* where the defendant is designated as an unknown owner, or the like, or whenever his whereabouts are unknown and cannot be ascertained by diligent inquiry." Thus, it now applies to **any** action, whether *in personam*, *in rem* or *quasi in rem*.[12]

Regarding the matter of the affidavit of service, the relevant portion of Section 19,[13] Rule 14 of the Rules of Court simply speaks of the following:

> … an affidavit showing the deposit of a copy of the summons and order for publication in the post office, postage prepaid, directed to the defendant by registered mail to his last known address.

Service of summons by publication is proved by the affidavit of the printer, his foreman or principal clerk, or of the editor, business or advertising manager of the newspaper which published the summons. The service of summons by *publication* is complemented by service of summons by *registered mail* to the defendant's last known address. This complementary service is evidenced by an affidavit "showing the deposit of a copy of the summons and order for publication in the post office, postage prepaid, directed to the defendant by registered mail to his last known address."

The rules, however, do not require that the affidavit of complementary service be executed by the clerk of court. While

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[12] *See* Herrera, Oscar M., *REMEDIAL LAW*, vol. I, pp. 699 and 702.

[13] The provision states:

SEC. 19. *Proof of service by publication*. – If the service has been made by publication, service may be proved by the affidavit of the printer, his foreman or principal clerk, or of the editor, business or advertising manager, to which affidavit a copy of the publication shall be attached, and by an affidavit showing the deposit of a copy of the summons and order for publication in the post office, postage prepaid, directed to the defendant by registered mail to his last known address.

the trial court ordinarily does the mailing of copies of its orders and processes, the duty to make the complementary service by registered mail is imposed on the party who resorts to service by publication.

Moreover, even assuming that the service of summons was defective, **the trial court acquired jurisdiction over the person of petitioner by his own voluntary appearance in the action** against him. In this connection, Section 20, Rule 14 of the Rules of Court states:

> SEC. 20. *Voluntary appearance*. – **The defendant's voluntary appearance in the action shall be equivalent to service of summons**. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance. (emphasis supplied)

Petitioner voluntarily appeared in the action when he filed the "Omnibus Motion for Reconsideration and to Admit Attached Answer."[14] This was equivalent to service of summons and vested the trial court with jurisdiction over the person of petitioner.

ENTITLEMENT TO NOTICE OF PROCEEDINGS

The trial court allowed respondent to present its evidence *ex parte* on account of petitioner's failure to file his answer within the prescribed period. Petitioner assails this action on the part of the trial court as well as the said court's failure to furnish him with copies of orders and processes issued in the course of the proceedings.

The effects of a defendant's failure to file an answer within the time allowed therefor are governed by Sections 3 and 4, Rule 9 (on Effect of Failure to Plead) of the Rules of Court:

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[14] Herrera, *supra* note 12 citing *Europa v. Intermediate Appellate Court*, G.R. No. 72827, 18 July 1989, 175 SCRA 394.

SEC. 3. *Default; declaration of.* – **If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default**. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.

SEC. 4. *Effect of order of default.* – **A party in default shall be entitled to notice of subsequent proceedings** but not to take part in the trial. (emphasis supplied)

If the defendant fails to file his answer on time, he may be declared in default upon motion of the plaintiff with notice to the said defendant. In case he is declared in default, the court shall proceed to render judgment granting the plaintiff such relief as his pleading may warrant, unless the court in its discretion requires the plaintiff to submit evidence. The defaulting defendant may not take part in the trial but shall be entitled to notice of subsequent proceedings.

In this case, even petitioner himself does not dispute that he failed to file his answer on time. That was in fact why he had to file an "Omnibus Motion for Reconsideration and **to Admit Attached Answer**." But respondent moved only for the *ex parte* presentation of evidence, not for the declaration of petitioner in default. In its February 6, 2004 order, the trial court stated:

The disputed Order of September 11, 2003 allowing the presentation of evidence *ex-parte* precisely ordered that "despite and notwithstanding service of summons by publication, no answer has been filed with the Court within the required period and/or forthcoming.["] **Effectively[,] that was a finding that the defendant [that is, herein petitioner] was in default for failure to file an answer or any responsive pleading within the period fixed** in the publication as precisely the defendant [could not] be found and for which reason, service of summons by publication was ordered. It is simply illogical to notify the defendant of the Order of September 11, 2003 simply on account of the reality that he was no longer residing and/or found

on his last known address and his whereabouts unknown – thus the publication of the summons. In other words, it was reasonable to expect that the defendant will not receive any notice or order in his last known address. Hence, [it was] impractical to send any notice or order to him. **Nonetheless, the record[s] will bear out that a copy of the order of September 11, 2003 was mailed to the defendant at his last known address** but it was not claimed. (emphasis supplied)

As is readily apparent, the September 11, 2003 order did not limit itself to permitting respondent to present its evidence *ex parte* but in effect issued an order of default. But the trial court could not validly do that as an order of default can be made only upon motion of the claiming party.[15] Since no motion to declare petitioner in default was filed, no default order should have been issued.

To pursue the matter to its logical conclusion, if a party declared in default is entitled to notice of subsequent proceedings, all the more should a party who has not been declared in default be entitled to such notice. But what happens if the residence or whereabouts of the defending party is not known or he cannot be located? In such a case, there is obviously no way notice can be sent to him and the notice requirement cannot apply to him. The law does not require that the impossible be done.[16] *Nemo tenetur ad impossibile*. The law obliges no one to perform an impossibility.[17] Laws and rules must be interpreted in a way that they are in accordance with logic, common sense, reason and practicality.[18]

Hence, even if petitioner was not validly declared in default, he could not reasonably demand that copies of orders and processes be furnished him. Be that as it may, a copy of the September 11, 2003 order was nonetheless still mailed to petitioner at his last known address but it was unclaimed.

