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OF THE

PHILIPPINES

FROM

JANUARY 8, 2009 TO JANUARY 20, 2009

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MANILA
2013

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. No. 168437. January 8, 2009]

LAURINIO GOMA and NATALIO UMALE, *petitioners, vs.* **THE COURT OF APPEALS, PEOPLE OF THE PHILIPPINES, and SANGGUNIAN MEMBER MANUEL G. TORRALBA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; CLASSES OF DOCUMENTS; PUBLIC DOCUMENTS; INCLUDES RESOLUTIONS AND ORDINANCES OF SANGGUNIANS. — Under Sec. 19(a) of Rule 132, Revised Rules on Evidence, public documents include "[t]he written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country." Verily, resolutions and ordinances of *sanggunians*, be they of the *sanggunian panlalawigan*, *panlungsod*, *bayan*, or *barangay*, come within the pale of the above provision, such issuances being their written official acts in the exercise of their legislative authority. As a matter of common practice, an action appropriating money for some public purpose or creating liability takes the form of an ordinance or resolution.

2. CRIMINAL LAW; FALSIFICATION OF PUBLIC DOCUMENTS; PUBLIC DOCUMENT; DEFINED. — Black defines a *public document* as "a document of public interest issued or published

by a political body or otherwise connected with public business." The term is also described as a document in the execution of which a person in authority or notary public takes part. There can be no denying that the public money-disbursing and seemingly genuine Res. T-95, in the preparation of which petitioners, in their official capacity, had a hand, is, in context, a public document in a criminal prosecution for falsification of public document. And it bears to stress that in falsification under Art. 171(2) of the RPC, it is not necessary that there be a genuine document; it is enough that the document fabricated or simulated has the appearance of a true and genuine document or of apparent legal efficacy.

3. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF TRIAL COURT, AFFIRMED BY APPELLATE COURT, RESPECTED; EXCEPTIONS. — It must be emphasized that the Court usually defers to factual findings of the trial court, more so when such findings receive a confirmatory nod from the appellate court. We explained in one case: The rule is that the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect if not conclusive effect. This is more true if such findings were affirmed by the appellate court. When the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court. And this factual determination, as a matter of long and sound appellate practice, deserves great weight and shall not be disturbed on appeal, except only for the most convincing reasons, such as when that determination is clearly without evidentiary support on record or when the judgment is based on misapprehension of facts or overlooked certain relevant facts which, if properly considered, would justify a different conclusion. This is as it should be since it is not the function of the Court under Rule 45 of the Rules of Court to evaluate and weigh all over again the evidence presented or the premises supportive of the factual holdings of lower courts.

4. CRIMINAL LAW; FALSIFICATION OF PUBLIC DOCUMENTS; ELEMENTS. — Art. 171(2) of the RPC provides as follows: ART. 171. *Falsification by public officer, employee; or notary or ecclesiastical minister*.—The penalty of *prision mayor* and

a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts: x x x (2) Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate. The elements of the crime of falsification of public documents, as above defined and penalized, are: 1. That the offender is a public officer, employee, or notary public. 2. That he takes advantage of his official position. 3. That he falsifies a document by causing it to appear that persons have participated in any act or proceeding. 4. That such person or persons did not in fact so participate in the proceeding.

5. ID.; ID.; CONSUMMATED UPON EXECUTION OF THE FALSE DOCUMENT; GAIN OR BENEFIT, NOT MATERIAL. — Falsification of a public document is consummated upon the execution of the false document. And criminal intent is presumed upon the execution of the criminal act. Erring public officers' failure to attain their objectives, if that really be the case, is not determinative of their guilt or innocence. The simulation of a public document, done in a manner so as to give it the appearance of a true and genuine instrument, thus, leading others to errors as to its authenticity, constitutes the crime of falsification. In fine, the element of gain or benefit on the part of the offender or prejudice to a third party as a result of the falsification, or tarnishing of a document's integrity, is not essential to maintain a charge for falsification of public documents. What is punished in falsification of public document is principally the undermining of the public faith and the destruction of truth as solemnly proclaimed therein. In this particular crime, therefore, the controlling consideration lies in the public character of a document; and the existence of any prejudice caused to third persons or, at least, the intent to cause such damage becomes immaterial.

6. ID.; ID.; PENALTY; CASE AT BAR. — Art. 171 of the RPC provides for a single divisible penalty of *prision mayor* to public officers or employees who, taking advantage of their official positions, shall cause it to appear that persons have participated in any act or proceeding when they did not in fact participate. And where neither aggravating nor mitigating circumstance

attended the execution of the offense, as here, the imposable penalty is, according to Art. 64 of the RPC, that of the medium period provided. The medium period for *prision mayor* is from eight (8) years and one (1) day to ten (10) years. Applying the Indeterminate Sentence Law, the penalty imposable would be that of a degree lower than the medium period of *prision mayor* as minimum, and the maximum is any period included in the medium period of *prision mayor*. The degree lower than the medium period of *prision mayor* is the medium period of *prision correccional* which ranges from two (2) years, four (4) months, and one (1) day to four (4) years and two (2) months. The penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to eight (8) years and two (2) months of *prision mayor*, as maximum, thus imposed on petitioners is well within the authorized imposable range, and is, therefore, proper.

APPEARANCES OF COUNSEL

Leonardo M. Ragaza, Jr. for petitioners.
The Solicitor General for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Appealed, via this Petition for Review on *Certiorari* under Rule 45, is the Decision[1] dated June 6, 2005 of the Court of Appeals (CA) in CA-G.R. CR No. 27963, affirming the July 28, 2003 Decision[2] of the Regional Trial Court (RTC), Branch 26 in Santa Cruz, Laguna in Criminal Case No. SC-6712. The RTC convicted petitioners of the crime of falsification of public document under Article 171 of the Revised Penal Code (RPC).

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[1] *Rollo*, pp. 27-40. Penned by Associate Justice Perlita J. Tria Tirona and concurred in by Associate Justices Delilah Vidallon-Magtolis and Jose C. Reyes, Jr.

[2] *Id.* at 41-51. Penned by Judge Pablo B. Francisco.

The Facts

On the basis of the affidavit-complaint of Manuel Torralba and two other members of the *Sangguniang Barangay* of Brgy. Cabanbanan, Pagsanjan, Laguna, the Office of the Ombudsman for Luzon filed with the RTC in Sta. Cruz, Laguna an Information for falsification of public document under Art. 171(2) of the RPC against petitioners Laurinio Goma and Natalio Umale.[3] Specifically, the complaint alleged that Laurinio and Natalio, as *barangay* chairperson and secretary, respectively, falsified a *barangay* resolution dated September 24, 1995, allocating the amount of PhP 18,000 as disbursement for a seminar for the two officials. The indicting information, docketed as Crim. Case No. SC-6712 and raffled to Branch 26 of the Sta. Cruz RTC, alleged as follows:

> That on or about September 24, 1995 in Barangay Cabanban [sic], Pagsanjan, Laguna, Philippines and within the jurisdiction of this Honorable Court, the above-named accused LAURINIO GOMA and NATALIO A. UMALI, both public officials, being the Barangay Chairman and *Barangay* Secretary, respectively, taking advantage of their official positions and committing the offense in relation to their office, in connivance and conspiracy with each other, did then and there, willfully, unlawfully and feloniously falsify a Resolution dated September 24, 1995, an official document, by indicating therein that aforesaid Resolution was passed on motion of Kagawad Renato Dizon, seconded by Kagawad Recaredo C. Dela Cruz and unanimously approved by those present in the meeting held on September 24, 1995 at 2:00 P.M., when in truth and in fact no meeting was held as no quorum was mustered, to the damage and prejudice of public interest.
>
> CONTRARY TO LAW.[4]

When arraigned, both Laurinio and Natalio, assisted by counsel, pleaded not guilty to the above charge. Pre-trial and trial then ensued.

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[3] His surname is spelled "Umali" in both the RTC and CA decisions.

[4] *Rollo,* p. 41.

The prosecution presented the three complaining witnesses,[5] who testified that, for lack of quorum, no actual session of the *sanggunian* of Brgy. Cabanbanan took place on September 24, 1995, the day the disputed resolution was allegedly passed. On that day, according to the three, they went to the *barangay* health center to attend a pre-scheduled session which, however, did not push through as, apart from them, only one other member, *i.e.*, Laurinio, came. But they later got wind of the existence of subject Resolution No. T-95 (Res. T-95) dated September 24, 1995, in which it was made to appear that all the s*anggunian* members attended the session of September 24, 1995 and unanimously approved, upon motion of kagawad Renato Dizon, duly seconded by kagawad Ricaredo dela Cruz, the allocation of PhP 18,000 to defray the expenses of two officials who would attend a seminar in Zamboanga. On the face of the resolution appears the signature of Natalio and Laurinio, in their respective capacities as *barangay* secretary and chairperson. It also bore the official seal of the *barangay*.

On October 15, 1995, the *sanggunian* held a special session during which it passed a resolution therein stating that no session was held on September 24, 1995.[6]

In their defense, Natalio and Laurinio, while admitting having affixed their signatures on the adverted falsified resolution, alleged that said resolution was nothing more than a mere proposal or a draft which Natalio, as was the practice, prepared and signed a week before the scheduled September 24, 1995. They also alleged that the same resolution was not the enabling instrument for the release of the seminar funds.

The Ruling of the RTC

After trial, the RTC rendered on July 28, 2003 judgment, finding both Laurinio and Natalio guilty as charged and, accordingly, sentenced them, thus:

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[5] Barangay Kagawads Manuel G. Torralba, Armando F. Cabantog, and Ricaredo dela Cruz of Barangay Cabanbanan, Pagsanjan, Laguna. The defense presented Laurinio, Natalio, and Asst. Municipal Treasurer Elizalde G. Cabaleño.

[6] *Rollo*, p. 44.

WHEREFORE, this Court finds both accused Laurinio Goma and Natalio A. Umali guilty beyond reasonable doubt as principals in the felony of falsification of public document punishable under Section [sic] 171 of the Revised Penal Code and there being neither aggravating nor mitigating circumstance, hereby imposes upon each of said accused the penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to eight (8) years, and two (2) months of *prision mayor*, as maximum.

Costs against both accused.

SO ORDERED.[7]

The RTC found Res. T-95 to have all the appearance of a complete and "true and genuine document," sealed and signed by the *Sanggunian* secretary.[8] And for reasons set out in its decision, the trial court dismissed, as incredulous, the defense's theory, and the arguments propping it, about the subject resolution being just a mere proposal.

The Ruling of the CA

From the RTC decision, Laurinio and Natalio appealed to the CA, their recourse docketed as CA-G.R. CR No. 27963, raising three issues, to wit: (a) whether Res. T-95 is a public document; (b) whether they violated Art. 171(2) of the RPC; and (c) whether the penalty imposed is proper. Answering all three issues in the affirmative, the CA, by its Decision dated June 6, 2005, affirmed that of the trial court, disposing as follows:

WHEREFORE, the 28 July 2003 Decision of Branch 26, Regional Trial Court of Santa Cruz, Laguna finding accused-appellants Laurinio Goma and Natalio A. Umali guilty beyond reasonable doubt of the crime of falsification of public document under Article 171(2) of the Revised Penal Code and sentencing them to suffer the penalty of four (4) years and two (2) months of *prision correctional* [sic], as minimum, to eight (8) years, and two (2) months of *prision mayor*, as maximum, is AFFIRMED. Costs against appellants.

SO ORDERED.[9]

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[7] *Id.* at 51.

[8] *Id.* at 45.

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

Petitioners are now before this Court raising the very same issues they earlier invoked before the CA, the first two of which may be reduced into the following proposition: Whether Res. T-95 may be characterized as a public document to bring the case, and render petitioners liable on the basis of the evidence adduced, under Art. 171(2) of the RPC.

The Court's Ruling

The petition is bereft of merit.

As a preliminary consideration, petitioners, in this recourse, merely highlight and discuss their defense that the subject resolution is a mere draft or proposed resolution not acted upon by the *sanggunian* for lack of quorum on September 24, 1995, and that they never had any criminal intent when they signed such proposed resolution. They deny having affixed the *barangay* official seal on the subject resolution.

Subject Resolution a Public Document

Under Sec. 19(a) of Rule 132, Revised Rules on Evidence, public documents include "[t]he written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country." Verily, resolutions and ordinances of *sanggunians*, be they of the *sanggunian panlalawigan*, *panlungsod*, *bayan*, or *barangay*, come within the pale of the above provision, such issuances being their written official acts in the exercise of their legislative authority. As a matter of common practice, an action appropriating money for some public purpose or creating liability takes the form of an ordinance or resolution.

Black defines a *public document* as "a document of public interest issued or published by a political body or otherwise connected with public business."[10] The term is also described as a document in the execution of which a person in authority or notary public takes part.[11] There can be no denying that the

[10] BLACK'S LAW DICTIONARY 520 (8th ed.).

[11] *Bermejo v. Barrios*, Nos. L-23614-15, February 27, 1970, 31 SCRA 764; *Cacnio v. Baens*, 5 Phil. 742 (1906); cited in 6 Herrera, *REMEDIAL LAW* 256 (1999).

public money-disbursing and seemingly genuine Res. T-95, in the preparation of which petitioners, in their official capacity, had a hand, is, in context, a public document in a criminal prosecution for falsification of public document. And it bears to stress that in falsification under Art. 171(2) of the RPC, it is not necessary that there be a genuine document; it is enough that the document fabricated or simulated has the appearance of a true and genuine document or of apparent legal efficacy.[12]

Petitioners Guilty of Falsification

At the outset, it must be emphasized that the Court usually defers to factual findings of the trial court, more so when such findings receive a confirmatory nod from the appellate court. We explained in one case:

> The rule is that the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect if not conclusive effect. This is more true if such findings were affirmed by the appellate court. When the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court.[13]

And this factual determination, as a matter of long and sound appellate practice, deserves great weight and shall not be disturbed on appeal, except only for the most convincing reasons,[14] such as when that determination is clearly without evidentiary support on record[15] or when the judgment is based on misapprehension of facts or overlooked certain relevant facts which, if properly considered, would justify a different

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[12] 2 L.B. Reyes, *THE REVISED PENAL CODE* 213 (1981); citing MILLER ON CRIMINAL LAW.

[13] *Fullero v. People*, G.R. No. 170583, September 12, 2007, 533 SCRA 97, 117; citations omitted.

[14] *Republic v. Court of Appeals*, G.R. No. 116372, January 18, 2001, 349 SCRA 451, 460.

[15] *Alba Vda. de Raz v. Court of Appeals*, G.R. No. 120066, September 9, 1999, 314 SCRA 36, 52.

conclusion.[16] This is as it should be since it is not the function of the Court under Rule 45 of the Rules of Court to evaluate and weigh all over again the evidence presented or the premises supportive of the factual holdings of lower courts.[17]

The case disposition of the CA and the factual and logical premises holding it together commend themselves for concurrence. Its inculpatory findings on the guilt of petitioners for falsification under Art. 171(2) of the RPC, confirmatory of those of the trial court, are amply supported by the evidence on record, consisting mainly of the testimony of the complaining witnesses and a copy of the subject resolution.

Art. 171(2) of the RPC provides as follows:

ART. 171. *Falsification by public officer, employee; or notary or ecclesiastical minister*.— The penalty of *prision mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

x x x x x x x x x

(2) Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate.

The elements of the crime of falsification of public documents, as above defined and penalized, are:

1. That the offender is a public officer, employee, or notary public.

2. That he takes advantage of his official position.

3. That he falsifies a document by causing it to appear that persons have participated in any act or proceeding.

4. That such person or persons did not in fact so participate in the proceeding.[18]

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[16] *Sampayan v. Court of Appeals*, G.R. No. 156360, January 14, 2005, 448 SCRA 220, 229.

[17] *Culaba v. Court of Appeals*, G.R. No. 125862, 15 April 2004, 427 SCRA 721, 729.

[18] 2 L.B. Reyes, T*HE REVISED PENAL CODE* (15th ed., 2001).

The first two elements clearly obtain, petitioners, during the period material, being local government elected officials who, by reason of their position, certified, as Natalio did, as to the holding of a *barangay* session and falsely attested, as Laurinio did, as to the veracity of a resolution supposedly taken up therein. The other two elements are likewise present. As correctly observed by the CA:

> x x x [Petitioners] made it appear in the *Barangay* resolution dated 24 September 1995 that all members of the Sangguniang Barangay deliberated upon and unanimously approved the questioned resolution, when in fact no such deliberation and approval occurred. The non-participation of the members of the Sangguniang Barangay in the passage of the resolution was established by the 15 October 1995 resolution issued by 7 of the 8 members of the Sangguniang Barangay denying that the challenged resolution was passed upon and approved by the council.[19]

Petitioners' bid to pass off the resolution in question as a mere proposal or a draft cannot be accorded merit in the light of the manner they worded and made it appear. Consider the following apt observations of the trial court:

> *Barangay* Resolution No. T-95 does not appear to be a proposed resolution in all aspects x x x
>
> x x x x x x x x x
>
> b) the opening paragraph unequivocally states that the contents thereof were copied from the minutes of the ordinary session of Sanggunian held on September 24, 1995 meeting, at 2:00 o'clock pm;
>
> c) it announces all the names of the members of the Sanggunian who attended the session during which said resolution [was] passed;
>
> d) it bears the resolution number, not the proposed resolution number;
>
> e) the title clearly states that the Sanggunian had already approved the allocation of ₱18,000.00 for two (2) *barangay* officials x x x;

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[19] *Rollo*, p. 36.

f) it made mention that Kagawad Renato M. Dizon made the motion, duly seconded by Kagawad [Ricaredo] C. de la Cruz, for the passing of said resolution; and

g) accused Natalio A. Umali, in his official capacity as *Barangay Kalihim*, certified said resolution as true and correct, and accused Laurinio A. Goma, *Punong Barangay*, attested to the truthfulness of said resolution.[20]

Indeed, the contents and appearance of Res. T- 95 argue against the very idea of its being merely a proposal or a draft *barangay* enactment. *Res ipsa loquitur*. A draft resolution would not be numbered or be carrying certificatory and attestative signatures, let alone impressed with the dry seal of the *barangay*. It would not also include such particulars as the attendance of all members of the *sanggunian* and the identity of the moving and seconding *kagawads* relative to the passage of the resolution, for such details are not certain; unless they have been rehearsed or planned beforehand. But the notion that a plan had been arranged by the *sanggunian* as a body would be negated by subsequent development which saw the approval of a resolution dated October 15, 1995 duly signed by seven *kagawads* virtually trashing Res. T-95 as a falsity. The sequence of events would readily show that petitioners falsified the subject resolution, but only to be exposed by private complainants.

Petitioners' allegation that *kagawad* Torralba was the one who affixed the seal or that he harbored ill-feelings towards them strikes this Court as a mere afterthought, absent convincing evidence to support the imputation.

Finally, petitioners urge their acquittal on the theory that they did not benefit from, or that the public was not prejudiced by, the resolution in question, it not having been used to obtain the PhP18,000 seminar funds. The argument holds no water. Falsification of a public document is consummated upon the execution of the false document. And criminal intent is presumed upon the execution of the criminal act. Erring public officers' failure to attain their objectives, if that really be the case, is not

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

determinative of their guilt or innocence. The simulation of a public document, done in a manner so as to give it the appearance of a true and genuine instrument, thus, leading others to errors as to its authenticity, constitutes the crime of falsification.[21]

In fine, the element of gain or benefit on the part of the offender or prejudice to a third party as a result of the falsification, or tarnishing of a document's integrity, is not essential to maintain a charge for falsification of public documents.[22] What is punished in falsification of public document is principally the undermining of the public faith and the destruction of truth as solemnly proclaimed therein. In this particular crime, therefore, the controlling consideration lies in the public character of a document; and the existence of any prejudice caused to third persons or, at least, the intent to cause such damage becomes immaterial.[23]

Third Issue: Imposed Penalty Proper

Finally, the penalty imposed by the RTC, as affirmed by the CA, is proper. Art. 171 of the RPC provides for a single divisible penalty of *prision mayor* to public officers or employees who, taking advantage of their official positions, shall cause it to appear that persons have participated in any act or proceeding when they did not in fact participate. And where neither aggravating nor mitigating circumstance attended the execution of the offense, as here, the imposable penalty is, according to Art. 64 of the RPC, that of the medium period provided. The medium period for *prision mayor* is from eight (8) years and one (1) day to ten (10) years.

Applying the Indeterminate Sentence Law, the penalty imposable would be that of a degree lower than the medium

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[21] *Re: Fake Decision Allegedly in G.R. No. 75242*, A.M. No. 02-8-23-0, February 16, 2005, 451 SCRA 357, 386.

[22] *Bustillo v. Sandiganbayan*, G.R. No. 146217, April 7, 2006, 486 SCRA 545, 551.

[23] *Lastrilla v. Granda*, G.R. No. 160257, January 31, 2006, 481 SCRA 324, 345; citing *Lumancas v. Intas*, G.R. No. 133472, December 5, 2000, 347 SCRA 22, 33-34; and *Luague v. Court of Appeals*, G.R. No. 55683, February 22, 1982, 112 SCRA 97, 101.

period of *prision mayor* as minimum, and the maximum is any period included in the medium period of *prision mayor*. The degree lower than the medium period of *prision mayor* is the medium period of *prision correccional* which ranges from two (2) years, four (4) months, and one (1) day to four (4) years and two (2) months.

The penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to eight (8) years and two (2) months of *prision mayor*, as maximum, thus imposed on petitioners is well within the authorized imposable range, and is, therefore, proper.

WHEREFORE, the instant appeal is *DENIED* for lack of merit. Accordingly, the appealed CA Decision dated June 6, 2005 in CA-G.R. CR No. 27963 is hereby *AFFIRMED IN TOTO*.

No pronouncement as to costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 167426. January 12, 2009]

CHRIS GARMENTS CORPORATION, *petitioner, vs.* **HON. PATRICIA A. STO. TOMAS and CHRIS GARMENTS WORKERS UNION-PTGWO LOCAL CHAPTER No. 832,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; MOTION FOR RECONSIDERATION, A PREREQUISITE

THERETO; EXCEPTIONS; WHEN THE SAME WOULD BE USELESS UNDER THE CIRCUMSTANCES. — It is settled that the filing of a motion for reconsideration is a prerequisite to the filing of a special civil action for certiorari to give the lower court the opportunity to correct itself. This rule, however, admits of exceptions, such as when a motion for reconsideration would be useless under the circumstances.

2. ID.; ID.; ID.; ID.; ID.; CASE AT BAR. — Under Department Order No. 40-03, Series of 2003, the decision of the Secretary of Labor and Employment shall be final and executory after ten days from receipt thereof by the parties and that it shall not be subject of a motion for reconsideraiton. In this case, the Decision dated January 18, 2005 of the Secretary of Labor and Emploment was received by petitioner on January 25, 2005. It would have become final and executory on February 4, 2005, the tenth day from petitioner's receipt of the decision. However, petitioner filed a petition for *certiorari* with the Court of Appeals on even date. Clearly, petitioner availed of the proper remedy since Department Order No. 40-03 explicitly prohibits the filing of a motion for reconsideration. Such motion becomes dispensable and not at all necessary.

3. ID.; CIVIL PROCEDURE; EFFECT OF JUDGMENTS OR FINAL ORDERS; DOCTRINE OF *RES JUDICATA*; ELEMENTS. — The doctrine of *res judicata* provides that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on points and matters determined in the former suit. The elements of *res judicata* are: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, subject matter, and causes of action.

4. ID.; ID.; ID.; DUAL ASPECT; BAR BY PRIOR JUDGMENT. — *Res judicata* has a dual aspect: first, "bar by prior judgment" which is provided in Rule 39, Section 47(b) of the 1997 Rules of Civil Procedure and second, "conclusiveness of judgment" which is provided in Section 47(c) of the same Rule. There is "bar by prior judgment" when, as between the first case where the judgment was rendered, and the second case that is sought

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

5. ID.; ID.; ID.; ID.; ID.; CONCLUSIVENESS OF JUDGMENT; APPLICATION IN CASE AT BAR.— The doctrine of "conclusiveness of judgment" provides that issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties involving a different cause of action. Under this doctrine, identity of causes of action is not required but merely identity of issues. Otherwise stated, conclusiveness of judgment bars the relitigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action. The matter of employer-employee relationship has been resolved with finality by the Secretary of Labor and Employment in the Resolution dated December 27, 2002. Since petitioner did not appeal this factual finding, then, it may be considered as the final resolution of such issue. To reiterate, "conclusiveness of judgment" has the effect of preclusion of issues.

6. ID.; ID.; ID.; ID.; IDENTITY OF CAUSE OF ACTION; NOT PRESENT IN CASE AT BAR. — Is the fourth element – identity of parties, subject matter, and causes of action between the first and third petitions for certification election – present? We hold in the negative. The Secretary of Labor and Employment dismissed the first petition as it was filed outside the 60-day freedom period. At that time therefore, the union has no cause of action since they are not yet legally allowed to challenge openly and formally the status of SMCGC-SUPER as the exclusive bargaining representative of the bargaining unit. Such dismissal, however, has no bearing in the instant case since the third petition for certification election was filed well within the 60-day freedom period. Otherwise stated, there is no identity of causes of action to speak of since in the first petition, the union has no cause of action while in the third, a cause of action already exists for the union as they are now legally allowed to

challenge the status of SMCGC-SUPER as exclusive bargaining representative.

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta & Gastardo Law Offices for petitioner.

Rogee Mayteen B. Espinosa Datudacula for respondent.

D E C I S I O N

QUISUMBING, *J.*:

Petitioner assails the Resolutions dated February 22, 2005[1] and March 16, 2005[2] of the Court of Appeals in CA-G.R. SP No. 88444, which dismissed its petition for *certiorari* due to its failure to file a motion for reconsideration from the Decision[3] of the Secretary of the Department of Labor and Employment before filing the petition.

The relevant facts are as follows:

Petitioner Chris Garments Corporation is engaged in the manufacture and export of quality garments and apparel.

On February 8, 2002, respondent Chris Garments Workers Union–PTGWO, Local Chapter No. 832, filed a petition for certification election with the Med-Arbiter. The union sought to represent petitioner's rank-and-file employees not covered by its Collective Bargaining Agreement (CBA) with the *Samahan Ng Mga Manggagawa sa* Chris Garments Corporation–Solidarity of Union in the Philippines for Empowerment and Reforms (SMCGC-SUPER), the certified bargaining agent of the rank-and-file employees. The union alleged that it is a legitimate labor organization with a Certificate of Creation of

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[1] *Rollo*, pp. 66-67. Penned by Associate Justice Renato C. Dacudao, with Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao concurring.

[2] *Id.* at 69.

[3] CA *rollo*, pp. 45-53, dated January 18, 2005.

Local/Chapter No. PTGWO-832[4] dated January 31, 2002 issued by the Bureau of Labor Relations.[5]

Petitioner moved to dismiss the petition. It argued that it has an existing CBA from July 1, 1999 to June 30, 2004 with SMCGC-SUPER which bars any petition for certification election prior to the 60-day freedom period. It also contended that the union members are not its regular employees since they are direct employees of qualified and independent contractors.[6]

The union countered that its members are regular employees of petitioner since: (1) they are engaged in activities necessary and desirable to its main business although they are called agency employees; (2) their length of service have spanned an average of four years; (3) petitioner controlled their work attitude and performance; and (4) petitioner paid their salaries. The union added that while there is an existing CBA between petitioner and SMCGC-SUPER, there are other rank-and-file employees not covered by the CBA who seek representation for collective bargaining purposes. It also contended that the contract bar rule does not apply.[7]

The Med-Arbiter dismissed the petition. The Med-Arbiter ruled that there was no employer-employee relationship between the parties since the union itself admitted that its members are agency employees. The Med-Arbiter also held that even if the union members are considered direct employees of petitioner, the petition for certification election will still fail due to the contract bar rule under Article 232[8] of the Labor Code. Hence, a petition could only be filed during the 60-day freedom period

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[4] *Id.* at 107.

[5] *Rollo*, p. 95.

[6] *Id.*

[7] *Id.* at 96.

[8] **ART. 232.** ***Prohibition on Certification Election***. — The Bureau shall not entertain any petition for certification election or any other action which may disturb the administration of duly registered existing collective bargaining agreements affecting the parties except under Articles 253, 253-A and 256 of this Code.

of the CBA or from May 1, 2004 to June 30, 2004. Nevertheless, the Med-Arbiter ruled that the union may avail of the CBA benefits by paying agency fees to SMCGC-SUPER.[9]

In a Resolution[10] dated December 27, 2002, the Secretary of Labor and Employment affirmed the decision of the Med-Arbiter. She ruled that petitioner failed to prove that the union members are employees of qualified and independent contractors with substantial capital or investment and added that petitioner had the right to control the performance of the work of such employees. She also noted that the union members are garment workers who performed activities directly related to petitioner's main business. Thus, the union members may be considered part of the bargaining unit of petitioner's rank-and-file employees. However, she held that the petition could not be entertained except during the 60-day freedom period. She also found no reason to split petitioner's bargaining unit.

On May 16, 2003, the union filed a second petition for certification election. The Med-Arbiter dismissed the petition on the ground that it was barred by a prior judgment. On appeal, the Secretary of Labor and Employment affirmed the decision of the Med-Arbiter.[11]

On June 4, 2004, the union filed a third petition for certification election.[12] The Med-Arbiter dismissed the petition on the grounds that no employer-employee relationship exists between the parties and that the case was barred by a prior judgment. On appeal, the Secretary of Labor and Employment granted the petition in a Decision[13] dated January 18, 2005. Thus:

WHEREFORE, the appeal filed by Chris Garment[s] Workers Union–PTGWO is hereby **GRANTED**. The 7 July 2004 Order of Med-Arbiter Tranquilino B. Reyes is hereby **REVERSED** and **SET ASIDE**.

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[9] *Rollo*, p. 96.

[10] *Id.* at 95-98.

[11] *Id.* at 8-9.

[12] CA *rollo*, pp. 59-61.

[13] *Id.* at 45A-53.

Accordingly, let the entire records of the case be remanded to the Regional Office of origin for the immediate conduct of a certification election, subject to the usual pre-election conference, among the regular rank-and-file employees of Chris Garments Corporation, with the following choices:

1. Chris Garments Workers Union – PTGWO Local Chapter No. 832;
2. Samahan ng Manggagawa sa Chris Garments Corp. – SUPER; and
3. No Union.

Pursuant to Section 13(e), Rule VIII of Department Order No. 40-03, the employer is hereby directed to submit to the office of origin, within ten (10) days from receipt hereof, the certified list of its employees in the bargaining unit or when necessary a copy of its payroll covering the same employees for the last three (3) months preceding the issuance of this Decision.

SO DECIDED.[14]

Petitioner received a copy of the decision on January 25, 2005. On February 4, 2005, petitioner filed a petition for *certiorari* with the Court of Appeals which was dismissed due to its failure to file a motion for reconsideration of the decision before filing the petition.

Incidentally, a certification election was conducted on June 21, 2005 among petitioner's rank-and-file employees where SMCGC-SUPER emerged as the winning union. On January 20, 2006, the Med-Arbiter certified SMCGC-SUPER as the sole and exclusive bargaining agent of all the rank-and-file employees of petitioner.[15]

Petitioner now comes before us arguing that:

I.

THE COURT OF APPEALS SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN DISMISSING THE PETITION

[14] *Id.* at 53.

[15] *Rollo*, pp. 131-132.

[FOR *CERTIORARI*] ON THE SOLE GROUND THAT THE COMPANY DID NOT FILE A MOTION FOR RECONSIDERATION DESPITE SECTION 21, RULE VIII OF DEPARTMENT ORDER NO. 43-03, . . . SERIES OF 2003, [WHICH] PROHIBITS THE FILING OF A MOTION FOR RECONSIDERATION FROM A DECISION OF THE SECRETARY OF LABOR.

II.

THE COURT OF APPEALS SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN REFUSING TO RESOLVE THE MERITS OF THE PETITION AS IT DISMISSED THE SAME BY MERE, ALBEIT, BASELESS TECHNICALITY WHICH ONLY FRUSTRATED RATHER THAN PROMOTED SUBSTANTIAL JUSTICE . . .

III.

PUBLIC RESPONDENT SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN REVERSING THE DECISION OF THE MED-ARBITER AND GIVING [DUE] COURSE TO THE PETITION FOR CERTIFICATION ELECTION FILED BY PRIVATE RESPONDENT CGWU-PTGWO DESPITE THE ABSENCE OF ANY EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE COMPANY AND ITS MEMBERS.

IV.

PUBLIC RESPONDENT SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN REVERSING THE FINDINGS OF THE MED-ARBITER THAT THE PETITION FOR CERTIFICATION ELECTION WAS BARRED BY *RES JUDICATA* AND/OR THE PRINCIPLE OF CONCLUSIVENESS OF JUDGMENT.

V.

PUBLIC RESPONDENT SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN NOT DISMISSING OUTRIGHT THE APPEAL OF PRIVATE RESPONDENT FOR FAILURE TO SUBMIT A CERTIFICATION AGAINST FORUM SHOPPING.[16]

The principal issues are: (1) Is a motion for reconsideration necessary before a party can file a petition for *certiorari* from the decision of the Secretary of Labor and Employment? (2) Is the case barred by *res judicata* or conclusiveness of

[16] *Id.* at 168-169.

judgment? and (3) Is there an employer-employee relationship between petitioner and the union members?

First. It is settled that the filing of a motion for reconsideration is a prerequisite to the filing of a special civil action for *certiorari* to give the lower court the opportunity to correct itself.[17] This rule, however, admits of exceptions, such as when a motion for reconsideration would be useless under the circumstances.[18]

Under Department Order No. 40-03, Series of 2003,[19] the decision of the Secretary of Labor and Employment shall be final and executory after ten days from receipt thereof by the parties and that it shall not be subject of a motion for reconsideration.

In this case, the Decision dated January 18, 2005 of the Secretary of Labor and Employment was received by petitioner on January 25, 2005. It would have become final and executory on February 4, 2005, the tenth day from petitioner's receipt of the decision. However, petitioner filed a petition for *certiorari* with the Court of Appeals on even date. Clearly, petitioner availed of the proper remedy since Department Order No. 40-03 explicitly prohibits the filing of a motion for reconsideration. Such motion becomes dispensable and not at all necessary.

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[17] *Abacan, Jr. v. Northwestern University, Inc.*, G.R. No. 140777, April 8, 2005, 455 SCRA 136, 148; *Indiana Aerospace University v. Commission on Higher Education*, G.R. No. 139371, April 4, 2001, 356 SCRA 367, 378.

[18] *Santos v. Cruz*, G.R. Nos. 170096-97, March 3, 2006, 484 SCRA 66, 73-74; *Metro Transit Organization, Inc. v. Court of Appeals*, G.R. No. 142133, November 19, 2002, 392 SCRA 229, 235-236.

[19] AMENDING THE IMPLEMENTING RULES OF BOOK V OF THE LABOR CODE OF THE PHILIPPINES, Rule VIII,

Section 21. Decision of the Secretary. — The Secretary shall have fifteen (15) days from receipt of the entire records of the petition within which to decide the appeal. The filing of the memorandum of appeal from the order or decision of the Med-Arbiter stays the holding of any certification election.

The decision of the Secretary shall become final and executory after ten (10) days from receipt thereof by the parties. No motion for reconsideration of the decision shall be entertained.

Second. The doctrine of *res judicata* provides that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on points and matters determined in the former suit.[20] The elements of *res judicata* are: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, subject matter, and causes of action.[21]

Res judicata has a dual aspect: first, "bar by prior judgment" which is provided in Rule 39, Section 47(b)[22] of the 1997 Rules of Civil Procedure and second, "conclusiveness of judgment" which is provided in Section 47(c)[23] of the same Rule.

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[20] *Mallion v. Alcantara*, G.R. No. 141528, October 31, 2006, 506 SCRA 336, 342; *Parayno v. Jovellanos*, G.R. No. 148408, July 14, 2006, 495 SCRA 85, 95.

[21] *Heirs of Rolando N. Abadilla v. Galarosa*, G.R. No. 149041, July 12, 2006, 494 SCRA 675, 686; *Oropeza Marketing Corporation v. Allied Banking Corporation*, G.R. No. 129788, December 3, 2002, 393 SCRA 278, 287.

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

x x x x x x x x x

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

x x x x x x x x x

[23] SEC. 47. *Effect of judgments or final orders*. —…

x x x x x x x x x

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

There is "bar by prior judgment" when, as between the first case where the judgment was rendered, and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action.[24] In this instance, the judgment in the first case constitutes an absolute bar to the second action. Otherwise put, the judgment or decree of the court of competent jurisdiction on the merits concludes the litigation between the parties, as well as their privies, and constitutes a bar to a new action or suit involving the same cause of action before the same or any other tribunal.[25]

On the other hand, the doctrine of "conclusiveness of judgment" provides that issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties involving a different cause of action. Under this doctrine, identity of causes of action is not required but merely identity of issues. Otherwise stated, conclusiveness of judgment bars the relitigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action.[26]

In the instant case, there is no dispute as to the presence of the first three elements of *res judicata*. The Resolution dated December 27, 2002 of the Secretary of Labor and Employment on the first petition for certification election became final and executory. It was rendered on the merits and the Secretary of Labor and Employment had jurisdiction over the case. Now, is the fourth element – identity of parties, subject matter, and causes of action between the first and third petitions for certification election – present? We hold in the negative.

The Secretary of Labor and Employment dismissed the first petition as it was filed outside the 60-day freedom period. At that time therefore, the union has no cause of action

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[24] *Republic v. Yu*, G.R. No. 157557, March 10, 2006, 484 SCRA 416, 422.

[25] *Oropeza Marketing Corporation v. Allied Banking Corporation*, *supra* at 286-287.

[26] *Heirs of Rolando N. Abadilla v. Galarosa*, *supra* at 688-689.

since they are not yet legally allowed to challenge openly and formally the status of SMCGC-SUPER as the exclusive bargaining representative of the bargaining unit. Such dismissal, however, has no bearing in the instant case since the third petition for certification election was filed well within the 60-day freedom period. Otherwise stated, there is no identity of causes of action to speak of since in the first petition, the union has no cause of action while in the third, a cause of action already exists for the union as they are now legally allowed to challenge the status of SMCGC-SUPER as exclusive bargaining representative.

Third. The matter of employer-employee relationship has been resolved with finality by the Secretary of Labor and Employment in the Resolution dated December 27, 2002. Since petitioner did not appeal this factual finding, then, it may be considered as the final resolution of such issue. To reiterate, "conclusiveness of judgment" has the effect of preclusion of issues.[27]

WHEREFORE, the instant petition is *DENIED* for lack of merit.

SO ORDERED.

Carpio,[*] *Carpio Morales*, *Tinga*, and *Velasco*, *Jr.*, *JJ.*, concur.

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[27] *Rasdas v. Estenor*, G.R. No. 157605, December 13, 2005, 477 SCRA 538, 548.

[*] Additional member in lieu of Associate Justice Arturo D. Brion who ihibited, being former Undersecretary of the Department of Labor and Employment.

FIRST DIVISION

[G.R. No. 176768. January 12, 2009]

GOLDEN (ILOILO) DELTA SALES CORPORATION, *petitioner, vs.* **PRE-STRESS INTERNATIONAL CORPORATION, ZEÑON SETIAS and JERRY JARDIOLIN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME COURT UNDER RULE 45; ONLY QUESTIONS OF LAW ARE ALLOWED; EXCEPTIONS. — As a rule only questions of law are entertained in petitions for review on *certiorari* under Rule 45 of the Rules of Court. The trial court's findings of fact, especially when affirmed by the CA, are generally binding and conclusive upon this Court. However, the rule allows certain exceptions. Among the recognized exceptions are: (1) when the conclusion is grounded on speculations, surmises or conjectures; (2) when the inference is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when there is no citation of specific evidence on which the factual findings are based; (7) when the finding of facts is contradicted by the evidence on record; (8) when the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (9) when the findings of the CA are beyond the issues of the case; and, (10) when such findings are contrary to the admissions of the parties.

2. ID.; EVIDENCE; RULES OF ADMISSIBILITY; ADMISSIONS OF A PARTY; APPRECIATION THEREOF. — Petitioner Golden Delta clearly delivered construction materials to the PSI compound. There is sufficient basis in both respondents' judicial admissions and the evidence on record that indeed construction materials were delivered by petitioner in the PSI compound. Allegations, statements and admissions made by a party in his pleadings are binding upon him. He cannot subsequently take a position contradictory or inconsistent with his admissions.

3. ID.; ID.; ID.; DOCUMENTARY EVIDENCE; DOCUMENTS PREPARED *ANTE LITEM MOTAM* WITHOUT ANTICIPATION OF LITIGATION; APPRECIATION THEREOF; CASE AT BAR. — It cannot be contended that the inventory lists are self-serving simply because they were prepared by petitioner's employees. These documents were prepared *ante litem motam*, and without anticipation that any litigation between the parties may ensue in the future. In *Philippine Airlines, Inc. v. Ramos*, this Court held that a writing or document made contemporaneously with a transaction which evidenced facts pertinent to the issue, when adduced as proof of those facts, is ordinarily regarded as more reliable proof and of greater probative force than the oral testimony of a witness as to such facts based upon memory and recollection. Statements, acts or conducts accompanying or so nearly connected with the main transaction as to form part of it, and which illustrate, elucidate, qualify or characterize the act, are admissible as part of the *res gestae*. In the present case, the withdrawal slips and inventory lists were prepared by the petitioner's employees who were detailed at the PSI compound, in the regular course of its business, made contemporaneously with the transaction, and in the performance of their regular duties without anticipation of any future litigation which may arise between petitioner and PSI. They should have been afforded great weight and credence as evidence.

APPEARANCES OF COUNSEL

Rico & Associates for petitioner.
Arturo B. Dullano for respondents.

D E C I S I O N

AZCUNA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure seeking to set aside the Decision[1] dated July 22, 2005 and the Amended

[1] Penned by Associate Justice Mercedes Gozo-Dadole with Associate Justices Arsenio J. Magpale and Ramon M. Bato, Jr. concurring; *rollo*, pp. 52-72.

Decision[2] dated February 20, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 79101.

Petitioner Golden (Iloilo) Delta Sales Corporation (Golden Delta) is a domestic corporation engaged in the business of selling hardware and construction materials. Mr. Chui Han Sing Cembrano is its Vice-President and General Manager.[3]

Respondent Pre-Stress International Corporation (PSI) is also a domestic corporation engaged in the fabrication of pre-stress concrete pipes and pre-case concrete, while respondents Jerry Jardiolin and Zeñon Setias are officers of PSI.[4]

Sometime in 1990, Cembrano was introduced by Jardiolin to the PSI Board of Directors, among whom was Setias. Since then, Golden Delta supplied PSI with its construction materials on credit and at times helped finance the latter's construction projects through Golden Delta's sister financing company.[5]

Initially, the construction materials delivered by Golden Delta to PSI were taken from the former's warehouse located in Dungon A, Jaro, Iloilo City, which was situated some kilometers away from the PSI compound at Barangay Maliao, Pavia, Iloilo.[6]

Sometime in March 2000, for convenience of both parties, the officers of PSI allegedly offered Golden Delta to store its construction materials at the PSI compound in Pavia, Iloilo. At that time, Golden Delta's warehouse in Dungon A, Jaro, Iloilo City, was being rented by Wewins Bakeshop. Consequently, Golden Delta accepted the proposal and began utilizing a portion of the PSI compound as its warehouse and bodega, stacking and storing its construction materials there.[7]

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[2] Penned by Associate Justice Arsenio J. Magpale with Associate Justices Romeo F. Barza and Priscilla Baltazar-Padilla concurring; *id.* at 74-82.