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[15] *Mediserv, Inc. v. China Banking Corporation*, 408 Phil. 745 (2001).

[16] *Akbayan-Youth v. Commission on Elections*, 407 Phil. 618 (2001).

[17] *Id*.

[18] *Id*.

CORRECTNESS OF NON-ADMISSION OF ANSWER

Petitioner failed to file his answer within the required period. Indeed, he would not have moved for the admission of his answer had he filed it on time. Considering that the answer was belatedly filed, the trial court did not abuse its discretion in denying its admission.

Petitioner's plea for equity must fail in the face of the clear and express language of the rules of procedure and of the September 11, 2003 order regarding the period for filing the answer. Equity is available only in the absence of law, not as its replacement.[19] Equity may be applied only in the absence of rules of procedure, never in contravention thereof.

WHEREFORE, the petition is hereby *DENIED*.

Costs against petitioner.

SO ORDERED.

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

[19] *Heirs of Spouses de la Cruz v. Heirs of Quintos, Sr.*, 434 Phil. 708 (2002) citing *Tupas v. Court of Appeals*, G.R. No. 89571, 06 February 1991, 193 SCRA 597.

FIRST DIVISION

[G.R. No. 173318. September 23, 2008]

U-BIX CORPORATION, *petitioner, vs.* **MILLIKEN & COMPANY, SYLVAN CHEMICAL COMPANY, WILFREDO BATARA, PROJEXX CREATOR, INC., and ONOFRE ESER,** *respondents.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; REQUISITES THAT MUST BE SHOWN BEFORE A PARTY MAY BE HELD GUILTY OF MALICIOUS INTERFERENCE. — To prove that respondents were guilty of malicious interference, petitioner had to show the following: the existence of a valid contract, knowledge by respondents that such a contract existed and acts (done in bad faith and without legal basis) by respondents which interfered in the due performance by the contracting parties of their respective obligations under the contract.

2. ID.; ID.; MALICIOUS INFERENCE, NOT A CASE OF. — In this case, both the RTC and the CA found that respondents were not guilty of malicious interference because no contract was ever perfected between petitioner and CMB. Because all petitioner presented to us were reiterations of its arguments in the courts *a quo*, we find no reason to disturb the decision of the CA.

3. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW MAY BE RAISED IN A RULE 45 PETITION. — Only questions of law may be raised in a Rule 45 petition because the jurisdiction of this Court is limited to passing upon errors of law. Factual findings of the trial court, when affirmed by the CA, are generally binding on this Court.

APPEARANCES OF COUNSEL

Belo Gozon Elma Parel Asuncion & Lucila for petitioner.

Mariano Jesus S. Averia for PROJEXX Creator, Inc. and Onofre Eser.

Romulo Mabanta Buenaventura Sayoc & De Los Angeles for Milliken & Company, Sylvan Chemical Company, Inc. and W. Batara.

R E S O L U T I O N

CORONA, *J.*:

On February 5, 1998, respondent Milliken & Company (M&C) designated petitioner U-Bix Corporation as its authorized dealer of Milliken carpets in the Philippines. Under the dealership agreement, petitioner undertook to market Milliken carpets and to keep on hand samples for the local market and stock sufficient to cover market demand. M&C, on the other hand, bound itself to support petitioner's marketing efforts and projects. Thus, once petitioner had specified a project (*i.e.*, submitted an accomplished dealer project registration form), M&C was to exclusively designate the said project as petitioner's.

In 1999, M&C informed petitioner (at that time its lone Philippine dealer) that an international corporate client, Chase Manhattan Bank (CMB), was furnishing its Manila office. Petitioner immediately formed a team headed by its creative vice president, Carmen Huang, (with respondent Onofre Eser as team member)[1] to work on the CMB project.[2] They conducted presentations and submitted product samples to CMB project director Gerry Shirley and interior designer Group Three. The team, however, failed to impress CMB.

On December 10, 1999, CMB awarded the supply contract to respondent Projexx Creator, Inc. (Projexx) which, like petitioner, had in the meantime become a dealer of Milliken carpets.

Eser resigned from petitioner and joined Projexx.

On April 3, 2000, petitioner filed a complaint for breach of contract, torts and damages against M&C, Sylvan Chemical

[1] The other members of the team were Ronald Inan and Lynn Vergara.

[2] Prior to this, Huang joined M&C representative John Kwok in calling upon the offices of CMB's Manila branch on August 11, 1999.

Company (Sylvan), Wilfred Batara, Projexx and Eser in the Regional Trial Court (RTC) of Makati City, Branch 60.[3] According to petitioner, M&C violated the dealership agreement when it designated Projexx as an authorized dealer of Milliken carpets; thus it was guilty of breach of contract. It also claimed that Projexx, with the help of Sylvan and Batara, poached the CMB project from it. Moreover, Projexx allegedly hired Eser because he had worked on the CMB project while in the employ of petitioner. Thus, they were guilty of malicious interference.[4]

In their answer, M&C, Sylvan and Batara averred that since petitioner was unacceptable to CMB, M&C designated Projexx as authorized dealer. Moreover, petitioner neither submitted an accomplished dealer project registration form nor complied with the rules for project registration. It never specified the CMB project. Therefore, petitioner never earned a right over it.

Projexx and Eser, on the other hand, contended that since no contract was perfected between petitioner and CMB, petitioner never acquired any proprietary interest in the project.

Trial ensued. After petitioner offered its evidence and the RTC admitted the same, respondents separately moved for demurrer to evidence.[5]

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[3] Docketed as Civil Case No. 00-474.

[4] *See* CIVIL CODE, Art. 1314 which provides:

Article 1314. Any third person who induces another to violate his contract shall be liable for damages to the other contracting party.

The following are the elements of tortuous interference:

(a) existence of a valid contract;

(b) knowledge on the part of the third person of the existence of the contract and

(c) interference of the third person without legal justification.

See *Lagon v. Court of Appeals,* G.R. No. 119107, 18 March 2005, 453 SCRA 616, 624 and *Tayag v. Lacson*, G.R. No. 134971, 25 March 2004, 426 SCRA 282, 305.

[5] *See* RULES OF COURT, Rule 33, Sec. 1 which provides:

Section 1. *Demurrer to Evidence.* – After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on

M&C, Sylvan and Batara stated that, because petitioner was not the exclusive distributor of Milliken carpets in the Philippines, M&C had the right to appoint Projexx as dealer. Furthermore, petitioner failed to prove the existence of a valid contract between it and CMB. In fact, petitioner never presented a dealer project registration form approved by M&C. It never specified (and consequently never acquired an exclusive right to) the CMB project. Hence, petitioner had no cause of action against M&C, Sylvan and Batara.

Projexx added that neither the appointment nor the resignation letter of Eser prohibited him from working for a direct competitor of petitioner.

The RTC, in its August 7, 2003 decision,[6] granted respondents' respective motions on demurrer to evidence and dismissed the complaint. It found that no contract was ever perfected between petitioner and CBM. For this reason, petitioner could not have specified the project as its own. M&C therefore did not violate the dealership agreement when it appointed Projexx. Petitioner also failed to prove that respondents prevented the perfection of the said contract and thus could not have been guilty of malicious interference.

Aggrieved, petitioner appealed the RTC decision to the Court of Appeals (CA) which affirmed the said decision *in toto* on October 19, 2005.[7]

Petitioner moved for reconsideration but it was denied.[8]

Hence, this recourse.

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the ground that upon the facts and the law plaintiff has shown no right to relief. If his motion is denied, he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence.

[6] Issued by Judge Marissa Macaraeg-Guillen. *Rollo*, pp. 163-167.

[7] Penned by Associate Justice Magdangal M. de Leon and concurred in by Associate Justices Portia Aliño-Hormachuelos and Mariano C. del Castillo of the Former Sixth Division of the Court of Appeals. *Id.*, pp. 41-57.

[8] Dated June 21, 2006. *Id.*, pp. 59-60.

Petitioner contends that the CA erred in affirming the RTC decision *in toto.* It insists that respondents were guilty of malicious interference.

We deny the petition.

To prove that respondents were guilty of malicious interference, petitioner had to show the following: the existence of a valid contract, knowledge by respondents that such a contract existed and acts (done in bad faith and without legal basis) by respondents which interfered in the due performance by the contracting parties of their respective obligations under the contract. Apart from the fact that these matters were factual (and therefore beyond our mandate to review), petitioner failed to prove entitlement to the relief it was seeking.

Only questions of law may be raised in a Rule 45 petition because the jurisdiction of this Court is limited to passing upon errors of law.[9] Factual findings of the trial court, when affirmed by the CA, are generally binding on this Court.[10]

In this case, both the RTC and the CA found that respondents were not guilty of malicious interference because no contract was ever perfected between petitioner and CMB. Because all petitioner presented to us were reiterations of its arguments in the courts *a quo*, we find no reason to disturb the decision of the CA.

WHEREFORE, the petition is hereby *DENIED.*

Costs against petitioner.

SO ORDERED.

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

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[9] *Titan-Ikeda Construction Corporation v. Court of Appeals,* G.R. No. 153874, 1 March 2007, 517 SCRA 180, 186 *citing Tirol, Jr. v. Commission on Audit,* 391 Phil. 897 (2000).

[10] *Id., citing Fuentes v. Court of Appeals*, G.R. No. 109849, 26 February 1997, 268 SCRA 703.

SECOND DIVISION

[G.R. No. 173483. September 23, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **MERLIE* DUMANGAY *y* SALE,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ELEMENTS OF ILLEGAL SALE OF *SHABU*, ESTABLISHED. — The elements of illegal sale of *shabu* are: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor. What is material is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti*. *Corpus delicti* is the body or substance of the crime, and establishes the fact that a crime has been actually committed. It has two elements, namely: (1) proof of the occurrence of a certain event; and (2) some person's criminal responsibility for the act. The straightforward testimony of Barbosa, the poseur-buyer, clearly established that an illegal sale of *shabu* actually took place and that appellant was the seller. Barbosa, PO1 Jaime Laura, MADAC members Romeo Lazaro and Marvin Cruz, in the sworn *Pinagsanib na Salaysay ng Pag-aresto*, recounted the details of the buy-bust operation. They stated therein that acting on confidential information, a team composed of MADAC and DEU agents proceeded to the place where Merlie was allegedly selling *shabu*. The informant made the introductions and the transaction took place. Barbosa handed the marked money to Merlie while the latter handed him one plastic sachet of *shabu*. Thereafter, Merlie was immediately arrested and upon her arrest, Barbosa found two plastic sachets in her right hand. The laboratory examination of the crystalline substance confiscated from Merlie and forwarded to the Philippine National Police Crime Laboratory yielded positive of methamphetamine hydrochloride. In short, the prosecution clearly and positively established that Merlie

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* "Merle" in some parts of the records.

agreed to sell *shabu* to the poseur-buyer and that the sale was consummated. Moreover, Barbosa identified the three plastic sachets of *shabu* and the marked money in court.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ABSENCE OF CIRCUMSTANCES THAT DISCREDIT. — We disagree with appellant's contention that inconsistencies in Barbosa's testimony are adequate to demolish the credibility of Barbosa. The inconsistencies alluded to by the appellant in the testimony of Barbosa are inconsequential and minor to adversely affect his credibility. The inconsistencies do not detract from the fact that Barbosa positively identified her in open court. What is essential is that the prosecution witness positively identified the appellant as the one who sold the *shabu* to the poseur-buyer. There is also nothing on record that sufficiently casts doubt on the credibility of the prosecution witness. More so, the lack of prior surveillance does not cast doubt on Barbosa's credibility. We have held that a prior surveillance is not necessary especially where the police operatives are accompanied by their informant during entrapment, as in this case. Contrary to appellant's contention, the informant was present during the entrapment.