[3] *Id.* at 14.

[4] *Id.*

[5] *Id.* at 15.

[6] *Id.*

[7] *Id.*

Golden Delta alleged that its stocks coming from Luzon and Cebu were delivered directly to the PSI compound and stored there. Golden Delta also placed there trucks, forklifts and other equipment necessary for loading and unloading the materials. It likewise assigned there its own personnel to manage and attend to the receipts and withdrawal of materials by its buyers. Golden Delta claimed that the procedure in the withdrawal of materials by its customers in the PSI compound was to first purchase the materials from its main office in Iloilo City; the customer would then be issued a withdrawal slip describing the materials and their quantities; the withdrawal slip would then be presented to Golden Delta's personnel stationed at the PSI compound and the latter would record it and release the materials to the customer. Golden Delta claimed that the arrangement went smoothly from March 2000 to December 2001.[8]

Before December 5, 2001, the lessee of Golden Delta's warehouse in Dungon A, Jaro, Iloilo City, terminated its lease agreement with Golden Delta. Hence, Golden Delta decided to resume its operations at its own warehouse. Thereafter, Golden Delta started to retrieve and transfer its alleged stocks from the PSI compound to its own warehouse in Dungon A. Golden Delta's employees were able to load three out of four trucks with assorted construction materials, but were only able to bring out two loaded trucks from the PSI compound to its warehouse in Dungon A. When Golden Delta's people returned to retrieve the remaining materials, they were prevented from doing so by the guards of PSI, allegedly upon the instructions of Jardiolin. Despite numerous telephone calls by Golden Delta to the officers and personnel of PSI, the latter allegedly refused to allow Golden Delta to withdraw its remaining stocks.[9]

On December 7, 2001, PSI purportedly called Golden Delta's office to inform the latter that it may retrieve the two trucks that were left at the PSI compound. Golden Delta, however, found two empty trucks along the highway outside the PSI compound. It appears that one of the trucks which were loaded

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[8] *Id.* at 16.

[9] *Id.*

with materials earlier was emptied of its cargo. At that time, according to Golden Delta, the drivers who retrieved the trucks saw Golden Delta's materials still inside the PSI compound.[10]

On December 8, 2001, Golden Delta sent a Letter[11] addressed to Setias, the General Manager of PSI, demanding the release of the construction materials. PSI allegedly refused to release or allow Golden Delta to enter the compound and withdraw the materials.[12]

Consequently, Golden Delta filed on January 8, 2002 a Complaint for Recovery of Personal Property with Prayer for Replevin with Damages[13] before the Regional Trial Court (RTC), Iloilo City, against PSI, Jardiolin and Setias, later docketed as Civil Case No. 02-27020. In its complaint, Golden Delta averred that respondents' refusal to allow it to withdraw the construction materials inside the PSI compound, in effect, constitutes unlawful taking of possession of personal properties. Golden Delta prayed that the trial court issue a writ of replevin ordering the seizure and delivery of the subject personal properties in accordance with law or in the event that manual delivery cannot be effected, to render judgment ordering respondents to pay, jointly and severally, the sum of ₱3,885,750.69 plus 20% as attorney's fees and the replevin bond premium and other expenses incurred in the seizure of the construction materials. Golden Delta likewise prayed for ₱200,000 moral damages, ₱200,000 exemplary damages, and the cost of the suit.[14]

On January 12, 2002, upon the complaint of Golden Delta, agents of the National Bureau of Investigation (NBI) apprehended and impounded two trucks loaded with Golden Delta's materials that were not retrieved from the PSI compound. Said materials, according to Golden Delta, were identified by the metal tags attached thereto bearing the name "Golden Delta." The truck

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[10] *Id*. at 17.

[11] *Id*. at 87.

[12] *Id*. at 55.

[13] *Id*. at 83-86.

[14] *Id*. at 84-86.

drivers and their helpers were apprehended and detained by the NBI. Thereafter, on the basis of the evidence gathered and the findings of the NBI, a complaint for qualified theft was filed by the NBI with the Municipal Circuit Trial Court, Sta. Barbara-Pavia, Iloilo, against Jardiolin and Setias together with other officers and personnel of PSI.[15]

In their Answer with Affirmative Defense and Counterclaim[16] filed on February 8, 2002, PSI and Setias contended that Golden Delta's action for recovery of personal property with prayer for replevin with damages has no factual and legal basis. They averred that they came to know Cembrano when Jardiolin introduced him to them and that they are familiar with Golden Delta since they used to buy construction materials from it. They added that Golden Delta delivered construction materials at the PSI compound when they bought materials from the latter or when it delivered construction materials to Jardiolin at a separate area within the compound. Further, the PSI compound has a total of 5.7 hectares. It has wide and idle spaces since PSI occupies only a portion of the property consisting of more or less 2.5 hectares. Jardiolin was also allowed to use a portion of the area as storage for his own equipment and construction materials. In addition, they do not interfere with the affairs and activities of Jardiolin as his operations do not interfere with their own operations. Although Golden Delta also delivers construction materials to Jardiolin, their transaction is exclusively between the two of them and they have no participation in it whatsoever.[17]

In his own Answer with Affirmative Defenses and Counterclaim[18] dated February 8, 2002, Jardiolin maintained that he did not agree or allow, impliedly or explicitly, Golden Delta or any of its representatives to store any construction materials in his designated area inside the PSI compound. He

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[15] *Supra*, note 10.

[16] *Rollo*, pp. 98-103.

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

[18] *Id.* at 105-109.

averred that neither he, PSI nor Setias agreed to the withdrawal of any of the alleged stocks because the stocks inside the PSI compound were not owned by Golden Delta. He added that the construction materials inside the PSI compound being claimed by Golden Delta were his personal properties. Thus, he cannot and could not have refused Golden Delta from withdrawing any construction materials that it allegedly stored inside the PSI compound since Golden Delta had not stored or delivered any construction materials to him for storing or safekeeping with the obligation to return the same.[19]

Thereafter, trial ensued and on March 17, 2003, the RTC rendered a Decision[20] in favor of respondents and against Golden Delta. Its dispositive portion stated:

WHEREFORE, judgment is hereby rendered in favor of the defendants and against the plaintiff as follows:

1. Dismissing the complaint of plaintiff;

2. Directing plaintiff to pay defendants as follows;

A. To defendant Jerry Jardiolin:

   1. Five Hundred Thousand Pesos (₱500,000.00) as Attorney's Fees and one [*sic*] Hundred Thousand Pesos (₱100,000.00) as Acceptance Fee;

   2. Moral Damages in the amount of Three Million Five Hundred Thousand Pesos (₱3,500,000.00);

   3. Exemplary Damages in the amount of One Million Pesos (₱1,000,000.00);

B. To defendant Zeñon Setias;

   1. One Million Pesos (₱1,000,000.00) for Attorney's Fees;

   2. Moral Damages in the amount of Three Million Five Hundred Thousand Pesos (₱3,500,000.00);

   3. Exemplary Damages in the amount of One Million Pesos (₱1,000,000.00);

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[19] *Id*. at 105-107.

[20] *Id*. at 132-203.

SO ORDERED.[21]

In ruling for respondents the RTC ratiocinated that Golden Delta was not able to prove its ownership of the subject materials and its entitlement to their possession. The court stated that Golden Delta was not able to prove its case or causes of action, having failed to establish in a satisfactory manner the facts upon which it based its claims. Specifically, Golden Delta failed to establish the requisites for Replevin under Rule 60 of the Revised Rules of Court. The RTC concluded that there was no agreement to store the materials in the PSI compound and that Jardiolin was the owner of the subject material.[22]

Further, it was the opinion of the trial court that the case was filed not for the recovery of the subject construction materials but due to Cembrano's motive to take revenge on Jardiolin. The court based this on the testimony of one Imee Vilches who testified that she was the girlfriend of Cembrano and that they have a daughter. Their relationship started in 1996 and it lasted until April 26, 2001. She testified that Cembrano was extremely jealous of Jardiolin who, compared to him, was more talented, good looking and intelligent. The RTC pointed out that Ms. Vilches knew the transactions between Cembrano and PSI because she is the consultant and accountant of PSI.[23]

Also, the RTC found that Cembrano was not able to prove that he was authorized by the Board of Directors of Golden Delta to file the case.[24]

Moreover, the RTC noted that even before the filing of the complaint, the construction materials were in the possession of respondents. As such, it was Jardiolin who was entitled to the possession of the subject materials since he was both their owner and possessor, and no storage agreement was proven by Golden Delta.[25]

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[21] *Id.* at 203.

[22] *Id.* at 193-201.

[23] *Id.* at 184-188.

[24] *Id.* at 200.

[25] *Id.* at 201.

Aggrieved, Golden Delta sought recourse before the CA, claiming that the RTC erred:

I

IN HOLDING THAT CHUI HAN SING CEMBRANO, VICE-PRESIDENT AND MANAGER OF APPELLANT CORPORATION, HAS NO AUTHORITY TO REPRESENT/SUE FOR AND ON BEHALF OF APPELLANT.

II

IN RULING THAT NO CONSTRUCTION MATERIALS BELONGING TO APPELLANT [WAS] EVER RECEIVED BY APPELLEES AND STORED AT THE PSI COMPOUND.

III

IN FINDING THAT THE CONSTRUCTION MATERIALS SUBJECT OF THIS CASE [ARE] OWNED BY APPELLEES AND NOT BY APPELLANT.

IV

IN CONCLUDING THAT THE CONSTRUCTION MATERIALS, SUBJECT OF THIS CASE, ARE NOT PARTICULARLY DESCRIBED AND ARE INCORPOREAL PERSONAL PROPERTIES, HENCE, NOT SUBJECT OF REPLEVIN.

V

IN GIVING ABSOLUTE CREDENCE, AND SWALLOWING HOOK, LINE, AND SINKER THE TESTIMONY OF A MORALLY DEPRAVED AND ADULTEROUS WOMAN, IMEE VILCHES; AND

VI

IN AWARDING ATROCIOUS, SCANDALOUSLY EXHORBITANT AND GARGANTUAN AMOUNTS OF DAMAGES WHICH ARE TOTALLY UNPROVED.[26]

On July 22, 2005, the CA rendered a Decision[27] affirming with modification the decision of the RTC. In its decision, the

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[26] *Id.* at 220-221.

[27] *Supra*, note 1.

CA found that Cembrano had the personality to appear and represent Golden Delta. It, however, agreed with the RTC that Golden Delta was not able to prove by a *scintilla* of evidence that it is the owner of the subject materials and that it is entitled to their possession. Further, the appellate court reduced the monetary awards granted to Jardiolin and Setias. The decretal portion of the decision reads:

> WHEREFORE, premises considered, the assailed Decision under review dated March 17, 2003 of the Regional Trial Court, 6th Judicial Region, Branch 32, Iloilo City, in Civil Case No. 02-27020, is hereby **MODIFIED** as follows:
>
> **A. To defendant Jerry Jardiolin:**
>
> 1. The award of Attorney's Fees and Acceptance Fee is reduced from ₱600,000.00 [*sic*] to ₱100,000.00;
>
> 2. The award of moral damages is reduced from ₱3,500,000.00 to ₱200,000.00; and
>
> 3. the award of exemplary damages is reduced from ₱1,000,000.00 to ₱100,000.00;
>
> **B. To defendant Zeñon Setias:**
>
> 1. The award of Attorney's Fees and Acceptance Fee is reduced from ₱1,000,000.00 to ₱100,000.00;
>
> 2. The award of moral damages is reduced from ₱3,500,000.00 to ₱200,000.00; and
>
> 3. The award of exemplary damages is reduced from ₱1,000,000.00 to ₱100,000.00;
>
> In all respects, the assailed decision is hereby **AFFIRMED** except the portion wherein the trial court erroneously ruled that herein appellant was not able to prove that he was authorized by the Board of Directors of Golden (Iloilo) Delta Sales Corp.
>
> SO ORDERED.[28]

Thereafter, Golden Delta filed a motion for reconsideration, insisting that it is the owner of the construction materials

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[28] *Rollo*, p. 71.

purportedly delivered to the PSI compound for storage. Golden Delta also asserted that there was no evidence or legal basis for the award of moral and exemplary damages, as well as attorney's fees in favor of Jardiolin and Setias.[29] On February 20, 2007, the CA rendered an Amended Decision[30] partially granting Golden Delta's motion, the dispositive portion of which reads:

> WHEREFORE, after due consideration, the instant motion is **GRANTED** in **PART**. This court's decision promulgated on July 22, 2005, is **AFFIRMED** as to the dismissal of plaintiff-appellant's complaint. However, the award of moral and exemplary damages and attorney's fees to defendants Jerry Jardiolin and Zeñon Setias is hereby **DELETED** and **SET ASIDE** and the counterclaim of appellees is likewise **DISMISSED**.
>
> SO ORDERED.[31]

The CA concluded that after a reevaluation and thorough perusal of the evidence presented by both parties, it likewise found that Golden Delta failed to present convincing and concrete evidence to support its claim of ownership and rightful possession of the subject construction materials. However, the CA found the award for moral and exemplary damages and attorney's fees to Jardiolin and Setias to be without sufficient basis.[32]

Not contented with the amended decision, Golden Delta filed the petition here, assigning as errors the action of the appellate court:

I

IN FINDING THAT THERE IS NO PROOF THAT PETITIONER EVER DELIVERED CONSTRUCTION MATERIALS SUBJECT OF THE CONTROVERSY, INTO PSI's COMPOUND.

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[29] *Id.* at 75-76.

[30] *Supra*, note 2.

[31] *Rollo*, p. 81.

[32] *Id.* at 77-81.

II

IN RULING THAT RESPONDENT JERRY H. JARDIOLIN, NOT PETITIONER, IS THE "PRESUMED" OWNER OF THE CONTESTED CONSTRUCTION MATERIALS.

III

IN CONVENIENTLY PASSING *SUB-SILENCIO* THE VERY CRUCIAL ISSUE, WHETHER OR NOT THE TRIAL COURT (RTC, BR. 32, ILOILO) PRESIDING JUDGE, HON. LOLITA CONTRERAS-BESANA, WHO HERSELF CONFESSED HER PROXIMATE CONSANGUINITAL RELATION WITH ATTY. LEONARDO JIZ, COUNSEL FOR RESPONDENTS IN THE TRIAL COURT, SHOULD HAVE INHIBITED HERSELF FROM HEARING THE CASE. THE VERY FACT SHE (BESANA) PURSUED IN THE OTHER EARLIER CASES BEFORE HER WHEREIN ATTY. JIZ WAS A PARTY, AND IN NOT NULLYFYING OR AT THE VERY LEAST, REVERSING, THE DECISION OF THE TRIAL COURT ON GROUNDS OF CLEAR BIAS AND BEREFT OF EVIDENTIARY BASIS, AS BORNE BY THE RECORDS.

IV

IN NOT RESOLVING RESPONDENTS' MOTION FOR LEAVE TO ADMIT THEIR VERY BELATEDLY FILED APPELLEES' BRIEF, WHICH IS ACTUALLY IN THE NATURE OF A MOTION FOR RECONSIDERATION OVER ITS EARLIER RESOLUTION DIRECTING THE CASE SUBMITTED FOR DECISION WITHOUT THE APPELLEES' BRIEF, IN THE FACE OF PETITIONER'S VIGOROUS AND WELL FOUNDED OPPOSITION, BEFORE RENDERING ITS DECISION, THEREBY VIOLAT[ING] PETITIONER'S RIGHT TO DUE PROCESS.[33]

Petitioner argues that the conclusions of the RTC and CA are not only utterly baseless but, worse, contrary to the evidence on record and the law. Respondents allegedly failed to produce any evidence, in the form of purchase orders, delivery receipts, proof of payment, and the like, that would prove that the subject construction materials are owned by Jardiolin.[34]

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[33] *Id*. at 25-26.

[34] *Id*. at 26-29.

Golden Delta insists that sufficient evidence was presented to show that the construction materials subject of the controversy were delivered and stored in PSI's compound, but the CA refused to consider it and concluded instead that the ownership and possession thereof were presumed to belong to Jardiolin.[35] The above conclusion, says Golden Delta, which is evidently based on a presumption, clearly showed that there was no direct, clear, concrete and positive evidence of the fact of ownership.[36] Golden Delta likewise faults the appellate court for keeping mum on the question it raised on the trial judge's partiality, considering her close blood relation with PSI's counsel.[37] Lastly, Golden Delta avers that the CA should have first resolved whether or not to admit respondents' brief before deciding the case on the merits. Failure to do so, says Golden Delta, amounts to a denial of due process.[38]

Respondents, on the other hand, claim that only questions of law may be raised in a Petition for Review on *Certiorari* under Rule 45; that both the CA and the RTC found that petitioner did not store construction materials at the compound of PSI and neither was its ownership established; that both the CA and the RTC found that petitioner did not offer any written evidence showing that the construction materials were received by respondents' personnel; that the alleged bias and partiality of the trial judge were never raised as an issue before the CA, hence, it cannot be raised for the first time in the instant petition; that when the CA noted the entry of appearance of Gellada Law Office in substitution of respondent's former counsel, Atty. Leonardo E. Jiz, it impliedly noted and admitted its belated Appellees' Brief; that the instant petition is premature because the Partial Motion for Reconsideration of the CA's Amended Decision it filed is still pending resolution.[39]

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[35] *Id*. at 26-33.

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

[37] *Id*. at 39-42.

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

[39] *Id*. at 427-436.

As a rule only questions of law are entertained in petitions for review on *certiorari* under Rule 45 of the Rules of Court. The trial court's findings of fact, especially when affirmed by the CA, are generally binding and conclusive upon this Court. However, the rule allows certain exceptions. Among the recognized exceptions are: (1) when the conclusion is grounded on speculations, surmises or conjectures; (2) when the inference is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when there is no citation of specific evidence on which the factual findings are based; (7) when the finding of facts is contradicted by the evidence on record; (8) when the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (9) when the findings of the CA are beyond the issues of the case; and, (10) when such findings are contrary to the admissions of the parties.[40]

This case falls under the exceptions. The findings of the CA are contrary to the evidence, which it grossly misappreciated, and to the judicial admissions of respondents. In fine, the findings and conclusions of the CA are contrary to the undisputed facts and clear evidence on record.

Petitioner Golden Delta clearly delivered construction materials to the PSI compound. There is sufficient basis in both respondents' judicial admissions and the evidence on record that indeed construction materials were delivered by petitioner in the PSI compound. Allegations, statements and admissions made by a party in his pleadings are binding upon him. He cannot subsequently take a position contradictory or inconsistent with his admissions.[41] Respondents PSI and Setias admitted in their Answer:

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[40] *Pelonia v. People*, G.R. No. 168997, April 13, 2007, 521 SCRA 207.

[41] Sec. 4, Rule 129; Sec. 26, Rule 130, Herrera, *Remedial Law*, Vol. 5, pp. 107-108, citing *Mcdaniel v. Apacible*, 44 Phil. 248; *Cunanan v. Ocampo*, 80 Phil. 227.

12. That **although the plaintiff (Golden Delta) delivered construction materials at the PSI Compound**, it was only on occasion when herein defendants bought some construction materials from them or when plaintiffs delivered construction materials to JERRY JARDIOLIN and **that were stocked at a separated area designated for the latter**.

x x x x x x x x x

14. That herein defendants do not interfere with the affairs and activities of the plaintiff and JERRY JARDIOLIN as their operation does not interfere with our company's operation; that although **plaintiff delivers also construction materials** to JERRY JARDIOKIN [*sic*], the transaction is purely between them and that herein defendants has [*sic*] no participation their [*sic*] whatsoever.[42] (Emphasis supplied)

The CA, however, said that petitioner failed to prove "as to how much or how many" of these construction materials were actually stored at the PSI compound.[43]

The CA simply ignored the evidentiary impact of the voluminous withdrawal slips and inventory lists (Exhs. "G" to "CC," inclusive) prepared and testified to by petitioner's personnel proving the exact quantity and specifications of these construction materials stored at the PSI compound. Furthermore, a list of these construction materials with their respective quantities and descriptions, was annexed to the petitioner's complaint for replevin.[44] This list was never denied by respondents in their respective Answers, much less refuted by them during the trial.

The CA's findings that these inventory lists[45] that were testified to by petitioner's witnesses were not signed or acknowledged by any of respondents' personnel do not militate against their evidentiary value. As correctly pointed out by petitioner, the withdrawal slips and inventory lists do not bear the signature

[42] *Rollo*, pp. 100-101.

[43] *Id.* at 64.

[44] *Id.* at 84.

[45] Exhibits "G" to "CC" and Exhibits "EE" to "FF".

of any PSI officer/personnel because, as admitted by PSI and Setias in their Answer, they do not interfere with the affairs and activities of Golden Delta and Jardiolin as their operations do not interfere with their company's operation and that although Golden Delta delivers construction materials to Jardiolin, the transaction is purely between the two of them and that they have no participation in their transactions whatsoever.[46]

Nor can it be contended that the inventory lists are self-serving simply because they were prepared by petitioner's employees. These documents were prepared *ante litem motam*, and without anticipation that any litigation between the parties may ensue in the future. In *Philippine Airlines, Inc. v. Ramos*,[47] this Court held that a writing or document made contemporaneously with a transaction which evidenced facts pertinent to the issue, when adduced as proof of those facts, is ordinarily regarded as more reliable proof and of greater probative force than the oral testimony of a witness as to such facts based upon memory and recollection. Statements, acts or conducts accompanying or so nearly connected with the main transaction as to form part of it, and which illustrate, elucidate, qualify or characterize the act, are admissible as part of the *res gestae*.[48]

In the present case, the withdrawal slips and inventory lists were prepared by the petitioner's employees who were detailed at the PSI compound, in the regular course of its business, made contemporaneously with the transaction, and in the performance of their regular duties without anticipation of any future litigation which may arise between petitioner and PSI. They should have been afforded great weight and credence as evidence.

Petitioner's voluminous documentary evidence consisting of certifications and invoices[49] of its purchase and shipment to it

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[46] *Supra*, note 42.

[47] G.R. No. 92740, March 23, 1992, 207 SCRA 461.

[48] *Id.* at 471.

[49] Exhs. "KKK" to "OOO".

of construction materials by its suppliers Chuabenco Resources, Inc., Biñan Steel Corp., Pag-asa Steel Works Inc., Lapu-Lapu Steel Industries and Metal Steel Corp. prove that the subject construction materials belong to it. The admissions of respondents that they bought construction materials from petitioner which were stocked at its own compound proved that petitioner owned the materials and such ownership was recognized by respondents by the mere fact that they purchased some of the construction materials from petitioner. Moreover, the metal tags bearing the name "Golden Delta"[50] attached to some of the construction materials that were seized by the NBI from the truck of respondent Jardiolin are also proof of petitioner's ownership.

Furthermore, witnesses Arman Zarragosa[51] and Rudy Yap,[52] regular customers of petitioner, testified that whenever they purchased construction goods from petitioner they would withdraw the purchased materials from the PSI compound. Their testimonies and those of petitioner's personnel, namely, Messrs. Marvin Llorente,[53] Manuel Serue[54] and Jocelyn Santacera,[55] that they supervised the delivery and withdrawals of construction materials from the PSI compound have not been contradicted by any of respondents' evidence on record.

On the other hand, respondents' proof of ownership over the subject construction materials consisting of sales invoices of Chuabenco Resources, Inc.,[56] Lapu-Lapu Steel Industries[57] and Oakland Metal Corporation[58] does not buttress their claim.

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[50] Exhs. "JJ", "KK" and "LL".

[51] TSN, pp. 3-28, August 19, 2002.

[52] TSN, pp. 29-46, August 19, 2002; TSN, pp. 23-29, August 23, 2002; TSN, pp. 8-24, August 26, 2002.

[53] TSN, pp. 3-24, July 17, 2002.

[54] TSN, pp. 48-64, August 19, 2002.

[55] TSN, pp. 5-17, August 23, 2002.

[56] Exhs. "55" and "57".

[57] Exhs. "67" and "68".

[58] Exh. "69".

As correctly pointed out by the petitioner, the sales invoices issued by Chuabenco Resources, Inc. were disclaimed by it in a Certification[59] stating that it has no business transaction with PSI and neither sold any hardware or construction materials to PSI nor has it received payment from the latter. Also, the sales invoice of Lapu-Lapu Steel Industries refers to corrugated tie wires, which were not among the materials sought to be recovered by petitioner in the complaint. Aside from these sales invoices, no other documentary evidence was presented by Jardiolin or PSI to prove their ownership of the controverted materials.

Furthermore, it appears that respondents themselves cannot even agree on who among them is the real owner of the subject construction materials. In his Answer, Jardiolin claimed ownership over the construction materials, *viz*:

> 4. In so far as the defendant Jardiolin is concerned, the stocks of construction materials inside the compound of PSI now being claimed by the plaintiff were not owned by the plaintiff but by defendant Jardiolin. Furthermore, defendant Jardiolin requested the stoppage of the removal of the construction materials being claimed by the plaintiff, because there materials were the personal properties of defendant Jardiolin. The representative of the plaintiff was not intimidated or coerced into stopping the alleged removal of the construction materials.[60]

In respondent PSI and Jardiolin's letter to the NBI,[61] Jardiolin stated under oath that the subject construction materials belonged to PSI, not to him:

> The construction materials that you (NBI) seized consisting of 12mm x 20' round bars; 2,150 pcs. round bars; 182 pcs. ¼x2x20" and 43 pcs. C purlins 2x4x20 angle bars, were not stolen but **are owned and legally possessed by Pre-Stress International Phil. as shown by machine copies of the Sales Invoices of the construction materials seized by the agents of NBI as annexes "A", "B", "C".** (Emphasis supplied)

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[59] Exh. "QQQ".

[60] *Rollo*, p. 106.

[61] Exh. "JJJ".

The CA found that indeed there was an agreement between petitioner and Jardiolin with respect to the construction materials stored at the PSI compound, but the specifics of the agreement were not clear. Hence, the CA concluded that Jardiolin was the "presumed" owner of the construction materials.[62] This conclusion is based on pure conjecture and not on the evidence.

From all the foregoing, it is evident that the findings of the CA are contrary to the evidence and the admissions in the pleadings.

WHEREFORE, the petition is *GRANTED* and the Decision of July 22, 2005 and the Amended Decision of February 20, 2007 of the Court of Appeals are *REVERSED* and *SET ASIDE*. Respondents Pre-Stress International Corporation, Zeñon Setias and Jerry Jardiolin are *DIRECTED*, jointly and severally, to return to petitioner Golden (Iloilo) Delta Sales Corporation all the construction materials subject of the complaint or to indemnify petitioner the sum of ₱3,338,750 representing their value. Respondents are further ordered to pay petitioner interest on the principal amount at the legal rate from the date of filing of the complaint on January 8, 2002 until finality of this judgment and at twelve percent (12%) from such time until its satisfaction.

No costs.

SO ORDERED.

Puno, C.J. (Chairperson), Carpio, Chico-Nazario,[*] and *Leonardo-de Castro, JJ.,* concur.

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[62] Annex "B", p. 14.

[*] Per Special Order No. 545, dated December 16, 2008, signed by Chief Justice Reynato S. Puno, designating Associate Justice Minita V. Chico-Nazario to replace Associate Jutice Renato C. Corona, who is on leave.

EN BANC

[G.R. No. 155076. January 13, 2009]

LUIS MARCOS P. LAUREL, *petitioner, vs.* **HON. ZEUS C. ABROGAR, Presiding Judge of the Regional Trial Court, Makati City, Branch 150, PEOPLE OF THE PHILIPPINES & PHILIPPINE LONG DISTANCE TELEPHONE COMPANY,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; THEFT; ELEMENTS. — Article 308 of the Revised Penal Code provides: Art. 308. *Who are liable for theft.* – Theft is committed by any person who, with intent to gain but without violence against, or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent. The elements of theft under Article 308 of the Revised Penal Code are as follows: (1) that there be taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence against or intimidation of persons or force upon things.

2. ID.; ID.; ID.; WORD "PERSONAL PROPERTY," ELUCIDATED. — Prior to the passage of the Revised Penal Code on December 8, 1930, the definition of the term "personal property" in the penal code provision on theft had been established in Philippine jurisprudence. This Court, in *United States v. Genato, United States v. Carlos,* and *United States v. Tambunting,* consistently ruled that any personal property, tangible or intangible, corporeal or incorporeal, *capable of appropriation* can be the object of theft. Moreover, since the passage of the Revised Penal Code on December 8, 1930, the term "personal property" has had a generally accepted definition in civil law. In Article 335 of the Civil Code of Spain, "personal property" is defined as "*anything susceptible of appropriation and not included in the foregoing chapter (not real property).*" Thus, the term "personal property" in the Revised Penal Code should be interpreted in the context of the Civil Code provisions in accordance with the rule on statutory construction that where words have been

long used in a technical sense and have been judicially construed to have a certain meaning, and have been adopted by the legislature as having a certain meaning prior to a particular statute, in which they are used, the words used in such statute should be construed according to the sense in which they have been previously used. In fact, this Court used the Civil Code definition of "personal property" in interpreting the theft provision of the penal code in *United States v. Carlos.* Cognizant of the definition given by jurisprudence and the Civil Code of Spain to the term "personal property" at the time the old Penal Code was being revised, still the legislature did not limit or qualify the definition of "personal property" in the Revised Penal Code. Neither did it provide a restrictive definition or an exclusive enumeration of "personal property" in the Revised Penal Code, thereby showing its intent to retain for the term an extensive and unqualified interpretation. Consequently, any property which is not included in the enumeration of real properties under the Civil Code and capable of appropriation can be the subject of theft under the Revised Penal Code. The only requirement for a personal property to be the object of theft under the penal code is that it be capable of appropriation. It need not be capable of "asportation," which is defined as "carrying away." Jurisprudence is settled that to "take" under the theft provision of the penal code does not require asportation or carrying away.

3. ID.; ID.; ID.; WORD "TAKE," ELUCIDATED. — To appropriate means to deprive the lawful owner of the thing. The word "take" in the Revised Penal Code includes any act intended to transfer possession which, as held in the assailed Decision, may be committed through the use of the offenders' own hands, as well as any mechanical device, such as an access device or card as in the instant case. This includes controlling the destination of the property stolen to deprive the owner of the property, such as the use of a meter tampering, as held in *Natividad v. Court of Appeals,* use of a device to fraudulently obtain gas, as held in *United States v. Tambunting,* and the use of a jumper to divert electricity, as held in the cases of *United States v. Genato, United States v. Carlos,* and *United States v. Menagas.*

4. ID.; ID.; PROTECTS APPROPRIATION OF FORCES OF NATURE WHICH ARE BROUGHT UNDER THE CONTROL OF

SCIENCE, INCLUDING OWNERSHIP OVER ELECTRICITY AND TELEPHONE SERVICE. — Appropriation of forces of nature which are brought under control by science such as electrical energy can be achieved by tampering with any apparatus used for generating or measuring such forces of nature, wrongfully redirecting such forces of nature from such apparatus, or using any device to fraudulently obtain such forces of nature. In the instant case, petitioner was charged with engaging in International Simple Resale (ISR) or the unauthorized routing and completing of international long distance calls using lines, cables, antennae, and/or air wave frequency and connecting these calls directly to the local or domestic exchange facilities of th country where destined. As early as 1910, the Court declared in *Genato* that ownership over electricity (which an international long distance call consists of), as well as *telephone service*, is protected by the provisions on theft of the Penal Code. The pertinent provision of the Revised Ordinance of the City of Manila, which was involved in the said case, reads as follows: *Injury to electric apparatus: Tapping current; Evidence*. – No person shall destroy, mutilate, deface, or otherwise injure or tamper with any wire, meter, or other apparatus installed or used for generating, containing, conducting, or measuring electricity, telegraph or telephone service, nor tap or otherwise wrongfully deflect or take any electric current from such wire, meter, or other apparatus. No person shall, for any purpose whatsoever, use or enjoy the benefits of any device by means of which he may fraudulently obtain any current of electricity or any telegraph or telephone service; and the existence in any building premises of any such device shall, in the absence of satisfactory explanation, be deemed sufficient evidence of such use by the persons benefiting thereby. It was further ruled that even without the above ordinance the acts of subtraction punished therein are covered by the provisions on theft of the Penal Code then in force, thus: Even without them (ordinance), the right of the ownership of electric current is secured by articles 517 and 518 of the Penal Code; the application of these articles in cases of subtraction of gas, a fluid used for lighting, and in some respects resembling electricity, is confirmed by the rule laid down in the decisions of the supreme court of Spain of January 20, 1887, and April 1, 1897, construing and enforcing the provisions of articles 530 and 531 of the Penal Code of that country, articles 517 and 518 of the code in force in these islands.

5. ID.; ID.; ACTS OF SUBTRACTION; CASE AT BAR. — The acts of "subtraction" include: (a) tampering with any wire, meter, or other apparatus installed or used for generating, containing, conducting, or measuring electricity, telegraph or telephone service; (b) tapping or otherwise wrongfully deflecting or taking any electric current from such wire, meter, or other apparatus; and (c) using or enjoying the benefits of any device by means of which one may fraudulently obtain any current of electricity or any telegraph or telephone service. In the instant case, the act of conducting ISR operations by illegally connecting various equipment or apparatus to private respondent PLDT's telephone system, through which petitioner is able to resell or re-route international long distance calls using respondent PLDT's facilities constitutes all three acts of subtraction mentioned above.

6. ID.; ID.; BUSINESS OF PROVIDING TELECOMMUNICATIONS IS PERSONAL PROPERTY WHICH CAN BE THE OBJECT OF THEFT. — The business of providing telecommunication or telephone service is likewise personal property which can be the object of theft under Article 308 of the Revised Penal Code. Business may be appropriated under Section 2 of Act No. 3952 (Bulk Sales Law), hence, could be object of theft: Section 2. Any sale, transfer, mortgage, or assignment of a stock of goods, wares, merchandise, provisions, or materials otherwise than in the ordinary course of trade and the regular prosecution of the business of the vendor, mortgagor, transferor, or assignor, or any sale, transfer, mortgage, or assignment of all, or substantially all, of the business or trade theretofore conducted by the vendor, mortgagor, transferor or assignor, or all, or substantially all, of the fixtures and equipment used in and about the business of the vendor, mortgagor, transferor, or assignor, shall be deemed to be a sale and transfer in bulk, in contemplation of the Act. x x x. In *Strochecker v. Ramirez*, this Court stated: With regard to the nature of the property thus mortgaged which is one-half interest in the business above described, such interest is a personal property capable of appropriation and not included in the enumeration of real properties in article 335 of the Civil Code, and may be the subject of mortgage. Interest in business was not specifically enumerated as personal property in the Civil Code in force at the time the above decision was rendered. Yet, interest in business was declared to be personal property since it is capable of appropriation and not included in the enumeration of real

properties. Article 414 of the Civil Code provides that all things which are or may be the object of appropriation are considered either real property or personal property. Business is likewise not enumerated as personal property under the Civil Code. Just like interest in business, however, it may be appropriated. Following the ruling in *Strochecker v. Ramirez*, business should also be classified as personal property. Since it is not included in the exclusive enumeration of real properties under Article 415, it is therefore personal property.

7. ID.; ID.; ID.; CASE AT BAR. — Petitioner's acts in case at bar constitute theft of respondent PLDT's business and service, committed by means of the unlawful use of the latter's facilities. In this regard, the Amended Information inaccurately describes the offense by making it appear that what petitioner took were the international long distance telephone calls, rather than respondent PLDT's business. Indeed, while it may be conceded that "international long distance calls," the matter alleged to be stolen in the instant case, take the form of electrical energy, it cannot be said that such international long distance calls were personal properties belonging to PLDT since the latter could not have acquired ownership over such calls. PLDT merely encodes, augments, enhances, decodes and transmits said calls using its complex communications infrastructure and facilities. PLDT not being the owner of said telephone calls, then it could not validly claim that such telephone calls were taken without its consent. It is the use of these communications facilities without the consent of PLDT that constitutes the crime of theft, which is the unlawful taking of the telephone services and business. Therefore, the business of providing telecommunication and the telephone service are personal property under Article 308 of the Revised Penal Code, and the act of engaging in ISR is an act of "subtraction" penalized under said article.

8. ID.; ID.; AMENDMENT TO AMENDED INFORMATION IN CASE AT BAR MADE PROPER TO CORRECT THE INACCURACY THAT THE SUBJECT OF THEFT ARE THE SERVICES AND BUSINESS OF PLDT, NOT THE INTERNATIONAL LONG DISTANCE CALLS. — The Amended Information describes the thing taken as, "international long distance calls," and only later mentions "stealing the business from PLDT" as the manner by which the gain was derived by the accused. In order to

correct this inaccuracy of description, this case must be remanded to the trial court and the prosecution directed to amend the Amended Information, to clearly state that the property subject of the theft are the services and business of respondent PLDT. Parenthetically, this amendment is not necessitated by a mistake in charging the proper offense, which would have called for the dismissal of the information under Rule 110, Section 14 and Rule 119, Section 19 of the Revised Rules on Criminal Procedure. To be sure, the crime is properly designated as one of theft. The purpose of the amendment is simply to ensure that the accused is fully and sufficiently apprised of the nature and cause of the charge against him, and thus guaranteed of his rights under the Constitution.

CORONA, *J., separate opinion:*

CRIMINAL LAW; THEFT; ON PROPERTY TAKEN; CLARIFICATION ON WHO OWNS THE TELEPHONE CALLS WE MAKE; THE TELEPHONE SERVICE IS OWNED BY PLDT BUT THE TELEPHONE CONVERSATION IS PROTECTED BY OUR PRIVACY LAWS. — The bone of contention in this case is: who owns the telephone calls that we make? In my view, it is essential to differentiate between the *conversation* of a caller and recipient of the call, and the *telephone service* that made the call possible. Undoubtedly, any conversation between or among individuals is theirs alone. For example, if two children use two empty cans and string as a makeshift play phone, they themselves create their "phone call." However, if individuals separated by long distances use the telephone and have a conversation through the telephone lines of the PLDT, then the latter owns the service which made possible the resulting call. The conversation, however, remains protected by our privacy laws.

TINGA, *J., concurring opinion:*

1. CRIMINAL LAW; THEFT; ELEMENTS. — The crime of theft is penalized under Article 308 of the RPC. From that provision, we have long recognized the following as the elements of theft: (1) that there be taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without

the use of violence against or intimidation of persons or force upon things.

2. ID.; ID.; ID.; PERSONAL PROPERTY; "INTERNATIONAL LONG DISTANCE CALLS" CONSIDERED AS SUCH; ELUCIDATED. — Are "international long distance calls" personal property? I agree with the present Resolution that they are. The Court equates telephone calls to electrical energy. To be clear, telephone calls are not exactly alike as pure electricity. They are sound waves (created by the human voice) which are carried by electrical currents to the recipient on the other line. While electricity is merely the medium through which the telephone calls are carried, it is sufficiently analoguous to allow the courts to consider such calls as possessing similar physical characteristics as electricity. As the Resolution now correctly points out, electricity or electronic energy may be the subject of theft, as it is personal property capable of appropriation. Since physically a telephone call is in the form of an electric signal, our jurisprudence acknowledging that electricity is personal property which may be stolen through theft is applicable.

3. ID.; ID.; ID.; ID.; ID.; NOT AN OWNERSHIP OF PLDT. — I now turn to the issue of the legal ownership of the "international long distance calls", or telephone calls in general for that matter. x x x More precisely, it [PLDT] merely transmits the calls, owned by another , to the intended recipient. x x x Just because the phone calls are transmitted using the facilities and services of PLDT, it does not follow that PLDT is the owner of such calls. x x x PLDT does not purchase the electronic signals it transmits. These signals are created by the interaction between the human voice and the electrical current. x x x PLDT is most definitely not the owner of the phone calls. The consensus of the majority has been to direct the amendment of the subject Amended Information to sustain the current prosecution of the petitioners without suggesting in any way that PLDT is the owner of those "international long distance calls." Said result is acceptable to me, and I concur therein.

APPEARANCES OF COUNSEL

Salonga Hernandez & Mendoza for petitioner.

Angara Abello Concepcion Regala and Cruz and *Kapunan Tamano Villadolid & Associates* for private respondent.

R E S O L U T I O N

YNARES-SANTIAGO, *J.*:

On February 27, 2006, this Court's First Division rendered judgment in this case as follows:

> IN LIGHT OF ALL THE FOREGOING, the petition is **GRANTED**. The assailed Orders of the Regional Trial Court and the Decision of the Court of Appeals are **REVERSED and SET ASIDE**. The Regional Trial Court is directed to issue an order granting the motion of the petitioner to quash the Amended Information.
>
> SO ORDERED.[1]

By way of brief background, petitioner is one of the accused in Criminal Case No. 99-2425, filed with the Regional Trial Court of Makati City, Branch 150. The Amended Information charged the accused with theft under Article 308 of the Revised Penal Code, committed as follows:

> On or about September 10-19, 1999, or prior thereto in Makati City, and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together and all of them mutually helping and aiding one another, with intent to gain and without the knowledge and consent of the Philippine Long Distance Telephone (PLDT), did then and there willfully, unlawfully and feloniously take, steal and use the international long distance calls belonging to PLDT by conducting International Simple Resale (ISR), which is a method of routing and completing international long distance calls using lines, cables, antenae, and/or air wave frequency which connect directly to the local or domestic exchange facilities of the country where the call is destined, effectively stealing this business from PLDT while using its facilities in the estimated amount of ₱20,370,651.92 to the damage and prejudice of PLDT, in the said amount.
>
> CONTRARY TO LAW.[2]

Petitioner filed a "Motion to Quash (with Motion to Defer Arraignment)," on the ground that the factual allegations in

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[1] *Rollo*, p. 728.

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

the Amended Information do not constitute the felony of theft. The trial court denied the Motion to Quash the Amended Information, as well petitioner's subsequent Motion for Reconsideration.

Petitioner's special civil action for *certiorari* was dismissed by the Court of Appeals. Thus, petitioner filed the instant petition for review with this Court.

In the above-quoted Decision, this Court held that the Amended Information does not contain material allegations charging petitioner with theft of personal property since international long distance calls and the business of providing telecommunication or telephone services are not personal properties under Article 308 of the Revised Penal Code.

Respondent Philippine Long Distance Telephone Company (PLDT) filed a Motion for Reconsideration with Motion to Refer the Case to the Supreme Court *En Banc*. It maintains that the Amended Information charging petitioner with theft is valid and sufficient; that it states the names of all the accused who were specifically charged with the crime of theft of PLDT's international calls and business of providing telecommunication or telephone service on or about September 10 to 19, 1999 in Makati City by conducting ISR or International Simple Resale; that it identifies the international calls and business of providing telecommunication or telephone service of PLDT as the personal properties which were unlawfully taken by the accused; and that it satisfies the test of sufficiency as it enabled a person of common understanding to know the charge against him and the court to render judgment properly.

PLDT further insists that the Revised Penal Code should be interpreted in the context of the Civil Code's definition of real and personal property. The enumeration of real properties in Article 415 of the Civil Code is exclusive such that all those not included therein are personal properties. Since Article 308 of the Revised Penal Code used the words "personal property" without qualification, it follows that all "personal properties" as understood in the context of the Civil Code, may be the subject of theft under Article 308 of the Revised Penal Code.