3. ID.; ID.; ID.; TESTIMONY OF POLICE OFFICER WHO PARTICIPATED IN THE BUY-BUST OPERATION USUALLY GIVEN CREDIT; REASONS. — Note that a buy-bust operation is a form of entrapment legally employed by peace officers as an effective way of apprehending drug dealers in the act of committing an offense. Such police operation has judicial sanction as long as it is carried out with due regard to constitutional and legal safeguards. The delivery of the contraband to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction between the entrapping officers and the accused. Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimony on the operation deserves faith and credit. In light of the clear and convincing evidence of the prosecution, we find no reason to deviate from the findings of the trial court and the appellate court. More so, appellant failed to present evidence that Barbosa and the other members of the team had any ill motive to falsely accuse her of a serious crime. Absent any proof of

such motive, the presumption of regularity in the performance of official duty as well as the findings of the trial court on the credibility of witnesses shall prevail over appellant's self-serving and uncorroborated defenses.

4. ID.; CRIMINAL PROCEDURE; WHEN THE BUY-BUST OPERATION IS LEGITIMATE, THE SUBSEQUENT WARRANTLESS ARREST AND THE WARRANTLESS SEARCH AND SEIZURE ARE EQUALLY VALID. — Considering that the buy-bust operation in this case is legitimate, the subsequent warrantless arrest and the warrantless search and seizure are equally valid. In *People v. Julian-Fernandez*, we held that the interdiction against warrantless searches and seizures is not absolute and such warrantless searches and seizures have long been deemed permissible by jurisprudence in instances such as the search incidental to a lawful arrest. This includes a valid warrantless arrest, for, while as a rule, an arrest is considered legitimate if effected with a valid warrant of arrest, the Rules of Court recognize an arrest in *flagrante delicto* as a permissible warrantless arrest. In this case, we find that the appellant, having failed to controvert the evidence that the other two plastic sachets of *shabu* were found in her possession, is also guilty beyond reasonable doubt of illegal possession of *shabu*.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

QUISUMBING, *J.*:

For review is the Decision[1] dated April 28, 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 01700. The appellate court affirmed the Decision[2] dated October 29, 2003 of the

[1] CA *rollo*, pp. 105-113. Penned by Associate Justice Arturo G. Tayag, with Associate Justices Jose L. Sabio, Jr. and Jose C. Mendoza concurring.

[2] *Id.* at 11-15. Penned by Judge Francisco B. Ibay.

Regional Trial Court of Makati City, Branch 135 in Criminal Case Nos. 02-3568 and 02-3569. The trial court had convicted appellant Merlie Dumangay *y* Sale of violation of Sections 5 and 11 of Article II of Republic Act No. 9165[3] and sentenced her to suffer the penalty of life imprisonment and pay the fine of ₱500,000 in Criminal Case No. 02-3568, and imprisonment of twelve (12) years and one (1) day to twenty (20) years and to pay the fine of ₱300,000 in Criminal Case No. 02-3569; and pay the cost of suit.

The Informations[4] both dated December 2, 2002 that led to Merlie's convictions are as follows:

Criminal Case No. 02-3568

x x x x x x x x x

That on or about the 29th day of November 2002, in the City of Makati Philippines and a place within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously without being authorized by law, sell, distribute and transport zero point zero one (0.01) gram of [Methamphetamine] hydrochloride (shabu) which is a dangerous drug in consideration of two hundred (Php 200.00) pesos.

CONTRARY TO LAW.

x x x x x x x x x

Criminal Case No. 02-3569

x x x x x x x x x

That on or about the 29th day of November 2002, in the City of Makati Philippines and a place within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess any dangerous drug and without the corresponding license

[3] AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES. Also known as the "Comprehensive Drugs Act of 2002." Approved on June 7, 2002.

[4] Records, pp. 2 and 4.

or prescription, did then and there willfully, unlawfully and feloniously have in [her] possession zero point zero two (0.02) gram of [Methamphetamine] hydrochloride of a dangerous drug.

CONTRARY TO LAW.

xxx xxx xxx

Upon arraignment on February 21, 2003, appellant pleaded not guilty. Thereafter, trial ensued.