PLDT alleges that the international calls and business of providing telecommunication or telephone service are personal properties capable of appropriation and can be objects of theft.

PLDT also argues that "taking" in relation to theft under the Revised Penal Code does not require "asportation," the sole requisite being that the object should be capable of "appropriation." The element of "taking" referred to in Article 308 of the Revised Penal Code means the act of depriving another of the possession and dominion of a movable coupled with the intention, at the time of the "taking," of withholding it with the character of permanency. There must be intent to appropriate, which means to deprive the lawful owner of the thing. Thus, the term "personal properties" under Article 308 of the Revised Penal Code is not limited to only personal properties which are "susceptible of being severed from a mass or larger quantity and of being transported from place to place."

PLDT likewise alleges that as early as the 1930s, international telephone calls were in existence; hence, there is no basis for this Court's finding that the Legislature could not have contemplated the theft of international telephone calls and the unlawful transmission and routing of electronic voice signals or impulses emanating from such calls by unlawfully tampering with the telephone device as within the coverage of the Revised Penal Code.

According to respondent, the "international phone calls" which are "electric currents or sets of electric impulses transmitted through a medium, and carry a pattern representing the human voice to a receiver," are personal properties which may be subject of theft. Article 416(3) of the Civil Code deems "forces of nature" (which includes electricity) which are brought under the control by science, are personal property.

In his Comment to PLDT's motion for reconsideration, petitioner Laurel claims that a telephone call is a conversation on the phone or a communication carried out using the telephone. It is not synonymous to electric current or impulses. Hence, it may not be considered as personal property susceptible of appropriation. Petitioner claims that the analogy between

generated electricity and telephone calls is misplaced. PLDT does not produce or generate telephone calls. It only provides the facilities or services for the transmission and switching of the calls. He also insists that "business" is not personal property. It is not the "business" that is protected but the "right to carry on a business." This right is what is considered as property. Since the services of PLDT cannot be considered as "property," the same may not be subject of theft.

The Office of the Solicitor General (OSG) agrees with respondent PLDT that "international phone calls and the business or service of providing international phone calls" are subsumed in the enumeration and definition of personal property under the Civil Code hence, may be proper subjects of theft. It noted that the cases of *United States v. Genato*,[3] *United States v. Carlos*[4] and *United States v. Tambunting*,[5] which recognized intangible properties like gas and electricity as personal properties, are deemed incorporated in our penal laws. Moreover, the theft provision in the Revised Penal Code was deliberately couched in broad terms precisely to be all-encompassing and embracing even such scenario that could not have been easily anticipated.

According to the OSG, prosecution under Republic Act (RA) No. 8484 or the *Access Device Regulations Act of 1998* and RA 8792 or the *Electronic Commerce Act of 2000* does not preclude prosecution under the Revised Penal Code for the crime of theft. The latter embraces unauthorized appropriation or use of PLDT's international calls, service and business, for personal profit or gain, to the prejudice of PLDT as owner thereof. On the other hand, the special laws punish the surreptitious and advanced technical means employed to illegally obtain the subject service and business. Even assuming that the correct indictment should have been under RA 8484, the quashal of the information would still not be proper. The charge of theft as alleged in the Information should be taken in relation

[3] 15 Phil. 170 (1910).

[4] 21 Phil. 553 (1911).

[5] 41 Phil. 364 (1921).

to RA 8484 because it is the elements, and not the designation of the crime, that control.

Considering the gravity and complexity of the novel questions of law involved in this case, the Special First Division resolved to refer the same to the Banc.

We resolve to grant the Motion for Reconsideration but remand the case to the trial court for proper clarification of the Amended Information.

Article 308 of the Revised Penal Code provides:

> Art. 308. *Who are liable for theft.* — Theft is committed by any person who, with intent to gain but without violence against, or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.

The elements of theft under Article 308 of the Revised Penal Code are as follows: (1) that there be taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence against or intimidation of persons or force upon things.

Prior to the passage of the Revised Penal Code on December 8, 1930, the definition of the term "personal property" in the penal code provision on theft had been established in Philippine jurisprudence. This Court, in *United States v. Genato, United States v. Carlos*, and *United States v. Tambunting*, consistently ruled that any personal property, tangible or intangible, corporeal or incorporeal, *capable of appropriation* can be the object of theft.

Moreover, since the passage of the Revised Penal Code on December 8, 1930, the term "personal property" has had a generally accepted definition in civil law. In Article 335 of the Civil Code of Spain, "personal property" is defined as "*anything susceptible of appropriation and not included in the foregoing chapter (not real property)*." Thus, the term "personal property" in the Revised Penal Code should be interpreted in

the context of the Civil Code provisions in accordance with the rule on statutory construction that where words have been long used in a technical sense and have been judicially construed to have a certain meaning, and have been adopted by the legislature as having a certain meaning prior to a particular statute, in which they are used, the words used in such statute should be construed according to the sense in which they have been previously used.[6] In fact, this Court used the Civil Code definition of "personal property" in interpreting the theft provision of the penal code in *United States v. Carlos*.

Cognizant of the definition given by jurisprudence and the Civil Code of Spain to the term "personal property" at the time the old Penal Code was being revised, still the legislature did not limit or qualify the definition of "personal property" in the Revised Penal Code. Neither did it provide a restrictive definition or an exclusive enumeration of "personal property" in the Revised Penal Code, thereby showing its intent to retain for the term an extensive and unqualified interpretation. Consequently, any property which is not included in the enumeration of real properties under the Civil Code and capable of appropriation can be the subject of theft under the Revised Penal Code.

The only requirement for a personal property to be the object of theft under the penal code is that it be capable of appropriation. It need not be capable of "asportation," which is defined as "carrying away."[7] Jurisprudence is settled that to "take" under the theft provision of the penal code does not require asportation or carrying away.[8]

To appropriate means to deprive the lawful owner of the thing.[9] The word "take" in the Revised Penal Code includes any act intended to transfer possession which, as held in the assailed Decision, may be committed through the use of the

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[6] *Krivenko v. Register of Deeds*, 79 Phil. 461 (1947).

[7] *People v. Mercado*, 65 Phil. 665 (1938).

[8] *Id.*; *Duran v. Tan*, 85 Phil 476 (1950).

[9] Regalado, *Criminal Law Conspectus* (2000 ed.), p. 520.

offenders' own hands, as well as any mechanical device, such as an access device or card as in the instant case. This includes controlling the destination of the property stolen to deprive the owner of the property, such as the use of a meter tampering, as held in *Natividad v. Court of Appeals*,[10] use of a device to fraudulently obtain gas, as held in *United States v. Tambunting*, and the use of a jumper to divert electricity, as held in the cases of *United States v. Genato, United States v. Carlos*, and *United States v. Menagas*.[11]

As illustrated in the above cases, appropriation of forces of nature which are brought under control by science such as electrical energy can be achieved by tampering with any apparatus used for generating or measuring such forces of nature, wrongfully redirecting such forces of nature from such apparatus, or using any device to fraudulently obtain such forces of nature. In the instant case, petitioner was charged with engaging in International Simple Resale (ISR) or the unauthorized routing and completing of international long distance calls using lines, cables, antennae, and/or air wave frequency and connecting these calls directly to the local or domestic exchange facilities of the country where destined.

As early as 1910, the Court declared in *Genato* that ownership over electricity (which an international long distance call consists of), as well as *telephone service*, is protected by the provisions on theft of the Penal Code. The pertinent provision of the Revised Ordinance of the City of Manila, which was involved in the said case, reads as follows:

> *Injury to electric apparatus; Tapping current; Evidence.* — No person shall destroy, mutilate, deface, or otherwise injure or tamper with any wire, meter, or other apparatus installed or used for generating, containing, conducting, or measuring electricity, telegraph or telephone service, nor tap or otherwise wrongfully deflect or take any electric current from such wire, meter, or other apparatus.
>
> No person shall, for any purpose whatsoever, use or enjoy the benefits of any device by means of which he may fraudulently obtain

[10] G.R. No. L-14887, January 31, 1961, 1 SCRA 380.

[11] 11 N.E. 2d 403 (1937).

any current of electricity or any telegraph or telephone service; and the existence in any building premises of any such device shall, in the absence of satisfactory explanation, be deemed sufficient evidence of such use by the persons benefiting thereby.

It was further ruled that even without the above ordinance the acts of subtraction punished therein are covered by the provisions on theft of the Penal Code then in force, thus:

Even without them (ordinance), the right of the ownership of electric current is secured by Articles 517 and 518 of the Penal Code; the application of these Articles in cases of subtraction of gas, a fluid used for lighting, and in some respects resembling electricity, is confirmed by the rule laid down in the decisions of the supreme court of Spain of January 20, 1887, and April 1, 1897, construing and enforcing the provisions of articles 530 and 531 of the Penal Code of that country, Articles 517 and 518 of the code in force in these islands.

The acts of "subtraction" include: (a) tampering with any wire, meter, or other apparatus installed or used for generating, containing, conducting, or measuring electricity, telegraph or telephone service; (b) tapping or otherwise wrongfully deflecting or taking any electric current from such wire, meter, or other apparatus; and (c) using or enjoying the benefits of any device by means of which one may fraudulently obtain any current of electricity or any telegraph or telephone service.

In the instant case, the act of conducting ISR operations by illegally connecting various equipment or apparatus to private respondent PLDT's telephone system, through which petitioner is able to resell or re-route international long distance calls using respondent PLDT's facilities constitutes all three acts of subtraction mentioned above.

The business of providing telecommunication or telephone service is likewise personal property which can be the object of theft under Article 308 of the Revised Penal Code. Business may be appropriated under Section 2 of Act No. 3952 (Bulk Sales Law), hence, could be object of theft:

Section 2. Any sale, transfer, mortgage, or assignment of a stock of goods, wares, merchandise, provisions, or materials otherwise than

in the ordinary course of trade and the regular prosecution of the business of the vendor, mortgagor, transferor, or assignor, or any sale, transfer, mortgage, or assignment of all, or substantially all, of the business or trade theretofore conducted by the vendor, mortgagor, transferor or assignor, or all, or substantially all, of the fixtures and equipment used in and about the business of the vendor, mortgagor, transferor, or assignor, shall be deemed to be a sale and transfer in bulk, in contemplation of the Act. x x x.

In *Strochecker v. Ramirez*,[12] this Court stated:

With regard to the nature of the property thus mortgaged which is one-half interest in the business above described, such interest is a personal property capable of appropriation and not included in the enumeration of real properties in article 335 of the Civil Code, and may be the subject of mortgage.

Interest in business was not specifically enumerated as personal property in the Civil Code in force at the time the above decision was rendered. Yet, interest in business was declared to be personal property since it is capable of appropriation and not included in the enumeration of real properties. Article 414 of the Civil Code provides that all things which are or may be the object of appropriation are considered either real property or personal property. Business is likewise not enumerated as personal property under the Civil Code. Just like interest in business, however, it may be appropriated. Following the ruling in *Strochecker v. Ramirez*, business should also be classified as personal property. Since it is not included in the exclusive enumeration of real properties under Article 415, it is therefore personal property.[13]

As can be clearly gleaned from the above disquisitions, petitioner's acts constitute theft of respondent PLDT's business and service, committed by means of the unlawful use of the latter's facilities. In this regard, the Amended Information inaccurately describes the offense by making it appear that

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[12] 44 Phil. 933 (1922).

[13] II Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines* 26 (1992 ed.).

what petitioner took were the international long distance telephone calls, rather than respondent PLDT's business.

A perusal of the records of this case readily reveals that petitioner and respondent PLDT extensively discussed the issue of ownership of telephone calls. The prosecution has taken the position that said telephone calls belong to respondent PLDT. This is evident from its Comment where it defined the issue of this case as whether or not "the unauthorized use or appropriation of PLDT international telephone calls, service and facilities, for the purpose of generating personal profit or gain that should have otherwise belonged to PLDT, constitutes theft."[14]

In discussing the issue of ownership, petitioner and respondent PLDT gave their respective explanations on how a telephone call is generated.[15] For its part, respondent PLDT explains the process of generating a telephone call as follows:

> 38. The role of telecommunication companies is not limited to merely providing the medium (*i.e.* the electric current) through which the human voice/voice signal of the caller is transmitted. Before the human voice/voice signal can be so transmitted, a telecommunication company, using its facilities, must first break down or decode the human voice/voice signal into electronic impulses and subject the same to further augmentation and enhancements. Only after such process of conversion will the resulting electronic impulses be transmitted by a telecommunication company, again, through the use of its facilities. Upon reaching the destination of the call, the telecommunication company will again break down or decode the electronic impulses back to human voice/voice signal before the called party receives the same. In other words, a telecommunication company both converts/reconverts the human voice/voice signal and provides the medium for transmitting the same.
>
> 39. Moreover, in the case of an international telephone call, once the electronic impulses originating from a foreign telecommunication company country (*i.e.* Japan) reaches the Philippines through a local telecommunication company (*i.e.* private respondent PLDT), it is the latter which decodes, augments and enhances the electronic impulses

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[14] *Rollo*, p. 902.

[15] *Id.* at 781-783; 832-837; 872, 874-877.

back to the human voice/voice signal and provides the medium (*i.e.* electric current) to enable the called party to receive the call. Thus, it is not true that the foreign telecommunication company provides (1) the electric current which transmits the human voice/voice signal of the caller and (2) the electric current for the called party to receive said human voice/voice signal.

40. Thus, contrary to petitioner Laurel's assertion, once the electronic impulses or electric current originating from a foreign telecommunication company (*i.e.* Japan) reaches private respondent PLDT's network, it is private respondent PLDT which decodes, augments and enhances the electronic impulses back to the human voice/voice signal and provides the medium (*i.e.* electric current) to enable the called party to receive the call. Without private respondent PLDT's network, the human voice/voice signal of the calling party will never reach the called party.[16]

In the assailed Decision, it was conceded that in making the international phone calls, the human voice is converted into electrical impulses or electric current which are transmitted to the party called. A telephone call, therefore, is electrical energy. It was also held in the assailed Decision that intangible property such as electrical energy is capable of appropriation because it may be taken and carried away. Electricity is personal property under Article 416 (3) of the Civil Code, which enumerates "forces of nature which are brought under control by science."[17]

Indeed, while it may be conceded that "international long distance calls," the matter alleged to be stolen in the instant case, take the form of electrical energy, it cannot be said that such international long distance calls were personal properties belonging to PLDT since the latter could not have acquired ownership over such calls. PLDT merely encodes, augments, enhances, decodes and transmits said calls using its complex communications infrastructure and facilities. PLDT not being the owner of said telephone calls, then it could not validly claim that such telephone calls were taken without its consent. It is the use of these communications facilities without the consent

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[16] *Id.* at 875-877.

[17] *Supra* note 13.

of PLDT that constitutes the crime of theft, which is the unlawful taking of the telephone services and business.

Therefore, the business of providing telecommunication and the telephone service are personal property under Article 308 of the Revised Penal Code, and the act of engaging in ISR is an act of "subtraction" penalized under said article. However, the Amended Information describes the thing taken as, "international long distance calls," and only later mentions "stealing the business from PLDT" as the manner by which the gain was derived by the accused. In order to correct this inaccuracy of description, this case must be remanded to the trial court and the prosecution directed to amend the Amended Information, to clearly state that the property subject of the theft are the services and business of respondent PLDT. Parenthetically, this amendment is not necessitated by a mistake in charging the proper offense, which would have called for the dismissal of the information under Rule 110, Section 14 and Rule 119, Section 19 of the Revised Rules on Criminal Procedure. To be sure, the crime is properly designated as one of theft. The purpose of the amendment is simply to ensure that the accused is fully and sufficiently apprised of the nature and cause of the charge against him, and thus guaranteed of his rights under the Constitution.

ACCORDINGLY, the motion for reconsideration is *GRANTED*. The assailed Decision dated February 27, 2006 is *RECONSIDERED and SET ASIDE*. The Decision of the Court of Appeals in CA-G.R. SP No. 68841 affirming the Order issued by Judge Zeus C. Abrogar of the Regional Trial Court of Makati City, Branch 150, which denied the Motion to Quash (With Motion to Defer Arraignment) in Criminal Case No. 99-2425 for theft, is *AFFIRMED*. The case is remanded to the trial court and the Public Prosecutor of Makati City is hereby *DIRECTED* to amend the Amended Information to show that the property subject of the theft were services and business of the private offended party.

SO ORDERED.

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

Corona, J., see separate opinion.

Tinga, J., see concurring opinion.

SEPARATE OPINION

CORONA, *J.*:

The bone of contention in this case is: who owns the telephone calls that we make? If respondent Philippine Long Distance Telephone Company (PLDT) can claim ownership over them, then petitioner Luis Marcos P. Laurel (Laurel) can be charged with theft of such telephone calls under Article 308 of the Revised Penal Code. If PLDT does not own them, then the crime of theft was not committed and Laurel cannot be charged with this crime.

One view is that PLDT owns the telephone calls because it is responsible for creating such calls. The opposing view is that it is the caller who owns the phone calls and PLDT merely encodes and transmits them.

The question of whether PLDT **creates** the phone calls or merely **encodes and transmits** them is a question of fact that can be answered by science. I agree with Justice Consuelo Ynares-Santiago that, while telephone calls "take the form of electrical energy, it cannot be said that such [telephone] calls were personal properties belonging to PLDT since the latter could not have acquired ownership over such calls. PLDT merely encodes, augments, enhances, decodes and transmits said calls using its complex infrastructure and facilites."

In my view, it is essential to differentiate between the *conversation* of a caller and recipient of the call, and the *telephone service* that made the call possible. Undoubtedly, any conversation between or among individuals is theirs alone. For example, if two children use two empty cans and a string

as a makeshift play phone, they themselves create their "phone call." However, if individuals separated by long distances use the telephone and have a conversation through the telephone lines of the PLDT, then the latter owns the service which made possible the resulting call. The conversation, however, remains protected by our privacy laws.

Accordingly, I vote to *GRANT* the motion for reconsideration.

CONCURRING OPINION

TINGA, *J.*:

I do not have any substantive disagreements with the *ponencia*. I write separately to flesh out one of the key issues behind the Court's present disposition — whether the Philippine Long Distance Company (PLDT) can validly claim ownership over the telephone calls made using its telephone services. As the subject Amended Information had alleged that petitioners had "unlawfully and feloniously take, steal and use the *international long distance calls* belonging to PLDT," said information could have been sustained only if its premise were accepted that PLDT indeed owned those phone calls.

I.

It is best to begin with an overview of the facts that precede this case. Among many other services, PLDT operates an International Gateway Facility (IGF),[1] through which pass phone calls originating from overseas to local PLDT phones. However, there exists a method of routing and completing international long distance calls called International Simple Resale (ISR), which makes use of International Private Leased Lines (IPL). Because IPL lines may be linked to switching equipment connected to a PLDT phone line, it becomes possible to make

[1] Other telecommunication companies authorized to operate an IGF are Globe Telecommunications (Globe), Eastern Telecoms (ETPI), Digitel Communications (Digitel) and Bayan Telecommunications Company (Bayantel).

an overseas phone call to the Philippines without having to pass through the IGF.[2]

Petitioner Laurel was, until November of 1999, the Corporate Secretary of Baynet Co., Ltd. (Baynet), as well as a member of its Board of Directors.[3] Baynet was in the business of selling phone cards to people who wished to call people in the Philippines. Each phone card, which apparently was sold in Japan, contained an ISR telephone number and a PIN. For the caller to use the phone card, he or she would dial the ISR number indicated, and would be connected to an ISR operator. The caller would then supply the ISR operator with the PIN, and the operator would then connect the caller with the recipient of the call in the Philippines through the IPL lines. Because the IPL Lines bypass the IGF, PLDT as operator of the IGF would have no way of knowing that the long-distance call was being made.[4]

Apparently, the coursing of long distance calls through ISR is not *per se* illegal. For example, the Federal Communications Commission of the United States is authorized by statute to approve long-distance calling through ISR for calls made to certain countries, as it has done so with nations such as Australia, France and Japan.[5] However, as indicated by the Office of the Solicitor General's support for the subject prosecution, there was no authority yet for the practice during the time of the subject incidents.

Taking issue with this scheme, PLDT filed a complaint against Baynet "for network fraud."[6] A search warrant issued caused the seizure of various equipment used in Baynet's operations. However, after the inquest investigation, the State Prosecutor, on 28 January 2000, issued a Resolution finding probable cause

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[2] *Supra* note 1 at 251.

[3] *Id.*, at 255.

[4] *Id.*, at 252.

[5] See *International Bureau International Simple Resale*, http://www.fcc.gov/ib/pd/pf/isr.html (Last visited, 6 September 2007).

[6] *Supra* note 1, at 253.

"for theft under Article 308" of the RPC **and** for violating Presidential Decree No. 401, a law which criminalizes the installation of a telephone connection without the prior authority from the PLDT, or the tampering of its lines.[7] However, when the Information was filed against petitioner with the Regional Trial Court (RTC) of Makati on 8 February 2000, the Information charged petitioner **only with theft under Article 308 of the RPC**. The accusatory portion of the Amended Information reads as follows:

> On or about September 10-19, 1999, or prior thereto, in Makati City, and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together and all of them mutually helping and aiding one another, with intent to gain and without the knowledge and consent of the Philippine Long Distance Telephone (PLDT), did then and there willfully, unlawfully and feloniously take, steal and use the *international long distance calls* belonging to PLDT by conducting International Simple Resale (ISR), which is a method of routing and completing international long distance calls using lines, cables, antennae, and/or air wave frequency which connect directly to the local or domestic exchange facilities of the country where the call is destined, *effectively stealing this business from PLDT* while using its facilities in the estimated amount of ₱20,370,651.92 to the damage and prejudice of PLDT, in the said amount.[8]

Prior to arraignment, petitioner filed a Motion to Quash on the ground that the factual allegations in the Amended Information do not constitute the felony of theft under Article 308 of the Revised Penal Code. He claimed, among others, that telephone calls with the use of PLDT telephone lines, whether domestic or international, belong to the persons making the call, not to PLDT. The RTC denied the Motion to Quash, and the Court of Appeals affirmed the denial of the motion. However, in its Decision now sought to be reconsidered the Court reversed the lower courts and directed the quashal of the Amended Information.

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[7] *Id.* at 254.

[8] *Id.* at 255. Emphasis not mine.

II.

Preliminarily, it should be noted that among the myriad possible crimes with which petitioner could have been charged, he was charged with theft, as defined in the RPC provision which has remained in its vestal 1930 form. Even our earlier Decision now assailed pointed out that petitioner could have been charged instead with estafa under the RPC, or with violation of the Access Devices Regulation Act of 1998.[9] Moreover, it appears that PLDT's original complaint was for "network fraud," and that the State Prosecutor had initially recommended prosecution as well under P.D. 401, a law specifically designed against tampering with the phone service operations of PLDT. Facially, it would appear that prosecution of petitioner under any of these

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[9] "In the Philippines, Congress has not amended the Revised Penal Code to include theft of services or theft of business as felonies. Instead, it approved a law, Republic Act No. 8484, otherwise known as the Access Devices Regulation Act of 1998, on February 11, 1998. Under the law, an access device means any card, plate, code, account number, electronic serial number, personal identification number and other telecommunication services, equipment or instrumentalities-identifier or other means of account access that can be used to obtain money, goods, services or any other thing of value or to initiate a transfer of funds other than a transfer originated solely by paper instrument. Among the prohibited acts enumerated in Section 9 of the law are the acts of obtaining money or anything of value through the use of an access device, with intent to defraud or intent to gain and fleeing thereafter: and of effecting transactions with one or more access devices issued to another person or persons to receive payment or any other thing of value. Under Section 11 of the law, conspiracy to commit access devices fraud is a crime. However, the petitioner is not charged of violation of R.A. 8484.

Significantly, a prosecution under the law shall be without prejudice to any liability for violation of any provisions of the Revised Penal Code inclusive of theft under Rule 308 of the Revised Penal Code and estafa under Article 315 of the Revised Penal Code. Thus, if an individual steals a credit card and uses the same to obtain services, he is liable of the following: theft of the credit card under Article 308 of the Revised Penal Code; violation of Republic Act No. 8484; and estafa under Article 315 (2) (a) of the Revised Penal Code with the service provider as the private complainant. The petitioner is not charged of estafa before the RTC in the Amended Information." *Laurel v. Abrogar*, G.R. 155706, 27 February 2006, 483 SCRA 243.

other laws would have been eminently more appropriate than the present recourse, which utilizes the same provision used to penalize pickpockets.

But since the State has preferred to pursue this more cumbersome theory of the case, we are now belabored to analyze whether the facts as alleged in the Amended Information could somehow align with the statutory elements of theft under the RPC.

The crime of theft is penalized under Article 308 of the RPC. From that provision, we have long recognized the following as the elements of theft: (1) that there be taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence against or intimidation of persons or force upon things.[10]

In analyzing whether the crime of theft had been committed given the allegations in this case, it is against these five elements that the facts must be tested. We can agree outright that the "taking" alleged in this case was accomplished without the use of violence against or intimidation of persons or force upon things. It can also be conceded for now that the element of *animo lucrandi*, or intent to gain, does not bear materiality to our present discussion and its existence may be presumed for the moment.

Let us discuss the remaining elements of theft as they relate to the Amended Information, and its contentious allegation that petitioner did "unlawfully and feloniously take, steal and use the international long distance calls belonging to PLDT."

Are "international long distance calls" personal property? The assailed Decision did not believe so, but I agree with the present Resolution that they are. The Court now equates telephone calls to electrical energy. To be clear, telephone calls

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[10] See *e.g.*, *People v. Bustinera*, G.R. No. 148233, 8 June 2004, 431 SCRA 284, 291; citing *People v. Sison*, 322 SCRA 345, 363-364 (2000).

are not exactly alike as pure electricity. They are sound waves (created by the human voice) which are carried by electrical currents to the recipient on the other line.[11] While electricity is merely the medium through which the telephone calls are carried, it is sufficiently analogous to allow the courts to consider such calls as possessing similar physical characteristics as electricity.

The assailed Decision conceded that when a telephone call was made, "the human voice [is] converted into electronic impulses or electrical current." [12] As the Resolution now correctly points out, electricity or electronic energy may be the subject of theft, as it is personal property capable of appropriation. Since physically a telephone call is in the form of an electric signal, our jurisprudence acknowledging that electricity is personal property which may be stolen through theft is applicable.

III.

I now turn to the issue of the legal ownership of the "international long distance calls", or telephone calls in general for that matter. An examination of the physical characteristics of telephone calls is useful for our purposes.

As earlier stated, telephone calls take on the form of electrical current, though they are distinguished from ordinary electricity in that they are augmented by the human voice which is transmitted from one phone to another. A material inquiry is how these calls are generated in the first place?

It bears significance that neither the RTC nor the Court of Appeals concluded that PLDT owns the telephone calls. Instead, they concluded that PLDT owns the telephone service, a position that is intellectually plausible, unlike the contention that PLDT owns the actual calls themselves. Yet PLDT is willing to make

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[11] "When a person speaks into a telephone, the sound waves created by his voice enter the mouthpiece. An electric current carries the sound to the telephone of the person he is talking to." See *How the Telephone Works*, at http://atcaonline.com/phone/telworks.html.

[12] *Id*. at 273.

the highly controversial claim that it owns the phone calls, despite the absence of any reliable or neutral evidence to that effect.

PLDT argues that it does not merely transmit the telephone calls but "actually creates them". The claim should beggar belief, if only for the underlying implication that if PLDT "creates" telephone calls, such calls can come into existence without the participation of a caller, or a human voice for that matter.

Let us examine the analysis of the American law professors Benjamin, Lichtman and Shelanski in their textbook *Telecommunications Law and Policy*. In illustrating the "telephone system vocabulary", they offer the following discussion:

> Consumers have in their homes standard equipment (like telephones) capable of encoding and receiving voice communications. Businesses have similar basic equipment. This equipment is what insiders call customer premises equipment, which is abbreviated "CPE." The Telecommunications Act of 1996 defines CPE as "equipment employed on the premises of a person (other than a carrier) to originate, route or terminate telecommunications." 47 U.S.C. §153(14). This category, as implemented by the FCC, includes not only basic telephones but also answering machines, fax machines, modems, and even private branch exchange (PBX) equipment (in which a large entity maintains, in effect, its own switchboard to various internal extensions).[13]

It has been suggested that PLDT owns the phone calls because it is the entity that encodes or decodes such calls even as they originate from a human voice. Yet it is apparent from the above discussion that the device that encodes or decodes telephone calls is the CPE, more particularly the telephone receiver. It is the telephone receiver, which is in the possession of the telephone user, which generates the telephone call at the initiative of the user. Now it is known from experience that while PLDT does offer its subscribers the use of telephone receivers marked with the PLDT logo, subscribers are free to

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[13] S. Benjamin, D. Lichtman & H. Shelanski, *Telecommunications Law and Policy* (2001 *ed*.), at 613.

go to *Abenson* and purchase a telephone receiver manufactured by an entity other than PLDT, such as *Sony* or *Bell Siemens* or *Panasonic*. Since such is the case, it cannot be accurately said that the encoding or decoding of Philippine telephone calls is done through the exclusive use of PLDT equipment, because the telephone receivers we use are invariably purchased directly by the very same people who call or receive the phone calls.

It likewise appears from the particular facts of this case that some, if not many of the phone calls alleged to have been stolen from PLDT were generated by calls originating not from the Philippines, but from Japan. Assuming that the telephone company exclusively generates the phone calls, those calls originating from Japan were not generated by PLDT, but by *KDDI, NTT, Japan Telecom, Verizon Japan*, and all the other long distance telephone service providers in Japan.

If PLDT were indeed the owner of the telephone calls, then it should be able to demonstrate by which mode did it acquire ownership under the Civil Code. Under that Code, ownership may be acquired by occupation, by intellectual creation, by law, by donation, by testate and intestate succession, by prescription, and in consequence of certain contracts, by tradition.[14] Under which mode of acquisition could PLDT deemed as acquiring ownership over the telephone calls? We can exclude outright, without need of discussion, such modes as testate and intestate succession, prescription, and tradition. Neither can the case be made that telephone calls are susceptible to intellectual creation. Donation should also be ruled out, since a donation must be accepted in writing by the donee in order to become valid, and that obviously cannot apply as to telephone calls.

Can telephone calls be acquired by "occupation"? According to Article 713, properties which are acquired by occupation are "things appropriable by nature which are without an owner, such as animals that are the object of hunting and fishing, hidden treasure and abandoned movables." It is not possible to establish a plausible analogy between telephone calls and "animals that

[14] See Article 712, Civil Code.

are the object of hunting or fishing", or of "hidden treasure" and of "abandoned movables".

Is it possible that PLDT somehow acquired ownership over the phone calls by reason of law? No law vesting ownership over the phone calls to PLDT or any other local telephone service provider is in existence.

All these points demonstrate the strained reasoning behind the claim that PLDT owns the international long distance calls. Indeed, applying the traditional legal paradigm that governs the regulation of telecommunications companies, it becomes even clearer that PLDT cannot validly assert such ownership. Telephone companies have historically been regulated as common carriers.[15] The 1936 Public Service Act classifies wire or wireless communications systems as a "public service," along with other common carriers.[16] In the United States, telephone providers were expressly decreed to operate as common carriers in the Mann-Elkins Act of 1910,[17] utilizing an analogy typically akin to the regulation of railroads.[18]

Under the Public Service Act, a telephone communication system is classified as a "public service," not a "common carrier." That fact might seem to imply that the two phrases are mutually exclusive, despite the fact that the Public Service Act does categorize as belonging to "public service," "any common carrier, railroad, street railway, subway motor vehicle, either for freight or passenger, or both, with or without fixed route and whatever may be its classification, freight or carrier service of any class, express service, steamboat, or steamship, or steamship line,

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[15] See *Globe Telecom v. National Telecommunications Commission*, G.R. No. 143964, 26 July 2004, 435 SCRA 110, 121; citing K. MIDDLETON, R. TRAGER & B. CHAMBERLIN, *THE LAW OF PUBLIC COMMUNICATION* (5th *ed*., 2001), at 578; in turn citing 47 U.S.C. Secs. 201, 202.

[16] See Sec. 13 (b), Public Service Act, as amended (1936).

[17] See H. ZUCKMAN, R. CORN-REVERE, R. FRIEDEN, C. KENNEDY, *MODERN COMMUNICATIONS LAW* (1999 *ed*.), at 911.

[18] *Id*., at 912.

pontines, ferries and water craft, engaged in the transportation of passengers or freight or both."[19]

It may be correct to say that under the Civil Code, a telephone system is not a common carrier, the civil law definition of such term limited to "persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water or air. . ."[20] Still, it cannot be denied that the weight of authorities have accepted that the traditional regulation regime of telephone service providers has been akin to common carriers, both in the United States and the Philippines.[21]

The legal paradigm that treats PLDT as akin to a common carrier should alert against any notion that it is the owner of the "long distance overseas calls" alleged as having been stolen in the Amended Information. More precisely, it merely transmits these calls, owned by another, to the intended recipient. Applying the common carrier paradigm, when a public transport system is contracted to transport goods or persons to a destination, the transport company does not acquire ownership over such goods or such persons, even though it is in custody of the same for the duration of the trip. Just because the phone calls are transmitted using the facilities and services of PLDT, it does not follow that PLDT is the owner of such calls.

On this score, the distinction must be made between a telephone company such as PLDT, and a power company such

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[19] See also *De Guzman v. Court of Appeals*, 168 SCRA 612, "So understood, the concept of 'common carrier' under Article 1732 [of the Civil Code] may be seen to coincide neatly with the notion of 'public service', under the Public Service Act (Commonwealth Act No. 1416, as amended) which at least partially supplements the law on common carriers set forth in the Civil Code."

[20] See Article 1732, Civil Code.

[21] See *Globe Telecom v. National Telecommunication Communications*, G.R. No. 143964, 26 July 2004, 435 SCRA 110, 121; citing K. MIDDLETON, R. TRAGER & B. CHAMBERLIN, *THE LAW OF PUBLIC COMMUNICATION* (5th ed., 2001), at 578, in turn citing 47 U.S.C. Secs. 201, 202.

as Meralco. Both companies are engaged in the business of distributing electrical energy to end-users. In the case of Meralco, it is pure electricity, while in PLDT's case, it is an electronic signal converted out of an indispensable element which is the human voice and transformed back to the original voice at the point of reception. Neither Meralco nor PLDT created the electronic energy it transmits. But in Meralco's case, it purchases the electricity from a generating company such as the National Power Corporation, and it may thus be considered as the owner of such electricity by reason of the sale. PLDT's case is different, as it does not purchase the electronic signals it transmits. These signals are created by the interaction between the human voice and the electrical current.

Indeed, the logical consequences should it be held that PLDT owns these "long distance overseas calls" are quite perilous. PLDT, as owner of these calls (or any telephone calls made for that matter), would have in theory, the right to record these calls and sell them.[22] That is a circumstance not one of us wants to contemplate.

At the very least, it is clear that the caller or the recipient of the phone call has a better right to assert ownership thereof than the telephone company. And critically, the subject Amended Information does not allege that the "international long distance calls" were taken without the consent of either the caller or the recipient.

I am thus hard pressed to conclude that the Amended Information as it stands was able to allege one of the essential elements of the crime of theft, that the personal property belonging to another was taken without the latter's consent. All the Amended Information alleged was that the taking was without PLDT's consent, a moot point considering that PLDT is most definitely not the owner of the phone calls.

The consensus of the majority has been to direct the amendment of the subject Amended Information to sustain the current prosecution of the petitioners without suggesting in any

[22] See Art. 428, Civil Code.

way that PLDT is the owner of those "international long distance calls." Said result is acceptable to me, and I concur therein.

SECOND DIVISION

[G.R. No. 161237. January 14, 2009]

PERFECTO MACABABBAD, JR.,[*] deceased, substituted by his heirs SOPHIA MACABABBAD, GLENN M. MACABABBAD, PERFECTO VENER M. MACABABBAD III AND MARY GRACE MACABABBAD, and SPS. CHUA SENG LIN and SAY UN AY, *petitioners, vs.* **FERNANDO G. MASIRAG, FAUSTINA G. MASIRAG, CORAZON G. MASIRAG, LEONOR G. MASIRAG, and LEONCIO M. GOYAGOY,** *respondents.*

FRANCISCA MASIRAG BACCAY, PURA MASIRAG FERRER-MELAD, and SANTIAGO MASIRAG, *intervenors- respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED. — A question of law arises when there is doubt as to what the law is on a certain state of facts while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. A question of law may be resolved by the court without reviewing or evaluating the evidence. No examination of the probative value of the evidence would be necessary to resolve a question of law. The opposite is true with respect to questions of fact, which necessitate a calibration of the evidence.

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[*] Macabadbbad is spelled Macabadbad in some pleadings.

2. ID.; ID.; ID.; ID.; ON THE ISSUE OF PRESCRIPTION. — In *Crisostomo v. Garcia,* this Court ruled that prescription may either be a question of law or fact; it is a question of fact when the doubt or difference arises as to the truth or falsity of an allegation of fact; it is a question of law when there is doubt or controversy as to what the law is on a given state of facts. The test of whether a question is one of law or fact is not the appellation given to the question by the party raising the issue; the test is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence. Prescription, evidently, is a question of fact where there is a need to determine the veracity of factual matters such as the date when the period to bring the action commenced to run.

3. ID.; ID.; SUMMARY DISMISSAL OF COMPLAINT NOT PROPER WHERE FACTUAL ISSUES REQUIRE TRIAL ON THE MERITS.— *Ingjug-Tiro v. Casals* instructively tells us too that a summary or outright dismissal of an action is not proper where there are factual matters in dispute which require presentation and appreciation of evidence. In this cited case whose fact situation is similar to the present case, albeit with a very slight and minor variation, we considered the improvident dismissal of a complaint based on prescription and laches to be improper because of issues that must still be proven by the complaining parties. As in *Ingjug-Tiro*, the present case involves factual issues that require trial on the merits. This situation rules out a summary dismissal of the complaint.

4. ID.; ID.; APPEAL TO THE COURT OF APPEALS; ORDINARY APPEAL; ELUCIDATED. — Since the appeal raised mixed questions of fact and law, no error can be imputed on the respondents for invoking the appellate jurisdiction of the CA through an ordinary appeal. Rule 41, Sec. 2 of the Rules of Court provides: Modes of appeal. (a) Ordinary appeal - The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party.

5. ID.; ID.; APPEAL; THREE MODES OF APPEAL FROM THE DECISION OF THE RTC; CLARIFIED. — In ***Murillo v. Consul***, this Court had the occasion to clarify the three (3) modes of appeal from decisions of the RTC, namely: (1) ordinary appeal

or appeal by writ of error, where judgment was rendered in a civil or criminal action by the RTC in the exercise of original jurisdiction, covered by Rule 41; (2) petition for review, where judgment was rendered by the RTC in the exercise of appellate jurisdiction, covered by Rule 42; and (3) petition for review to the Supreme Court under Rule 45 of the Rules of Court. The first mode of appeal is taken to the CA on questions of fact or mixed questions of fact and law. The second mode of appeal is brought to the CA on questions of fact, of law, or mixed questions of fact and law. The third mode of appeal is elevated to the Supreme Court only on questions of law.

6. ID.; CIVIL PROCEDURE; MOTION TO DISMISS BASED ON PRESCRIPTION HYPOTHETICALLY ADMITS THE ALLEGATIONS RELEVANT AND MATERIAL TO THE RESOLUTION OF THE ISSUE. — A ruling on prescription necessarily requires an analysis of the plaintiff's cause of action based on the allegations of the complaint and the documents attached as its integral parts. A motion to dismiss based on prescription hypothetically admits the allegations relevant and material to the resolution of this issue, but not the other facts of the case.

7. CIVIL LAW; OBLIGATION AND CONTRACTS; VOID AND INEXISTENT CONTRACTS; ACTION FOR DECLARATION OF INEXISTENT CONTRACT DOES NOT PRESCRIBE; APPLICATION OF RULE IN THE NULLITY OF EXTRAJUDICIAL SETTLEMENT OF ESTATE AND SALE IN THE CASE AT BAR.— Respondents' amended complaint sufficiently pleaded a cause to declare the **nullity** of the extrajudicial settlement of estate and sale. Without prejudging the issue of the merits of the respondents' claim and on the assumption that the petitioners already hypothetically admitted the allegations of the complaint when they filed a motion to dismiss based on prescription, the transfer may be null and void if indeed it is established that respondents had not given their consent and that the deed is a forgery or is absolutely fictitious. As the nullity of the extrajudicial settlement of estate and sale has been raised and is the primary issue, the action to secure this result will not prescribe pursuant to Article 1410 of the Civil Code.

8. ID.; ID.; ID.; ID.; ID.; RULE REMAINS IN CASE AT BAR NOTWITHSTANDING THE ISSUANCE OF CERTIFICATES

OF TITLES.— Does the issuance of the certificates of titles convert the action to one of reconveyance of titled land which, under settled jurisprudence, prescribes in ten (10) years? Precedents say it does not; the action remains imprescriptible, the issuance of the certificates of titles notwithstanding. *Ingjug-Tiro* is again instructive on this point: Article 1458 of the New Civil Code provides: "By the contract of sale one of the contracting parties obligates himself of transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent." It is essential that the vendors be the owners of the property sold otherwise they cannot dispose that which does not belong to them. As the Romans put it: "*Nemo dat quod non habet*." **No one can give more than what he has. The sale of the realty to respondents is null and void insofar as it prejudiced petitioners' interests and participation therein. At best, only the ownership of the shares of Luisa, Maria and Guillerma in the disputed property could have been transferred to respondents.** Consequently, respondents could not have acquired ownership over the land to the extent of the shares of petitioners. **The issuance of a certificate of title in their favor could not vest upon them ownership of the entire property; neither could it validate the purchase thereof which is null and void. Registration does not vest title; it is merely the evidence of such title. Our land registration laws do not give the holder any better title than what he actually has. Being null and void, the sale to respondents of the petitioners' shares produced no legal effects whatsoever**. Similarly, the claim that Francisco Ingjug died in 1963 but appeared to be a party to the *Extrajudicial Settlement and Confirmation of Sale* executed in 1967 would be fatal to the validity of the contract, if proved by clear and convincing evidence. Contracting parties must be juristic entities at the time of the consummation of the contract. Stated otherwise, to form a valid and legal agreement it is necessary that there be a party capable of contracting and party capable of being contracted with. Hence, if any one party to a supposed contract was already dead at the time of its execution, such contract is undoubtedly simulated and false and therefore null and void by reason of its having been made after the death of the party who appears as one of the contracting parties therein. The death of a person terminates contractual capacity. **In actions for reconveyance of the property** predicated on the fact that the

conveyance complained of was null and void *ab initio*, **a claim of prescription of action would be unavailing. "The action or defense for the declaration of the inexistence of a contract does not prescribe."** Neither could *laches* be invoked in the case at bar. *Laches* is a doctrine in equity and our courts are basically courts of law and not courts of equity. Equity, which has been aptly described as "justice outside legality," should be applied only in the absence of, and never against, statutory law. *Aequetas nunguam contravenit legis*. The positive mandate of Art. 1410 of the New Civil Code; conferring imprescriptibility to actions for declaration of the inexistence of a contract should preempt and prevail over all abstract arguments based only on equity. Certainly, *laches* cannot be set up to resist the enforcement of an imprescriptible legal right, and petitioners can validly vindicate their inheritance despite the lapse of time.

9. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; GROUNDS; LACHES; CANNOT BE ESTABLISHED BY MERE ALLEGATIONS IN THE PLEADINGS. — Dismissal based on laches cannot also apply in this case, as it has never reached the presentation of evidence stage and what the RTC had for its consideration were merely the parties' pleadings. Laches is evidentiary in nature and cannot be established by mere allegations in the pleadings. Without solid evidentiary basis, laches cannot be a valid ground to dismiss the respondents' complaint.

10. ID.; ID.; PARTIES; MISJOINDER AND NON-JOINDER OF PARTIES, NOT A GROUND FOR DISMISSAL OF ACTION; PROPER REMEDY.— Rule 3, Section 11 of the Rules of Court provides that neither misjoinder nor nonjoinder of parties is a ground for the dismissal of an action, thus: Sec. 11. Misjoinder and non-joinder of parties. Neither misjoinder nor non-joinder of parties is ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a misjoined party may be severed and proceeded with separately. In *Domingo v. Scheer*, this Court held that the proper remedy when a party is left out is to implead the indispensable party at any stage of the action. The court, either *motu proprio* or upon the motion of a party, may order the inclusion of the indispensable party or give the

plaintiff opportunity to amend his complaint in order to include indispensable parties. If the plaintiff to whom the order to include the indispensable party is directed refuses to comply with the order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion. Only upon unjustified failure or refusal to obey the order to include or to amend is the action dismissed.

11. ID.; ID.; ID.; INDISPENSABLE PARTIES; DEFINED.— Rule 3, Sec. 7 of the Rules of Court defines indispensable parties as those who are parties in interest without whom no final determination can be had of an action. They are those parties who possess such an interest in the controversy that a final decree would necessarily affect their rights so that the courts cannot proceed without their presence. A party is indispensable if his interest in the subject matter of the suit and in the relief sought is inextricably intertwined with the other parties' interest.

12. ID.; ID.; ID.; ID.; FAILURE OF THE COURT OF APPEALS TO RULE ON THE ISSUE DISMISSING THE COMPLAINT FOR FAILURE TO IMPLEAD INDISPENSABLE PARTIES DOES NOT MAKE THE SAME FINAL AND EXECUTORY.— In relation with the conclusion, we see no merit too in the petitioners' argument that the RTC ruling dismissing the complaint on respondents' failure to implead indispensable parties had become final and executory for the CA's failure to rule on the issue. This argument lacks legal basis as nothing in the Rules of Court states that the failure of an appellate court to rule on an issue raised in an appeal renders the appealed order or judgment final and executory with respect to the undiscussed issue. A court need not rule on each and every issue raised, particularly if the issue will not vary the tenor of the Court's ultimate ruling. In the present case, the CA ruling that overshadows all the issues raised is what is stated in the dispositive portion of its decision, *i.e.*, "the order of the lower court dismissing the case is SET ASIDE and the case is remanded for further proceeding."

APPEARANCES OF COUNSEL

Perez and Calagui Law Office for petitioners.
Macpaul B. Soriano Law Offices for respondents.

D E C I S I O N

BRION, *J.*:

Before us is the Petition for Review on *Certiorari* filed by Perfecto Macababbad, Jr.[1] (*Macababbad*) and the spouses Chua Seng Lin (*Chua*) and Say Un Ay (*Say*) (collectively called the *petitioners*), praying that we nullify the Decision[2] of the Court of Appeals (*CA*) and the Resolution[3] denying the motion for reconsideration that followed. The assailed decision reversed the dismissal Order[4] of the Regional Trial Court (*RTC*), Branch 4, Tuguegarao City, Cagayan, remanding the case for further trial.

BACKGROUND

On April 28, 1999, respondents Fernando Masirag (*Fernando*), Faustina Masirag (*Faustina*), Corazon Masirag (*Corazon*), Leonor Masirag (*Leonor*) and Leoncio Masirag Goyagoy (*Leoncio*) (collectively called the *respondents*), filed with the RTC a complaint[5] against Macababbad, Chua and Say.[6] On May 10, 1999, they amended their complaint to allege new matters.[7] The respondents alleged that their complaint is an action for:

quieting of title, nullity of titles, reconveyance, damages and attorney's fees[8] *against the defendants* [petitioners here] x x x *who*

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[1] In view of the death of Macababbad, the Court of Appeals ordered that he be substituted by his legal heirs and representatives Sophia Macababbad, Glenn M. Macababbad, Perfecto Vener M. Macababbad III and Mary Grace Macababbad in its Resolution dated September 20, 2001; see Annex "A" of the Motion for Reconsideration; *rollo*, p. 160.

[2] *Rollo*, pp. 31-39.

[3] *Id.*, pp. 40-41.

[4] *Id.*, pp. 93-94.

[5] Docketed as Civil Case No. 5487; *id.*, pp. 40-41.

[6] The respondents also impleaded the Registry of Deeds of Cagayan as a nominal party being the custodian of all land records.

[7] *Rollo*, pp. 76-93.

[8] *Id.*, pp. 44, 78.

cabal themselves in mala fides of badges of fraud dishonesty, deceit, misrepresentations, bad faith, under the guise of purported instrument, nomenclature "EXTRA-JUDICIAL SETTLEMENT WITH SIMULTANEOUS SALE OF PORTION OF REGISTERED LAND (Lot 4144)", dated December 3, 1967, a falsification defined and penalized under Art. 172 in relation to Art. 171, Revised Penal Code, by "causing it to appear that persons (the plaintiffs herein [the respondents in this case]*) have participated in any act or proceeding when they (the plaintiffs herein* [the respondents in this case]*) did not in fact so participate" in the "EXTRA-JUDICIAL SETTLEMENT WITH SIMULTANEOUS SALE OF PORTION OF REGISTERED LAND (Lot 4144" – covered by Original Certificate of Title No. 1946)* [sic].[9]

The amended complaint essentially alleged the following:[10]

The deceased spouses Pedro Masirag (*Pedro*) and Pantaleona Tulauan (*Pantaleona*) were the original registered owners of Lot No. 4144 of the Cadastral Survey of Tuguegarao (Lot No. 4144), as evidenced by Original Certificate of Title (OCT) No. 1946.[11] Lot No. 4144 contained an area of 6,423 square meters.

Pedro and Pantaleona had eight (8) children, namely, Valeriano, Domingo, Pablo, Victoria, Vicenta, Inicio, Maxima and Maria. Respondents Fernando, Faustina, Corazon and Leonor Masirag are the children of Valeriano and Alfora Goyagoy, while Leoncio is the son of Vicenta and Braulio Goyagoy. The respondents allegedly did not know of the demise of their respective parents; they only learned of the inheritance due from their parents in the first week of March 1999 when their relative, Pilar Quinto, informed respondent Fernando and his wife Barbara Balisi about it. They immediately hired a lawyer to investigate the matter.

The investigation disclosed that the petitioners falsified a document entitled "Extra-judicial Settlement with Simultaneous

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[9] Underscoring supplied, parenthetical notes ours.

[10] *Rollo*, pp. 76-92.

[11] *Id.,* p. 59.

Sale of Portion of Registered Land (Lot 4144) dated December 3, 1967"[12] (hereinafter referred to as the *extrajudicial settlement of estate and sale*) so that the respondents were deprived of their shares in Lot No. 4144. The document purportedly bore the respondents' signatures, making them appear to have participated in the execution of the document when they did not; they did not even know the petitioners. The document ostensibly conveyed the subject property to Macababbad for the sum of ₱1,800.00.[13] Subsequently, OCT No. 1946 was cancelled and Lot No. 4144 was registered in the names of its new owners under Transfer Certificate of Title (TCT) No. 13408,[14] presumably after the death of Pedro and Pantaleona. However, despite the supposed sale to Macababbad, his name did not appear on the face of TCT No. 13408.[15] Despite his exclusion from TCT No. 13408, his "Petition for another owner's duplicate copy of TCT No. 13408," filed in the Court of First Instance of Cagayan, was granted on July 27, 1982.[16]

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[12] *Id.,* pp. 60-63.

[13] *Id.,* p. 62.

[14] *Id.,* pp. 64-65.

[15] TCT No. 13408 identified the following owners: CHUA SENG LIN, married to SAY LIN AY - 1/8; GUILLERMO TAMBAUAN; VICTORIA DAYAG, married to FELICIANO TAMBAUAN; ESTEBAN DAYAG, married to LUISITA CATOLIN; IRENE DAYAG, married to ELADIO TUPPIL; MARGARITA DAYAG; GABINA DAYAG, married to GASPAR CARANGMIAN, Jr. - 1/8; PURA GOYAGOY; LUCIA MASIRAG, married to ACKING RONDOLOY; CORAZON MASIRAG, married to FRANCISCO CASIPAG - 1/8; PETRA TUGAD; JUAN MASIRAG, married to LEONILA BAACAY; PEDRO MASIRAG - 1/8; CLARO FERRER; PEDRO FERRER, married to ANGELA CORDON; PURA FERRER, married to DANIEL MELOD - 1/8; BRAULIO GOYAGOY; LEONCIO GOYAGOY, married to ISABEL BADEJOS; PROCOPIO DAYAG; GENOVEVA DAYAG, married to HERMIGILDO CATOLIN; ESTANISLAO DAYAG, married to TEOFISTO STO. TOMAS; MAGNO DAYAG, married to VILMA MARAMAG; ISABEL DAYAG, married to ROGELIO MABBARONG - 1/8; DOMINGO MASIRAG, married to PRIMA DANAN - 1/8.

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

Subsequently, Macababbad registered portions of Lot No. 4144 in his name and sold other portions to third parties.[17]

On May 18, 1972, Chua filed a petition for the cancellation of TCT No. T-13408 and the issuance of a title evidencing his ownership over a subdivided portion of Lot No. 4144 covering 803.50 square meters. On May 23, 1972, TCT No. T-18403 was issued in his name.[18]

Based on these allegations, the respondents asked: (1) that the extrajudicial settlement of estate and sale be declared null and void *ab initio* and without force and effect, and that Chua be ordered and directed to execute the necessary deed of reconveyance of the land; if they refuse, that the Clerk of Court be required to do so; (2) the issuance of a new TCT in respondents' name and the cancellation of Macababbad's and Chua's certificates of title; and (3) that the petitioners be ordered to pay damages and attorney's fees.

Macababbad filed a motion to dismiss the amended complaint on July 14, 1999, while Chua and Say filed an "Appearance with Motion to Dismiss" on September 28, 1999.

On December 14, 1999, the RTC granted the motion of Francisca Masirag Baccay, Pura Masirag Ferrer-Melad, and Santiago Masirag for leave to intervene and to admit their complaint-in-intervention. The motion alleged that they have common inheritance rights with the respondents over the disputed property.

THE RTC RULING

The RTC, after initially denying the motion to dismiss, reconsidered its ruling and **dismissed the complaint** in its Order[19] dated May 29, 2000 **on the grounds that: 1) the**

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[17] For example, the sale of Lot No. 4144-C to Nestor E. Calubaquib, evidenced by a Deed of Sale of a portion of Registered Land, Annex "H" of the Complaint; *id.,* pp. 68-69.

[18] *Id.,* p. 67.

[19] *Id.,* pp. 93-94.

action, which was filed 32 years after the property was partitioned and after a portion was sold to Macababbad, had already prescribed; and 2) there was failure to implead indispensable parties, namely, the other heirs of Pedro and Pantaleona and the persons who have already acquired title to portions of the subject property in good faith.[20]

The respondents appealed the RTC's order dated May 29, 2000 to the CA on the following grounds:

I.

THE COURT *A QUO* ERRED IN DISMISSING THE CASE

II.

THE COURT *A QUO* ERRED IN INTERPRETING THE NATURE OF APPELLANTS' CAUSE OF ACTION AS THAT DESIGNATED IN THE COMPLAINT'S TITLE AND NOT IN (*SIC)* THE ALLEGATIONS IN THE COMPLAINT[21]

The petitioners moved to dismiss the appeal primarily on the ground that the errors the respondents raised involved pure questions of law that should be brought before the Supreme Court *via* a petition for review on *certiorari* under Rule 45 of the Rules of Court. The respondents insisted that their appeal involved mixed questions of fact and law and thus fell within the purview of the CA's appellate jurisdiction.

THE CA DECISION[22]

The CA ignored[23] the jurisdictional issue raised by the petitioners in their motion to dismiss, took cognizance of the

[20] *Id.,* p. 94.

[21] *Id.,* p. 109.

[22] Penned by Justice Mario L. Guarina III, with the concurrence of Justice Martin S. Villarama and Justice Elvi John S. Asuncion.

[23] The CA, in note 10 of its decision stated that "A further consideration has been raised by the appellees to the effect that this appeal should have been brought to the Supreme Court. We note, however, that this issue was already discussed before another Division of our Court through a motion to dismiss appeal and was denied." A perusal of the resolution denying

appeal, and focused on the following issues: **1) whether the complaint stated a cause of action; and 2) whether the cause of action had been waived, abandoned or extinguished.**

The appellate court reversed and set aside the RTC's dismissal of the complaint. On the *first* issue, it ruled that the complaint "*carve(d) out a sufficient and adequate cause of action xxx. One can read through the verbosity of the initiatory pleading to discern that a fraud was committed by the defendants on certain heirs of the original owners of the property and that, as a result, the plaintiffs were deprived of interests that should have gone to them as successors-in-interest of these parties. A positive deception has been alleged to violate legal rights. This is the ultimate essential fact that remains after all the clutter is removed from the pleading. Directed against the defendants, there is enough to support a definitive adjudication.*"[24]

On the *second* issue, the CA applied the Civil Code provision on implied trust, *i.e.*, that a person who acquires a piece of property through fraud is considered a trustee of an implied trust for the benefit of the person from whom the property came. Reconciling this legal provision with Article 1409 (which defines void contracts) and Article 1410 (which provides that an action to declare a contract null and void is imprescriptible), the CA ruled that the respondents' cause of action had not prescribed, because "*in assailing the extrajudicial partition as void, the [respondents] have the right to bring the action unfettered by a prescriptive period.*"[25]

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the motion to dismiss (*see* Annex "A," Motion for Reconsideration [Re: Resolution dated January 28, 2004]; *rollo*, p. 160) shows that the issue of whether the appeal should have been taken to this court, not the CA, was not discussed.

[24] *Rollo*, p. 35.

[25] *Id.*, p. 38.

THE PETITION FOR REVIEW ON *CERTIORARI*

The Third Division of this Court initially denied[26] the petition for review on *certiorari* for the petitioners' failure to show any reversible error committed by the CA. However, it subsequently reinstated the petition. In their motion for reconsideration, the petitioners clarified the grounds for their petition, as follows:

A. THE HONORABLE COURT OF APPEALS DID NOT HAVE JURISDICTION TO PASS UPON AND RULE ON THE APPEAL TAKEN BY THE RESPONDENTS IN CA-GR CV NO. 68541.[27]

In the alternative, *ex abundanti cautela*, the petitioners alleged other reversible errors summarized as follows:[28]

- The RTC dismissal on the ground that indispensable parties were not impleaded has already become final and executory because the CA did not pass upon this ground;[29]
- The respondents' argument that there was no failure to implead indispensable parties since the other heirs of Pedro and Pantaleona who were not impleaded were not indispensable parties in light of the respondents' admission that the extra-judicial settlement is valid with respect to the other heirs who sold their shares to Perfecto Macababbad is erroneous because innocent purchasers for value of portions of Lot 4144 who are also indispensable parties were not impleaded;[30]
- The CA erred in reconciling Civil Code provisions Article 1456 and Article 1410, in relation to Article 1409;[31]
- The CA erred in saying that the Extra-judicial Partition was an inexistent and void contract because it could not

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[26] *Id.,* p. 136.

[27] *Id.,* p. 138.

[28] *Id.,* p. 142.

[29] *Id.,* p. 143.

[30] *Ibid.*

[31] *Id.,* p. 147.

be said that none of the heirs intended to be bound by the contract.[32]

The respondents argued in their Comment that:[33]

- The appeal was brought on mixed questions of fact and law involving prescription, laches and indispensable parties;
- The non-inclusion of indispensable parties is not a ground to dismiss the claim;
- The respondents' action is not for reconveyance. Rather, it is an action to declare the sale of their respective shares null and void;
- An action for the nullity of an instrument prescribes in four (4) years from discovery of the fraud. Discovery was made in 1999, while the complaint was also lodged in 1999. Hence, the action had not yet been barred by prescription;
- *Laches* had not set in because the action was immediately filed after discovery of the fraud.

OUR RULING

We find the petition devoid of merit.

Questions of Fact v. Questions of Law

A question of law arises when there is doubt as to what the law is on a certain state of facts while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts.[34] A question of law may be resolved by the court without reviewing or evaluating the evidence.[35] No examination of the probative value of the evidence would be necessary to resolve a question of law.[36] The opposite

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[32] *Id.,* p. 148.

[33] *Id.,* pp. 167-170.

[34] *Suarez v. Villarama, Jr.,* G.R. No. 124512, June 27, 2006, 493 SCRA 74.

[35] Regalado, Florenz, D., *Remedial Law Compendium,* Vol. I, 2000 ed., p. 596.

[36] *Ibid.*

is true with respect to questions of fact, which necessitate a calibration of the evidence.[37]

The nature of the issues to be raised on appeal can be gleaned from the appellant's notice of appeal filed in the trial court and in his or her brief as appellant in the appellate court.[38] In their Notice of Appeal, the respondents manifested their intention to appeal the assailed RTC order on legal grounds and "*on the basis of the environmental facts*."[39] Further, in their Brief, the petitioners argued that the RTC erred in ruling that their cause of action had prescribed and that they had "slept on their rights."[40] All these indicate that questions of facts were involved, or were at least raised, in the respondents' appeal with the CA.

In *Crisostomo v. Garcia*,[41] this Court ruled that prescription may either be a question of law or fact; it is a question of fact when the doubt or difference arises as to the truth or falsity of an allegation of fact; it is a question of law when there is doubt or controversy as to what the law is on a given state of facts. The test of whether a question is one of law or fact is not the appellation given to the question by the party raising the issue; the test is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence. Prescription, evidently, is a question of fact where there is a need to determine the veracity of factual matters such as the date when the period to bring the action commenced to run.[42]

Ingjug-Tiro v. Casals[43] instructively tells us too that a summary or outright dismissal of an action is not proper where there are factual matters in dispute which require presentation

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[37] *Ibid.*, citing *Bernardo v. CA,* 216 SCRA 224 (1992).

[38] *Ibid.*

[39] *Rollo,* pp. 95-96.

[40] *Id.*, pp. 107-112.

[41] G.R. No. 164787, January 31, 2006, 481 SCRA 402.

[42] *Ibid.*

[43] G.R. No. 134718, August 20, 2001, 363 SCRA 435.

and appreciation of evidence. In this cited case whose fact situation is similar to the present case, albeit with a very slight and minor variation, we considered the improvident dismissal of a complaint based on prescription and laches to be improper because the following must still be proven by the complaining parties:

first, that they were the co-heirs and co-owners of the inherited property; ***second***, that their co-heirs-co-owners sold their hereditary rights thereto without their knowledge and consent; ***third***, that forgery, fraud and deceit were committed in the execution of the *Deed of Extrajudicial Settlement and Confirmation of Sale* since Francisco Ingjug who allegedly executed the deed in 1967 actually died in 1963, hence, the thumbprint found in the document could not be his; ***fourth***, that Eufemio Ingjug who signed the deed of sale is not the son of Mamerto Ingjug, and, therefore, not an heir entitled to participate in the disposition of the inheritance; ***fifth***, that respondents have not paid the taxes since the execution of the sale in 1965 until the present date and the land in question is still declared for taxation purposes in the name of Mamerto Ingjug, the original registered owner, as of 1998; ***sixth***, that respondents had not taken possession of the land subject of the complaint nor introduced any improvement thereon; and ***seventh***, that respondents are not innocent purchasers for value.

As in *Ingjug-Tiro*, the present case involves factual issues that require trial on the merits. This situation rules out a summary dismissal of the complaint.

Proper Mode of Appeal

Since the appeal raised mixed questions of fact and law, no error can be imputed on the respondents for invoking the appellate jurisdiction of the CA through an ordinary appeal. Rule 41, Sec. 2 of the Rules of Court provides:

Modes of appeal.

(a) Ordinary appeal — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party.

In ***Murillo v. Consul***,[44] this Court had the occasion to clarify the three (3) modes of appeal from decisions of the RTC, namely: (1) ordinary appeal or appeal by writ of error, where judgment was rendered in a civil or criminal action by the RTC in the exercise of original jurisdiction, covered by Rule 41; (2) petition for review, where judgment was rendered by the RTC in the exercise of appellate jurisdiction, covered by Rule 42; and (3) petition for review to the Supreme Court under Rule 45 of the Rules of Court. The first mode of appeal is taken to the CA on questions of fact or mixed questions of fact and law. The second mode of appeal is brought to the CA on questions of fact, of law, or mixed questions of fact and law. The third mode of appeal is elevated to the Supreme Court only on questions of law.

Prescription

A ruling on prescription necessarily requires an analysis of the plaintiff's cause of action based on the allegations of the complaint and the documents attached as its integral parts. A motion to dismiss based on prescription hypothetically admits the allegations relevant and material to the resolution of this issue, but not the other facts of the case.[45]

Unfortunately, both the respondents' complaint and amended complaint are poorly worded, verbose, and prone to misunderstanding. In addition, therefore, to the complaint, we deem it appropriate to consider the clarifications made in their appeal brief by the petitioners relating to the intent of their complaint. We deem this step appropriate since there were no matters raised for the first time on appeal and their restatement was aptly supported by the allegations of the RTC complaint. The respondents argue in their Appellant's Brief that:

x x x Although reconveyance was mentioned in the title, reconveyance of which connotes that there was a mistake in titling

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[44] *Resolution of the Court En Banc in* UDK-9748 dated March 1, 1990; See also *Macawiwili Gold Mining and Development Co., Inc. v. CA*, G.R. No. 115104, October 12, 1998, 297 SCRA 602.

[45] *Halimao v. Villanueva,* A.M. No. 3825, February 1, 1996, 253 SCRA 1.

the land in question in the name of the registered owner indicated therein, but in the allegations in the body of the allegations in the body of the instant complaint, it clearly appears that the nature of the cause of action of appellants, [*sic*] they wanted to get back their respective shares in the subject inheritance because they did not sell said shares to appellee Perfecto Macababbad as the signatures purported to be theirs which appeared in the Extrajudicial Settlement with Simultaneo[u]s Sale of Portion of Registered Land (Lot 4144) were forged.

As appellants represented 2 of the 8 children of the deceased original owners of the land in question who were Pedro Masirag and Pantaleona Talauan, the sale is perfectly valid with respect to the other 6 children, and void *ab initio* with respect to the appellants.[46]

The respondents likewise argue that their action is one for the annulment of the *extrajudicial settlement of estate and sale* bearing their forged signatures. They contend that their action had not yet prescribed because an action to declare an instrument null and void is imprescriptible. In their Comment to the petition for review, however, the respondents modified their position and argued that the sale to the petitioners pursuant to the *extrajudicial settlement of estate and sale* was void because it was carried out through fraud; thus, the appropriate prescription period is four (4) years from the discovery of fraud. Under this argument, respondents posit that their cause of action had not yet prescribed because they only learned of the *extrajudicial settlement of estate and sale* in March 1999; they filed their complaint the following month.

The petitioners, on the other hand, argue that the relevant prescriptive period here is ten (10) years from the date of the registration of title, this being an action for reconveyance based on an implied or constructive trust.

We believe and so hold that the respondents' amended complaint sufficiently pleaded a cause to declare the **nullity** of the extrajudicial settlement of estate and sale, as they claimed in their amended complaint. Without prejudging the issue of the

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[46] *Rollo,* p. 110.

merits of the respondents' claim and on the assumption that the petitioners already hypothetically admitted the allegations of the complaint when they filed a motion to dismiss based on prescription, the transfer may be null and void if indeed it is established that respondents had not given their consent and that the deed is a forgery or is absolutely fictitious. As the nullity of the extrajudicial settlement of estate and sale has been raised and is the primary issue, the action to secure this result will not prescribe pursuant to Article 1410 of the Civil Code.

Based on this conclusion, the necessary question that next arises is: What then is the effect of the issuance of TCTs in the name of petitioners? In other words, does the issuance of the certificates of titles convert the action to one of reconveyance of titled land which, under settled jurisprudence, prescribes in ten (10) years?

Precedents say it does not; the action remains imprescriptible, the issuance of the certificates of titles notwithstanding. *Ingjug-Tiro* is again instructive on this point:

> Article 1458 of the New Civil Code provides: "By the contract of sale one of the contracting parties obligates himself of transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent." It is essential that the vendors be the owners of the property sold otherwise they cannot dispose that which does not belong to them. As the Romans put it: "*Nemo dat quod non habet*." **No one can give more than what he has. The sale of the realty to respondents is null and void insofar as it prejudiced petitioners' interests and participation therein. At best, only the ownership of the shares of Luisa, Maria and Guillerma in the disputed property could have been transferred to respondents**.
>
> Consequently, respondents could not have acquired ownership over the land to the extent of the shares of petitioners. **The issuance of a certificate of title in their favor could not vest upon them ownership of the entire property; neither could it validate the purchase thereof which is null and void. Registration does not vest title; it is merely the evidence of such title. Our land registration laws do not give the holder any better title than what he actually has. Being null and void, the sale to respondents of the petitioners' shares produced no legal effects whatsoever**.

Similarly, the claim that Francisco Ingjug died in 1963 but appeared to be a party to the *Extrajudicial Settlement and Confirmation of Sale* executed in 1967 would be fatal to the validity of the contract, if proved by clear and convincing evidence. Contracting parties must be juristic entities at the time of the consummation of the contract. Stated otherwise, to form a valid and legal agreement it is necessary that there be a party capable of contracting and party capable of being contracted with. Hence, if any one party to a supposed contract was already dead at the time of its execution, such contract is undoubtedly simulated and false and therefore null and void by reason of its having been made after the death of the party who appears as one of the contracting parties therein. The death of a person terminates contractual capacity.

In actions for reconveyance of the property predicated on the fact that the conveyance complained of was null and void *ab initio*, a claim of prescription of action would be unavailing. "The action or defense for the declaration of the inexistence of a contract does not prescribe." Neither could *laches* be invoked in the case at bar. *Laches* is a doctrine in equity and our courts are basically courts of law and not courts of equity. Equity, which has been aptly described as "justice outside legality," should be applied only in the absence of, and never against, statutory law. *Aequetas nunguam contravenit legis*. The positive mandate of Art. 1410 of the New Civil; Code conferring imprescriptibility to actions for declaration of the inexistence of a contract should preempt and prevail over all abstract arguments based only on equity. Certainly, *laches* cannot be set up to resist the enforcement of an imprescriptible legal right, and petitioners can validly vindicate their inheritance despite the lapse of time.[47]

We have a similar ruling in *Heirs of Rosa Dumaliang v. Serban*[48]

The respondents' action is therefore imprescriptible and the CA committed no reversible error in so ruling.

Laches

Dismissal based on laches cannot also apply in this case, as it has never reached the presentation of evidence stage and what the RTC had for its consideration were merely the parties'

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47 *Supra* note 43. Underscoring supplied.

48 G.R. No. 155133, February 21, 2007, 516 SCRA 343.

pleadings. Laches is evidentiary in nature and cannot be established by mere allegations in the pleadings.[49] Without solid evidentiary basis, laches cannot be a valid ground to dismiss the respondents' complaint.

Non-joinder of Indispensable parties is not a Ground for a Motion to Dismiss

The RTC dismissed the respondents' amended complaint because indispensable parties were not impleaded. The respondents argue that since the *extrajudicial settlement of estate and sale* was valid with respect to the other heirs who executed it, those heirs are not indispensable parties in this case. Innocent purchasers for value to whom title has passed from Macababbad and the spouses Chua and Say are likewise not indispensable parties since the titles sought to be recovered here are still under the name of the petitioners.

We also find the RTC dismissal Order on this ground erroneous.

Rule 3, Section 11 of the Rules of Court provides that neither misjoinder nor nonjoinder of parties is a ground for the dismissal of an action, thus:

> Sec. 11. Misjoinder and non-joinder of parties. Neither misjoinder nor non-joinder of parties is ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a misjoined party may be severed and proceeded with separately.

In *Domingo v. Scheer*,[50] this Court held that the proper remedy when a party is left out is to implead the indispensable party at any stage of the action. The court, either *motu proprio* or upon the motion of a party, may order the inclusion of the indispensable party or give the plaintiff opportunity to amend his complaint in order to include indispensable parties. If the plaintiff to whom the order to include the indispensable party

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[49] *Abadiano v. Spouses Martir,* G.R. No. 156310, July 31, 2008.

[50] G.R. No. 154745, January 29, 2004, 421 SCRA 468.

is directed refuses to comply with the order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion.[51] Only upon unjustified failure or refusal to obey the order to include or to amend is the action dismissed.[52]

Rule 3, Sec. 7 of the Rules of Court defines indispensable parties as those who are parties in interest without whom no final determination can be had of an action.[53] They are those parties who possess such an interest in the controversy that a final decree would necessarily affect their rights so that the courts cannot proceed without their presence.[54] A party is indispensable if his interest in the subject matter of the suit and in the relief sought is inextricably intertwined with the other parties' interest.[55]

In an action for reconveyance, all the owners of the property sought to be recovered are indispensable parties. Thus, if reconveyance were the only relief prayed for, impleading petitioners Macababbad and the spouses Chua and Say would suffice. On the other hand, under the claim that the action is for the declaration of the nullity of *extrajudicial settlement of estate and sale,* all of the parties who executed the same should be impleaded for a complete resolution of the case. This case, however, is not without its twist on the issue of impleading indispensable parties as the RTC never issued an order directing their inclusion. Under this legal situation, particularly in light of Rule 3, Section 11 of the Rules of Court, there can be no basis for the immediate dismissal of the action.

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[51] RULES OF COURT, Rule 17, Sec. 3.

[52] *Cortez v. Avila*, 101 Phil. 205 (1957).

[53] *Uy v. Court of Appeals*, G.R. No. 157065, July 11, 2006, 494 SCRA 535.

[54] *Seno v. Mangubat*, G.R. No. L-44339, December 2, 1987, 156 SCRA 113.

[55] *Uy v. Court of Appeals, supra* note 53.

In relation with this conclusion, we see no merit too in the petitioners' argument that the RTC ruling dismissing the complaint on respondents' failure to implead indispensable parties had become final and executory for the CA's failure to rule on the issue. This argument lacks legal basis as nothing in the Rules of Court states that the failure of an appellate court to rule on an issue raised in an appeal renders the appealed order or judgment final and executory with respect to the undiscussed issue. A court need not rule on each and every issue raised,[56] particularly if the issue will not vary the tenor of the Court's ultimate ruling. In the present case, the CA ruling that overshadows all the issues raised is what is stated in the dispositive portion of its decision, *i.e.*, "the order of the lower court dismissing the case is SET ASIDE and the case is remanded for further proceeding."

In sum, the CA correctly reversed the RTC dismissal of the respondents' complaint.

WHEREFORE, premises considered, we *DENY* the petition for review for lack of merit.

SO ORDERED.

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

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[56] See *Novino v. Court of Appeals*, G.R. No. L-21098, May 31, 1963, 8 SCRA 279.

FIRST DIVISION

[A.C. No. 7860. January 15, 2009]

AVELINO O. ANGELES, LAURO O. ANGELES, MARIA O. ANGELES, ROSALINA O. ANGELES, and CONNIE M. ANGELES, *complainants, vs.* **ATTY. AMADO O. IBAÑEZ,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; NOTARIES PUBLIC; DOCUMENT NOTARIZED IN THE ABSENCE OF AFFIANTS IS VIOLATION OF LAWYER'S OATH OF OFFICE AND CODE OF PROFESSIONAL RESPONSIBILITY; PENALTY. — Respondent violated his oath as a lawyer and the Code of Professional Responsibility when he notarized the "Extrajudicial Partition with Absolute Sale" in the absence of the affiants. Under the facts and circumstances of the case, respondent's notarial commission should not only be suspended but respondent must also be suspended from the practice of law. Accordingly, the Court **SUSPENDS** him from the practice of law for one year, **REVOKES** his incumbent notarial commission, if any, and **PROHIBITS** him from being commissioned as a notary public for one year, effective immediately, with a stern warning that a repetition of the same or similar offense shall be dealt with more severely.

2. ID.; ID.; THAT AFFIANTS TO A DOCUMENT MUST PERSONALLY APPEAR BEFORE THE NOTARY PUBLIC; ELUCIDATED. — Time and again, we have reminded lawyers commissioned as notaries public that the affiants must personally appear before them. Section 1 of Public Act No. 2103, or the Notarial Law, provides: Sec. 1. (a) The acknowledgement shall be before a notary public or an officer duly authorized by law of the country to take acknowledgements of instruments or documents in the place where the act is done. The notary public or the officer taking the acknowledgement shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, acknowledged that the same is his free act and deed. The certificate shall be made under the official seal, if he is required

by law to keep a seal, and if not, his certificate shall so state. Section 2(b) of Rule IV of the Rules on Notarial Practice of 2004 reads: A person shall not perform a notarial act if the person involved as signatory to the instrument or document – (1) is not in the notary's presence personally at the time of the notarization; and (2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules. The physical presence of the affiants enables 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 and deed. Notarization of a private document converts such document into a public one, and renders it admissible in court without further proof of its authenticity. Courts, administrative agencies and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument. Notarization is not an empty routine; to the contrary, it engages public interest in a substantial degree and the protection of that interest requires preventing those who are not qualified or authorized to act as notaries public from imposing upon the public and the courts and administrative offices generally.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a complaint filed by Avelino O. Angeles, Maria O. Angeles, Lauro O. Angeles, Rosalina O. Angeles, and Connie M. Angeles in representation of the deceased Loreto Angeles (collectively, complainants) against Atty. Amado O. Ibañez (respondent) for disbarment for notarizing the "Extrajudicial Partition with Absolute Sale" without a notarial commission and in the absence of the affiants.

The Facts

The facts of CBD Case No. 06-1830, as stated in the Report and Recommendation of the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP), read as follows:

II. Statement of the Complaint

Complainants ... are residents of Highway, Sapang I, Ternate, Cavite.

Respondent Atty. Amado Ibañez is a practicing lawyer who holds office at 2101 Carolina (now Madre Ignacia) St., Malate, Manila.

The lengthy and confusing narrative of what appears to be a bitter land dispute notwithstanding, it can be gleaned from the Complaint and Position Paper, and the personal clarification by the complainants themselves after questioning by the undersigned during the Mandatory Conference, that the present administrative case is limited to an "Extrajudicial Partition with Absolute Sale" which respondent Atty. Amado Ibañez allegedly notarized in the City of Manila on 18 February 1979, and entered in his Notarial Book as Doc. No. 735, p. 157 and Book No. II, Series of 1979.

The complainants denied that they executed the said document or that they ever appeared before respondent Atty. Ibañez for this purpose. They alleged that respondent Atty. Ibañez did not even have the authority to notarize the "Extrajudicial Partition with Absolute Sale" as he did not have a commission as a notary public at that time.

The complainants alleged that the respondent and his relatives are presently using the said document in judicial proceedings pending before the Regional Trial Court of Naic, Cavite to their damage and prejudice.

The complainants contend that respondent Atty. Ibañez's act of notarizing the "Extrajudicial Partition with Absolute Sale" without requiring the presence of the parties thereto, and despite his alleged lack of a notarial commission, constitutes professional misconduct for which reason he should be disbarred.

In support of their allegations, the complainants attached to their Complaint and Position Paper the following documents:

1. Tax Declaration Nos. 20-004-00052, 1356, 1809 in the name of Barselisa Angeles, and Tax Declarations 198, 283, 403 and 1544, in the name of Juan Angeles.

2. Certification dated 24 March 2006 issued by the Office of the Clerk of Court of the Regional Trial Court of Manila stating that the Master List of Notaries Public shows that Atty.

Amado O. Ibañez was not appointed as such for and in the City of Manila for the year 1976-1977.

3. Certification dated 28 April 2006 issued by the National Archives stating that there is no notarial record on file with the said office of Amado Ibañez, a notary public for and within the City of Manila, and it has no copy on file of an affidavit allegedly executed by Gabriel, Estebana, Eutiquio, Gloria, Leocadio, Jovita, Samonte, and Renato, all surnamed Angeles, ratified sometime in 1977 by the said notary public and acknowledged as Doc. No. 202, Page No. 42, Book No. 1, Series of 1977.

4. Certification dated 11 April 2006 issued by the National Archives stating that there is no notarial record on file with the said office of Amado Ibañez, a notary public for and within the City of Manila, and it has no copy on file of a partition w/renunciation [sic] and affidavit allegedly executed by and among Gabriela, Estebana, Eutiquio, Gloria, Leocadio, Jovita, Samonte and Renato, all surnamed Angeles, ratified sometime in 1977 by the said notary public and acknowledged as Doc. No. 201, Page No. 41, Series of 1977.

5. Two (2) versions of a "Partihang Labas sa Hukuman at Ganap na Bilihan" dated 28 March 1978, executed by and between Gloria Angeles, Leocadio Angeles and Gabriela, Estebana, Eutiquio, Jovita, Samonte and Renato, all surnamed Torres.

6. Flow chart showing the history of Tax Declaration No. 403, from 1948 to 1974.

7. Application for Free Patent over Cadastral Lot No. 460-C of the Ternate Cadastral Sketching (CADS-617-D), SWO-04-000598 and Cadastral Lot No. 460-B, executed by Atty. Amado O. Ibañez.

8. Certification dated 24 March 2006 issued by the Office of the Clerk of Court of the Regional Trial Court of Manila stating that the Master List of Notaries Public shows that Atty. Amado O. Ibañez was not appointed as such for and in the year 1978-1979.

9. "Extrajudicial Partition with Absolute Sale" (with various marginal notes made by the complainants) notarized by Atty. Amado Ibañez in the City of Manila on 18 February 1979,

and entered in his Notarial Book as Doc. No. 735, p. 147 and Book No. II, Series of 1979.

10. Real Estate Mortgage executed by Flora Olano in favor of the Rural Bank of Naic, Inc., in the amount of Php350.00, covering property located in Zapang, Ternate, Cavite and described in Tax Declaration No. 1657-1658.

11. Certification dated 12 January 2007 issued by the Office of the Clerk of Court of the Regional Trial Court of Trece Martires City stating that Atty. Amado O. Ibañez was not duly commissioned as a notaryt [sic] public for and within the Province of Cavite in the year 1979, and that it has no copy in its records of an "Extrajudicial Partition with Absolute Sale" allegedly notarized by Atty. Amado Ibañez on 18 February 1979 and entered in his Notarial Book as Doc. No. 735, p. 147 and Book No. II. Series of 1979.

III. Respondents' Position/Defense

In his Motion to Dismiss and Position Paper, respondent Atty. Ibañez contended that the complainants are guilty of forum-shopping inasmuch as they had previously filed the same complaint, docketed as Administrative Case No. 3581, which was eventually dismissed by then IBP CBD Comm. Victor Fernandez.

The respondent admitted that he notarized the "Extrajudicial Partition with Absolute Sale" but clarified that he did so as Notary Public of the Province of Cavite, with a notarial commission issued by the Regional Trial Court of Cavite, Branch 1, Trece Martires City. He explained that the designation of "Manila" as the place of execution of the said document was a mistake of his former legal secretary, who failed to correct the same through oversight.

Respondent Atty. Ibañez alleged that he notarized the "Extrajudicial Partition with Absolute Sale" in his capacity as the official Notary Public of Puerto Azul, and the same was actually prepared and typewritten by complainant Rosalina Angeles for a consideration of Php20,000.00 as evidenced by a photocopy of Commercial Bank & Trust Co. Cashier's Check dated 31 January 1979 on file with the Puerto Azul office, as well as an "Exclusive Authority" attached to the said document. The respondent also alleged that complainant Rosalina Angeles was at that time employed as a typist at Puerto Azul and that she enjoyed the trust and confidence of the Puerto Azul management.

The respondent stated that the land subject of the sale was surveyed for Mrs. Trinidad Diaz-Enriquez by the late Angel Salvacion, the official surveyor of Puerto Azul, and was submitted to the Bureau of Lands for verification and approval and was approved on 14 February 1985 as CCN No. 04-000038-D. Respondent Atty. Ibañez alleged that the property is presently in the actual possession of Puerto Azul, with former Sapang I Bgy. Captain Johnny Andra as tenant.

The respondent alleged that Puerto Azul's ownership of the property is anchored on the "Extrajudicial Partition with Absolute Sale," which is in turn the subject of a case, CA GR SP No. 2006-1668, which is presently pending in the Court of Appeals.

Respondent Atty. Ibañez alleged that a defect in the notarization of a document of sale does not invalidate the transaction, and he stated that his failure to require the presence of the parties to the "Extrajudicial Partition with Absolute Sale" is wholly justified because of the assurance of complainant Rosalina Angeles that the signatures appearing in the said document were indeed those of her co-heirs. The respondent also alleged that almost all the complainants submitted their residence certificates, the numbers of which were recorded in the acknowledgement portion of the document.

The respondent denied that he had committed any crime when he notarized the "Extrajudicial Partition with Absolute Sale" because the offenses in the Revised Penal Code are "*mala in se*" where the intention to commit the crime is required, which is lacking in his case. The respondent added that there is regularity in the performance of his duty as the official notary public of Puerto Azul.

The respondent pointed out that nearly twenty eight (28) years have lapsed without anyone questioning not only the sale of the said property, but Puerto Azul's long possession of the same as well. He alleged that the complainants are now denying the sale because they want to make it appear that they have land within or adjoining a quarry site which they have invaded and taken over. He reiterated that the defect in his notarization of the sale document notwithstanding, the sale remains valid.

By way of his defense, respondent Atty. Ibañez submitted the following documents:

1. Photocopy of a Supreme Court Resolution dated 31 July 2000 denying the complainants' motion for reconsideration in

Administrative Case No. 3581, entitled "*Rosalina Angeles, et al. vs. Atty. Amado Ibañez*"

2. Photocopy of IBP Board of Governors Resolution dated 27 June 1999, adopting and approving the Report and Recommendation of Comm. Victor Fernandez dismissing Administrative Case No. 3581, entitled "*Rosalina Angeles, et al. vs. Atty. Amado Ibañez*"

3. Photocopy of a Counter-Affidavit filed by Atty. Amado Ibañez in OMB-1-C 06-0368-C/OMB-L C 06-0272-C, entitled "*Mario O. Angeles vs. Sony Peji, et al.,*"

4. "Extrajudicial Partition with Absolute Sale" notarized by Atty. Amado Ibañez in the City of Manila on 18 February 1979, and entered in his Notarial Book as Doc. No. 735, p. 147 and Book No. II, Series of 1979, with attached "Exclusive Authority" executed by Maria Angeles, Flora Angeles, Lauro Angeles and Avelino Angeles in favor of Rosalina Angeles.[1]

The IBP's Report and Recommendation

In a Report[2] dated 21 January 2008, IBP Commissioner for Bar Discipline Rico A. Limpingco (Commissioner Limpingco) found that respondent notarized the "Extrajudicial Partition with Absolute Sale" in the absence of affiants and without a notarial commission. Thus:

> As stated earlier, the present administrative complaint may seem at first to be one for falsification, land grabbing, *etc.*, but a closer examination of the complainants' allegations coupled with their own verbal confirmation during the Mandatory Conference, shows that the complainants are actually accusing respondent Atty. Amado Ibañez of notarizing an "Extrajudicial Partition with Absolute Sale" in the City of Manila on 18 February 1979 (entered in his Notarial Book as Doc. No. 735, p. 147 and Book No. II, Series of 1979) without requiring the presence of the parties thereto, and further, for notarizing the said document even if he did not have a notarial commission at that time.