The prosecution presented only one witness, a member of the Makati Anti-Drug Abuse Council (MADAC), Francisco Barbosa. He testified as follows:

At 7 o'clock in the evening of November 29, 2002, an informant reported to the office of MADAC Cluster 3 that a certain Merlie, later identified as appellant, was engaged in selling *shabu* at the corner of Don Pedro and Enriquez Sts., Barangay Poblacion, Makati City. Acting on the report, MADAC Cluster Head, Barangay Chairman Vic Del Prado, formed a team to conduct a buy-bust operation with Barbosa as the poseur-buyer. Del Prado also coordinated with the Drug Enforcement Unit (DEU) of the Makati City Police Station.[5]

Thereafter, Del Prado, DEU operative PO1 Jaime Laura, and other MADAC members proceeded to the place where Merlie was reportedly selling *shabu*. They found Merlie in front of her house at 5649 Don Pedro corner Enriquez St., Barangay Poblacion, Makati City; and with the informant, Barbosa approached Merlie. The informant introduced Barbosa as a buyer of *shabu*, while the other members of the team watched from strategic positions. Merlie then asked Barbosa how much he would buy. Barbosa said, "*dalawang daang piso lang*," then handed Merlie the two 100-peso marked money. In exchange, Merlie gave him a small plastic sachet of a white crystalline substance. After Barbosa pretended to examine it, he gave the pre-arranged signal to the other members of the team and they arrested Merlie. Barbosa found the marked money and two more plastic sachets containing white crystalline substance

[5] TSN, June 11, 2003, pp. 3-4; Records, p. 53.

in Merlie's possession and informed Merlie the cause of her arrest and apprised her of her constitutional rights.[6]

Thereafter, Merlie was brought to the DEU of the Makati City Police Station. The three plastic sachets were sent to the Philippine National Police Crime Laboratory for examination. The laboratory report confirmed that the sachets contained methamphetamine hydrochloride or *shabu*. Each sachet weighed 0.01 gram.[7]

The testimony of the Forensic Chemist who examined the substance and prepared the report was dispensed with, considering the parties had stipulated that the report was duly accomplished after the substance examined by the crime laboratory yielded positive of methamphetamine hydrochloride.[8]

The defense presented Merlie as its sole witness. Merlie denied the allegations of the prosecution. She testified that at the time of the alleged buy-bust operation, she was already sleeping at home with her daughter when a man awakened her. She said that there were two men who searched the house. According to her, although no illegal item was found, she was still forced to board a vehicle and was taken to the Sta. Cruz Barangay Hall. There, a certain Minyang had taken her to a comfort room and told her to strip, but nothing illegal was found on her person. She also said that no uniformed policemen accompanied the arresting team and that Barbosa was not among the men who arrested her. She did not file any complaint against the people who arrested her because she had no relative to help her.[9]

On October 29, 2003, the trial court found the evidence of the prosecution sufficient to prove Merlie's guilt beyond reasonable doubt and rendered a decision of conviction in Criminal Case Nos. 02-3568 and 02-3569.

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[6] *Id.* at 7-10; *id.*

[7] Records, p. 56.

[8] TSN, June 11, 2003, p. 14; CA *rollo*, pp. 11-12.

[9] TSN, September 19, 2003, pp. 3-9; CA *rollo*, pp. 12-13.

The dispositive portion of the trial court's decision reads:

WHEREFORE, it appearing that the guilt of the accused MERL[I]E DUMANGAY *y* SALE was proven beyond reasonable doubt for violation of Sections 5 and 11, Article II of R.A. 9165, as principal, with no mitigating or aggravating circumstances, accused is hereby sentenced:

1. In Criminal Case No. 02-3568, to suffer life imprisonment and to pay a fine of ₱500,000.00;

2. In Criminal Case No. 02-3569, to suffer imprisonment for a term of twelve [12] years and one [1] day to twenty [20] years and to pay a fine of ₱300,000.00; and

3. To pay the costs.

Let the three [3] plastic sachets each containing zero point zero one [0.01] gram of [Methamphetamine] Hydrochloride be turned over to the PDEA for proper disposition.

SO ORDERED.[10]

Merlie appealed. In view of our ruling in *People v. Mateo*,[11] this case was referred to the Court of Appeals.[12]

Upon review, the Court of Appeals concluded in the Decision dated April 28, 2006 that the trial court did not err in finding Merlie guilty beyond reasonable doubt.

The appellant and the Office of the Solicitor General (OSG) opted not to file their supplemental briefs. But, we find on record their briefs filed with this Court before the case was transferred to the Court of Appeals. Appellant raised in her brief a single issue:

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED FOR VIOLATION OF SECTIONS 5 AND 11, ARTICLE II OF RA 9165 DESPITE THE PROSECUTION'S FAILURE TO PROVE HER GUILT BEYOND REASONABLE DOUBT.[13]

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[10] CA *rollo*, p. 15.

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

[12] *Rollo*, p. 2.

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

Simply stated, the issue in this case is whether appellant is guilty beyond reasonable doubt of violating Rep. Act No. 9165.

Appellant challenges the testimony of Barbosa and claims that it was incredible and inconsistent in regard to her identity. She avers that since there was no surveillance conducted before the buy-bust operation and the informant was not present at the time, there was no certainty as to the "Merlie" who was selling the prohibited drugs, named by the informant.[14] According to appellant, although the testimony of Barbosa presented the elements of the crime that would convince the trial court, it should be taken with caution, since, Barbosa, as a MADAC agent, could make it appear that there was entrapment when there was none.[15] She further argues that the reason for her conviction shall not be the weakness of her defense but the strength of the evidence of the prosecution.[16]

For the State, the OSG maintains that the prosecution had proved the elements of the crime charged: (1) the presence of the appellant at the scene of the crime; (2) the act of selling one plastic sachet of *shabu*; and (3) the recovery of two plastic sachets of *shabu* at the time of the entrapment. It also argues that the credibility of Barbosa, whose testimony established the elements of the crime, was never impeached by the defense.[17] The OSG avers that Barbosa positively identified appellant as the seller of *shabu*, and such positive identification prevails over her feeble defense that she was sleeping at their house when the entrapment took place.[18] Moreover, the OSG maintains that the trial court imposed the proper penalty for the crime charged.[19]

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[14] *Id.* at 36.

[15] *Id.* at 40.

[16] *Id*.

[17] *Id.* at 73.

[18] *Id.* at 80-81.