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[1] *Rollo*, pp. 181-186.

[2] *Id.* at 181-190.

The respondent contends that the complainants have previously filed the same administrative complaint against him, docketed as Administrative Case No. 3581, and that the same was eventually dismissed by the Supreme Court. He alleged that as in this prior complaint, the present case must likewise be dismissed for forum shopping.

It appears, however, that Administrative Case No. 3581 is entirely different and distinct from the present complaint. A reading of the photocopy of IBP Board of Governors Resolution dated 27 June 1999, adopting and approving the attached Report and Recommendation of Comm. Victor Fernandez dismissing Administrative Case No. 3581, entitled "*Rosalina Angeles, et al. vs. Atty. Amado Ibañez*" (as attached by the respondent himself in his Motion to Dismiss) shows that this earlier complaint pertains to herein respondent's alleged "land-grabbing" of two (2) parcels of land in Bgy. Zapang, Ternate, Cavite. As stated in the report authored by then Commissioner Victor Fernandez, the earlier administrative case relates to the sale of the said property to the Sps. Danilo Andra and Angela Olano, and its subsequent sale to the respondent, Atty. Amado Ibañez, who for his part later applied for, and was granted, free patent titles over the same. Branding the transaction as land-grabbing, the complainants filed an action in court to recover possession and annul the titles but the case was eventually dismissed by the Supreme Court for lack of merit. The complainants then filed the same complaint with the Office of the Ombudsman, the Dept. of Justice, the Bureau of Internal Revenue and the Supreme Court, which eventually referred the matter to the IBP. In his report, then-Commissioner Victor Fernandez declared that the complainants were engaged in forum-shopping, reasoning that unsuccessful in their effort to obtain the result they desire from the courts, they would attempt to refile their dismissed action under the guise of an administrative case.

The present administrative complaint may be in one way or another related to the alleged land-grabbing which was the subject of Administrative Case No. 3581, but it pertains to an altogether different matter. In the present complaint, respondent Atty. Ibañez is not being accused of land-grabbing or falsification, but rather, for misconduct in notarizing a document.

We would point out that respondent Atty. Amado Ibañez admitted that he did not require the presence of the parties to the document because he was assured as to the authenticity of their signatures.

We would also stress that the respondent *never* denied that he notarized the "Extrajudicial Partition with Absolute Sale," but claimed that he did so not in Manila as stated in document, but in Cavite where he claimed to be a commissioned notary public; he attributed the mistake to his legal secretary, and he insisted that the sale remained valid despite the defects in notarization.

That is not the point, however. The validity of the transaction covered by the "Extrajudicial Partition with Absolute Sale" is not at issue in this administrative case for that is a matter for the courts to adjudicate, if they have not already done so.

As it is, no less than the respondent himself categorically admitted that he notarized the "Extrajudicial Partition with Absolute Sale" in the absence of the parties thereto. To make matters worse, the certifications submitted by the complainants clearly indicate that respondent Atty. Amado Ibañez did *not* have any notarial commission whether for Manila or Cavite, in 18 February 1979 when he notarized the subject document. The respondent, for his part, has been completely unable to proffer any kind of proof of his claim that he had a commission as a notary public for and in the Province of Cavite in 1979, or of his submission of notarial reports and notarial register during the said period.

x x x x x x x x x

While the case of respondent Atty. Amado Ibañez is not perfectly identical to the facts and circumstances obtaining in these cases, his act of notarizing a document without the necessary commission is nonetheless clear and undeniable. Guided by the foregoing rulings of the Supreme Court *vis-a-vis* the facts in the present complaint, it is therefore respectfully recommended that respondent Atty. Amado Ibañez:

1. Be barred from being commissioned as a notary public for a period of two (2) years, and in the event that he is presently commissioned as a notary public, that his commission be immediately revoked and suspended for such period; and
2. Be suspended from the practice of law for a period of one (1) year.

Respectfully submitted.[3] (Emphasis added)

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[3] *Id*. at 186-190.

In a Resolution[4] dated 6 February 2008, the IBP Board of Governors adopted and approved the Report and Recommendation of Commissioner Limpingco. The Office of the Bar Confidant received the notice of the Resolution and the records of the case on 10 April 2008.

Respondent filed a supplemental position paper on 28 May 2008 before the IBP Board of Governors. In a Resolution dated 29 May 2008, the IBP Board of Governors referred respondent's submission to the Office of the Bar Confidant. Respondent attached photocopies of the following: respondent's Petition for Commission as Notary Public for and within the Province of Cavite filed before the said Court on 16 February 1978; respondent's commission as Notary Public for the province of Cavite for the term 1978 until 1979 issued by Executive Judge Pablo D. Suarez on 21 February 1978; and respondent's oath of office as notary public dated 21 February 1978.

The Ruling of the Court

We sustain the findings of the IBP and adopt its recommendations with modification. Respondent violated his oath as a lawyer and the Code of Professional Responsibility when he notarized the "Extrajudicial Partition with Absolute Sale" in the absence of the affiants.

Respondent Notarized the "Extrajudicial Partition with Absolute Sale" in the Absence of the Affiants

Respondent himself admits that he merely relied on the representation of Rosalina Angeles that the signatures appearing on the "Extrajudicial Partition with Absolute Sale" subject of the present complaint are those of her co-heirs.[5] Respondent claims that he reposed confidence upon Rosalina Angeles because she is his confidential secretary. Unfortunately for respondent, he cannot exculpate himself from the consequences of his recklessness and his failure to comply with the requirements of the law by relying on his confidential secretary.

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[4] *Id*. at 180.

[5] *Id*. at 211.

Time and again, we have reminded lawyers commissioned as notaries public that the affiants must personally appear before them. Section 1 of Public Act No. 2103, or the Notarial Law, provides:

> Sec. 1. (a) The acknowledgement shall be before a notary public or an officer duly authorized by law of the country to take acknowledgements of instruments or documents in the place where the act is done. The notary public or the officer taking the acknowledgement shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, acknowledged that the same is his free act and deed. The certificate shall be made under the official seal, if he is required by law to keep a seal, and if not, his certificate shall so state.

Section 2(b) of Rule IV of the Rules on Notarial Practice of 2004 reads:

> A person shall not perform a notarial act if the person involved as signatory to the instrument or document -
>
> (1) is not in the notary's presence personally at the time of the notarization; and
>
> (2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.

The physical presence of the affiants enables 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 and deed.[6]

Notarization of a private document converts such document into a public one, and renders it admissible in court without further proof of its authenticity. Courts, administrative agencies and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument. Notarization is not an empty routine; to the contrary, it engages public interest in a substantial degree and the protection of that interest requires

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[6] *Bernardo v. Atty. Ramos*, 433 Phil. 8, 16 (2002).

preventing those who are not qualified or authorized to act as notaries public from imposing upon the public and the courts and administrative offices generally.[7]

Under the facts and circumstances of the case, respondent's notarial commission should not only be suspended but respondent must also be suspended from the practice of law.

WHEREFORE, the Court finds respondent Atty. Amado O. Ibañez *GUILTY* of notarizing the "Extrajudicial Partition with Absolute Sale" in the absence of the affiants. Accordingly, the Court *SUSPENDS* him from the practice of law for one year, *REVOKES* his incumbent notarial commission, if any, and *PROHIBITS* him from being commissioned as a notary public for one year, effective immediately, with a stern warning that a repetition of the same or similar offense shall be dealt with more severely.

Let copies of this Decision be furnished to 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. (Chairperson), Corona, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

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[7] *Joson v. Baltazar*, A.C. No. 575, 14 February 1991, 194 SCRA 114, 119.

FIRST DIVISION

[G.R. No. 158539. January 15, 2009]

INDUSTRIAL & TRANSPORT EQUIPMENT, INC. and/or RAYMOND JARINA, *petitioners, vs.* **TOMAS TUGADE and CRESENCIO TUGADE,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; SUSPENSION, NOT DISMISSAL, PROPER IN CASE AT BAR.— Dismissal connotes a permanent severance or complete separation of the worker from the service on the initiative of the employer regardless of the reasons therefor. Based on the foregoing, it can hardly be said that respondents were dismissed from employment rather than merely temporarily suspended. Nowhere in the proceedings or pleadings filed before the Labor Arbiter or the NLRC did respondents dispute that they were merely suspended from March 30, 1998 to April 11, 1998. As shown by the contents of the memorandum issued to respondents, they were not dismissed but merely suspended from employment. x x x However, despite our President's direct and clear instruction you released the vehicle to Mr. Faustino Cabel without the necessary payment. This is a clear disobedience, incompetence and gross negligence of your duty as Supervisor. In view thereof, we regret to inform you that you are being suspended for ten (10) working days without pay effective March 30 to April 11, 1998. Repetition of the same offense will be dealt with accordingly in accordance with the labor law. (Annex "2" to Annex "F" to Annex "C" hereof) This piece of evidence clearly disproves the finding of the Court of Appeals that respondents were terminated from employment supposedly based on a memorandum prohibiting their entry into the company premises. A settled exception to the rule generally sustaining the factual determination of the Court of Appeals is when it disregards a vital evidence in reaching its finding. This obtains here.

2. ID.; LABOR RELATIONS; MANAGEMENT PREROGATIVE; RIGHT OF EMPLOYER TO DISCIPLINE ERRING EMPLOYEES.— In numerous cases, this Court has sustained the right of employers

to exercise their management prerogative to discipline erring employees, thus: However, petitioner loses sight off the fact that the right of an employer to regulate all aspects of employment is well settled. This right, aptly called management prerogative, gives employers the freedom to regulate, according to their discretion and best judgment, all aspects of employment, including work assignment, working methods, processes to be followed, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of workers. In general, management has the prerogative to discipline its employees and to impose appropriate penalties on erring workers pursuant to company rules and regulations.

3. ID.; TERMINATION OF EMPLOYMENT; DISMISSAL; BACKWAGES NOT PROPER IN THE ABSENCE OF ILLEGAL DISMISSAL. — Since there was no dismissal to speak of, there is no basis to award any backwages to respondents. Under Article 279 of the Labor Code, an employee is entitled to reinstatement and backwages only if he was illegally dismissed.

4. ID.; ID.; ABANDONMENT OF WORK; EMPLOYEE ENTITLED TO SEPARATION PAY AND DAMAGES FOR NON-COMPLIANCE OF NOTICE REQUIREMENTS AFTER ABANDONMENT. — The decision of the Labor Arbiter is, therefore, sustained, finding that respondents abandoned their positions by failing to return to work despite management directives to do so, and awarding separation pay of ₱56,680 each to respondents. Nevertheless, this Court agrees with the Court of Appeals that petitioners failed to follow the requirements of notices after respondents abandoned their positions. Respondents are therefore entitled to an additional award of ₱30,000 each in accordance with the doctrine in the *Agabon* case.

APPEARANCES OF COUNSEL

Ponce Enrile Reyes and Manalastas and *Romeo M. Rome* for petitioners.

Hector B. Centeno for respondents.

D E C I S I O N

AZCUNA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking to annul and set aside the Decision of the Court of Appeals dated March 14, 2003 which affirmed the decision of the National Labor Relations Commission (NLRC) finding petitioners liable for illegal dismissal and ordering the payment of backwages and separation pay to respondents, and the Resolution dated May 29, 2003 denying petitioners' motion for reconsideration.

As found by the Court of Appeals, the facts are as follows:

Petitioner is a corporation engaged in the business of motor vehicle repair. Private respondents, Tomas Tugade and his brother Cresencio Tugade, were hired on November 14, 1978 and on May 11, 1984, respectively, by petitioner corporation. Tomas was employed as a diesel mechanic, while Cresencio was the officer-in-charge at petitioner's shop on Visayas Avenue.

Private respondents' dismissal stemmed from an incident which took place on March 22, 1998, when Mr. Faustino Cabel, one of the regular customers of petitioner, arrived at the shop to have his vehicle repaired. On March 27, 1998, respondent Cresencio Tugade, after making the necessary verifications regarding the payment of the service made by Mr. Cabel, released the latter's vehicle.

On March 28, 1998, Felix P. Broqueza, petitioner's Personnel and Administration Manager issued a memorandum against Engr. Fernando Fabros and respondents Tomas and Cresencio Tugade, suspending them for ten (10) working days from March 30, 1998 to April 11, 1998 for disobedience, incompetence and gross negligence. The memorandum stated, among others, that the three employees released the vehicle to Mr. Cabel, despite the instructions made by the Company president not to release the same, unless and until he made full settlement of his obligation which remained unpaid since 1996.

After the lapse of ten (10) days suspension or on April 12, 1998, the Tugades allegedly did not report for work and were considered absent without leave. On April 13, 1998, another memorandum was

issued by Felix Broqueza directing him to make the necessary explanation why he failed to report for work.

On April 16, 1996, however, the Tugades filed a complaint for illegal dismissal with prayer for payment of separation pay in lieu of reinstatement, backwages and damages against petitioner.[1]

On September 28, 1998, Labor Arbiter Potenciano S. Cañezares rendered his Decision, dismissing the complaint for lack of merit but awarding separation pay of ₱56,680, the dispositive portion of which reads:

WHEREFORE, the above-captioned case is hereby DISMISSED for lack of merit.

However, We find it in conformity with labor justice, considering the long services of the complainants, to award them separation pay equivalent to one-half month pay for every year of service, which as computed by Patricia B. Pangilinan of the Commission's NLRC NCR Branch are the following:

Separation Pay (1/2)	
11/14/78-09/30/98	
₱218 x 13 x 20 yrs.	₱56,680.00

SO ORDERED.

Both parties appealed the decision of the Labor Arbiter to the NLRC which rendered a decision on July 30, 1999 that reversed the Labor Arbiter by ruling that respondents were illegally dismissed and ordering payment of backwages and separation pay. The motion for reconsideration filed by petitioners was also denied by the NLRC in a Resolution dated September 20, 1999.

The Court of Appeals, as stated, affirmed the NLRC decision.

On July 8, 2003, petitioners filed the present petition for review on *certiorari* with prayer for the issuance of a temporary

[1] See CA Decision, Annex "B" of Petition, pp. 44-45.

restraining order and/or writ of preliminary injunction assailing the Decision and Resolution of the Court of Appeals.

In a Resolution dated March 10, 2004, this Court issued a temporary restraining order enjoining respondents from enforcing the assailed Decision and Resolution of the Court of Appeals.

Petitioners contend that:

I

THE COURT OF APPEALS SERIOUSLY ERRED IN DECLARING THAT RESPONDENTS WERE ILLEGALLY DISMISSED FROM EMPLOYMENT.

II

THE COURT OF APPEALS SERIOUSLY ERRED IN ORDERING THE PAYMENT OF BACKWAGES AND SEPARATION PAY TO RESPONDENTS.

Dismissal connotes a permanent severance or complete separation of the worker from the service on the initiative of the employer regardless of the reasons therefor.[2] Based on the foregoing, it can hardly be said that respondents were dismissed from employment rather than merely temporarily suspended. Nowhere in the proceedings or pleadings filed before the Labor Arbiter or the NLRC did respondents dispute that they were merely suspended from March 30, 1998 to April 11, 1998. As shown by the contents of the memorandum issued to respondents, they were not dismissed but merely suspended from employment:

> xxx However, despite our President's direct and clear instruction you released the vehicle to Mr. Faustino Cabel without the necessary payment. This is a clear disobedience, incompetence and gross negligence of your duty as Supervisor.
>
> In view thereof, we regret to inform you that you are being suspended for ten (10) working days without pay effective March 30 to April 11, 1998.

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[2] *Jo Cinema Corporation v. Abellana*, G.R. No. 132837, June 28, 2001, 360 SCRA 142, 148.

Repetition of the same offense will be dealt with accordingly in accordance with the labor law. (Annex "2" to Annex "F" to Annex "C" hereof)

This piece of evidence clearly disproves the finding of the Court of Appeals that respondents were terminated from employment supposedly based on a memorandum prohibiting their entry into the company premises. A settled exception to the rule generally sustaining the factual determination of the Court of Appeals is when it disregards a vital evidence in reaching its finding. This obtains here.

There is also no dispute that petitioners instructed the respondents not to release the vehicle of Mr. Faustino Cabel unless and until the latter has completely settled his obligations with the company. However, despite the fact that Mr. Cabel failed to settle his obligations and in clear defiance of the petitioners' order, respondents released the car to Mr. Cabel. Petitioners were clearly acting within their rights in suspending respondents.

In numerous cases, this Court has sustained the right of employers to exercise their management prerogatives to discipline erring employees, thus:

> However, petitioner loses sight off the fact that the right of an employer to regulate all aspects of employment is well settled. This right, aptly called management prerogative, gives employers the freedom to regulate, according to their discretion and best judgment, all aspects of employment, including work assignment, working methods, processes to be followed, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of workers. In general, management has the prerogative to discipline its employees and to impose appropriate penalties on erring workers pursuant to company rules and regulations.[3]

Therefore, the complaint for illegal dismissal filed by respondents was premature, since even after the expiration of their suspension period, they refused, despite due notice, to

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[3] *Deles, Jr. v. National Labor Relations Commission*, G.R. No. 121348, March 9, 2000, 327 SCRA 540, 547-548.

report to work. In fact, in their Memorandum of Appeal, respondents admitted having received petitioners' return-to-work memorandum which, however, became futile because they hastily filed the complaint for illegal dismissal.

Since there was no dismissal to speak of, there is no basis to award any backwages to respondents. Under Article 279 of the Labor Code, an employee is entitled to reinstatement and backwages only if he was illegally dismissed.

The decision of the Labor Arbiter is, therefore, sustained, finding that respondents abandoned their positions by failing to return to work despite management directives to do so, and awarding separation pay of ₱56,680 each to respondents.

Nevertheless, this Court agrees with the Court of Appeals that petitioners failed to follow the requirements of notices after respondents abandoned their positions. Respondents are therefore entitled to an additional award of ₱30,000 each in accordance with the doctrine in the *Agabon*[4] case.

WHEREFORE, the Decision dated March 14, 2003 and the Resolution dated May 29, 2003 of the Court of Appeals are hereby *MODIFIED*. The decision of the National Labor Relations Commission dated July 30, 1999 is *REVERSED* and the Decision of the Labor Arbiter dated September 28, 1998 is *REINSTATED with MODIFICATION*, awarding separation pay to respondents in the amount of ₱56,680 each plus ₱30,000 each in accordance with the *Agabon* doctrine.

No costs.

SO ORDERED.

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

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[4] *Agabon v. National Labor Relations Commission*, G.R. No. 158693, November 17, 2004, 442 SCRA 573.

FIRST DIVISION

[G.R. No. 165547. January 15, 2009]

DEPARTMENT OF AGRARIAN REFORM, as represented by its Secretary RENE C. VILLA, *petitioner, vs.* **SARANGANI AGRICULTURE CO., INC., ACIL CORPORATION, NICASIO ALCANTARA and TOMAS ALCANTARA,** *respondents.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM LAW; DUE PROCESS REQUIREMENTS IN THE PROJECTED ACQUISITION OF LANDS FOR AGRARIAN REFORM; DISPOSITIVE PORTION OF DECISION AMENDED TO REMOVE DOUBTS THEREIN. — Respondents filed a motion for partial reconsideration of this Court's Decision of January 24, 2007, invoking this Court's ruling in *Roxas & Co., Inc. v. Court of Appeals* and asking that they be served separate Notices of Coverage and Notices of Acquisition *vis-à-vis* the subject lands, apart from and in addition to the Notice of Deferment that this Court's Decision deemed sufficient and amounting to said Notices. To remove any and all doubts as to compliance with due process requirements in the projected acquisition of subject lands for agrarian reform, the Court **RESOLVES** to amend the dispositive portion of its aforesaid Decision to read as follows: x x x

APPEARANCES OF COUNSEL

Delfin B. Samson for petitioner.
Quasha Ancheta Peña & Nolasco for respondents.

R E S O L U T I O N

AZCUNA, *J.*:

Respondents filed a motion for partial reconsideration of this Court's Decision of January 24, 2007, invoking this Court's

ruling in *Roxas & Co., Inc. v. Court of Appeals*[1] and asking that they be served separate Notices of Coverage and Notices of Acquisition *vis-à-vis* the subject lands, apart from and in addition to the Notice of Deferment that this Court's Decision deemed sufficient and amounting to said Notices. To remove any and all doubts as to compliance with due process requirements in the projected acquisition of subject lands for agrarian reform, the Court **RESOLVES** to amend the dispositive portion of its aforesaid Decision to read as follows:

WHEREFORE, the petition is *PARTLY GRANTED*. Subject to the compliance with all requirements in connection with the giving of the Notices of Coverage and Notices of Acquisition as provided by law, the denial by the Department of Agrarian Reform (DAR) of respondents' application for conversion with regard to 154.622 [or 154.1622] hectares, the deferment period of which has already expired, is *AFFIRMED*. The Decision and Resolution, dated July 19, 2004 and September 24, 2004, respectively, of the Court of Appeals in CA-G.R. SP No. 79899, are hereby *MODIFIED* accordingly. The case is *REMANDED* to the Department of Agrarian Reform for further proceedings to properly effect the acquisition of the subject lands for distribution to the intended beneficiaries.

No costs.

SO ORDERED.

IT IS SO ORDERED.

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

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[1] G.R. No. 127876, December 17, 1999, 321 SCRA 106.

FIRST DIVISION

[G.R. No. 170318. January 15, 2009]

JOSEPH REMENTIZO, *petitioner, vs.* **HEIRS OF PELAGIA *VDA. DE* MADARIETA,** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; EMANCIPATION PATENT; FRAUD IN ISSUANCE THEREOF MUST BE ESTABLISHED.— Fraud is a question of fact which must be alleged and proved. Fraud cannot be presumed and must be proven by clear and convincing evidence. In this case, there was no such evidence showing actual fraud on the part of Rementizo.

2. ID.; ID.; ID.; MISTAKE IN ISSUANCE THEREOF RENDERS REGISTRATION OF TITLE AN ERROR THAT CAN BE CORRECTED IN AN ACTION FOR RECONVEYANCE. — Madarieta's evidence at the most tends to show that the DAR committed a mistake in issuing EP No. A-028390-H in favor of Rementizo, who was admittedly a tenant of Luspo and not of Angel. While the entire Lot No. 153 was indeed covered by the Operation Land Transfer, Madarieta presented the Real Property Historical Ownership which was issued by the Office of the Provincial Assessor, stating that Lot Nos. 153-E and F were retained and declared in the name of Angel. Considering that there appears to be a mistake in the issuance of the subject emancipation patent, then the registration of the title to the subject property in Rementizo's name is likewise erroneous. In such a case, the law prescribes a specific remedy reserved to the rightful owner of the erroneously registered property, that is, an action for reconveyance. In an action for reconveyance, the decree of registration is respected as incontrovertible but what is sought instead is the transfer of the property wrongfully or erroneously registered in another's name to its rightful owner or to one with a better right. The person in whose name the land is registered holds it as a mere trustee.

3. ID.; PRESCRIPTION; ACTION FOR RECONVEYANCE OF REGISTERED PROPERTY IS TEN YEARS FROM DATE OF ISSUANCE OF CERTIFICATE OF TITLE; EXCEPTION. — The

right to seek reconveyance of registered property is not absolute because it is subject to **extinctive prescription**. In *Caro v. Court of Appeals*, the prescriptive period of an action for reconveyance was explained: [U]nder the present Civil Code, we find that just as an implied or constructive trust is an offspring of the law (Art. 1456, Civil Code), so is the corresponding obligation to reconvey the property and the title thereto in favor of the true owner. In this context, and *vis-à-vis* prescription, Article 1144 of the Civil Code is applicable. **Article 1144. The following actions must be brought within ten years from the time the right of action accrues:** (1) Upon a written contract; **(2) Upon an obligation created by law;** (3) Upon a judgment. The 10-year prescriptive period is reckoned from the date of issuance of the certificate of title. There is but one instance when prescription cannot be invoked in an action for reconveyance, that is, when the plaintiff or complainant (Madarieta or respondents in this case) is in possession of the land to be reconveyed, and the registered owner was never in possession of the disputed property. In such a case, the Court has allowed the action for reconveyance to prosper despite the lapse of more than 10 years from the issuance of the title to the land.

4. ID.; ID.; ID.; ID.; ID.; GENERAL RULE APPLIED IN CASE AT BAR.— In the instant case, it is the rule rather than the exception which should apply. An action for reconveyance based on an implied or constructive trust prescribes in 10 years from the issuance of the Torrens title over the property, which operates as a constructive notice to the whole world. The title over the subject land was registered in Rementizo's name in 1987 while Madarieta filed the complaint to recover the subject lot only in 1998. More than 11 years had lapsed before Madarieta instituted the action for annulment of EP No. A-028390-H, which in essence is an action for reconveyance. Therefore, the complaint was clearly barred by prescription. Madarieta's discovery in 1997, through a relocation survey, of the ownership of the subject land can not be considered as the reckoning point for the computation of the prescriptive period. EP No. A-028390-H, by virtue of which OCT No. EP-195 was registered, was issued in 1987, when Angel who is the declared landowner was still alive. In *GSIS v. Santiago*, *Samonte v. Court of Appeals*, and *Adille v. Court of Appeals*, this Court used as starting point the date of the actual discovery of the fraud, instead of the

date of the issuance of the certificate of title. In those cases, however, there were evident bad faith, misrepresentations, and fraudulent machinations employed by the registered owners in securing titles over the disputed lots. In this case, there is no evidence adduced by Madarieta or respondents that Rementizo employed fraud in the issuance of EP No. A-028390-H and OCT No. EP-195. Madarieta did not even present any evidence that her late husband objected to Rementizo's occupation over the subject land after the issuance of EP No. A-028390-H and OCT No. EP-195. The absence of fraud in the present case distinguishes it from the cases of *GSIS*, *Samonte*, and *Adille*. The reckoning point, therefore, for the computation of the 10-year prescriptive period is the date of the issuance of EP No. A-028390-H and registration of OCT No. EP-195 in the name of Rementizo.

APPEARANCES OF COUNSEL

Bureau of Agrarian Legal Assistance for petitioner.
Pedro R. Luspo for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 4 July 2005 Amended Decision[2] and 3 October 2005 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 65286. The Court of Appeals set aside its 26 May 2004 Decision[4] by declaring void Emancipation Patent

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

[2] *Rollo*, pp. 47-56. Penned by Associate Justice Hakim S. Abdulwahid with Associate Justices Eugenio S. Labitoria and Jose L. Sabio, Jr. concurring.

[3] *Id.* at 36. Penned by Associate Justice Hakim S. Abdulwahid with Associate Justices Eugenio S. Labitoria and Jose L. Sabio, Jr. concurring.

[4] *Id.* at 83-87.

(EP) No. A-028390-H issued to petitioner Joseph Rementizo (Rementizo).

The Facts

The instant controversy stemmed from a Complaint for Annulment and Cancellation of Original Certificate of Title (OCT) No. EP-195 and EP No. A-028390-H filed by the late Pelagia *Vda. De* Madarieta (Madarieta) against Rementizo before the Department of Agrarian Reform Adjudication Board (DARAB) in Camiguin.

In her complaint, Madarieta claimed that she is the owner of a parcel of land declared in the name of her late husband Angel Madarieta (Angel), Lot No. 153-F with an area of 436 square meters situated in Tabulig, Poblacion, Mambajao, Camiguin. Madarieta alleged that Rementizo was a tenant of Roque Luspo (Luspo) and, as such, Rementizo was issued OCT No. EP-185 and OCT No. 174. Madarieta also alleged that the Department of Agrarian Reform (DAR) mistakenly included Lot No. 153-F as part of Luspo's property covered by Operation Land Transfer. As a result, EP No. A-028390-H was issued to Rementizo. By virtue of such emancipation patent, OCT No. EP-195 was registered in Rementizo's name. Madarieta further claimed that she had been deprived of her property without due process since she had not received any notice or information from the DAR relating to the transfer of ownership over the subject land to Rementizo.

In his answer, Rementizo claimed that he had been in possession of the subject land in the concept of an owner since 1987 and even constructed a house on the subject lot after the registration of the title. Rementizo denied that Lot No. 153-F is owned by Angel. Instead, the subject land was allegedly adjoining Lot No. 153 which is owned by Luspo. Rementizo further claimed that assuming Madarieta's allegations were true, Angel did not object to his possession of the subject land during the latter's lifetime considering that the subject land is just a few meters away from the Madarietas' house. Further, Rementizo asserted that, in instituting the case, Madarieta was guilty of laches and that the action had already prescribed.

On 22 December 1998, the Provincial Adjudicator[5] issued an Order declaring OCT No. EP-195 and EP No. A-028390-H null and void, and directing Rementizo or anyone in possession to vacate the subject property. The dispositive portion of this Order reads:

> WHEREFORE, the Original Certificate of Title No. 195, EP No. A-028390-H issued in the name of the respondent is hereby ordered cancelled and/or revoked for being null and void *ab initio*, and the respondent or anybody in possession or occupation of subject land is hereby ordered to turn over subject land to the plaintiff and vacate the premises.
>
> SO ORDERED.[6]

Rementizo appealed the Provincial Adjudicator's order to the DARAB-Central Office. On 7 February 2001, the DARAB-Central Office reversed the Provincial Adjudicator's order by ruling in favor of Rementizo, thus:

> x x x After careful considerations, we find the appeal impressed with merit.
>
> The records show that the subject land was placed under Operation Land Transfer, pursuant to P.D. No. 27. It must be pointed out that the coverage was made during the lifetime of Angel Madarieta who is the alleged declared owner of the land in question. There is no showing that the late Angel objected to the coverage. Consequently, OCT No. 195 was generated in favor of Respondent-Appellant who took possession thereof and even built his house thereon. All this while there was no objection to said occupation. Considering that the occupation is manifest, that the landholding of said Angel is proximate thereto, there can be no question that the occupancy of Respondent was known to the late Angel Madarieta, under whose alleged rights over said landholding, herein Petitioner-Appellee anchors her claim. Angel Madarieta failed to object to Respondent-Appellant's possession and occupation of the subject premises for a period of eleven (11) years; said inaction of alleged declared owner of the subject land only shows that Respondent's occupancy thereof was legitimate, and that the late Angel had no rights or claims thereon.

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[5] Atty. Fidel H. Borres, Jr.

[6] DARAB Records, p. 25.

Under the circumstances, the surviving wife's claim now of rights over said land on alleged non-notice of DAR coverage is untenable.

Moreover, an action to invalidate a Certificate of Title on the ground of fraud prescribes after one (1) year from the entry of the decree of registration. (*Bishop vs. Court of Appeals*, 208 SCRA 637). In this case, Petitioners (sic) inaction for more than eleven (11) years is inexcusable (*Comero vs. Court of Appeals*, 247 SCRA 291).

WHEREFORE, premises considered, the appealed decision is SET ASIDE. A new judgment is rendered.

1. Upholding the validity of Original Certificate of Title (CTC) No. 195, E.P. No. A-028390-H issued in favor of Respondent-Appellant Joseph Rementizo;

2. Nullifying the Order dated February 15, 1999, and Ordering the Plaintiff and all persons acting in her behalf to respect and maintain Respondent Rementizo's peaceful occupation of the land in question; and

3. Reinstating Respondent-Appellant over the subject land, if already ejected.

SO ORDERED.[7]

Madarieta filed a petition for review with the Court of Appeals under Rule 43 of the Rules of Court assailing the decision of the DARAB. Madarieta raised the following errors in the Court of Appeals:

1. The DARAB erred in holding that she had already learned of Rementizo's occupation and possession of the subject property for the last 11 years prior to the filing of the case, when EP No. A-028390-H was registered and the OCT was issued in 1987; and

2. The DARAB erred in holding that she committed "negligence" for failing to file the instant case within the prescriptive period.

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[7] *Rollo*, pp. 140-143. Penned by Assistant Secretary Lorenzo R. Reyes with Undersecretary Federico A. Poblete, Assistant Secretaries Augusto P. Quijano, Edwin C. Sales, and Wilfredo M. Penaflor concurring. Secretary Horacio R. Morales, Jr. and Undersecretary Conrado S. Navarro did not take part.

Madarieta argued that she never knew that the subject land was part of her husband's estate. Madarieta averred that it was only on 21 November 1997, through a relocation survey, that she discovered that the land where Rementizo constructed his house was part of her husband's property. This discovery prompted Madarieta to file a complaint with the DARAB on 5 November 1998, or within 11 months and 14 days reckoned from such knowledge.

The Court of Appeals' Ruling

In its Decision of 26 May 2004, the Court of Appeals held that when Madarieta filed an action on 5 November 1998, for the annulment and cancellation of Rementizo's title, more than 10 years had passed after the issuance of Rementizo's title rendering the title incontrovertible.

Madarieta sought reconsideration of the 26 May 2004 Decision, which the Court of Appeals partially granted in its Amended Decision of 4 July 2005. The Court of Appeals set aside its earlier decision of 26 May 2004.

In its Amended Decision, the appellate court applied the exception to the rule that an action for reconveyance of a fraudulently registered real property prescribes in 10 years. Citing *Bustarga v. Navo II*,[8] the appellate court held that Lot No. 153-F was erroneously awarded to Rementizo. The entire Lot No. 153 was indeed covered by the Operation Land Transfer. Hence, Lot No. 153 was subdivided into: (1) Lot No. 153-B, declared in the name of Alberto Estanilla; (2) Lot No. 153-C, declared in the name of Eusebio Arce; (3) Lot No. 153-D, declared in the name of Feliciano Tadlip; and (4) Lot Nos. 153-E and F, retained and declared in the name of Angel. Nowhere in the records is it shown that Rementizo was a beneficiary or tenant of Lot No. 153-F.

The Court of Appeals granted the petition insofar as the cancellation of EP No. A-028390-H was concerned. The appellate court opined that Madarieta still has to file the appropriate action

[8] 214 Phil. 86 (1984). This case quoted this Court's ruling in *Vital v. Anore*, 90 Phil. 855 (1952).

in the Regional Trial Court, which has original jurisdiction in actions after original registration, to have the subject OCT reconveyed by virtue of the issuance of a void emancipation patent.

The Court of Appeals disposed of the instant case, as follows:

> WHEREFORE, the instant motion for reconsideration is PARTIALLY GRANTED. The Decision of this Court promulgated on May 26,2004 is SET ASIDE. In lieu thereof, the herein discussion is adopted and a new judgment is entered, as follows:
>
> > WHEREFORE, the petition for review is GRANTED. The decision of the DARAB dated February 7, 2001 is REVERSED and SET ASIDE. Further, Emancipation Patent (EP) No. A-028390-H, covering Lot No. 153-F, issued to the private respondent, is declared NULL and VOID.
>
> SO ORDERED.[9]

The Issue

The crucial issue in this case is whether the action for the annulment of the emancipation patent, which ultimately seeks the reconveyance of the title issued to Rementizo, has already prescribed.

The Ruling of the Court

The petition is meritorious.

In the present case, the DAR, which is presumed to have regularly performed its official function, awarded EP No. A-028390-H to Rementizo in 1987. Aside from this emancipation patent, two other emancipation patents and certificates of title (OCT Nos. 183 and 174) were issued to Rementizo covering two different parcels of land. This means that Rementizo was a qualified beneficiary of various parcels of agricultural land placed under the government's Operation Land Transfer.

The Court notes that Madarieta was claiming the subject property as the surviving spouse of Angel. While Madarieta

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[9] *Rollo*, p. 56.

presented evidence pointing out that Lot No. 153-F was historically owned and declared in the name of her deceased husband, Angel, there is nothing in the records showing that Angel during his lifetime opposed Rementizo's occupation and possession of the subject land. Madarieta and respondents started claiming the property after the death of Angel. Considering that the subject property was proximate to the Madarietas' residence, Angel could have questioned the legality of Rementizo's occupation over the land.

There is no dispute that Rementizo possessed the subject land in the concept of an owner since the issuance of EP No. A-028390-H and the registration of OCT No. EP-195 in 1987, when Angel was still alive. Rementizo even constructed a house on the subject property immediately thereafter. No objection was interposed by Angel against Rementizo's possession of the subject land. With Angel's unexplained silence or acquiescence, it may be concluded that Angel recognized the legitimacy of Rementizo's rights over the land. Otherwise, Angel could have challenged Rementizo's occupation of the subject property.

There is no allegation or proof that there was fraud in the issuance of EP No. A-028390-H and OCT No. EP-195. Madarieta did not adduce any evidence showing the existence of fraud in the issuance of the subject emancipation patent and title. In fact, Madarieta faulted the DAR in including the subject land in the Operation Land Transfer and termed DAR's alleged unlawful taking of the subject property as "landgrabbing." In her Memorandum before the DARAB, Madarieta stated that:

> Unfortunately for petitioner (Madarieta), sometime about 1988, DAR people of Camiguin Province identified respondent as tenant of Roque Luspo and Lourdes Luspo Neri and made him qualified beneficiary of the said landowner in the implementation of P.D. 27, and awarded to respondent not only the farm of the said landowner but also the subject land exclusively belonging to petitioner x x x.
>
> That by virtue thereof, said respondent was issued OCT No. EP 195.

x x x x x x x x x

Respondent cannot be considered possessor in good faith. He has no hand in the acquisition of the property. **He was merely a recipient being a qualified beneficiary.** It was the government thru the instrumentality of a law P.D. 27 that acquired the land thru the Ministry of Agrarian Reform.[10] (Emphasis supplied)

Thus, Madarieta miserably failed to show that Rementizo employed fraud in the awarding of EP No. A-028390-H in his favor. Fraud is a question of fact which must be alleged and proved. Fraud cannot be presumed and must be proven by clear and convincing evidence.[11] In this case, there was no such evidence showing actual fraud on the part of Rementizo.

Madarieta's evidence at the most tends to show that the DAR committed a mistake in issuing EP No. A-028390-H in favor of Rementizo, who was admittedly a tenant of Luspo and not of Angel. While the entire Lot No. 153 was indeed covered by the Operation Land Transfer, Madarieta presented the Real Property Historical Ownership which was issued by the Office of the Provincial Assessor,[12] stating that Lot Nos. 153-E and F were retained and declared in the name of Angel.

Considering that there appears to be a mistake in the issuance of the subject emancipation patent, then the registration of the title to the subject property in Rementizo's name is likewise erroneous. In such a case, the law prescribes a specific remedy reserved to the rightful owner of the erroneously registered property, that is, an action for reconveyance.

In an action for reconveyance, the decree of registration is respected as incontrovertible but what is sought instead is the transfer of the property wrongfully or erroneously registered in another's name to its rightful owner or to one with a better

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[10] DARAB Records, pp. 81, 83.

[11] *Quitoriano v. Department of Agrarian Reform Adjudication Board*, G.R. No. 171184, 4 March 2008, 547 SCRA 617.

[12] Annex C of the Complaint, DARAB Records.

right. The person in whose name the land is registered holds it as a mere trustee.[13]

Nevertheless, the right to seek reconveyance of registered property is not absolute because it is subject to **extinctive prescription**.[14] In *Caro v. Court of Appeals*,[15] the prescriptive period of an action for reconveyance was explained:

> [U]nder the present Civil Code, we find that just as an implied or constructive trust is an offspring of the law (Art. 1456, Civil Code), so is the corresponding obligation to reconvey the property and the title thereto in favor of the true owner. In this context, and *vis-à-vis* prescription, Article 1144 of the Civil Code is applicable.
>
> **Article 1144. The following actions must be brought within ten years from the time the right of action accrues:**
>
> (1) Upon a written contract;
>
> **(2) Upon an obligation created by law;**
>
> (3) Upon a judgment. (Emphasis supplied)

The 10-year prescriptive period is reckoned from the date of issuance of the certificate of title.

There is but one instance when prescription cannot be invoked in an action for reconveyance, that is, when the plaintiff or complainant (Madarieta or respondents in this case) is in possession of the land to be reconveyed,[16] and the registered owner was never in possession of the disputed property. In such a case, the Court has allowed the action for reconveyance to prosper

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[13] *Pasiño v. Monterroyo*, G.R. No. 159494, 31 July 2008, citing *Mendizabel v. Apao*, G.R. No. 143185, 20 February 2006, 482 SCRA 587.

[14] Article 1106 of the Civil Code expressly provides that by prescription, one acquires ownership and other real rights through the lapse of time in the manner and under the conditions laid down bylaw. **In the same way, rights and actions are lost by prescription.** (Emphasis supplied)

[15] G.R. No. 76148, 20 December 1989, 180 SCRA 401, 406-407, citing *Amerol v. Bagumbaran*, No. L-33261, 30 September 1987, 154 SCRA 396.

[16] *Heirs of Pomposa Saludares v. Court of Appeals*, 464 Phil. 958, 966-968 (2004).

despite the lapse of more than 10 years from the issuance of the title to the land.[17]

In the instant case, however, it is the rule rather than the exception which should apply.

To repeat, an action for reconveyance based on an implied or constructive trust prescribes in 10 years from the issuance of the Torrens title over the property, which operates as a constructive notice to the whole world.[18] The title over the subject land was registered in Rementizo's name in 1987 while Madarieta filed the complaint to recover the subject lot only in 1998. More than 11 years had lapsed before Madarieta instituted the action for annulment of EP No. A-028390-H, which in essence is an action for reconveyance. Therefore, the complaint was clearly barred by prescription.

Madarieta's discovery in 1997, through a relocation survey, of the ownership of the subject land can not be considered as the reckoning point for the computation of the prescriptive period. EP No. A-028390-H, by virtue of which OCT No. EP-195 was registered, was issued in 1987, when Angel who is the declared landowner was still alive.

In *GSIS v. Santiago*,[19] *Samonte v. Court of Appeals*,[20] and *Adille v. Court of Appeals*,[21] this Court used as starting point the date of the actual discovery of the fraud, instead of the date of the issuance of the certificate of title. In those cases, however, there were evident bad faith, misrepresentations, and

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[17] *Id.*, citing *Rodriguez v. Director of Lands*, 31 Phil. 272 (1915); *Zarate v. Director of Lands*, 34 Phil. 416 (1916); *Amerol v. Bagumbaran*, No. L-33261, 30 September 1987, 154 SCRA 396; *Caro v. Court of Appeals*, G.R. No. 76148, 20 December 1989, 180 SCRA 401.

[18] *Vagilidad v. Vagilidad, Jr.*, G.R. No. 161136, 16 November 2006, 507 SCRA 94; *Rodrigo v. Ancilla*, G.R. No. 139897, 26 June 2006, 492 SCRA 514.

[19] 460 Phil. 763 (2003).

[20] 413 Phil. 487 (2001).

[21] 241 Phil. 487 (1988).

fraudulent machinations employed by the registered owners in securing titles over the disputed lots.