[19] *Id.* at 82.

The pertinent provisions of Article II of Rep. Act No. 9165 provide:

SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*.—The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

xxx xxx xxx

SEC. 11. *Possession of Dangerous Drugs*.—The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

xxx xxx xxx

(5) 50 grams or more of methamphetamine hydrochloride or "*shabu*";

xxx xxx xxx

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

xxx xxx xxx

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of …. methamphetamine hydrochloride….

xxx xxx xxx

We are convinced that appellant is guilty beyond reasonable doubt.

The elements of illegal sale of *shabu* are: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor. What is material is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti. Corpus delicti* is the body or substance of the crime, and establishes the fact that a crime has been actually committed. It has two elements, namely: (1) proof of the occurrence of a certain event; and (2) some person's criminal responsibility for the act.[20]

The straightforward testimony of Barbosa, the poseur-buyer, clearly established that an illegal sale of *shabu* actually took place and that appellant was the seller, thus:

FISCAL MORENO:

Q: Mr. Witness, how did you come to know the accused in this particular case, Merlie Dumangay?
A: Through our informant.

Q: And when did that informant go to your office?
A: November 29, 2002 at 7:00 p.m.

Q: [A]nd what was the information given to your office by the informant?
A: That [a] certain Merlie was engaged in selling prohibited drugs.

Q: And after receiving such information Mr. Witness, do you recall if your office did [anything] to the information?
A: Yes sir.

Q: What Mr. Witness?
A: Our office called up … the DEU, Makati police.

Q: Do you know the reason Mr. [W]itness why your office has to call up the DEU office?

[20] *People v. Del Mundo*, G.R. No. 169141, December 6, 2006, 510 SCRA 554, 562, citing *People v. Isnani*, G.R. No. 133006, June 9, 2004, 431 SCRA 439, 449 and *People v. Monte*, G.R. No. 144317, August 5, 2003, 408 SCRA 305, 309-310.

A: [Y]es sir.

Q: For what particular purpose Mr. Witness? Why is there a need to call DEU Mr. Witness?
A: [S]o that we can participate in our operation sir.

Q: And what participation did the [DEU] office make in connection with the buy bust operation?
A: He [led] our operation sir.

Q: After the coordination has been made with the [DEU], what happened next?
A: We conducted a briefing sir.

xxx xxx xxx

Q: After the briefing was conducted Mr. Witness do you recall if ever a buy bust operation was conducted?
A: There was sir.

Q: Against whom was the buy bust operation Mr. Witness?
A: I could not recall sir.

Q: Do you know if [a] buy bust operation was in fact conducted on November 29, 2002?
A: Yes sir, there was.

Q: Do you recall if somebody was arrested as a result of the buy bust operation Mr. Witness?
A: Yes sir.

Q: Who is that particular person?
A: Merlie Dumangay sir.

Q: Where is that Merlie Dumangay now? Will you kindly point her out?

INTERPRETER:

Witness pointing to a woman inside the courtroom [who], when asked, identified herself as Merlie Dumangay.

FISCAL MORENO:

Q: In connection with the arrest, which you have conducted against the person of Merlie Dumangay, do you recall if you ever executed a *Pinagsanib na Salaysay ng Pag-aresto*?
A: Yes sir.

Q: If that *Pinagsanib na Salaysay ng Pag-aresto* will be shown to you, will you be able to identify the same?
A: Yes sir.

Q: I am showing to you Mr. Witness this *Pinagsanib na Salaysay ng pag-aresto* consisting of two pages. Will you kindly go over this document and tell us if that is the same *Pinagsanib na Salaysay ng Pag-aresto* which you said you executed?
A: Yes sir.

xxx xxx xxx

FISCAL MORENO:

Q: Have you read the contents of this *Pinagsanib na Salaysay ng Pag-aresto* written in Tagalog?
A: Yes sir.

Q: [D]o you affirm and confirm as to the truthfulness of the allegations contained in this *Pinagsanib na Salaysay ng Pag-aresto*?
A: Yes sir.

FISCAL MORENO:

For purposes of expediency your Honor and to save the material time of the Honorable Court, we would like to stipulate with the defense that the allegations contained in this *Pinagsanib na Salaysay ng Pag-aresto* will form part of his direct testimony your Honor.

ATTY. QUIAMBAO:

We agree your Honor.[21] (Emphasis supplied.)

[21] TSN, June 11, 2003, pp. 3-7.

Barbosa, PO1 Jaime Laura, MADAC members Romeo Lazaro and Marvin Cruz, in the sworn *Pinagsanib na Salaysay ng Pag-aresto*,[22] recounted the details of the buy-bust operation. They stated therein that acting on confidential information, a team composed of MADAC and DEU agents proceeded to the place where Merlie was allegedly selling *shabu*. The informant made the introductions and the transaction took place. Barbosa handed the marked money to Merlie while the latter handed him one plastic sachet of *shabu*. Thereafter, Merlie was immediately arrested and upon her arrest, Barbosa found two plastic sachets in her right hand.

The laboratory examination of the crystalline substance confiscated from Merlie and forwarded to the Philippine National Police Crime Laboratory yielded positive of methamphetamine hydrochloride.

In short, the prosecution clearly and positively established that Merlie agreed to sell *shabu* to the poseur-buyer and that the sale was consummated. Moreover, Barbosa identified the three plastic sachets of *shabu* and the marked money in court.[23]

We disagree with appellant's contention that inconsistencies in Barbosa's testimony are adequate to demolish the credibility of Barbosa. The inconsistencies alluded to by the appellant in the testimony of Barbosa are inconsequential and minor to adversely affect his credibility.[24] The inconsistencies do not detract from the fact that Barbosa positively identified her in open court.[25] What is essential is that the prosecution witness positively identified the appellant as the one who sold the *shabu* to the poseur-buyer. There is also nothing on record that sufficiently casts doubt on the credibility of the prosecution

[22] Records, p. 53.