In this case, there is no evidence adduced by Madarieta or respondents that Rementizo employed fraud in the issuance of EP No. A-028390-H and OCT No. EP-195. Madarieta did not even present any evidence that her late husband objected to Rementizo's occupation over the subject land after the issuance of EP No. A-028390-H and OCT No. EP-195. The absence of fraud in the present case distinguishes it from the cases of *GSIS,*[22] *Samonte*,[23] and *Adille*.[24] The reckoning point, therefore, for the computation of the 10-year prescriptive period is the date of the issuance of EP No. A-028390-H and registration of OCT No. EP-195 in the name of Rementizo.

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the 4 July 2005 Amended Decision and 3 October 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 65286. We *DISMISS* the Complaint for Annulment and Cancellation of Original Certificate of Title No. EP-195 and Emancipation Patent No. A-028390-H on the ground of prescription. Costs against respondents.

SO ORDERED.

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

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[22] *Supra*.

[23] *Supra*.

[24] *Supra*.

EN BANC

[A.M. No. 2007-15-SC. January 19, 2009]

RE: EMPLOYEES INCURRING HABITUAL TARDINESS IN THE 1ST SEMESTER OF 2007: MS. MARIVIC C. AZURIN, ATTY. WINSTON R. BANIEL, MS. MARIA VICTORIA S. BUZON, MR. CRISANTO C. CARILLO, JR., MR. ALLAN MICHAEL L. CHUA, MR. MANOLITO V. DE GUZMAN, MR. RODERICK I. DUERO, MR. RODEL A. GOMBIO, MR. EDUARDO M. IGLESIAS, ATTY. TERESITA ASUNCION M. LACANDULA-RODRIGUEZ, MR. RONALD C. NAPOLITANO, MS. MARIA TERESA P. OLIPAS, MS. DIGNA C. PALAFOX, MS. SANDRA O. PENDON, MR. JOVITO V. SANCHEZ and MR. ROLANDO N. YACAT.

SYLLABUS

1. POLITICAL LAW; CSC MEMORANDUM CIRCULAR NO. 4, SERIES OF 1991; HABITUAL TARDINESS. — Under CSC Memorandum Circular No. 4, Series of 1991, a public employee shall be considered habitually tardy if he incurs tardiness, regardless of the number of minutes, ten (10) times a month for at least two (2) months in a semester or at least two (2) consecutive months during the year.

2. ID.; ADMINISTRATIVE LAW; COURT EMPLOYEES; PROPER DECORUM; REQUIRED DEMEANOR; STRICT OBSERVANCE OF OFFICIAL TIME; EMPHASIZED. — By being habitually tardy, these employees have fallen short of the stringent standard of conduct demanded from everyone connected with the administration of justice. By reason of the nature and functions of their office, officials and employees of the Judiciary must be role models in the faithful observance of the constitutional canon that public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives. Inherent in this mandate is the observance of prescribed office hours

and the efficient use of every moment thereof for public service, if only to recompense the Government, and ultimately, the people who shoulder the cost of maintaining the Judiciary. Thus, to inspire public respect for the justice system, court officials and employees are at all times behooved to strictly observe official time. As punctuality is a virtue, absenteeism and tardiness are impermissible.

3. ID.; ID.; ID.; ID.; ID.; ID.; NON-COMPLIANCE THEREWITH NOT EXCUSED BY MORAL OBLIGATIONS, HOUSEHOLD CHORES, TRAFFIC, HEALTH CONDITIONS, DOMESTIC AND FINANCIAL CONCERNS. — The employees involved in the administrative matter before us, however, beg our indulgence and consideration, giving various explanations for their habitual tardiness, *i.e.* domestic problems and responsibilities, health reasons, traffic and road repairs, overtime work, and unfamiliarity with the rules on attendance in government. As correctly found by Atty. Candelaria, none of the justifications provided by the employees for their habitual tardiness merit our consideration. We have ruled that moral obligations, performance of household chores, traffic problems, health conditions, and domestic and financial concerns are not sufficient reasons to excuse habitual tardiness or to exempt the guilty employee from the imposition of the penalty, although these may be considered to mitigate their liability.

4. ID.; CSC MEMORANDUM CIRCULAR NO. 19, SERIES OF 1999; HABITUAL TARDINESS; PENALTY; CASE AT BAR. — Under Section 52(c)(4), Rule VI of CSC Memorandum Circular No. 19, Series of 1999, habitual tardiness shall be penalized as follows: First Offense – Reprimand; Second Offense – Suspension for 1-30 days; Third Offense – Dismissal from the service. In the case of Ms. Olipas, while she should already be dismissed from the service, as this is the third time she is found guilty of habitual tardiness, we believe, for humanitarian considerations, as well as taking into account her (30) long years of service in this Court, that a suspension of only fifteen (15) days is in order. Ms. Olipas, however, is finally warned that this Court will not hesitate to impose the extreme penalty of dismissal in case of a repetition of the same or similar act in the future. Ms. Azurin, Atty. Baniel, Mr. Chua, and Mr. Sanchez are suspended from the service for five (5) days without pay since they have committed the offense of habitual tardiness

for the second time. As for Ms. Buzon, Mr. Carillo, Mr. De Guzman, Mr. Duero, Mr. Gombio, Mr. Iglesias, Atty. Lacandula-Rodriguez, Mr. Napolitano, Ms. Palafox, Ms. Pendon, and Mr. Yacat, found guilty of habitual tardiness for the first time the proper penalty for the first offense of habitual tardiness is reprimand.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Pending our action is the Memorandum[1] dated 16 November 2007 of Atty. Eden T. Candelaria (Atty. Candelaria), Deputy Clerk of Court and Chief Administrative Officer of this Court, recommending the imposition of administrative penalties on 16 employees who committed habitual tardiness during the first semester of 2007, in accordance with Civil Service Commission (CSC) Memorandum Circular No. 4, Series of 1991 (Policy on Absenteeism and Tardiness) and Memorandum Circular No. 19, Series of 1999 (Revised Uniform Rules on Administrative Cases in Civil Service).

The present administrative matter stemmed from the referral by the Leave Division to the Complaints and Investigation Division of the Office of Administrative Services (OAS) of the list of employees who incurred tardiness 10 times or more in a month for the first semester (January to June) of 2007, for appropriate action. Atty. Candelaria then required the employees in said list to explain within five days from notice why no disciplinary action should be taken against them. The names of the concerned employees and their respective explanations are reproduced below:

A. Employees with previous penalties of habitual tardiness:

1. Ms. Maria Teresa P. Olipas (Ms. Olipas), Court Stenographer III, Court Management Office.

In the First Semester of 2007, Ms. Olipas incurred habitual tardiness, to wit:

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[1] *Rollo*, pp. 1-13.

MONTH	TIMES TARDY
January	10
April	11

In her Comment[2] dated 29 August 2007, Ms. Olipas explained that she is a single parent with no one to assist her in taking care of her two daughters' needs. There are times when she suffers a severe pain on her left foot which gives her a hard time in getting up from bed. She admitted, however, she incurred tardiness but without any intention to violate the said CSC Memorandum Circular. She now begs for the kind indulgence and compassion of the Court for her predicament.

The Court *En Banc* in a Resolution dated 4 May 2001 in Re: Habitual Tardiness for the Year 1999 suspended Ms. Olipas for one month. She was again suspended for five days pursuant to the Court *En Banc* Resolution dated 16 March 2004 Re: Habitual Tardiness for the 1st and 2nd Semesters of 2003 for her second incursion of the same offense.

2. Ms. Marivic C. Azurin (Ms. Azurin), Clerk IV, Leave Division-OCA.

In the first semester of 2007, Ms. Azurin incurred habitual tardiness, to wit:

MONTH	TIMES TARDY
January	13
February	10
March	10

Ms. Azurin did not submit her explanation despite receipt of the Memorandum of OCA on 24 August 2007 and First Tracer on 26 September 2007 by the Leave Section of OCA, requiring her to explain in writing why no disciplinary action should be taken against her for her habitual tardiness. Thus, she is deemed to have waived her right to comment.

In a Resolution dated 23 October 2001, the Court *En Banc* in Re: Habitual Tardiness for the First Semester of 2001, Ms. Azurin was sternly warned.

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[2] *Id.* at 14.

3. Atty. Winston Baniel (Atty. Baniel), Court Attorney VI, Office of the Clerk of Court-*En Banc*.

Atty. Baniel incurred habitual tardiness in the first semester of 2007, to wit:

MONTH	TIMES TARDY
January	14
May	13
June	12

In his Comment[3] dated 1 October 2007, Atty. Baniel apologized for the late compliance with the OCA's directive to explain. He stated that through oversight, he was not able to comply in due time because all the while he thought that he had already complied but as he checked his files none has been filed.

As to the tardiness he incurred in the 1st semester of 2007 he explained that it was a balance of priorities between domestic troubles and family problems as against the rules being required of civil servants. He admitted that to decide between priorities, the latter should prevail. He now asks for temperance and promises to persevere and sacrifice more as he approaches his eighteenth year of service to the Court.

In a Resolution dated 13 September 2006, the Court *En Banc* in Re: Habitual Tardiness for the 2nd Semester 2005, sternly warned Atty. Baniel.

4. Mr. Allan Michael L. Chua (Mr. Chua), Clerk IV, Office of the Court Administrator.

In the first semester of 2007, Mr. Chua incurred tardiness, to wit:

MONTH	TIMES TARDY
January	13
February	11

In his Comment[4] dated 14 September, Mr. Chua admitted his infraction. He said that such incursion was neither intentional nor

[3] *Id.* at 15.

[4] *Id.* at 17.

ingrained with bad faith. Having been employed only in July 2006 as co-terminus, he is still at a loss on the procedure on attendance in the government. That due to some domestic problems that he dealt with during said period, his performance at work was somehow affected. Mr. Chua now begs for the kind consideration on his case so as not to prejudice his chance of being employed elsewhere in the future when his appointment expires.

In a Resolution dated 5 June 2007, the Court *En Banc* in Re: Employees Incurring Habitual Tardiness in the Second Semester of 2006, Mr. Chua was sternly warned.

5. Jovito V. Sanchez (Mr. Sanchez), Information System Analyst III, Management Information Systems Office.

Mr. Sanchez incurred habitual tardiness in the First Semester of 2007, to wit:

MONTH	TIMES TARDY
January	10
March	11

In his Comment[5] dated 5 September 2007, he explained that it has been a year now since he was separated with his wife. On 10 December 2006, his estranged wife left for Singapore to work. Their three children, two of whom are already attending school, are now living with him since she left and they are all being taken care of by himself alone. He is considering the idea of getting a household help but finds it difficult to get one. He now begs that any disciplinary action that may be imposed on him as a result of his being habitually tardy be accorded with utmost compassion for humanitarian reasons.

Mr. Sanchez was sternly warned pursuant to the Court *En Banc* Resolution dated 17 April 2001, Re: Habitual Tardiness for the 1st Semester of 2000.

B. Employees incurring habitual tardiness for the first time:

1. Ms. Maria Victoria S. Buzon (Ms. Buzon), Management & Audit Analyst II, Court Management Office-OCA.

Ms. Buzon has been reported to be habitually tardy in the first semester of 2007, to wit:

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[5] *Id.* at 29.

MONTH	TIMES TARDY
February	10
April	10

In her Comment[6] dated 27 August 2007, Ms. Buzon explained that for having served the Judiciary for the past thirty (30) years as a public servant, she is well aware of the Civil Service Rules and Regulations regarding tardiness, absenteeism and the like. Having acquired hypertension last year, she finds it difficult to adjust and still is unable to handle the situations up to the earlier part of this year. She added that she is not used to uncomfortable feelings brought about by attacks of hypertension which caused her to slow down especially in the morning. This predicament, she said, was compounded by the unprecedented street diggings that caused so much traffic along the different routes used by public utility vehicles which she takes to reach the office.

Nonetheless, she admitted that she failed to monitor the number of times she came late. She promised, however, that this would not happen again especially now that she has been able to cope with her present health condition and the routes she takes daily to reach the office.

2. Mr. Crisanto C. Carrillo, Jr. (Mr. Carrillo), Judicial Officer III, MCLEO.

Mr. Carrillo, Jr. has incurred habitual tardiness in the first semester of 2007, to wit:

MONTH	TIMES TARDY
January	12
May	10

In his Comment[7] dated 4 September 2007, he admitted the report for incurring tardiness qualified as habitual on the above-mentioned months. Nonetheless, he seeks favorable consideration due to the personal and health problems he was dealing with at that time compounded by the demand in school where he enrolled for his post

[6] *Id.* at 34.

[7] *Id.* at 35.

graduate studies. He promised to be more circumspect in his actions despite this predicament.

3. Mr. Manolito V. De Guzman (Mr. De Guzman), Data Entry Machine Operator IV, Office of ACA Antonio Dujua, OCA.

Mr. De Guzman has been reported to be habitually tardy during the first semester of 2007, to wit:

MONTH	TIMES TARDY
January	11
May	10

He explained in his Comment[8] dated 29 August 2007 that during the months he was habitually tardy, his wife was sick and would not be able to take of their seven children, six of whom are attending their classes. That during those times, he was the one who took care of all the children's needs as he could not afford to get a household help. He is hoping for the kind consideration on his predicament.

4. Mr. Roderick I. Duero (Mr. Duero), Utility Worker II, Office of the Chief Attorney.

Mr. Roderick I. Duero incurred habitual tardiness in the first semester of 2007, to wit:

MONTH	TIMES TARDY
January	11
February	10
May	10
June	11

In his explanation[9] dated 29 August 2007, Mr. Duero did not dispute the record of his tardiness. As a family man who is desolated by his better-half, he said that he has to attend to all the needs of his four kids, three of whom are attending schools. Nonetheless, he pleads that any disciplinary action that may be imposed on him for the said infraction be accorded with leniency for humanitarian reasons.

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[8] *Id.* at 36.

[9] *Id.* at 37.

5. Mr. Rodel A. Gombio (Mr. Gombio), Human Resource Management Officer II, Office of Administrative Services.

Mr. Gombio incurred habitual tardiness in the first semester of 2007, to wit:

MONTH	TIMES TARDY
May	10
June	10

In his Comment[10] dated 28 August 2007, Mr. Gombio, at the outset, expressed his apologies for being tardy during the said months. He explained that his tardiness was incurred due to some circumstances attendant in his family life. That during those times, his wife was set to travel to Australia for one year and had a short period to prepare for her trip. Most of the time, he had to do the errands as his wife could not afford to be absent nor late for work.

He added further that two days before his wife left for Australia, his brother came home from Dubai and stayed there for his month-long vacation. With his wife away, he had to run the household by himself and attend to the needs of their children. Despite all of these, he said that he tried his best to wake up early and catch the Court of Appeals shuttle bus at 6:00 a.m. At times that he missed the shuttle service, he is sure that on his way to the office he will be caught in terrible traffic that hindered him from coming to work on time.

6. Mr. Eduardo M. Iglesias (Mr. Iglesias), SC Chief Judicial Staff Officer, Personnel Division-OCA

Mr. Iglesias has been reported to be habitually tardy in the first semester of 2007, to wit:

MONTH	TIMES TARDY
April	11
May	10

Mr. Iglesias submitted his Comment[11] dated 5 September 2007. In his comment, he admitted his tardiness pursuant to CSC Memorandum Circular No. 4, s. 1991. He said, however, that he was

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

[11] *Id.* at 40.

not fully aware of his being tardy ten times or more for two consecutive months. He humbly expresses his apology and assured not to commit the same infraction in the future.

7. Atty. Teresita Asuncion M. Lacandula-Rodriguez (Atty. Lacandula-Rodriguez), Court Attorney VI, Office of Justice Renato C. Corona.

Atty. Lacandula-Rodriguez has been reported to be habitually tardy in the first semester of 2007, to wit:

MONTH	TIMES TARDY
January	10
February	16

In her Comment[12] dated 28 August 2007, Atty. Rodriguez explained that she lives in Quezon City and during the period she was tardy, repairs to the Ayala Bridge (where she passes) were made which made her travel time longer than usual. In addition, she cites the circumstances in her family as her reason for her coming to the office late. She nonetheless resolves to rearrange her schedule so she can henceforth arrive on time. She asks the kind consideration on this matter and offers her sincere apology to the Court for the inconvenience she may have caused it.

8. Mr. Ronald C. Napolitano (Mr. Napolitano), Information Officer IV, Public Information Office.

Mr. Ronald C. Napolitano incurred habitual tardiness in the first semester of 2007, to wit:

MONTH	TIMES TARDY
January	11
February	13
March	16
June	12

In his letter[13] dated 28 September 2007, Mr. Napolitano explained that being the Public Information Office's Primary Artist and Layout

[12] *Id.* at 41.

[13] *Id.* at 42.

Editor, he rendered overtime, on a regular basis, just to complete his tasks within the deadlines. Because of this, he has difficulty waking up early in the morning. He said that he already requested for a change in his official time. He begs for kind consideration and pledges to endeavor not to repeat the same infraction in the future.

9. Ms. Digna C. Palafox (Ms. Palafox), Clerk IV, Court Management Office.

Ms. Palafox incurred habitual tardiness in the first semester of 2007, to wit:

MONTH	TIMES TARDY
April	10
May	10

In her letter[14] dated 31 August 2007, she admitted having incurred her tardiness for a considerable number of days but without deliberate disregard of the Civil Service Rules. She explained that her tardiness for the above-mentioned months were caused by her severe symptoms of menopause which frequently wake her all night long. Being forty-nine (49) years of age, she finds difficulty to get up in the morning after a very troublesome sleep. Despite this predicament, she has been trying her best to adjust her schedule and has been successful in not incurring tardiness ten (10) times a month prior to April and May 2007, and the months thereafter.

10. Ms. Sandra O. Pendon (Ms. Pendon), Clerk IV, Office of Court Administrator Jose P. Perez.

Ms. Pendon was reported to be habitually tardy in the first semester of 2007, to wit:

MONTH	TIMES TARDY
January	10
March	10

In her Comment[15] dated 28 August 2007, Ms. Pendon explained that during the months she was habitually tardy, she has no household help to take care of all the needs of her two nieces who were left by

[14] *Id.* at 44.

[15] *Id.* at 46.

their mother to her charge. She prays for kind consideration on the matter.

11. Mr. Rolando N. Yacat (Mr. Yacat), Clerk III, Office of Administrative Services-OCA.

Mr. Yacat incurred habitual tardiness in the first semester of 2007, to wit:

MONTH	TIMES TARDY
February	11
June	10

Mr. Yacat explained in his letter[16] dated 28 August 2007 that he and his family are living in Kawit, Cavite; that during the month of February, part of the road along Island Cove, where they usually take as their route, is undergoing renovation and because of the volume of the vehicles going to Manila, heavy traffic builds up during the morning. This causes him to arrive late in the office. He added that he already remedied his predicament by changing his work schedule from 8:00 a.m. to 8:30 a.m. He prays for consideration and understanding on the matter.

In her Memorandum, Atty. Candelaria recommended that:

a. Ms. MARIA TERESA P. OLIPAS, for having been habitually tardy for the third time, be SUSPENDED for fifteen (15) days, for humanitarian consideration, with a final warning that a repetition of the same shall be dealt with more severely;

b. The following employees for having been found guilty of habitual tardiness for the second time, be SEVERELY REPRIMANDED for humanitarian reason, with a FINAL WARNING that a repetition of the same shall be dealt with more severely:

   1. Ms. MARIVIC C. AZURIN
   2. ATTY. WINSTON R. BANIEL
   3. MR. ALLAN MICHAEL L. CHUA
   4. MR. JOVITO V. SANCHEZ

c. The following employees be STERNLY WARNED for their first offense of habitual tardiness with the same warning that a

[16] *Id.* at 47.

repetition of the same infraction in the future shall be dealt with more severely:

1. MS. MARIA VICTORIA S. BUZON
2. MR. CRISANTO C. CARILLO, JR.
3. MR. MANOLITO V. DE GUZMAN
4. MR. RODERICK L. DUERO
5. MR. RODEL GOMBIO
6. MR. EDUARDO IGLESIAS
7. ATTY. TERESITA ASUNCION M. LACANDULA-RODRIGUEZ
8. MR. RONALD C. NAPOLITANO
9. MS. DIGNA C. PALAFOX
10. MS. SANDRA O. PENDON
11. MR. ROLANDO N. YACAT

On 27 November 2007, we required[17] the parties to manifest within 10 days from notice if they were willing to submit the matter for resolution based on the pleadings filed. Only Ms. Olipas,[18] Mr. De Guzman,[19] Ms. Pendon,[20] Atty. Lacandula-Rodriguez,[21] and Mr. Sanchez[22] submitted their manifestations. As for the others who failed to file their manifestations within the given period, despite due notice, we deemed as waived[23] their submission of supplemental comment/pleadings. Resultantly, the administrative matter was deemed submitted for decision based on the pleadings filed.

We agree in the findings of Atty. Candelaria in her Memorandum. We, however, make some modifications on the penalties.

Under CSC Memorandum Circular No. 4, Series of 1991, a public employee shall be considered habitually tardy if he incurs

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17 *Id.* at 72.

18 *Id.* at 77.

19 *Id.* at 67.

20 *Id.* at 70.

21 *Id.* at 71.

22 *Id.* at 75.

23 *Id.* at 65.

tardiness, regardless of the number of minutes, ten (10) times a month for at least two (2) months in a semester or at least two (2) consecutive months during the year.

There is no question that the employees herein were habitually tardy, as defined in CSC Memorandum Circular No. 4, Series of 1991, for which they must be penalized for such administrative offense which seriously compromises efficiency and hampers public service.

By being habitually tardy, these employees have fallen short of the stringent standard of conduct demanded from everyone connected with the administration of justice. By reason of the nature and functions of their office, officials and employees of the Judiciary must be role models in the faithful observance of the constitutional canon that public office is a public trust.[24] Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.[25] Inherent in this mandate is the observance of prescribed office hours and the efficient use of every moment thereof for public service, if only to recompense the Government, and ultimately, the people who shoulder the cost of maintaining the Judiciary.[26] Thus, to inspire public respect for the justice system, court officials and employees are at all times behooved to strictly observe official time. As punctuality is a virtue, absenteeism and tardiness are impermissible.[27]

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[24] Section 1, Article XI, 1987 Constitution, cited in A.M. No. 00-06-09-SC, *Re: Imposition of Corresponding Penalties for Habitual Tardiness Committed During the First and Second Semesters of 2003 by the following Employees of this Court: x x x.*

[25] *Belvis v. Fernandez,* 326 Phil. 467, 471 (1996).

[26] Administrative Circular No. 2-99, "Strict Observance of Working Hours and Disciplinary Action for Absenteeism and Tardiness," dated January 15, 1999.

[27] Administrative Circular No. 1-99, "Enhancing the Dignity of Courts as Temples of Justice and Promoting Respect for their Officials and Employees," dated 15 January 1999.

Likewise, in *Basco v. Gregorio* this Court held:

> The exacting standards of ethics and morality imposed upon court employees and judges are reflective of the premium placed on the image of the court of justice, and that image is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat. It thus becomes the imperative and sacred duty of everyone charged with the dispensation of justice, from the judge to the lowliest clerk, to maintain the court's good name and standing as true temples of justice. Circumscribed with the heavy burden of responsibility, their conduct at all times must not only be characterized with propriety and decorum, but above all else, must be above suspicion. Indeed, every employee of the Judiciary should be an example of integrity, probity, uprightness, honesty and diligence. x x x.[28]

The employees involved in the administrative matter before us, however, beg our indulgence and consideration, giving various explanations for their habitual tardiness, *i.e.*, domestic problems and responsibilities, health reasons, traffic and road repairs, overtime work, and unfamiliarity with the rules on attendance in government. As correctly found by Atty. Candelaria, none of the justifications provided by the employees for their habitual tardiness merit our consideration. We have ruled that moral obligations, performance of household chores, traffic problems, health conditions, and domestic and financial concerns are not sufficient reasons to excuse habitual tardiness[29] or to exempt the guilty employee from the imposition of the penalty, although these may be considered to mitigate their liability.

Under Section 52(C)(4), Rule VI of CSC Memorandum Circular No. 19, Series of 1999,[30] habitual tardiness shall be penalized as follows:

First Offense – Reprimand
Second Offense – Suspension for 1-30 days
Third Offense – Dismissal from the service

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[28] 315 Phil. 681, 687-688 (1995).

[29] *Id.*, citing *In Re: Imposition of Corresponding Penalties for Habitual Tardiness Committed During the Second Semester of 2002*, 456 Phil. 183, 190 (2003).

[30] *Id.*

Thus, we modify the penalties recommended by Atty. Candelaria to be imposed against the erring employees.

In the case of Ms. Olipas, while she should already be dismissed from the service, as this is the third time she is found guilty of habitual tardiness, we believe, for humanitarian considerations,[31] as well as taking into account her (30) long years of service[32] in this Court, that a suspension of only fifteen (15) days is in order. Ms. Olipas, however, is finally warned that this Court will not hesitate to impose the extreme penalty of dismissal in case of a repetition of the same or similar act in the future.

Ms. Azurin, Atty. Baniel, Mr. Chua, and Mr. Sanchez are suspended from the service for five (5) days without pay since they have committed the offense of habitual tardiness for the second time.

As for Ms. Buzon, Mr. Carillo, Mr. De Guzman, Mr. Duero. Mr. Gombio, Mr. Iglesias, Atty. Lacandula-Rodriguez, Mr. Napolitano, Ms. Palafox, Ms. Pendon, and Mr. Yacat, found guilty of habitual tardiness for the first time, we cannot approve Atty. Candelaria's recommendation that they should only be warned. According to the Civil Service rules earlier cited, the proper penalty for the first offense of habitual tardiness is reprimand.

WHEREFORE, as recommended by Atty. Candelaria, we find the concerned Supreme Court employees administratively liable for habitual tardiness and are penalized as follows:

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[31] Renato Labay, Utility Worker II, Medical and Dental Services and Albert Semilla, Clerk III, Office of the Chief Attorney of this Court, were found to be habitually tardy for the second time and were suspended and warned. In the instant case, they committed tardiness for the third time and, therefore, they should be dismissed from the service. Again, for humanitarian reasons and as recommended by Atty. Candelaria, the Court meted instead a penalty of suspension for ten (10) days without pay, with a warning that a repetition of the same or a similar offense will warrant the imposition of a more severe penalty.

[32] Almost 30 years in service.

1. Ms. Maria Teresa P. Olipas is *SUSPENDED* for fifteen (15) days without pay, for being habitually tardy for the third time, with a *FINAL WARNING* that a repetition of the same shall be dealt with more severely;

2. Ms. Marivic C. Azurin, Atty. Winston R. Baniel, and Mr. Jovito V. Sanchez are *SUSPENDED FOR 5 DAYS*, for being habitually tardy for the second time, with a *FINAL WARNING* that a repetition of the same shall be dealt with more severely;

3. Mr. Allan Michael L. Chua is *SUSPENDED* for 5 days for being habitually tardy for the second time. However, as such administrative sanction can no longer be imposed since his appointment expired on 30 November 2007, let a copy of this Decision be entered into his personal file for record purposes; and

4. The following employees: (a) Ms. Maria Victoria S. Buzon, (b) Mr. Crisanto C. Carrillo, Jr., (c) Mr. Manolito V. de Guzman, (d) Mr. Roderick L. Duero, (e) Mr. Rodel A. Gombio, (f) Mr. Eduardo M. Iglesias, (g) Atty. Teresita Asuncion M. Lacandula-Rodriguez, (h) Mr. Ronald Napolitano, (i) Mr. Digna C. Palafox, (j) Ms. Sandra O. Pendon, and (k) Mr. Rolando N. Yacat are *REPRIMANDED* with a *WARNING* that a repetition of the same act shall be dealt with more severely.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 146428. January 19, 2009]

HEIRS OF THE DECEASED CARMEN CRUZ-ZAMORA, *petitioners, vs.* **MULTIWOOD INTERNATIONAL, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONSTRUCTION; ELUCIDATED.— When the terms of the agreement are clear and explicit, such that they do not justify an attempt to read into them any alleged intention of the parties, the terms are to be understood literally just as they appear on the face of the contract. It is only in instances when the language of a contract is ambiguous or obscure that courts ought to apply certain established rules of construction in order to ascertain the supposed intent of the parties. However, these rules will not be used to make a new contract for the parties or to rewrite the old one, even if the contract is inequitable or harsh. They are applied by the court merely to resolve doubts and ambiguities within the framework of the agreement.

2. REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; OFFER OF EVIDENCE; APPLICATION IN CASE AT BAR. — After a consideration of the evidence, we agree with the CA that the trial court committed an error in interpreting the Marketing Agreement to include construction contracts based solely on Exhibits K-2 to K-7 which were allegedly contemporaneous acts of Multiwood of paying in part Zamora's commissions on construction contracts. As borne by the records, these exhibits were only marked as such during the testimony of the defense witness, Adrian Guerrero, but not offered in evidence by either party. Section 34, Rule 132 of the Rules of Court states: SEC. 34. Offer of evidence. – The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified. The trial court's reliance on Exhibits "K-2" to "K-7" is thus, misplaced. It has no evidentiary value in this case because it was not offered in evidence before the trial

court. The rule is that the court shall not consider any evidence which has not been formally offered. The purpose for which the evidence is offered must be specified. The offer of evidence is necessary because it is the duty of the court to rest its findings of fact and its judgment only and strictly upon the evidence offered by the parties. Unless and until admitted by the court in evidence for the purpose or purposes for which such document is offered, the same is merely a scrap of paper barren of probative weight. Mere identification of documents and the markings thereof as exhibits do not confer any evidentiary weight on documents unless formally offered.

3. ID.; ID.; RULES OF ADMISSIBILITY; EVIDENCE OF WRITTEN AGREEMENT; PAROL EVIDENCE RULE, ELUCIDATED.— Section 9, Rule 130 of the Revised Rules of Court is in point: SEC. 9. Evidence of written agreements. – When the terms of an agreement have been reduced in writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement. However, a party may present evidence to modify, explain, or add to the terms of the written agreement if he puts in issue in his pleading: (a) An intrinsic ambiguity, mistake, or imperfection in the written agreement; (b) The failure of the written agreement to express the true intent and agreement of the parties thereto; (c) The validity of the written agreement; or (d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement. The "parol evidence rule" forbids any addition to or contradiction of the terms of a written instrument by testimony or other evidence purporting to show that, at or before the execution of the parties' written agreement, other or different terms were agreed upon by the parties, varying the purport of the written contract. When an agreement has been reduced to writing, the parties cannot be permitted to adduce evidence to prove alleged practices which to all purposes would alter the terms of the written agreement. Whatever is not found in the writing is understood to have been waived and abandoned.

4. ID.; ID.; WEIGHT AND SUFFICIENCY; PREPONDERANCE OF EVIDENCE IN CIVIL CASES, NOT PRESENT IN CASE AT BAR. — It is a basic rule in civil cases that the party having the burden of proof must establish his case by a

preponderance of evidence, which simply means evidence which is of greater weight, or more convincing than that which is offered in opposition to it. However, although the evidence adduced by the plaintiff is stronger than that presented by the defendant, a judgment cannot be entered in favor of the former, if his evidence is not sufficient to sustain his cause of action. The plaintiff must rely on the strength of his own evidence and not upon the weakness of the defendant's. Whether or not Exhibits K to K-7 are considered or admitted in evidence, the Court finds that Zamora failed to prove by preponderant evidence her cause of action for collection of ten percent (10%) commission on her solicitations of interior construction contracts whether under the Marketing Agreement or any other agreement with the defendant.

APPEARANCES OF COUNSEL

M.M. Lazaro & Associates for petitioners.
Jose C. Leynes for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before us is a petition for review on *certiorari* of the Court of Appeals' (CA) Decision[1] dated October 19, 2000 and Resolution[2] dated December 18, 2000 in CA-G.R. CV No. 53451 which reversed and set aside the decision of the Regional Trial Court (RTC), National Capital Judicial Region, Makati City, Branch 59, and denied petitioners' motion for reconsideration respectively.

The facts as culled from the records are as follows:

On November 18, 1993, the late Carmen Cruz-Zamora (Zamora) filed a Complaint against respondent Multiwood International, Inc. (Multiwood). The complaint alleged that

[1] Penned by Associate Justice Martin S. Villarama, Jr., and concurred in by Associate Justices Romeo J. Callejo, Sr. (retired Supreme Court Associate Justice) and Juan Q. Enriques, Jr.; *rollo*, pp. 45-50.

[2] *Id.* at 52.

sometime in 1987, Zamora signed a Marketing Agreement to act as an agent of Multiwood. As agent, Zamora claimed that she obtained certain contracts on behalf of Multiwood and in renumeration for her services, she was to be paid ten percent (10%) commission for the said projects. Zamora claimed that Multiwood defaulted in the payment of her commission for the contracts with *Edsa Shangrila*, *Makati Shangrila* and *Diamond Hotel*. She was compelled to file an action for the collection of her commission in the amount of Two Hundred Fifty Four Thousand Eighty-Nine Pesos and Fifty Two Centavos (₱254,089.52) when her repeated demands for payment remained unheeded.

In its Answer with Counterclaim, Multiwood asserted that Zamora was not entitled to receive commissions for the *Edsa Shangrila, Makati Shangrila* and *Diamond Hotel* projects on the ground that those projects were "construction contracts" while their Marketing Agreement spoke only of the sale of Multiwood products. By way of counterclaim, Multiwood claimed, among others, that Zamora had unliquidated advances in the amount of Thirty Seven Thousand Three Hundred Ninety-Seven Pesos and Seventy One Centavos (₱37,397.71).[3]

During pre-trial, the parties entered into a stipulation of facts and limited the issues to the following:

1. Whether or not the projects indicated in the agreement are contracts for services (or construction contracts) and not contracts for the sale of products;
2. Whether or not the defendant is liable to pay the amount of ₱254,089.52 and damages;
3. Whether or not the plaintiff may be held liable on the defendant's counterclaim.[4]

On April 15, 1996, the RTC rendered a decision in favor of Zamora. The trial court interpreted the Marketing Agreement as to include construction contracts and allowed Zamora to

[3] *Id.* at 46.

[4] CA *rollo*, pp. 33-36.

claim the ten percent (10%) commission granted in the said agreement. In arriving at the decision, the trial court took into consideration the alleged intention of the contracting parties purportedly evidenced by Multiwood's contemporaneous and subsequent acts of making "partial payments" of the commission on the disputed projects as evidenced by various vouchers (Exhibits K-2 to K-7) which, however, were not offered in evidence by either party and marked for exhibit only during the testimony of defense witness, Adrian Guerrero.[5] The dispositive portion of the said decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant, as follows:
>
> 1. Ordering the defendant (respondent) to pay the plaintiff (petitioner) the following amounts:
>
> a. ₱165,941.78 plus legal interest thereon at the rate of twelve percent (12%) per annum starting November 18, 1993, the date when the complaint was filed until the amount is fully paid;
>
> b. ₱40,000.00 representing moral damages;
>
> c. ₱40,000.00 as and for reasonable attorney's fees.
>
> 2. Ordering the dismissal of defendant's (respondent's) counterclaim, for lack of merit; and
>
> 3. With costs against the defendant (respondent).
>
> SO ORDERED.[6]

Multiwood appealed to the CA insisting that based on the Marketing Agreement, Zamora's commissions were due only on contracts for the sale of its products, and not for construction contracts. Multiwood argued that the trial court erred in its interpretation of the Marketing Agreement and ultimately revised and amended its terms despite the absence of any ambiguity as to the intent of the parties.

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[5] TNS, dated March 5, 1996, pp. 8-17.

[6] *Supra* at note 4, p. 45.

On October 19, 2000, the CA rendered its decision reversing and setting aside the decision of the RTC. The CA ruled that Zamora could not validly claim commissions from the *Edsa Shangrila*, *Makati Shangrila* and *Diamond Hotel* contracts on the basis of the Marketing Agreement because these contracts were limited only to the solicitation of the products of prospective foreign or local buyers of Multiwood, excluding other services offered by the latter such as construction services. Thus, the CA decided in this wise:

> WHEREFORE, premises considered, the appealed Decision of the Regional Trial Court of Makati City, Branch 59 in Civil Case No. 93-4292 is hereby REVERSED AND SET ASIDE and a new one entered DISMISSING the Complaint for lack of merit.
>
> The plaintiff-appellee (petitioner) is also declared LIABLE to pay the unliquidated advances she obtained from the defendant-appellant (respondent) in the amount of Thirty Seven Thousand Three Hundred Ninety Seven Pesos and Seventy One Centavos (₱37,397.71) with legal interest at six percent (6%) per annum computed from August 4, 1994 until fully paid.
>
> No pronouncement as to costs.
>
> SO ORDERED.[7]

Zamora's subsequent motion for reconsideration having been likewise denied by the CA in the Resolution dated December 18, 2000, she elevated the case to this Court through the instant petition for review which raises the following arguments:

(1) The Hon. Court of Appeals erred in adjudging that private respondent is not liable to compensate petitioner for her services in soliciting construction contracts on the ground that petitioner's counsel failed to offer in evidence Exhs. K to K-7.

(2) The Hon. Court of Appeals erred in not holding that under Exhs. B to H, with sub-markings in relation to Exh. A, private respondent acknowledged or admitted its liability for a rate of 10% commission to petitioner for the latter's solicitation of construction contracts.

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[7] *Rollo*, p. 49.

(3) The Hon. Court of Appeals erred in not holding that, even if the solicitation of construction contracts was not covered by the Marketing Agreement (Exh. A), a new separate contract was deemed perfected between the parties as evidenced by Exhs. B to H, with submarkings.

(4) The Hon. Court of Appeals erred in not holding that private respondent would be unjustly enriched at the expense of petitioner if the latter is not compensated for her valuable services.

(5) The Hon. Court of Appeals erred in not affirming *in toto* the trial court's Decision.

On October 3, 2002, Zamora's counsel filed a Motion to Substitute Deceased Petitioner[8] informing the Court that Zamora had passed away on September 30, 2002 and asking that her heirs be substituted as petitioners pursuant to Section 16, Rule 3 of the Rules of Court. Accordingly, in the Resolution[9] dated January 22, 2003, the Court granted the motion.

Petitioners maintain that the interior construction projects solicited by Zamora, *i.e.*, the renovation/improvement of the coffee shop, health clubs, Chinese restaurant and barbeque pavilions of the *Edsa Shangrila*; the renovation of the ballroom, meeting room, lobby and elevator interior of the *Makati Shangrila*; and, the renovation of Presidential Suite of the *Diamond Hotel*, fell within the scope of the Marketing Agreement. The identification, "solicitation, finding or introduction for negotiation of buyers, dealers and customers" for Multiwood's product as stated in the agreement is an encompassing term as to include the solicitation of interior construction projects. Besides the construction projects it afforded Multiwood the opportunity to sell and supply its products to the project owner to implement the overall interior design. Petitioners advert to their interpretation of the text of the Marketing Agreement, as well as Multiwood's subsequent alleged acquiescence in Zamora's solicitation of the disputed construction contracts and supposed partial payment of her commission therefor as indicia of the parties' intention

[8] *Id.* at 87-88.

[9] *Id.* at 125.

to include the said solicitation of construction contracts within the coverage of the Marketing Agreement. These operative acts purportedly lead to the perfection of a new contract between the parties, albeit not reduced in writing. Hence, Multiwood is estopped from denying its obligation as the same would unjustly enrich the latter at Zamora's expense.

We deny the petition.

At the outset, the Court notes that Zamora's cause of action is anchored solely on the parties' Marketing Agreement, the due execution and authenticity of which are undisputed.

When the terms of the agreement are clear and explicit, such that they do not justify an attempt to read into them any alleged intention of the parties, the terms are to be understood literally just as they appear on the face of the contract. It is only in instances when the language of a contract is ambiguous or obscure that courts ought to apply certain established rules of construction in order to ascertain the supposed intent of the parties. However, these rules will not be used to make a new contract for the parties or to rewrite the old one, even if the contract is inequitable or harsh. They are applied by the court merely to resolve doubts and ambiguities within the framework of the agreement.[10]

Bearing in mind the aforementioned guidelines, we find that the CA committed no reversible error when it ruled that the construction projects solicited by Zamora for Multiwood were outside the coverage of the Marketing Agreement so as preclude the former from claiming a ten percent (10%) commission. The plain import of the text of the Marketing Agreement leaves no doubt as to the true intention of the parties in executing the Marketing Agreement. The pertinent provisions of the said Marketing Agreement[11] are as follows:

WHEREAS, the principal is engaged in the **manufacture and export of furniture** and such other related products using various types of suitable raw materials;

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[10] *First Fil-Sin Lending Corporation v. Padillo*, G.R. No. 160533, January 12, 2005, 448 SCRA 71, 76-77.

[11] Annex "A" of petitioner's Complaint; RTC Record, p. 8.

WHEREAS, the principal needs the services of the agent in **soliciting and finding buyers, customers, or dealers,** whether individuals or entities, for the products of the principal and agent has represented that she has the capability and competence to provide the said services;

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

1. That principal hereby grants the agent the non-exclusive right to identify, solicit, find or introduce for negotiation, prospective local and foreign buyers, dealers, or customers for the **products** of the principal.

x x x x x x x x x

4. That for the services of the agent **under this agreement**, the principal agrees to pay her Ten Percent (10%) of the face value of the invoice price, covering the letter of credit, or such similar instrument representing the actual purchase price for the products sold or shipped by the principal. x x x. (emphasis ours)

Both the trial court and the CA found that the Marketing Agreement quoted above does not mention construction contracts among the contemplated services of Zamora that would be compensable with a ten percent (10%) commission. The lower courts, however, differed with respect to the evidentiary weight that should be accorded to Exhibits K to K-7 which were never formally offered in evidence by any party.

After a consideration of the evidence, we agree with the CA that the trial court committed an error in interpreting the Marketing Agreement to include construction contracts based solely on Exhibits K-2 to K-7 which were allegedly contemporaneous acts of Multiwood of paying in part Zamora's commissions on construction contracts. As borne by the records, these exhibits were only marked as such during the testimony of the defense witness, Adrian Guerrero, but not offered in evidence by either party.

Section 34, Rule 132 of the Rules of Court states:

> SEC. 34. Offer of evidence. — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

The trial court's reliance on Exhibits "K-2" to "K-7" is thus, misplaced. It has no evidentiary value in this case because it was not offered in evidence before the trial court. The rule is that the court shall not consider any evidence which has not been formally offered. The purpose for which the evidence is offered must be specified. The offer of evidence is necessary because it is the duty of the court to rest its findings of fact and its judgment only and strictly upon the evidence offered by the parties. Unless and until admitted by the court in evidence for the purpose or purposes for which such document is offered, the same is merely a scrap of paper barren of probative weight. Mere identification of documents and the markings thereof as exhibits do not confer any evidentiary weight on documents unless formally offered.[12]

Plainly, the trial court should not have read terms into the Marketing Agreement that were not expressly in the agreement itself. The agreement is clear, plain and simple that it leaves no room for interpretation. It explicitly provides that for the services of Zamora, as agent under the agreement, Multiwood agreed to pay her in the amount equivalent to ten percent (10%) of the face value of the invoice price, covering the letter of credit or such other instrument representing the actual purchase price for the products sold or shipped by Multiwood. In other words, Zamora's commission under the Marketing Agreement was to be paid only for products sold or supplied by Multiwood and not for services rendered by the latter. As admitted by Zamora herself during cross-examination, the *Edsa Shangrila*, *Makati Shangrila* and *Diamond Hotel* projects were "interior construction" projects[13] and not simply contracts for sale or supply of Multiwood products.