[23] TSN, June 11, 2003, pp. 7-9.

[24] See *People v. Gonzales*, G.R. No. 143805, April 11, 2002, 380 SCRA 689, 698.

[25] TSN, June 11, 2003, pp. 4-5.

witness.[26] More so, the lack of prior surveillance does not cast doubt on Barbosa's credibility. We have held that a prior surveillance is not necessary especially where the police operatives are accompanied by their informant during entrapment, as in this case. [27] Contrary to appellant's contention, the informant was present during the entrapment.[28]

Note that a buy-bust operation is a form of entrapment legally employed by peace officers as an effective way of apprehending drug dealers in the act of committing an offense. Such police operation has judicial sanction as long as it is carried out with due regard to constitutional and legal safeguards.[29] The delivery of the contraband to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction between the entrapping officers and the accused. Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimony on the operation deserves faith and credit.[30]

In light of the clear and convincing evidence of the prosecution, we find no reason to deviate from the findings of the trial court and the appellate court. More so, appellant failed to present evidence that Barbosa and the other members of the team had any ill motive to falsely accuse her of a serious crime. Absent any proof of such motive, the presumption of regularity in the performance of official duty as well as the findings of the trial court on the credibility of witnesses shall prevail over appellant's self-serving and uncorroborated defenses.[31]

Lastly, considering that the buy-bust operation in this case is legitimate, the subsequent warrantless arrest and the warrantless search and seizure are equally valid. In *People v.*

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[26] *People v. Gonzales*, *supra* at 698.

[27] *Id*.

[28] TSN, June 11, 2003, p. 11; Records, p. 53.

[30] *People v. Del Mundo*, *supra* note 20 at 565-566.

[31] *People v. Isnani*, *supra* note 20 at 455.

Julian-Fernandez,[32] we held that the interdiction against warrantless searches and seizures is not absolute and such warrantless searches and seizures have long been deemed permissible by jurisprudence in instances such as the search incidental to a lawful arrest. This includes a valid warrantless arrest, for, while as a rule, an arrest is considered legitimate if effected with a valid warrant of arrest, the Rules of Court recognize an arrest in *flagrante delicto* as a permissible warrantless arrest.[33] In this case, we find that the appellant, having failed to controvert the evidence that the other two plastic sachets of *shabu* were found in her possession, is also guilty beyond reasonable doubt of illegal possession of *shabu*.

In sum, we find no reversible error in the decisions of the trial court and the appellate court in holding appellant guilty beyond reasonable doubt of the offenses charged.

WHEREFORE, the Decision dated April 28, 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 01700 finding appellant Merlie Dumangay *y* Sale guilty beyond reasonable doubt of the crimes charged in Criminal Case Nos. 02-3568 and 02-3569 for violation of Sections 5 and 11 of Rep. Act No. 9165 is *AFFIRMED*.

No pronouncement as to costs.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and *Brion, JJ.*, concur.

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[32] 423 Phil. 895, 912 (2001).

[33] *People v. Julian-Fernandez, id.* at 912-913.

FIRST DIVISION

[G.R. No. 175995. September 23, 2008]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **EDWIN FUENTES *y* CARSON,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PROOF BEYOND REASONABLE DOUBT; ESTABLISHED. — Both the trial and appellate courts ruled that appellant's denial and alibi were not worthy of belief. Instead, both courts gave credence to the testimony of the witnesses of the prosecution. The said witnesses categorically pointed to appellant as the person who stabbed the victim while the latter was alighting from a tricycle. Considering the suddenness of the attack and the victim's lack of opportunity to defend himself (as he had no inkling that he would be assaulted), the trial and appellate courts ruled that the attack was carried out treacherously. For this reason, both courts found that appellant's guilt for the crime of murder was sufficiently established beyond reasonable doubt. This Court finds no compelling reason to rule otherwise.

2. CRIMINAL LAW; MURDER; CIVIL LIABILITY; AWARD OF CIVIL INDEMNITY IS MANDATORY AND WITHOUT NEED OF PROOF.— The award of civil indemnity is mandatory and must be granted to the heirs of the victim without need of proof other than the commission of the crime. However, it should be increased from ₱50,000 to ₱75,000 to conform with current jurisprudence.

3. ID.; ID.; ID.; MORAL AND EXEMPLARY DAMAGES; AWARDED. — The grant of ₱50,000 in moral damages was proper. It was due because of the violent death of the victim and the resulting grief of his family. Moreover, under Article 2230 of the Civil Code, exemplary damages may be imposed if the crime is committed with one or more aggravating circumstances, as in this case. Thus, since treachery attended the commission of the crime, ₱25,000 in exemplary damages should also be awarded to the heirs of the victim to serve as an example and deterrent to others.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

R E S O L U T I O N

CORONA, *J.*:

This is an appeal of the September 27, 2006 decision[1] of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00297 affirming *in toto* the decision of the trial court finding appellant Edwin Fuentes *y* Carson guilty of the crime of murder.

Appellant was prosecuted in the Regional Trial Court of Tacloban City, Branch 6 under the following Information:[2]

> That on or about the 6th day of May, 1996, in the City of Tacloban, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to kill with treachery and evident premeditation, armed with a deadly weapon, did then and there, wil[l]fully, unlawfully and feloniously stab and hit one MANUEL GUIRA[3] on the back portion of his body, and [in] the chest inflicting wounds which caused his death.
>
> CONTRARY TO LAW.[4]

During arraignment, appellant pleaded not guilty to the charge. After pre-trial, trial proceeded.