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[12] *Landingin v. Republic*, G.R. No. 164948, June 27, 2006, 493 SCRA 415, 430.

[13] *TSN* dated Nov. 21, 1995, pp. 14-16.

As mandated by Article 1370 of the Civil Code, if the terms of the contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.

Moreover, Section 9, Rule 130 of the Revised Rules of Court is also in point:

> SEC. 9. Evidence of written agreements. — When the terms of an agreement have been reduced in writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.
>
> However, a party may present evidence to modify, explain, or add to the terms of the written agreement if he puts in issue in his pleading:
>
> (a) An intrinsic ambiguity, mistake, or imperfection in the written agreement;
>
> (b) The failure of the written agreement to express the true intent and agreement of the parties thereto;
>
> (c) The validity of the written agreement; or
>
> (d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.

The "parol evidence rule" forbids any addition to or contradiction of the terms of a written instrument by testimony or other evidence purporting to show that, at or before the execution of the parties' written agreement, other or different terms were agreed upon by the parties, varying the purport of the written contract. When an agreement has been reduced to writing, the parties cannot be permitted to adduce evidence to prove alleged practices which to all purposes would alter the terms of the written agreement. Whatever is not found in the writing is understood to have been waived and abandoned.[14] None of the above-cited exceptions finds application to the instant case, more particularly, the alleged failure of the contract to

[14] *Roble v. Arbasa*, G.R. No. 130707, July 31, 2001, 362 SCRA 69, 82-83.

express the true intent and agreement of the parties nor did Zamora raise any of the issues at the proceedings before the trial court.

With more reason, documentary evidence which was not formally offered cannot be used to modify, explain or add to the terms of an agreement.

In any event, even assuming purely for the sake of argument that Exhibits K-2 to K-7 are admissible evidence, they do not support Zamora's contention that she is entitled to a ten percent (10%) commission even on construction contracts she has solicited pursuant to the Marketing Agreement. A perusal of Exhibits K-2 to K-7 does not clearly show that these commissions were being paid for construction contracts or services. Moreover, most of the commissions purportedly paid to Zamora under Exhibits K-2 to K-7 were computed at a much lower rate of three percent (3%) and not the ten percent (10%) stipulated in the Marketing Agreement. We cannot simply accept, as the trial court did, Zamora's assertion that the lower rate of three percent (3%) commission was a partial payment of her commissions under the Marketing Agreement since there is nothing in Exhibits K-2 to K-7 to indicate that the commissions mentioned therein were only partial payments. The circumstances that Zamora did not include Exhibits K-2 to K-7 in her Complaint and that she did not demand payment of the alleged balance of the commissions therein from Multiwood further militate against her claim that these were partial payments of her commission under the Marketing Agreement subject of the present case.

An examination of even Exhibits B to H which were formally offered by Zamora do not substantiate her assertion that Multiwood agreed to pay her a ten percent (10%) commission on construction contracts whether under the Marketing Agreement or any other contract. We cannot subscribe to petitioners' view that mere silence or acquiescence of Multiwood to Zamora's solicitation of construction contracts is tantamount to agreement to payment of the ten percent (10%) commission under the Marketing Agreement. To be sure, Multiwood's defense is precisely that the issuance of the vouchers and checks (Exhibits B to H) attached

to the complaint are not authorized under the Marketing Agreement and that there is no agreement authorizing Zamora to collect ten percent (10%) commissions on construction contracts. This Court notes that even Exhibits B to H show a discrepancy in the alleged agreed rate of commission since Exhibit H mentions a five percent (5%) commission and not a ten percent (10%) commission.

It is a basic rule in civil cases that the party having the burden of proof must establish his case by a preponderance of evidence, which simply means evidence which is of greater weight, or more convincing than that which is offered in opposition to it.[15] However, although the evidence adduced by the plaintiff is stronger than that presented by the defendant, a judgment cannot be entered in favor of the former, if his evidence is not sufficient to sustain his cause of action. The plaintiff must rely on the strength of his own evidence and not upon the weakness of the defendant's.[16] Whether or not Exhibits K to K-7 are considered or admitted in evidence, the Court finds that Zamora failed to prove by preponderant evidence her cause of action for collection of ten percent (10%) commission on her solicitations of interior construction contracts whether under the Marketing Agreement or any other agreement with the defendant.

All told, we find no reversible error committed by the CA in rendering the assailed Decision dated October 19, 2000 and Resolution dated December 18, 2000.

WHEREFORE, the petition is *DENIED*. The assailed Decision and Resolution of the Court of Appeals are *AFFIRMED*.

Costs against petitioners.

SO ORDERED.

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

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[15] *Buduhan v. Pakurao,* G.R. No. 168237, February 22, 2006, 483 SCRA 116, 122.

[16] *Ong v. Yap,* G.R. No. 146797, February 18, 2005, 452 SCRA 41, 50.

THIRD DIVISION

[G.R. No. 152923. January 19, 2009]

NORTHEASTERN COLLEGE TEACHERS AND EMPLOYEES ASSOCIATION, represented by LESLIE GUMARANG, *petitioner, vs.* **NORTHEASTERN COLLEGE, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; AUTHORITY TO FILE PETITION FOR *CERTIORARI* IN BEHALF OF PETITIONER NCTEA, NOT PRESENT WHERE REPRESENTATIVE THEREOF IS ITS DEPOSED PRESIDENT. — The primordial question to be resolved is whether petitioner Gumarang had the authority to file the petition for *certiorari* assailing the decision of the NLRC dated 15 September 1997? It is clear from the title of the petition for *certiorari* (*NORTHEASTERN COLLEGE TEACHERS & EMPLOYEES ASSOCIATION duly rep. by LESLIE GUMARANG versus NATIONAL LABOR RELATIONS COMMISSION, Third Division – DOLE Quezon City & NORTHEASTERN COLLEGE, INC.*), filed with this Court but subsequently referred to the Court of Appeals pursuant to *St. Martin Funeral Home v. National Labor Relations Commission*, that the petitioner is NCTEA which is represented by its President, Leslie Gumarang. The Court of Appeals ruled that Leslie Gumarang, at the time he initially filed the petition for *certiorari* before the Supreme Court, had no more authority from the NCTEA to file the same. It declared that his lack of authority to act for and on behalf of the NCTEA rendered the petition itself as one that had not been filed at all, a ground for invalidating a claim made in the petition. Was Leslie Gumarang authorized by NCTEA to file the petition with the Supreme Court or Court of Appeals? There is nothing in the record that shows that Gumarang was authorized to file the petition on behalf of the NCTEA. Mr. Gumarang never adduced in evidence before the Court of Appeals or before this Court any authority from the NCTEA for him to file the petition and to act on its behalf after he was deposed as President of the NCTEA on 7 October 1994. His misrepresentation will not

pass unnoticed and without consequence. We cannot allow a party to gain an advantage from its flagrant disregard of the Rules.

2. ID.; ID.; ID.; REAL PARTY IN INTEREST; ELUCIDATED. — Pursuant to Section 2, Rule 3 of the 1997 Rules of Civil Procedure, every action must be prosecuted or defended in the name of the real party in interest, *i.e.*, the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Said section provides: Section 2. Parties in interest. – A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest. To qualify a person to be a real party in interest in whose name an action must be prosecuted, he must appear to be the present real holder of the right sought to be enforced. "Interest" within the meaning of the rule means material interest, an interest in essence to be affected by the judgment as distinguished from mere interest in the question involved, or a mere incidental interest. By real interest is meant a present substantial interest, as distinguished from a mere expectancy or a future, contingent, subordinate or consequential interest. In the case at bar, Mr. Gumarang is a person who has a real interest in the instant case. As he asserts, whatever adverse decision is rendered by the NLRC would necessarily affect his specific claim or interest, considering that the NLRC decision prevents the enforcement of the Order of the Labor Arbiter dated 28 May 1996 to convey the properties involved to NCTEA.

3. ID.; ID.; ACTIONS; REQUIREMENT OF CERTIFICATION AGAINST FORUM SHOPPING MUST BE ACCOMPLISHED BY THE PARTY HIMSELF. — When an appeal is made to the Court of Appeals or to the Supreme Court *via* Rule 45 or 65, it is mandatory that a certification against forum shopping must be filed. It is settled that the requirement to file a certificate of non-forum shopping is mandatory and that the failure to comply therewith cannot be excused. The certification is a peculiar and personal responsibility of the party, an assurance given to the court or other tribunal that there are no other pending cases involving basically the same parties, issues and causes of action.

Hence, the certification must be accomplished by the party himself because he has actual knowledge of whether or not he has initiated similar actions or proceedings in different courts or tribunals.

4. ID.; ID.; ID.; ID.; ADDITIONAL GUIDELINES WHERE PETITIONER IS A CORPORATION AND/OR THERE ARE SEVERAL PETITIONERS.— We have held that the requirement of filing a certification against forum shopping applies to both natural and juridical persons. In *Fuentebella v. Castro,* we laid down additional guidelines for compliance with the required certificate against forum shopping where the petitioner is a corporation and/or there are several petitioners, as follows: This requirement is intended to apply to both natural and juridical persons as Supreme Court Circular No. 28-91 and Section 5, Rule 7 of the Rules of Court do not make a distinction between natural and juridical persons. Where the petitioner is a corporation, the certification against forum shopping should be signed by its duly authorized director or representative. This was enunciated in *Eslaban, Jr. v. Vda. de Onorio,* where the Court held that if the real party-in-interest is a corporate body, an officer of the corporation can sign the certification against forum shopping so long as he has been duly authorized by a resolution of its board of directors. Likewise, where there are several petitioners, it is insufficient that only one of them executes the certification, absent a showing that he was so authorized by the others. That certification requires personal knowledge and it cannot be presumed that the signatory knew that his co-petitioners had the same or similar actions filed or pending. Hence, a certification which had been signed without the proper authorization is defective and constitutes a valid cause for the dismissal of the petition.

5. ID.; ID.; ID.; ID.; ID.; FAILURE OF ONE OF THE PETITIONERS TO SIGN THE CERTIFICATE AGAINST FORUM SHOPPING CONSTITUTES A DEFECT IN THE PETITION; RELAXATION OF THE RULE. — In case there are several petitioners, failure of one of the petitioners to sign the certificate against forum shopping constitutes a defect in the petition, which is a ground for dismissing the same. In *Tolentino v. Rivera*, we held that for the relaxation of said rule,

two conditions must be complied with: first, petitioners must show justifiable cause for their failure to personally sign the certification; and second, they must also be able to prove that the outright dismissal of the petition would seriously impair the orderly administration of justice. Thus, to merit the court's consideration, petitioners must show reasonable cause for failure to personally sign the certification and convince the court that the outright dismissal of the petition would defeat the administration of justice.

6. ID.; ID.; ID.; ID.; ID.; ID.; ID.; CASES WHERE EXECUTION OF ONE ON BEHALF OF OTHER PETITIONERS CONSTITUTE SUBSTANTIAL COMPLIANCE OF THE RULE ON CERTIFICATION OF NON-FORUM SHOPPING ON THE GROUND OF COMMON INTEREST; NOT APPLICABLE IN THE PRESENT CASE. — This Court is not unaware that in some cases, it has ruled that the execution of one petitioner on behalf of all the other petitioners constitutes substantial compliance with the rule on the filing of a certificate of non-forum shopping on the ground of common interest/ defense. In *Docena v. Lapesura*, the Court considered the signing of the certificate of non-forum shopping by the husband on his behalf and that of his wife to be not a fatal defect. In *Cavile v. Hiers of Clarita Cavile*, we ruled: We find that the execution by Thomas George Cavile, Sr. in behalf of all the other petitioners of the certificate of non-forum shopping constitutes substantial compliance with the Rules. All the petitioners, being relatives and co-owners of the properties in dispute, share a common interest thereon. They also share a common defense in the complaint for partition filed by the respondents. Thus, when they filed the instant petition, they filed it as a collective, raising only one argument to defend their rights over the properties in question. There is sufficient basis, therefore, for Thomas George Cavili, Sr. to speak for and in behalf of his co-petitioners that they have not filed any action or claim involving the same issues in another court or tribunal, nor is there other pending action or claim in another court or tribunal involving the same issues. We cannot apply the ruling in these two cases to the case before us. Common interest/defense is not present in the instant petition.

APPEARANCES OF COUNSEL

Law Firm of Habitan Ferrer Chan Tagapan Patriarca and Associates for petitioner.
Castillo Laman Tan Pantaleon and San Jose for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Assailed before Us is the Amended Decision[1] of the Court of Appeals dated 11 April 2002 in CA-G.R. SP No. 50490 which reversed and set aside its Decision[2] dated 22 March 2001 annulling and setting aside the decision of the National Labor Relations Commission (NLRC) dated 15 September 1997. In so doing, it affirmed in *toto* the said decision of the NLRC and reversed and set aside the Orders dated 22 July 1994 and 28 May 1996 of the Labor Arbiter of the Regional Arbitration Branch (RAB) II, Tuguegarao, Cagayan.

Petitioner Northeastern College Teachers & Employees Association (NCTEA) is a labor organization duly registered with the Department of Labor and Employment (DOLE).

Petitioner Leslie M. Gumarang (Gumarang) was the President of the NCTEA when the complaints in this case were filed with the National Labor Relations Commission, Regional Arbitration Branch No. II, until 7 October 1994 when his term of office expired.

Respondent Northeastern College, Inc. (NC) is an educational institution duly organized under Philippine laws with place of business at Maharlika Road, Municipality of Santiago, Province of Isabela, Philippines.

The antecedents are as follows:

On 7 May 1991, NCTEA and Gumarang filed a complaint for Unfair Labor Practice and Underpayment of Wages under

[1] Penned by Associate Justice Bienvenido L. Reyes with Associate Justices Eubulo G. Verzola and Marina L. Buzon, concurring. CA *rollo*, pp. 286-305.

[2] CA *rollo*, pp. 127-148.

Republic Act No. 6727 against NC and its President and Board of Directors, docketed as NLRC RAB II CN. 05-00157-91.[3]

On 4 September 1991, a complaint for Illegal Layoff, Non-Payment of Holiday Pay pursuant to Republic Act No. 6728, Differential Pay Money under Wage Order RO2-01, and Unfair Labor Practice was filed by NCTEA and Leslie Gumarang against the President, School Accountant and Board of Directors of NC. The case, docketed as NLRC RAB II CN. 09-00293-91, was entitled: "Leslie M. Gumarang, Roger T. Bautista[4] with NCTEA Board of Directors, Northeastern College Teachers-Employees Association v. President/School Accountant/Board of Directors of Northeastern College, Santiago, Isabela."[5]

The two cases were consolidated. On 13 August 1992, Labor Arbiter Gregorio C. Calasan rendered a decision,[6] the dispositive portion of which reads:

> WHEREFORE, decision is hereby rendered in accordance with the foregoing dispositions and the parties are ordered to sit down for the purpose of computing the amounts due to each employee concerned after which the respondents are ordered to pay the same.

On 26 August 1992, counsel for NC received a copy of the aforementioned decision. NC did not appeal the decision; thus, the same became final after the lapse of ten (10) days on September 5, 1992.[7]

On 8 September 1992, NCTEA filed a Motion for Enforcement of the decision stating therein that the total amount due NCTEA was ₱2,145,711.86.[8]

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[3] *Rollo* (G.R. No. 116935), p. 16.

[4] Vice-President of NCTEA.

[5] *Rollo* (G.R. No. 116935), p. 17.

[6] *Id.* at 405-411.

[7] The Court of Appeals erroneously stated that the Labor Arbiter's Decision became final on 6 September 1992. CA *rollo,* p. 131.

[8] See Writ of Execution; *rollo* (G.R. No. 116935), pp. 40-42.

On 10 September 1992, Labor Arbiter Calasan issued an Order[9] which reads:

> On September 8, 1992, the complainants filed a motion for enforcement setting forth the computation of the award in the Decision in the above-entitled cases which is already final and executory, copy of the motion of which is hereto attached.
>
> WHEREFORE, the respondent is given fifteen (15) days from receipt of this Order within which to comment on the complainants' motion (sic) failure of which shall be considered confirmation of the accuracy of the computation by the complainants and the issuance of writ of execution as prayed for.

Despite notice, NC did not file its comment.

On 2 October 1992, NCTEA filed a Motion for Execution praying that the writ be issued for the collection of the amount of ₱2,145,711.86.[10]

In an Order dated 6 October 1992, there being a disagreement over the recoveries of the individual complainants under the terms of the decision, Labor Arbiter Calasan scheduled a conference on 9 October 1992 for the purpose of clarifying the decision.[11] The Order reads:

> Considering that the DECISION in the above-entitled cases dated 13 August 1992 is already final and executory for lack of appeal by either of the parties and considering further that there is a disagreement over the recoveries of the individual complainants under the terms of the DECISION, the parties are hereby notified that a conference before the undersigned for the purpose of clarifying the DECISION is hereby set on 9 October 1992, 10:00 a.m. at the Conference Room, Northeastern College, Santiago, Isabela.

On the scheduled hearing, the request of NC to be given another opportunity to make its computation and submit and furnish the NCTEA a copy thereof on or before 24 October

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[9] *Id.* at 587.

[10] *Rollo* (G.R. No. 152923), p. 548.

[11] *Rollo* (G.R. No. 116935), p. 584.

1992 in order to reconcile its computation with that of the NCTEA, was granted. NC however failed to submit its computation.

On 28 October 1992, NCTEA filed a Motion for Execution of the decision dated 13 August 1992 and for the collection of the amount of ₱2,150,630.80 representing its total claim as of 31 October 1992 on the basis of the computation it submitted to Labor Arbiter Calasan. It argued that the acts of NC in failing to comment on the Motion for Enforcement and its failure to submit its computation despite being given an extension to do so were intended to delay the enforcement of the decision which had long become final and executory.[12]

On 4 November 1992, the Labor Arbiter issued a writ of execution for the collection of ₱2,150,630.80 per computation by the NCTEA. It explained that the failure of the NC to submit its computation could only be construed as a confirmation of the accuracy of the NCTEA's computation. The decretal portion of the writ reads:

> NOW THEREFORE, you are hereby ordered to proceed to the premises of the respondent Northeastern College located at Santiago, Isabela to demand from its management the sum of TWO MILLION ONE HUNDRED FIFTY THOUSAND SIX HUNDRED THIRTY PESOS & 80/100 (₱2,150,630.80) due to the respondent's employees concerned as indicated in the union's computation plus the amount of your execution fee. In the event that you fail to collect the amount in cash, Philippine Currency from the respondent College, you are hereby directed to cause the full satisfaction of the same from its movable properties or in the absence thereof, from its real properties not exempted from execution and return this writ of execution together with your proceedings thereon, within sixty (60) days from receipt hereof.[13]

On 25 November 1992, NC filed a Motion to Quash and Set Aside the Writ of Execution grounded on the following: (1) that the decision sought to be executed utterly failed to specify any definite adjudication of payment; (2) that the amount specified

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[12] *Rollo* (G.R. No. 152923), pp. 550-554.

[13] *Id.* at 556-558.

in the writ of execution to be collected had no legal basis; and (3) that the issuance of the writ of execution was evidently misplaced. It argued, *inter alia*, that based on its computation, the members of NCTEA had been fully paid and even overpaid the benefits under Republic Act Nos. 6727 and 6728.[14]

The Motion was set for hearing on 16 December 1992, with respondent NC manifesting that it would submit its computation, which was prepared in Manila. Despite the opportunity given, it failed to submit the promised computation.

In an Order dated 3 February 1993, Labor Arbiter Calasan dismissed the Motion to Quash and Set Aside the Writ of Execution for lack of merit.[15] Counsel for NC received a copy thereof on 9 February 1993. No motion for reconsideration or appeal was filed by NC.

On 4 March 1993, the Labor Arbiter issued an *Alias* Writ of Execution for the collection of ₱2,145,711.86 as the amount due NCTEA and ₱20,957.12 for execution fees and for other expenses.[16]

Subsequently, NC filed by mail before the NLRC a Complaint for Injunction with Urgent Prayer for the Issuance of a Temporary Restraining Order enjoining NCTEA, the Labor Arbiter and Sheriff Severino C. Gosiengfiao from enforcing the writ of execution issued in NLRC RAB II CN. 05-00157-91 and 09-00293-91 relative to the decision promulgated on 13 August 1992. On 16 April 1993, the NLRC issued a Resolution dismissing the complaint for lack of merit.[17] NC moved for the reconsideration[18] of said resolution but the same was not resolved.

On 17 May 1993, NCTEA filed a Motion for the Issuance of *Alias* Writ of Execution[19] which Labor Arbiter Calasan issued

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[14] *Id.* at 559-569.

[15] *Id.* at 570-573.

[16] *Id.* at 574-576.

[17] *Rollo* (G.R. No. 116935), pp. 401-404.

[18] *Rollo* (G.R. No. 152923), p. 579.

[19] *Id.* at 577.

on 27 May 1993.[20] A Notice of Public Auction on Execution of Real Property covering Transfer Certificate of Title (TCT) No. 98270 was published in the *Valley Times*, Ilagan, Isabela, on 5, 12 & 19 June 1993.[21]

On 4 June 1993, by virtue of the *Alias* Writ of Execution dated 27 May 1993, Sheriff Gosiengfiao issued a Notice of Public Auction on Execution of Real Property involving property covered by TCT No. 98270 which was levied on 18 March 1993.[22]

On 8 June 1993, NC filed with the Labor Arbiter a motion to quash the *Alias* Writ of Execution issued on 27 May 1993 on the ground that it had a pending Motion for Reconsideration of the Resolution of the NLRC dismissing its Complaint for Injunction.[23]

On 14 June 1993, the Labor Arbiter issued an Order holding the resolution of the Motion to Quash in abeyance, thus:

> On 08 June 1993, this Office received a MOTION TO QUASH *alias* WRIT OF EXECUTION dated 27 May 1993. As ground the respondents alleged that they filed a MOTION FOR RECONSIDERATION of the resolution of the Commission which denied the respondents' petition for Injunction which motion for reconsideration is still pending resolution by the Commission. However, the respondent failed to furnish Office with a copy of the said motion for reconsideration. It also appears that the sheriff of this office has already levied a property of the respondents and has scheduled its auction sale on June 30, 1993.
>
> WHEREFORE, resolution of the motion to quash is held in abeyance and the respondent is directed to submit within five (5) days from receipt hereof with a copy of their motion for reconsideration filed to the Commission.[24]

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[20] See *Alias* Writ of Execution dated 25 August 1993. *Rollo* (G.R. No. 116935), pp. 71-72.

[21] *Id.* at 509.

[22] *Rollo* (G. R. No. 152923), pp. 580-582.

[23] *Id.* at 579.

[24] *Id.* at 23.

On 30 June 1993, Sheriff Gosiengfiao issued a Certificate of Sheriff's Sale certifying that the property covered by TCT No. 98270 was sold at public auction to complainants Leslie Gumarang and Roger T. Bautista through their attorney-in-fact, Angelo T. Bautista, for ₱150,000.00. It was further certified that said persons were the only bidders and that the sale price was not paid but was merely credited to the partial satisfaction of the award contained in the decision.[25] The sheriff's return of service was done on 25 August 1993.

On 11 August 1993, NCTEA filed a motion for the issuance of an alias writ of execution for the deficiency of the award. On 25 August 1993, the Labor Arbiter issued another Alias Writ of Execution for the collection of the remaining amount of ₱1,995,711.86 (the balance after deducting ₱150,000.00 from ₱2,145,711.86) plus ₱20,957.12 as execution fee and for other expenses.[26]

On 26 August 1993, Sheriff Gosiengfiao issued a Notice of Public Auction on Execution of Real Property covering CTC No. 3973 – Cadastral Lot No. 4935-H.[27] On 11 September 1993, said Notice of Public Auction of Real Property was published in the *Valley Times*.[28] On 17 September 1993, Sheriff Gosiengfiao issued another Certificate of Sheriff's Sale covering the aforesaid property sold at public auction on 16 September 1993 to Leslie Gumarang, Roger T. Bautista and their attorney-in-fact, Angelo T. Bautista, for the amount of ₱1,995,711.86. As in the auction sale of 30 June 1993, Gumarang and Roger and Angelo Bautista were the only bidders, and the sale price was not paid but was merely credited to the satisfaction of the award contained in the decision.[29]

On 12 October 1993, NCTEA filed a Motion to Issue Order of Possession asking for the transfer of possession of the

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[25] *Id.* at 583.

[26] *Id.* at 584-585.

[27] *Id.* at 586.

[28] *Rollo* (G.R. No. 116935), pp. 65-66.

[29] *Rollo* (G.R. No. 152923), p. 587.

properties which it acquired at public auction.[30] In an Order dated 22 October 1993, the Labor Arbiter denied the motion for the issuance of a writ of possession arguing that NCTEA could not demand possession of the properties because the 12-month period for redemption of the same had not yet lapsed.[31]

On 1 June 1994, NC filed a Notice of Redemption of Property Sold on Execution alleging that the redemption price (for property covered by TCT No. 98270) plus one percent per month interest thereof, together with the amount of taxes paid, had already been fully settled and delivered directly to the members of NCTEA, who were the real parties in interest, as evidenced by receipts of payments. It prayed that the alleged redemption payment be approved and the necessary Certificate of Redemption be executed.[32] The alleged receipts of payments were unsworn/unnotarized.[33]

Effective 16 June 1994, Labor Arbiter Ricardo N. Olairez was assigned as Officer-in-Charge of NLRC Region II, Regional Arbitration Branch No. II, in place of Labor Arbiter Calasan.[34]

On 22 June 1994, Labor Arbiter Olairez issued an Order setting the hearing of the Notice of Redemption of Property Sold on Execution on 12 July 1994.[35] On motion of NC, said hearing was postponed to 20 July 1994 at 10:00 a.m.[36]

On the scheduled hearing on 20 July 1994, only NCTEA was present, as NC did not appear on time. The Labor Arbiter conducted the hearing asking clarificatory questions, particularly on NCTEA's allegation in its opposition to the notice of redemption that the signatures of some teachers in the alleged

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[30] *Id.* at 588-589.

[31] *Id.* at 600-601.

[32] *Id.* at 602-604.

[33] Comment dated 19 November 1994 of Labor Arbiter Ricardo N. Olairez. *Rollo* (G.R. No. 152923), p. 519.

[34] *Rollo* (G.R. No. 116935), p. 498.

[35] *Rollo* (G.R. No. 152923), p. 605.

[36] *Id.* at 606.

direct payments were obtained by duress, under threat of summary dismissal, and that they did not actually receive the amount appearing in the receipts. After 10:20 a.m., the hearing was closed and the motion was already deemed submitted for resolution. When NC arrived at past 10:30 a.m., it was informed that the hearing was already terminated and the motion already submitted for resolution. NC begged the Labor Arbiter to consider the alleged direct payments as substantial compliance with the requirements for the redemption; the Labor Arbiter, in turn, reminded NC that the annexes/exhibits attached to the notice of redemption were not sworn or notarized.[37]

In an Order dated 22 July 1994,[38] Labor Arbiter Ricardo N. Olairez denied NC's Notice of Redemption and granted NCTEA's motion to issue the writ of possession. The Order states in part:

We rule in favor of the complainants on the following grounds:

1. The twelve (12) months period of redemption for that parcel of land under TCT No. 98270 with an area of 8,546 square meters sold for ₱150,000.00 had expired on June 30, 1994 with the losing party, herein respondents, failing to comply with the express mandate of Section 12, Rule VII and Section 3, Rule IV of the NLRC Sheriff's Manual, aforestated.

2. Section 3, Rule IV does not only apply to voluntary satisfaction of money judgment prior to the public auction sale of a levied property, but it equally applies to payment by redemptioner under Section 12, especially in this case where the complainants are the NORTHEASTERN COLLEGE TEACHERS & EMPLOYEES ASSOCIATION (UNION), LESLIE GUMARANG & ROGER T. BAUTISTA. The teachers-employees who appeared to have received the partial payments and affixed their signature[s] are not the complainants or purchaser to whom the losing party or redemptioner may redeem the property. These teacher-employees are or were only members of the Union that has a separate and distinct personality. The formation of another Union did not extinguish the legal personality of the complainant Union and the legal right of Leslie Gumarang, Roger T. Bautista and their representative Angelo T. Bautista as PURCHASER. They are still the purchaser to whom the property

[37] *Id.* at 520-521

[38] *Id.* at 607-611.

must be redeemed, not the individual teacher-employees who were only former members of the complainant union, if they are now members of the other recently formed Union. Much more so that these teacher-employees could not anymore claim any representation for the complainant Union if they are now members of the new Union. The established legal right of complainants, namely the NORTHEASTERN COLLEGE TEACHERS & EMPLOYEES ASSOCIATION, LESLIE GUMARANG and ROGER T. BAUTISTA, and their representative Angelo T. Bautista as the purchaser of the property sold at public auction could not have been extinguished by the alleged direct payment made to some of the teacher-employees who are not the complainants and/or purchaser of the property to whom the respondents/redemptioner may redeem the property. If the respondent school did pay directly to its teacher-employees as alleged, respondents may collect back what they had paid to the teachers through salary deductions.

3. After a scrutiny of the arguments and documents submitted, respondents failed to convince us why we should approve the allege direct payment to some of the teacher-members of the complainant-Union as substantial compliance. On the contrary, the contention of complainants that the alleged partial payments were not actually paid to those teacher-employees and that they were constrained to affix their signature under threat of dismissal from the service, is more credible for the reason that:

a. Said alleged payments were paid without the knowledge and supervision of this Office, in gross violation of the requirement that it should have been deposited with the Cashier of this Regional Arbitration Branch, to preclude any suspicion of simulated payments.

b. The redemption payment must be made in full plus one percent per month legal interest together with the amount of taxes paid, to the purchaser of the property to be redeemed, namely LESLIE M. GUMARANG, ROGER T. BAUTISTA and their representative ANGELO T. BAUTISTA.[39]

On 8 August 1994, NC appealed the 22 July 1994 Order to the NLRC *via* a Notice of Appeal.[40] The NLRC did not rule on the appeal.

[39] *Id.* at 608-611.

[40] *Id.* at 612-613.

On 15 September 1994, NC filed before the Supreme Court a Petition for *Certiorari* and Prohibition with Prayer for Temporary Restraining Order, praying, among other things, that (a) the Decision of the Labor Arbiter dated 13 August 1992 be declared null and void; (b) the school's computation of the salary differentials of the UNION members be declared to be in consonance with Republic Act No. 6727; (c) the full payment made by NC to NCTEA pursuant to Republic Act No. 6727 be considered as redemption price for the lot and school buildings; and (d) the sheriff and NCTEA be prohibited from taking possession of the lot and the school itself. The petition which was entitled "*Northeastern College, Inc., et al. v. National Labor Relations Commission, et al.*" was docketed as G.R. No. 116935.[41]

On 19 September 1994, this Court resolved to issue a temporary restraining order enjoining the enforcement of the Order dated 22 July 1994 of Labor Arbiter Olairez, denying NC's Notice of Redemption and granting NCTEA's motion to issue the writ of possession; and also enjoining the enforcement of the writ of execution dated 4 November 1992 in NLRC RAB II CN 05-00157-91 and 09-00293-91.[42]

On 20 September 1994, NCTEA filed a Motion to Issue Deed of Sale and Convey Possession of Properties sold on Execution covering TCT No. 3973 – Cadastral Lot No. 4935-H.[43]

In a Resolution dated 3 July 1995, the Supreme Court dismissed the petition for *certiorari* and prohibition as follows:

> G.R. No. 116935 (*Northeastern College, Inc. vs. National Labor Relations Commission, et al.*) Considering the allegations, issues and arguments adduced in the petition for *certiorari*, as well as the Solicitor General's and private respondents' comments thereon and petitioner's reply thereto, the Court resolved to DISMISS the petition for failure of the petitioner to sufficiently show that the **respondent commission** had committed a grave abuse of discretion **in rendering the questioned judgment**. Besides, the issues raised are factual.[44]

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[41] *Rollo* (G.R. No. 116935), pp. 1-420.

[42] *Id.* at 421.

[43] *Rollo* (G.R. No. 152923), pp. 628-629.

[44] *Rollo* (G.R. No. 116935), p. 563.

On 8 August 1995, NC filed a Motion for Reconsideration.[45] On 15 November 1995, this Court resolved to deny with finality the Motion for Reconsideration for lack of merit. We granted the motion to lift the temporary restraining order issued on 19 September 1994.[46]

An Entry of Judgment was made on 19 January 1996 in *G.R. No. 116935*.[47]

In an Order dated 28 May 1996, Executive Labor Arbiter Ricardo N. Olairez, pursuant to the resolution of this Court dismissing with finality NC's petition which lifted the temporary restraining order that was issued, directed Mr. Juan Guerrero, Deputy Sheriff of Branch 35 of the RTC of Santiago City, to convey possession of the properties to NCTEA, through its President Leslie Gumarang and Attorney-in-Fact Angelo Bautista. The order reads:

> Filed on January 24, 1996 is a Motion to Convey Possession alleging that movants acting for and representing the Northeastern College Teachers & Employees Association are the Purchasers of that parcel of land including the improvements/building thereon (Lot No. 4935-H of Subd. Plan Psd-34128) which our NLRC Sheriff sold at public auction on September 17, 1993 and final Deed of Sale dated January 25, 1996, that the conveyance of possession was deferred pursuant to a Temporary Restraining Order issued by the Supreme Court but which petition was dismissed on July 3, 1995 and DISMISSED WITH FINALITY on November 15, 1995 in a Resolution which lifted the Restraining Order and per Entry of Judgment, the Resolution dismissing the petition became final and executory on January 19, 1996, you are hereby directed to convey possession of the said properties to the purchasers Leslie M. Gumarang, NCTEA President, and Angelo T. Bautista, their Atty.-in-Fact, both representing and acting for the Northeastern College Teachers & Employees Association. If necessary, you are to seek/request the assistance of the Philippine National Police and/or the military in the area in the enforcement of this Order pursuant to the Rules of Court on execution on judgment.[48]

[45] *Id.* at 569-575.

[46] *Id.* at 599.

[47] *Id.* at 603.

[48] *Rollo* (G.R. No. 152923), pp. 507-508.

On 6 August 1996, NC filed a Petition for Injunction with prayer for the issuance of a temporary restraining order before the NLRC, docketed as *NLRC RAB II Case Nos. 05-00157-91 & 09-00293-91* and *NLRC NCR IC No. 000644-96 (NLRC NCR CA No. 007730-94)*, seeking to enjoin Executive Labor Arbiter Ricardo N. Olairez and Juan Guerrero, deputized NLRC Sheriff, from implementing the Labor Arbiter's Order dated May 28, 1996 and to prevent them from taking further action on the matter. It alleged that NCTEA, as represented by Leslie Gumarang, Roger T. Bautista and Angelo T. Bautista, their Attorney-in-fact, after taking possession of the two (2) properties sold at public auction, registered the land with the Registry of Deeds under their names for which TCT No. 230342 was issued. On 30 August 1995, Angelo T. Bautista and Leslie Gumarang sold the property, which was acquired for ₱150,000.00 and covered by TCT No. 98270, to Jaime and Eva Co for ₱6 million. NC contended that assuming that the auction sale was valid, its obligation in the sum of ₱2,145,171.86 had already been satisfied and extinguished, considering that the property was sold at ₱6 million. Still dissatisfied, NCTEA wanted to dispose of the other property of NC covered by TCT No. 3973 by filing a motion to convey possession on 24 January 1996. Acting thereon, the Labor Arbiter ordered the conveyance of the said property to Leslie Gumarang and Angelo Bautista, who were allegedly disauthorized by the members of the Northeastern College Teachers and Employees Association.[49]

On 15 September 1997, respondent NLRC rendered a decision with the following findings:

I

The auction sale was made on June 30, 1993. The Notice of Redemption of Property Sold on Execution was filed on June 1, 1994. It is thus clear that the notice of redemption was made within the reglementary 12-month period.

II

The Labor Arbiter rejected the direct payments to the teachers and employees made by the SCHOOL in the total amount of ₱860,309.78

[49] CA *rollo*, pp. 36-37.

as substantial compliance of the redemption price because the payments were not deposited with the Cashier, NLRC Regional Arbitration Branch, and that the payments should have been paid to the purchasers Leslie M. Gumarang, Roger T. Bautista and their representative, Angelo T. Bautista, the payments to include the monthly legal interest and taxes.

It must be emphasized that the principal complain[ant] in these cases is the UNION-the Northeastern College Teachers and Employees Association. Leslie Gumarang and Roger Bautista are officers of the UNION, representing the UNION, although they are complainants themselves being teachers of the school.

In the aforecited provision of the NLRC Sheriff's Manual, there is no requirement that the redemption payment should be deposited with the NLRC Cashier. There being no prohibition, the payments to the teachers may be considered substantial compliance considering that the teachers are the members of the UNION.

The Order of the Labor Arbiter dated July 22, 1994, denying the SCHOOL'S notice of redemption and granting the complainant's motion to issue deed and possession to the purchaser, was seasonably appealed to this Commission on August 8, 1994, after the SCHOOL's counsel received the Order of the Labor Arbiter on July 30, 1994. Such being the case, the said Order has not become final and executory.

In another Order dated May 28, 1996, the Labor Arbiter directed the conveyance of the properties to the purchasers Leslie M. Gumarang and Angelo T. Bautista after the Supreme Court dismissed the SCHOOL's petition for *certiorari* and prohibition wherein the SCHOOL questioned decision of the Labor Arbiter dated August 13, 1992 and the dismissal of the Commission of its complaint for injunction.

We also noted that the Labor Arbiter, in his Order dated May 28, 1996, directed the conveyance of the properties to Leslie M. Gumarang, NCTEA President and Angelo T. Bautista, although the real complainant in these cases is the Northeastern College Teachers and Employees Association. Gumarang and Bautista are members of the UNION and as officers they represent the UNION.

Considering that the appeal of the SCHOOL has yet to be resolved, the Order of the Labor Arbiter dated July 22, 1994 is not yet final. The Order of the Labor Arbiter dated May 28, 1996 is likewise premature.

However, we have to remand these cases to the Labor Arbiter *a quo* for the determination of the amount of the direct partial payments to the teachers as alleged by the SCHOOL. On the other hand, the UNION claims that their members signed and accepted the payments because of a threat of loss of employment. In order to give both parties an opportunity to support their respective allegations, these cases are hereby remanded to the Labor Arbiter for further appropriate proceedings. Needless to say, the finding on the amount of the direct payments is material in arriving at the exact amount still to be paid by the SCHOOL to the UNION and its members.

III

We find no need to rule on the question of whether the obligation of the SCHOOL has been satisfied by the sale of the first property sold on execution since we declared the Order of the Labor Arbiter dated July 22, 1994 as null and void.

IV

Considering our ruling that the Order of the Labor Arbiter dated May 28, 1996 is premature, the Labor Arbiter and the respondents Sheriff are hereby enjoined from further implementing the same.[50]

The dispositive portion of the decision reads:

WHEREFORE, premises considered, the following judgments are entered:

1. Declaring that the notice of redemption filed by the SCHOOL on June 1, 1994 was made within the reglementary period of one year.

2. Reversing the Order of the Labor Arbiter dated July 22, 1994 denying the SCHOOL's notice of redemption and granting the UNION's motion to issue deed and possession as purchaser.

3. CASES NOS. 05-00157-91 and 09-00293-91 are remanded to the Labor Arbiter of origin for a determination of the amount of the direct partial payments by the SCHOOL to the teacher-members of the UNION. Thereafter, to issue the corresponding writ of execution may be issued (sic) to collect whatever remaining balance to be paid by the SCHOOL.

[50] *Id.* at 47-51.

4. The respondent Labor Arbiter and Sheriff are enjoined from implementing the Order of the Labor Arbiter dated May 28, 1996, directing the conveyance of the possession of the properties sold to Leslie M. Gumarang and Angelo T.B. Bautista.[51]

On 3 December 1997, NCTEA, represented by Leslie Gumarang, filed before this Court a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court assailing the decision of the NLRC dated September 15, 1997.[52] The petition was entitled *NORTHEASTERN COLLEGE TEACHERS & EMPLOYEES ASSOCIATION duly rep. by LESLIE GUMARANG versus NATIONAL LABOR RELATIONS COMMISSION, Third Division – DOLE Quezon City & NORTHEASTERN COLLEGE, INC.* It was docketed as G.R. No. 131420.

NCTEA raised the following issues for resolution:

I. WHETHER OR NOT THE COMMISSION HAS JURISDICTION TO RESOLVE THE INSTANT CASES WHICH IT PREVIOUSLY RESOLVED ON APRIL 16, 1993 (Paragraph 18, IV *SUPRA*), AND FINALLY RESOLVED BY THE HIGHEST TRIBUNAL ON JULY 3, 1995 (PAR. 32, IV *SUPRA*) TO BE FINAL AND EXECUTORY.

Assuming that the Commission has jurisdiction, the following additional issues are submitted:

II. WHETHER OR NOT THE COMMISSION WAS CORRECT IN REVERSING THE ORDER OF THE PETITIONER ARBITER DATED JULY 22, 1994 DENYING THE RESPONDENT-SCHOOL'S NOTICE OF REDEMPTION AND GRANTING THE PETITIONER-UNION'S MOTION TO ISSUE DEED AND POSSESSION AS PURCHASER.

III. WHETHER OR NOT THE COMMISSION WAS CORRECT IN REMANDING CASES NOS. 05-00157-91 and 09-00293-91 TO THE LABOR ARBITER OF ORIGIN FOR A DETERMINATION OF THE AMOUNT OF THE DIRECT PARTIAL PAYMENTS BY THE SCHOOL TO THE TEACHER-MEMBERS OF THE UNION. THEREAFTER, TO ISSUE THE CORRESPONDING WRIT OF EXECUTION TO COLLECT WHATEVER REMAINING BALANCE TO BE PAID BY THE SCHOOL.

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[51] *Id.* at 52-53.

[52] *Id.* at 3-21.

IV. WHETHER OR NOT THE COMMISSION IS CORRECT IN ENJOINING THE PETITIONER-ARBITER AND SHERIFF FROM IMPLEMENTING THE ORDER DATED MAY 28, 1996, DIRECTING THE CONVEYANCE OF THE POSSESSION OF THE PROPERTIES SOLD IN PUBLIC AUCTION TO PETITIONER-UNION (LESLIE M. GUMARANG AND ANGELO T. BAUTISTA).

In a Resolution dated 25 November 1998, consistent with our ruling in *St. Martin Funeral Home v. National Labor Relations Commission*,[53] we referred the NCTEA's petition for *certiorari* to the Court of Appeals for appropriate action and disposition.[54] The case was docketed as CA-G.R. SP No. 50490.

On 14 May 1999, NC filed by way of registered mail its Comment on the Petition.[55] It argued, among other things, that Leslie Gumarang was not authorized to file the petition for *certiorari*, he not being the President of the NCTEA, the association he claimed to duly represent. Attached to the Comment was a letter dated 28 August 1995 by Ricardo S. Martinez, Sr. Regional Director IV of the Department of Labor and Employment, Regional Office No. 2, Tuguegarao, Cagayan, addressed to Mr. Nicanor Y. Samaniego of the NC, showing that Leslie Gumarang was not an officer or member of the Board of Directors of the NCTEA.[56]

On 22 March 2001, the Court of Appeals rendered a decision[57] as follows:

WHEREFORE, the petition is GRANTED and the questioned decision of the National Labor Relations Commission dated September 15, 1995 is ANNULLED and SET ASIDE. The assailed Orders dated July 22, 1994 and May 28, 1996 of the Labor Arbiter of the RAB II are hereby AFFIRMED.