The prosecution established that, at around 10:00 p.m. on May 5, 1996, Rustico Bajar was having a drinking spree with

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[1] Penned by Associate Justice Agustin S. Dizon and concurred in by Associate Justices Pampio A. Abarintos and Priscilla Baltazar-Padilla of the Twentieth Division of the Court of Appeals. *Rollo*, pp. 5-9.

[2] Court of Appeals Records, p. 8. The case was docketed as Crim. Case No. 96-06-189.

[3] "Manuel Guerra" in some parts of the records.

[4] *Id*.

Manuel Guira at the Philtranco Bus Terminal on Real St., Tacloban City.[5] At around 1:00 a.m., May 6, 2006, they agreed to continue drinking at Paseo de Legaspi, also in Tacloban City. Guira boarded the first tricycle that passed by while Bajar followed shortly, taking the next tricycle. The two tricycles reached Paseo de Legaspi at about the same time. While Guira was about to alight from the tricycle, appellant suddenly approached and stabbed him. Shocked, Bajar ran away and called for assistance while appellant immediately fled from the crime scene. After some time, police officers came and brought Guira to the hospital where he was pronounced dead on arrival.

Dr. Angel Cordero, medico-legal officer of the Philippine National Police Crime Laboratory, autopsied Guira's body and prepared a report. The report stated that the victim sustained two fatal stab wounds measuring 2x5x1 cm. and 4x1x5 cm., respectively. The wounds punctured the upper and lower lobes of his left lung, causing his death.

Appellant's defenses were denial and alibi. He disavowed any participation in the killing of Guira. He claimed that he was sleeping in a pilot boat docked at the Tacloban City pier when Guira was stabbed.

After evaluating the evidence of the parties, the trial court ruled that appellant's denial was sufficiently refuted by the positive testimony of the prosecution witnesses. The positive identification of appellant as the killer obliterated his alibi. Moreover, it was not physically impossible for him to be at the crime scene at the time of the stabbing because the pier was only a kilometer away from Paseo de Legaspi. Thus:[6]

WHEREFORE, premises considered, the court finds accused Edwin Fuentes *Y* Carson guilty beyond reasonable doubt with the crime of Murder and as attended with aggravating circumstance of treachery, sentences him to suffer a penalty of *reclusion perpetua* and to pay

[5] Bajar was a security guard at the Philtranco bus terminal while Guira was a driver of Eagle Star Transit.

[6] Decision dated November 5, 2002. Penned by Judge Santos T. Gil. Court of Appeals Records, pp. 17-22.

the heirs of the deceased civil indemnity in the sum of pesos: Seventy-Five Thousand (₱ 75,000.00) and moral damages in the sum of pesos: Fifty Thousand (₱ 50,000.00). With cost[s].

So Ordered.[7]

After appellant filed his notice of appeal, the trial court forwarded the records of the case to this Court. Pursuant to *People v. Mateo*,[8] however, the case was referred to the Court of Appeals[9] which affirmed the decision of the trial court *in toto*.[10]

Hence, this appeal.

Both the trial and appellate courts ruled that appellant's denial and alibi were not worthy of belief. Instead, both courts gave credence to the testimony of the witnesses of the prosecution. The said witnesses categorically pointed to appellant as the person who stabbed the victim while the latter was alighting from a tricycle. Considering the suddenness of the attack and the victim's lack of opportunity to defend himself (as he had no inkling that he would be assaulted), the trial and appellate courts ruled that the attack was carried out treacherously. For this reason, both courts found that appellant's guilt for the crime of murder was sufficiently established beyond reasonable doubt. This Court finds no compelling reason to rule otherwise.

Pursuant to Article 248 of the Revised Penal Code, as amended by Section 6 of Republic Act (RA) 7659, appellant was correctly sentenced to suffer the penalty of *reclusion perpetua* and all its accessory penalties. It must be stressed that under RA 9346, appellant is not eligible for parole.[11]

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[7] *Id*.

[8] G.R. Nos. 147678-87, 04 July 2004, 433 SCRA 658.

[9] Resolution dated October 19, 2005 in G.R. No. 158213. Court of Appeals Records, p. 84.

[10] *Supra* note 1.

[11] *See* Section 3, RA 9346: "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."

The award of civil indemnity is mandatory and must be granted to the heirs of the victim without need of proof other than the commission of the crime.[12] However, it should be increased from ₱50,000 to ₱75,000 to conform with current jurisprudence.[13]

The grant of ₱50,000 in moral damages was proper. It was due because of the violent death of the victim and the resulting grief of his family.[14]

Moreover, under Article 2230 of the Civil Code, exemplary damages may be imposed if the crime is committed with one or more aggravating circumstances,[15] as in this case. Thus, since treachery attended the commission of the crime, ₱25,000 in exemplary damages should also be awarded to the heirs of the victim to serve as an example and deterrent to others.[16]

WHEREFORE, the appeal is hereby *DENIED*.The September 27, 2006 decision of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00297 finding appellant Edwin Fuentes *y* Carson guilty of the crime of murder is *AFFIRMED WITH MODIFICATION*. Appellant is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and all its accessory penalties. He is further ordered to pay the heirs of Manuel Guira ₱75,000 in civil indemnity, ₱50,000 in moral damages and ₱25,000 in exemplary damages.

Costs against appellant.

SO ORDERED.

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

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[12] *People v. de la Cruz,* G.R. No. 171272, 07 June 2007.

[13] *People v. Tubongbanua,* G.R. No. 171271, 31 August 2006, 500 SCRA 727; *People v. de la Cruz, supra.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

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