On 10 May 2001, NC filed a Motion for Reconsideration asserting that the Court of Appeals failed to rule on the issue of the authority of Leslie Gumarang to represent NCTEA. It

[53] 356 Phil. 811 (1998).

[54] CA *rollo*, p. 92.

[55] *Id.* at 102-116.

[56] CA *rollo*, p. 109.

[57] *Id.* at 127-148.

stated that Gumarang had been disowned by the association and even charged, together with his cohorts, in the regular courts for having surreptitiously, fraudulently and maliciously caused the titling in their own names of the property involved in this case.[58]

On 24 May 2001, NCTEA filed its Opposition to Motion for Reconsideration[59] arguing that the motion for reconsideration was filed out of time, and that the ground raised by NC was not one of the issues in the petition. It added that the question as to the authority of Leslie Gumarang to represent NCTEA had already been resolved by the Court of Appeals in its decision dated 30 May 1997 in CA G.R. SP No. 43262.[60]

On 8 June 2001, NC filed a Motion[61] seeking leave of court to file a Supplement to Motion for Reconsideration.[62] A leave of court was granted, and then the Supplement to the Motion for Reconsideration was admitted.[63] Subsequently, NCTEA filed its Opposition to Motion for Reconsideration and Opposition/Reply to the Supplement to Motion for Reconsideration.[64]

On 11 April 2002, the Court of Appeals promulgated an Amended Decision,[65] the decretal portion of which reads:

WHEREFORE, premises considered, the decision dated 22 March 2001 is hereby REVERSED and SET ASIDE, and the instant petition

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[58] *Id.* at 151-155.

[59] *Id.* at 160-162.

[60] The Court of Appeals noted that the controversy (referring to a case before the RTC of Santiago City, Br. 36, involving two orders issued by said court enjoining Labor Arbiter N. Olairez from proceeding with the execution of judgment in favor of the union) could have been avoided had the Labor Arbiter been notified that Leslie Gumarang was no longer the union president and that a new set of officers had been elected by the union members. (CA *rollo*, pp. 273-281.)

[61] CA *rollo*, pp. 163-166.

[62] *Id.* at 167-223.

[63] *Id.* at 226.

[64] *Id.* at 228-231, 232-237.

[65] *Id.* at 286-305.

DISMISSED. Accordingly, the decision of the NLRC dated 15 September 1997 is hereby AFFIRMED *in toto*.

The Court of Appeals explained:

As the records show, the present petition for *certiorari* was initially filed before the Supreme Court on 3 December 1997. Overwhelmingly, Mr. Leslie Gumarang on said date had no more authority to file the present petition for *certiorari*. Such lack of authority to act for and on behalf of the NCTEA rendered the petition itself as not had been filed at all.

Conspicuously, Mr. Leslie Gumarang's lack of authority and personality to file the instant petition is definitely a ground for invalidating a claim made in the instant petition.[66]

On 29 May 2002, NCTEA, represented by Leslie Gumarang, appealed the Amended Decision of the Court of Appeals *via* a petition for review under Rule 45 of the 1997 Rules of Civil Procedure.[67] It raised the following grounds for the allowance of the instant petition:

I

THE HON. COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO SERIOUS ERROR OF LAW IN RENDERING AN AMENDED DECISION DATED APRIL 11, 2002 REVERSING ITS EARLIER DECISION DATED MARCH 22, 2001 AND AFFIRMING *IN TOTO* THE SEPTEMBER 15, 1997 RESOLUTION OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC).

II

THE HON. COURT OF APPEALS RENDERED A CONFLICTING DECISION WHEN IT REVERSED ITS EARLIER DECISION DATED MARCH 22, 2001 AND AFFIRMING *IN TOTO* THE SEPTEMBER 15, 1997 RESOLUTION OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC).

III

THE HON. COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO ERROR OF LAW WHEN IT RULED

[66] *Id.* at 303.

[67] *Rollo* (G. R. No. 152923), pp. 12-60.

IN ITS AMENDED DECISION DATED APRIL 11, 2002 THAT LESLIE GUMARANG HAD NO AUTHORITY TO FILE THE PETITION.

IV

THE HON. COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT ENTERTAINED THE CERTIFICATION DATED JUNE 7, 2002 ISSUED BY PIO R. BAUTISTA STATING TO THE EFFECT THAT PETITIONER HAS NO MORE AUTHORTIY TO FILE THE PETITION SUBJECT OF THE AMENDED DECISION DATED APRIL 11, 2002 SINCE THE SAME IS A MERE AFTERTHOUGHT HAVING BEEN PRESENTED ONLY IN PRIVATE RESPONDENT'S SUPPLEMENT TO MOTION FOR RECONSIDERATION AND LONG AFTER THE HON. COURT OF APPEALS RENDERED ITS EARLIER RESOLUTION DATED MARCH 22, 2001.

V

THE HON. COURT OF APPEALS SERIOUSLY ERRED AMOUNTING TO MISAPPREHENSION OF FACTS WHEN IT RULED IN ITS AMENDED DECISION DATED APRIL 11, 2002 THAT THE NLRC WAS CORRECT TO RULE THAT THE ORDER OF THE LABOR ARBITER DATED JULY 22, 1994 WAS NOT YET FINAL AND THE ORDER DATED MAY 28, 1996 PREMATURE.

VI

WITH ALL DUE RESPECT AND WITHOUT GIVING ANY MALICE THE HON. COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT JUSTIFIED THAT PRIVATE RESPONDENT'S MOTION FOR RECONSIDERATION WAS FILED WITHIN THE FIFTEEN DAY REGLAMENTARY (sic) PERIOD BY REQUIRING THE POSTMASTER OF PASIG CITY TO SUBMIT A REPORT AS TO THE STATUS OF REGISTERED LETTER NO. 43890 (REFERRING TO THE DECISION DATED MARCH 21, 2001 MAILED ON MARCH 26, 2001 AND ADDRESS TO PRIVATE RESPONDENT'S COUNSEL) SINCE IT IS NOT FOR THE COURT TO ADDUCE EVIDENCE AND TO SHOW PROOF THAT A PARTY HAS FILED ITS PETITION WITHIN THE ALLOWABLE PERIOD. IT SHOULD BE THE PARTY CONCERNED, IN THIS CASE THE PRIVATE RESPONDENT, WHO SHOULD BE ADDUCING OR SHOWING PROOF OF SUCH COMPLIANCE.[68]

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[68] *Id.* at 33-35.

During the pendency of the instant petition, counsel for petitioner Gumarang filed a Manifestation and Notice of Death of Petitioner Lesli Gumarang with a prayer that his wife and some former co-employees take his place as petitioners in this case.[69] The same was opposed by NC.[70]

In a Manifestation and Motion filed by the Office of the Solicitor General (OSG) on 14 December 2004, it informed the Court that the records of the case could not be located and asked the parties and their counsels to help reconstitute the records of the case or the essential portions thereof that would be sufficient for the Court to resolve the petition.[71] In a resolution dated 23 January 2006, the Court noted and approved said manifestation and motion.[72]

The parties, as well as the OSG, submitted their memoranda.[73] In its memorandum, the OSG narrowed down the conflicting submissions of the parties to whether the individual teachers and employees, whose total claim was fixed at ₱2,145,711.86, had been partially or totally satisfied. It submitted that the procedurally correct way to resolve this question of fact was to remand the case to the labor arbiter as mandated by the NLRC decision dated 15 September 1997, the Supreme Court not being a trier of facts.

Of the issues raised by petitioner Leslie Gumarang, the Court finds his alleged lack of authority to file the petition before the Court of Appeals, as well as before this Court, to be vital in the resolution of the instant petition.

Petitioner Gumarang argues that the Court of Appeals erred in ruling that he had no authority to file the petition for *certiorari*. He says that the issue of representation is a foreign matter to

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[69] The Court did not act on the matter. *Rollo* (G.R. No. 152923), pp. 431-437.

[70] *Id.* at 442-460.

[71] *Id.* at 461-468.

[72] *Id.* at 469.

[73] *Id.* at 671-748; 749-789; 821-849.

the petition and was belatedly raised in NC's Supplement to Motion for Reconsideration. He adds that aside from being the lawful representative of the NCTEA, he is himself a party complainant who has the legal capacity to file the petition, considering that whatever adverse decision is rendered by the NLRC would naturally affect his claim or interest. In the verification portion of the petition for *certiorari*, he declared under oath that he was one of the petitioners and at the same time the representative of all the petitioners.

The primordial question to be resolved is whether petitioner Gumarang had the authority to file the petition for *certiorari* assailing the decision of the NLRC dated 15 September 1997?

It is clear from the title of the petition for *certiorari* (*NORTHEASTERN COLLEGE TEACHERS & EMPLOYEES ASSOCIATION duly rep. by LESLIE GUMARANG versus NATIONAL LABOR RELATIONS COMMISSION, Third Division – DOLE Quezon City & NORTHEASTERN COLLEGE, INC.*), filed with this Court but subsequently referred to the Court of Appeals pursuant to *St. Martin Funeral Home v. National Labor Relations Commission*, that the petitioner is NCTEA which is represented by its President, Leslie Gumarang.

The Court of Appeals ruled that Leslie Gumarang, at the time he initially filed the petition for *certiorari* before the Supreme Court, had no more authority from the NCTEA to file the same. It declared that his lack of authority to act for and on behalf of the NCTEA rendered the petition itself as one that had not been filed at all, a ground for invalidating a claim made in the petition.

Was Leslie Gumarang authorized by NCTEA to file the petition with the Supreme Court or Court of Appeals?

There is nothing in the record that shows that Gumarang was authorized to file the petition on behalf of the NCTEA. Mr. Gumarang never adduced in evidence before the Court of Appeals or before this Court any authority from the NCTEA for him to file the petition and to act on its behalf after he was

deposed as President of the NCTEA on 7 October 1994.[74] Mr. Gumarang was mum about his removal, and the courts would not have found out about his lack of authority if not for the disclosure made by NC.

Mr. Gumarang faults the Court of Appeals for entertaining the issue of lack of authority, considering that same was belatedly raised by NC only in its Supplement to Motion for Reconsideration.

We find that said issue of lack authority was brought up not in the Supplement to Motion for Reconsideration but in NC's Comment[75] on the Petition for *Certiorari*. This issue was raised squarely therein but the Court of Appeals failed to rule on it in its Decision dated 22 March 2001.

Mr. Gumarang insists he has all the legal personality, not only as representative of the NCTEA, but also as a party in interest because the adverse ruling of the NLRC would not only be detrimental to the interests of the NCTEA, but would also affect his specific claim as an officer and member of the union.

As above explained, as early as 7 October 1994, Mr. Gumarang had no more authority to represent NCTEA, he no longer being the President thereof. This being the case, he had no right to file the petition on behalf of the NCTEA and all its members without the proper authority. This nothwithstanding, we find that he can still file the petition on his own behalf, he being a party in interest.

Pursuant to Section 2, Rule 3 of the 1997 Rules of Civil Procedure, every action must be prosecuted or defended in the name of the real party in interest, *i.e.*, the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Said section provides:

Section 2. Parties in interest. – A real party in interest is the party who stands to be benefited or injured by the judgment in the suit,

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[74] CA *rollo*, p. 211.

[75] *Id.* at 102-115.

or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

To qualify a person to be a real party in interest in whose name an action must be prosecuted, he must appear to be the present real holder of the right sought to be enforced.[76] "Interest" within the meaning of the rule means material interest, an interest in essence to be affected by the judgment as distinguished from mere interest in the question involved, or a mere incidental interest. By real interest is meant a present substantial interest, as distinguished from a mere expentancy or a future, contingent, subordinate or consequential interest.[77]

In the case at bar, Mr. Gumarang is a person who has a real interest in the instant case. As he asserts, whatever adverse decision is rendered by the NLRC would necessarily affect his specific claim or interest, considering that the NLRC decision prevents the enforcement of the Order of the Labor Arbiter dated 28 May 1996 to convey the properties involved to NCTEA.

While, indeed, we hold that Mr. Leslie Gumarang is authorized to file the petition for review, this, however, will not work to secure his position. We find that he violated the rule regarding the certification against forum shopping, considering that he was not the sole petitioner.

Mr. Leslie Gumarang, representing NCTEA, appealed the decision of the NLRC dated 15 September 1997 to this Court *via* a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure. Said petition was referred to the Court of Appeals following our ruling in *St. Martin Funeral Home v. National Labor Relations Commission*. In the filing of said petition, Section 1 of Rule 65 and Section 3 of Rule 42 are pertinent. These provisions read:

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[76] *Shipside Incorporated v. Court of Appeals*, 404 Phil. 981, 998 (2001).

[77] *AC Enterprises, Inc. v. Frabelle Properties Corporation*, G.R. No. 166744, 2 November 2006, 506 SCRA 625, 668.

SECTION 1. *Petition for certiorari*. x x x.

x x x x x x x x x

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

x x x x x x x x x

SECTION 3. Contents and filing of petition; effect of noncompliance with requirements. – x x x.

x x x x x x x x x

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

x x x x x x x x x

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

Thereafter, in appealing the Amended Decision of the Court of Appeals to the Supreme Court, Mr. Gumarang, representing NCTEA again, and himself as party-petitioner, filed a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure. Section 4 thereof, which enumerates the contents of the petition, provides:

SECTION 4. *Contents of petition.* – The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall xxx (e) contain a sworn certification against forum shopping as provided in the last paragraph of Section 2, Rule 42.

Under Section 5 of Rule 45, non-compliance with the certification requirement shall be sufficient ground for the dismissal of the petition. Said section states:

SECTION 5. *Dismissal or denial of petition.* – The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, 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. x x x.

From the aforementioned provisions, it is clear that when an appeal is made to the Court of Appeals or to the Supreme Court *via* Rule 45 or 65, it is mandatory that a certification against forum shopping must be filed. It is settled that the requirement to file a certificate of non-forum shopping is mandatory and that the failure to comply therewith cannot be excused. The certification is a peculiar and personal responsibility of the party, an assurance given to the court or other tribunal that there are no other pending cases involving basically the same parties, issues and causes of action. Hence, the certification must be accomplished by the party himself because he has actual knowledge of whether or not he has initiated similar actions or proceedings in different courts or tribunals.[78]

We have held that the requirement of filing a certification against forum shopping applies to both natural and juridical persons. In *Fuentebella v. Castro*[79] we laid down additional guidelines for compliance with the required certificate against forum shopping where the petitioner is a corporation and/or there are several petitioners, as follows:

This requirement is intended to apply to both natural and juridical persons as Supreme Court Circular No. 28-91 and Section 5, Rule 7 of the Rules of Court do not make a distinction between natural and juridical persons. Where the petitioner is a corporation, the certification against forum shopping should be signed by its duly

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[78] *Eastland Construction & Development Corporation v. Mortel*, G.R. No. 165648, 23 March 2006, 485 SCRA 203, 214; *Expertravel & Tours, Inc. v. Court of Appeals*, G.R. No. 152392, 26 May 2005, 459 SCRA 147, 157.

[79] G.R. No. 150865, 30 June 2006, 494 SCRA 183, 190-191; *Rural Bankers Association of the Philippines vs. Tanghal-Salvaña*, G.R. No. 175020, 4 October 2007, 534 SCRA 721, 740-741.

authorized director or representative. This was enunciated in *Eslaban, Jr. v. Vda. de Onorio*, where the Court held that if the real party-in-interest is a corporate body, an officer of the corporation can sign the certification against forum shopping so long as he has been duly authorized by a resolution of its board of directors.

Likewise, where there are several petitioners, it is insufficient that only one of them executes the certification, absent a showing that he was so authorized by the others. That certification requires personal knowledge and it cannot be presumed that the signatory knew that his co-petitioners had the same or similar actions filed or pending.

Hence, a certification which had been signed without the proper authorization is defective and constitutes a valid cause for the dismissal of the petition.

This holds true in the present case where the Court of Appeals accordingly dismissed the petition for lack of proper authorization of the one signing it on behalf of petitioners. Lourdes Pomperada, the Administrative Manager of petitioner corporation, who signed the verification and certificate on non-forum shopping, initially failed to submit a secretary's certificate or a board resolution confirming her authority to sign for the corporation, and a special power of attorney to sign on behalf of co-petitioner Art Fuentebella, who was sued jointly and solidarily with the corporation in his capacity as officer of the latter.

From the foregoing, it is clear that if the petitioner is a juridical person, the required authorization must be shown by anyone who will represent it. Inasmuch as NCTEA is a juridical person, having been registered with the DOLE, authority from it is necessary before any person can represent it and sign a certificate against forum shopping on its behalf.

In case there are several petitioners, failure of one of the petitioners to sign the certificate against forum shopping constitutes a defect in the petition, which is a ground for dismissing the same.[80] In *Tolentino v. Rivera*,[81] we held that for the relaxation

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[80] *Loquias v. Office of the Ombudsman*, 392 Phil. 597, 603-604 (2000).

[81] G.R. No. 149665, 25 January 2006, 480 SCRA 87, 99; *PET Plans, Inc. v. Court of Appeals*, G.R. No. 148287, 23 November 2004, 443 SCRA 510, 520.

of said rule, two conditions must be complied with: first, petitioners must show justifiable cause for their failure to personally sign the certification; and second, they must also be able to prove that the outright dismissal of the petition would seriously impair the orderly administration of justice. Thus, to merit the court's consideration, petitioners must show reasonable cause for failure to personally sign the certification[82] and convince the court that the outright dismissal of the petition would defeat the administration of justice.[83]

In the petition initially filed with this Court but which was eventually referred to the Court of Appeals, the certification against forum shopping was solely signed by Mr. Gumarang in representation of all the other supposed claimants-members of the NCTEA. Mr. Gumarang failed to present any valid authority from the NCTEA or from any of the other members of the NCTEA to represent the union or the members. Mr. Gumarang failed to show not only any authority to sign the certification of non-forum shopping on behalf of NCTEA and the individual claimants but also any compelling reason why they were unable to sign it. This defect was not noticed by the Court of Appeals when it rendered its decision.

Failing to get a favorable ruling from the Court of Appeals, Mr. Gumarang is now before us *via* a petition for review under Rule 45. The petitioners herein are NCTEA and Mr. Gumarang. From the certification against forum shopping, it appears that Mr. Gumarang signed it as petitioner and on behalf of the NCTEA. He, however, did not show any authority from the NCTEA to represent it or act on its behalf. This was the second time that he did this – to represent and sign on behalf of the NCTEA.

As can be seen in the title of the case, Mr. Gumarang is insistent that he represents NCTEA. This obstinate claim is not supported by any evidence and he remains silent on this matter, neither denying nor admitting anything. His misrepresentation

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[82] *Docena v. Hon. Lapesura*, 407 Phil. 1007, 1017-1018 (2001).

[83] *Torres v. Specialized Packaging Development Corporation*, G.R. No. 149634, 6 July 2004, 433 SCRA 455, 467.

will not pass unnoticed and without consequence. We cannot allow a party to gain an advantage from its flagrant disregard of the Rules.[84]

Without the required authority from the NCTEA, Mr. Gumarang cannot represent the NCTEA. As explained above, if there are several petitioners, the failure of one to sign the certificate of non-forum shopping is a deficiency which is a ground for the dismissal of the petition. In the case before us, there being two petitioners – NCTEA and Mr. Gumarang – both of them should sign the certificate against forum shopping. Since there was only one signatory, the requirement on the filing of the certificate against forum shopping has not been complied with. As in the Court of Appeals, Mr. Gumarang failed to show why the duly authorized representative of the NCTEA was unable to sign the certification, and to convince this Court that the outright dismissal of the petition would defeat the administration of justice.

This Court is not unaware that in some cases, it has ruled that the execution of one petitioner on behalf of all the other petitioners constitutes substantial compliance with the rule on the filing of a certificate of non-forum shopping on the ground of common interest/defense. In *Docena v. Lapesura*, the Court considered the signing of the certificate of non-forum shopping by the husband on his behalf and that of his wife to be not a fatal defect. In *Cavile v. Hiers of Clarita Cavile*,[85] we ruled:

> We find that the execution by Thomas George Cavile, Sr. in behalf of all the other petitioners of the certificate of non-forum shopping constitutes substantial compliance with the Rules. All the petitioners, being relatives and co-owners of the properties in dispute, share a common interest thereon. They also share a common defense in the complaint for partition filed by the respondents. Thus, when they filed the instant petition, they filed it as a collective, raising only one argument to defend their rights over the properties in question. There is sufficient basis, therefore, for Thomas George Cavili, Sr. to speak for and in behalf of his co-petitioners that they

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[84] *PET Plan v. Court of Appeals*, *supra* note 81 at 520.

[85] 448 Phil. 302, 311 (2003).

have not filed any action or claim involving the same issues in another court or tribunal, nor is there other pending action or claim in another court or tribunal involving the same issues.

We cannot apply the ruling in these two cases to the case before us. Common interest/defense is not present in the instant petition. There can be no common interest between Mr. Gumarang and the NCTEA which he seeks to represent. As early as 1994, he had no more authority to file the petition for *certiorari* with the Court of Appeals (initially filed with the Supreme Court) on behalf of the NCTEA and its individual members, as he was no longer the President of said association.[86] In fact, the NCTEA has charged Mr. Gumarang and his cohorts in the regular courts for having surreptitiously, fraudulently and maliciously caused the titling of the property involved in this case in their own names. All these show that NCTEA and Mr. Gumarang do not have the same interest in the instant petition. If NCTEA still supported Mr. Gumarang in the filing of the instant petition, it could have given him the authority to file the same on its behalf. This, it did not do.

On the part of Mr. Gumarang, knowing fully well that he was no longer the representative of the NCTEA, why did he not inform both the Court of Appeals and the Supreme Court of such fact when he filed the petitions? Instead, he claimed to be the duly authorized representative of the NCTEA which he was not. His omission and misrepresentation are clear indications of bad faith of which this Court does not approve. He should have known that by including NCTEA as petitioner and signing as its representative, he should have had the authority to do so. This, he did not possess. When he alone signed on his behalf and that of the NCTEA, not once but twice, he flagrantly violated the rule on the filing of a certificate of non-forum shopping.

All the foregoing circumstances considered, we find the failure of all the petitioners to sign the certificate of non-forum shopping to be fatal, for it failed to comply with the rules of procedure.

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[86] CA *rollo*, pp. 210-217.

We cannot, under the circumstances, relax the rules with the knowledge that Mr. Gumarang flouted the rules.

In *Rural Bankers Association of the Philippines v. Tanghal-Salvaña,*[87] we decreed:

> Obedience to the requirements of procedural rules is needed if the parties are to expect fair results therefrom, and utter disregard of the rules cannot justly be rationalized by harking on the policy of liberal construction. Procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are thus enjoined to abide strictly by the rules. And while the Court, in some instances, allows a relaxation in the application of the rules, this was never intended to forge a bastion for erring litigants to violate the rules with impunity. The liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice.

All the foregoing discussion notwithstanding, and considering the merits of the case, the petition still fails to persuade.

Mr. Gumarang faults the Court of Appeals for requiring the postmaster of Pasig City to submit a report as to the status of Letter No. 43890 (referring to the copy of decision dated 21 March 2001 addressed to NC's counsel), since it was not for the court to adduce evidence and to show proof that a party had filed its motion for reconsideration within the allowable period, since it should be the party concerned that should be adducing or showing proof of such compliance.

The appellate court did not commit grave abuse of discretion when it ordered the postmaster to submit the required report. The Court of Appeals found said report to be necessary for the resolution of issues before it. It simply acted within its power[88]

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[87] *Supra* note 79 at 741-742.

[88] Sec. 5. Inherent powers of courts. — Every court shall have power:

x x x x x x x x x

(c) To compel obedience to its judgments, orders and proceedings, and to the lawful orders of a judge out of court, in a case pending therein; x x x.

in order to decide expeditiously and justly the case pending before it. With the submission of the report, the appellate court found the motion for reconsideration to have been filed on time.[89]

Mr. Gumarang contends that the Court of Appeals erred when it ruled in its Amended Decision dated 11 April 2002 that the NLRC was correct in ruling that the Order dated 22 July 1994 (of the Labor Arbiter denying NC's Notice of Redemption and granting NCTEA's motion to issue writ of possession) was not yet final and that the Order dated 28 May 1996 (of the Labor Arbiter directing the conveyance of properties to NCTEA) was premature, as the same constituted a misapprehension of facts. He further contends that the Resolution of the Supreme Court in G.R. No. 116935 could serve as basis for the issuance of the Orders dated 22 July 1994 and 28 May 1996.

His contentions are not tenable.

In our resolution in G.R. No. 116935 dated 3 July 1995, we dismissed NC's petition for *certiorari*, prohibition and preliminary injunction with prayer for temporary restraining order for its "failure to sufficiently show that the **respondent commission** had committed a grave abuse of discretion in rendering the questioned judgment."[90] From the wordings of said minute resolution, the Court ruled only on the judgment rendered by the respondent Commission (NLRC). From the petition, it can be gathered that the questioned judgment referred to is that dated *16 April 1993*, which dismissed NC's complaint for injunction filed before the NLRC. The Court did not rule on the Labor Arbiter's Orders dated 22 July 1994 and 28 May 1996. Such is clear in the Court's resolution. Having ruled only on the NLRC judgment dated 16 April 1993, said ruling, therefore, cannot be a sufficient basis for the Labor Arbiter's Orders of 22 July 1994 and 28 May 1996. We have not squarely ruled on the Labor Arbiter's denial of NC's Notice of Redemption and grant of NCTEA's motion to issue a writ of possession (Order dated 22 July 1994), and on the Labor Arbiter's command

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[89] Court of Appeals Amended Decision, pp. 14-15; CA *rollo*, pp. 299-300.

[90] *Rollo* (G.R. No. 116935), p. 563.

to convey possession of the properties to NCTEA (Order dated 28 May 1996).

Mr. Gumarang's argument that the Court of Appeals can no longer rule on the petition (CA-G.R. SP No. 50490), because the Supreme Court has ruled on the Order of 28 May 1996, deserves scant consideration. The Court of Appeals can still review the Labor Arbiter's Order of 28 May 1996, as well as NC's right of redemption (Labor Arbiter's Orders of 22 July 1994), for the simple reason that we have not yet done so. Despite the fact that the petition in G.R. No. 116935 was filed after the Labor Arbiter's issuance of the Order dated 22 July 1994, it does not follow that this Court ruled on the same. As explained above, our ruling in G.R. No. 116935 was limited to the NLRC's decision dated *16 April 1993*, and did not include the Labor Arbiter's Orders of 22 July 1994 and 28 May 1996. We agree with both NLRC and the Court of Appeals that the Labor Arbiter's Order dated 22 July 1994 has not yet attained finality. The NLRC never ruled on the appeal filed by NC thereon. Neither did we reach a decision on the matter. This being the case, the Order of Executive Labor Arbiter Olairez dated 28 May 1996 was, indeed, premature.

Finally, as to the prayer[91] of the counsel of Mr. Gumarang to allow the latter to be substituted by his wife, and by his former co-employees whom he had allegedly represented before the Regional Arbitration Branch of the NLRC, we grant the same insofar as the wife is concerned, she being his heir, but not as to the other co-employees. We cannot allow petitioner Gumarang's co-employees to take his place because, if we do, we would be allowing them to become parties to the instant petition when they are not. It would have been different if they presented evidence showing that they had authorized Mr. Gumarang to file the petition on their behalf before this Court and even before the Court of Appeals. This, they had not done.

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[91] Manifestation and Notice of Death of petitioner Lesli Gumarang. *Rollo*, pp. 442-460.

WHEREFORE, premises considered, the petition for review is *DENIED*.

In view of the letter of petitioner Leslie Gumarang, he is hereby substituted by his wife Julietta Billedo-Gumarang. No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Tinga,[*] and *Leonardo-de Castro,*[**] *JJ.*, concur.

THIRD DIVISION

[G.R. No. 159740. January 19, 2009]

METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM, *petitioner, vs.* **ESM TRADING CORPORATION,** *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; EXECUTION PENDING APPEAL; MOOTED WITH THE REVERSAL OF APPEALED DECISION, DELETING MONETARY CONSIDERATION AWARDED THEREIN. — On August 14, 1995, respondent ESM Trading Corporation (ESM) filed Civil Case No. G-2850 for nullification and cancellation of public bidding and damages with a prayer for Temporary Restraining Order and Preliminary Injunction with Branch 51 of the Regional Trial Court of Guagua, Pampanga, against petitioner MWSS,

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[*] Associate Justice Dante O. Tinga was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 12 January 2009.

[**] Per Special Order No. 546 Associate Justice Teresita J. Leonardo-De Castro was designated to sit as additional member in view of the retirement of Associate Justice Ruben T. Reyes dated 5 January 2009.

its officers, and Consuelo Commodities, Inc. (CCI), for awarding to the latter a contract for the supply of spring hydrants. ESM claims that it had suffered loss and damage as a result of the award to CCI, which turned out to be a non-complying and ineligible bidder. On June 30, 2000, the trial court rendered a decision in favor of ESM. On August 18, 2000, ESM moved for execution pending appeal which was opposed by MWSS. MWSS likewise interposed an appeal with respect to the decision of the trial court, which was docketed as CA-G.R. CV No. 74964. On January 8, 2001, the trial court issued its Order granting execution pending appeal. On January 19, 2001, the trial court issued the corresponding writ of execution, and MWSS' money placement in PNB in the amount of ₱963,468.51 was garnished. MWSS filed an original petition for *certiorari* squarely putting in issue the propriety of the trial court's grant of execution pending appeal, but the Court of Appeals, via the herein assailed decision, dismissed the same, and likewise denied MWSS' motion for reconsideration. Thus, the instant petition was filed on October 23, 2003. On October 29, 2004, however, or pending resolution of the instant petition, the Court of Appeals promulgated its Decision in CA-G.R. CV No. 74964. The appellate court reversed the decision of the trial court and deleted its award of actual, moral and exemplary damages originally granted in favor of ESM. In view of this development, the instant petition has been rendered moot. The reversal of the trial court's decision in Civil Case No. G-2850 carried with it the nullification of the issued writ of execution pending appeal.

APPEARANCES OF COUNSEL

The Government Corporate Counsel for petitioner.
Estrabillo-Flores and Associates Law Office for respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court seeks a review of the March 14, 2003 Decision[1]

[1] *Rollo*, pp. 35-40; penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justices Bernardo P. Abesamis and Edgardo F. Sundiam.

of the Court of Appeals in CA-G.R. SP No. 62920, which dismissed the petition for certiorari filed by petitioner Metropolitan Waterworks and Sewerage System (MWSS), as well as the August 28, 2003 Resolution[2] which denied its Motion for Reconsideration.

On August 14, 1995, herein respondent ESM Trading Corporation (ESM) filed Civil Case No. G-2850 for nullification and cancellation of public bidding and damages with a prayer for Temporary Restraining Order and Preliminary Injunction with Branch 51 of the Regional Trial Court of Guagua, Pampanga, against petitioner MWSS, its officers, and Consuelo Commodities, Inc. (CCI), for awarding to the latter a contract for the supply of spring hydrants. ESM claims that it had suffered loss and damage as a result of the award to CCI, which turned out to be a non-complying and ineligible bidder.

On June 30, 2000, the trial court rendered in favor of ESM a decision,[3] the dispositive portion of which reads, as follows:

> WHEREFORE, judgment is hereby rendered, as follows:
>
> 1. Defendants Metropolitan Waterworks and Sewerage System (MWSS), Francisco A. Arellano, Edgardo Q. Esteban, Edgar Ariel Recto, Antonio F. Kaimo, Macra A. Cruz, Ruben A. Hernandez, Gregorio R. Vigilar, Oscar I. Garcia, Gregorio M. Datuin, Alfredo C. Reyes, Gliceria V. Sicat, Jose F. Mabanta and Amauri R. Gutierrez are hereby ordered to pay jointly and severally, plaintiff ESM Trading Corporation the sum equivalent in Philippine Pesos the amount of $65,080.00 by way of actual damages, the conversion rate of which shall be computed on the basis of the year 1995 rate of exchange between the Philippine Peso to the United States of America dollars; and the legal rate of interest thereon from January, 1995 until paid;
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> 2. Defendants MWSS, Francisco A. Arellano, Edgardo Q. Esteban, Edgar Ariel Recto, Antonio F. Kaimo, Macra A. Cruz, Ruben A. Hernandez, Gregorio R. Vigilar, Oscar I. Garcia, Gregorio M. Datuin, Alfredo C. Reyes, Gliceria V. Sicat, Jose F. Mabanta and Amauri R. Gutierrez are hereby ordered to pay unto plaintiff

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

[3] *Id.* at 61-80.

Emilio S. Mendoza, jointly and severally, the sum of ₱500,000.00 by way of moral damages and the additional sum of ₱200,000.00 by way of exemplary damages;

3. The same defendants above, to pay plaintiff the sum of ₱100,000.00 by way of Attorney's fees and cost of suit.

No judgment is entered against Defendant Consuelo Commodities, Inc., for insufficiency of evidence.

Defendants' counterclaims are DISMISSED for lack of merit.

SO ORDERED.[4]

On August 18, 2000, ESM moved for execution pending appeal which was opposed by MWSS. MWSS likewise interposed an appeal with respect to the decision of the trial court, which was docketed as CA-G.R. CV No. 74964.[5]

On January 8, 2001, the trial court issued its Order[6] granting execution pending appeal. On January 19, 2001, the trial court issued the corresponding writ of execution, and MWSS' money placement in PNB in the amount of ₱963,468.51 was garnished.

MWSS filed an original petition for *certiorari* squarely putting in issue the propriety of the trial court's grant of execution pending appeal, but the Court of Appeals, via the herein assailed decision, dismissed the same, and likewise denied MWSS' motion for reconsideration. Thus, the instant petition was filed on October 23, 2003.

On October 29, 2004, however, or pending resolution of the instant petition, the Court of Appeals promulgated its Decision in CA-G.R. CV No. 74964.[7] The appellate court reversed the decision of the trial court and deleted its award of actual, moral and exemplary damages originally granted in favor of ESM.

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

[5] Entitled "*ESM Trading Corporation v. MWSS, et al.*"

[6] *Rollo*, pp. 43-49.

[7] *Id.* at 136-150.

In view of this development, the instant petition has been rendered moot. The reversal of the trial court's decision in Civil Case No. G-2850 carried with it the nullification of the issued writ of execution pending appeal.

WHEREFORE, the Petition for Review on *Certiorari* is hereby *DENIED*. The Decision of the Court of Appeals dated March 14, 2003 in CA-G.R. SP No. 62920 which dismissed the petition for certiorari filed by Metropolitan Waterworks and Sewerage System and the Resolution dated August 28, 2003 denying the motion for reconsideration, are thus *SET ASIDE*.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and *Leonardo-de Castro,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 164032. January 19, 2009]

LOLITA A. LOPEZ, JOSECITO M. DE LA VEGA, MANUEL ANTIOQUIA, ELMER G. HILAUS, LUCIA B. MONTEMAYOR, CAROLINA ESPIRITU, LEONARDO FORTE, HELEN NATIVIDAD, ROGER C. OBINSA, CARLOS C. ASILO, JR., RICARDO FRONDA, ALEX SANTIAGO, LEONORA S.J. BALABBO, CATALINO BALABBO, FE S. SANTOS, VICTORIA V. MOLAS, ANTONIO ATENTA, MA. DONNA SUSVILLA, ANDRES V. OCAMPO, JOVENCIO JUSAYAN, ARGIL LABRIS, EDNA R. MORAL, NESTOR LERIOS, EFREN

[*] Designated as additional member of the Third Division in view of the retirement of Associate Justice Ruben T. Reyes, per Special Order No. 546 dated January 5, 2009.

TURBANADA, RICKY ASPAN, EMMANUEL MEANA, MA. CECILIA PANGAN, HILARIO J. CACHO, RONALDO LIM, represented by ESTELITA LIM, MAXILINDA M. LIWANAG, JUDY F. PAGUERGAN, ROLANDO H. ABAÑO, JOSEPH MACARANAS, MARGARITO PERILLA, MARTIN GONZALES, JOEY MAHINAY, MARDI F. ALARDE, DOMINGITO DAO, SERAPIO MARDOQUIO, NORBERTA DE GUIA, PASTORA S. BASALLO, MELCHOR BARCELONA, DANILO VALENCIA, FERNANDO TOLENTINO, ARIEL DACAYO, represented by LEONARDA G. DACAYO, attorney-in-fact, TERESITA BANDO, in her behalf and in behalf of her minor children MICHAEL, JAY LEE, LARRA MELISSA and MARY ANNE, all surnamed BANDO, RONILO E. LEE, represented by THELMA V. LEE, attorney-in-fact, ANGELITO BASILIO, and HEIRS OF VICTORINO CARAIG, namely: EDNA L. AURELIO *VDA. DE* CARAIG, minors JENNICA, JESSA, CHRISTINE MAY and CATHERINE, all surnamed CARAIG, represented by their mother EDNA AURELIO *VDA. DE* CARAIG, *petitioners, vs.* **QUEZON CITY SPORTS CLUB, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; WHEN PERFECTED; REQUISITES; EXPLAINED.— Under the Rules, appeals involving monetary awards are perfected only upon compliance with the following mandatory requisites, namely: (1) payment of the appeal fees; (2) filing of the memorandum of appeal; and (3) payment of the required cash or surety bond. Thus, the posting of a bond is indispensable to the perfection of an appeal in cases involving monetary awards from the decision of the labor arbiter. The intention of the lawmakers to make the bond a mandatory requisite for the perfection of an appeal by the employer is clearly expressed in the provision that an appeal by the employer may be perfected "only upon the posting of a cash or surety bond." The word "only" makes

it unmistakably plain that the lawmakers intended the posting of a cash or surety bond by the employer to be the essential and exclusive means by which an employer's appeal may be perfected. The word "may" refers to the perfection of an appeal as optional on the part of the defeated party, but not to the compulsory posting of an appeal bond, if he desires to appeal. The meaning and the intention of the legislature in enacting a statute must be determined from the language employed; and where there is no ambiguity in the words used, then there is no room for construction. The filing of the bond is not only mandatory but also a jurisdictional requirement that must be complied with in order to confer jurisdiction upon the NLRC. Non-compliance with the requirement renders the decision of the labor arbiter final and executory. This requirement is intended to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the employer's appeal. It is intended to discourage employers from using an appeal to delay or evade their obligation to satisfy their employees' just and lawful claims.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; THE DECLARATION OF ILLEGALITY OF A STRIKE WILL NOT AFFECT THE GRANT OF BACKWAGES AND SEPARATION PAY ON AFFECTED EMPLOYEES WHO WERE CONSTRUCTIVELY DISMISSED FROM WORK; CASE AT BAR. — There is no conflict between the *Dinopol* and the *Lustria* decisions. While both rulings involve the same parties and same issues, there is a distinction between the remedies sought by the parties in these two cases. In the *Dinopol* decision, it was QCSC which filed a petition to declare the illegality of the 12 August 1997 strike by the union. The consequence of the declaration of an illegal strike is termination from employment, which the Labor Arbiter did so rule in said case. However, not all union members were terminated. In fact, only a few union officers were validly dismissed in accordance with Article 264 of the Labor Code. Corollarily, the other union members who had merely participated in the strike but had not committed any illegal acts were not dismissed from employment. Hence, the NLRC erred in declaring the employment status of all employees as having been lost or forfeited by virtue of the *Dinopol* decision. On the other hand, the *Lustria* decision involved the unfair labor practices alleged by the union with particularity. In said case, Labor Arbiter Lustria sided with

the Union and found QCSC guilty of such practices. As a consequence, the affected employees were granted backwages and separation pay. The grant of backwages and separation pay however was not premised on the declaration of the illegality of the strike but on the finding that these affected employees were constructively dismissed from work, as evidenced by the layoffs effected by the company. Clearly, there are two separate decisions issued by two different labor arbiters involving the same parties and interests. Considering that the remedies sought by the parties in each case differ, these two rulings may co-exist. Therefore, with respect to petitioners and union officers Alex J. Santiago, Ma. Cecilia Pangan, Ronilo E. Lee, and Genaro Bando, who apparently had been substituted by present petitioner Teresita Bando, the *Dinopol* decision declaring them as having lost their employment status still stands. To recapitulate, the NLRC erred in setting aside the *Lustria* decision, as well as in deleting the award of backwages and separation pay, despite the finding that the affected employees had been constructively dismissed. Based on the foregoing, the *Lustria* decision should be upheld and therefore reinstated except as regards the four petitioners.

APPEARANCES OF COUNSEL

Eduardo J. Mariño, Jr. for petitioners.
Rizalina V. Lumbera for respondent.

D E C I S I O N

TINGA, *J.*:

Before us is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, seeking to reverse and set aside the 18 February 2004 decision[2] and the 3 June 2004 resolution[3] of the Court of Appeals in CA-GR SP No. 78245.

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[1] *Rollo,* pp. 16-53.

[2] *Id.* at 54-66; Penned by Associate Justice Andres B. Reyes, Jr., and concurred in by Associate Justices Buenaventura J. Guerrero and Regalado E. Maambong.

[3] *Id.* at 67.

The factual antecedents of the case follow.

Claiming that it is a registered independent labor organization and the incumbent collective bargaining agent of Quezon City Sports Club (QCSC), the Kasapiang Manggagawa sa Quezon City Sports Club (union) filed a complaint for unfair labor practice[4] against QCSC on 12 November 1997, alleging that the latter committed the following unfair labor practices:

1. Interference with, restraining and/or coercing employees, particularly members of the incumbent union in their exercise of their rights to self-organization;

2. Discrimination in regards to payment of wages, hours of work and other terms and conditions of employment in order to discourage continued membership to the incumbent union;

3. Violation of several economic provisions of the CBA such as, across the board implementation of any legislated wage increases, non-payment of salaries and wages for [the] period already worked, and non-payment of overtime pay to some employees and other related economic benefits which will be specifically enunciated by the petitioner in the succeeding pleadings to be filed.[5]

The Union averred that it was ordered to submit a new information sheet.[6] It immediately wrote a letter addressed to the general manager, Angel Sadang, to inquire about the information sheet, only to be insulted by the latter. The members of the union were not paid their salaries on 30 June 1997.[7] A board member, Antonio Chua allegedly harassed one of the employees and told him not to join the strike and even promised a promotion.[8] On 4 July 1997, the union wrote a letter to the management for the release of the members' salaries for the period 16-30 June 1997, implementation of Wage Order No. 5, and granting of wage increases mandated by the Collective

[4] Records (Vol. 1), pp. 1-4.

[5] *Rollo*, p. 131.

[6] *Id.* at 136.

[7] *Id.* at 137.

[8] *Id.* at 138.

Bargaining Agreement (CBA).[9] When its letter went unanswered, the union filed a notice of strike on 10 July 1997 for violation of Article 248 (a)(c)(e) of the Labor Code, nonpayment of overtime pay, refusal to hear its grievances, and malicious refusal to comply with the economic provisions of the CBA.[10] After conducting a strike vote,[11] it staged a strike on 12 August 1997. On 16 August 1997, the QCSC placed some of its employees under temporary lay-off status due to redundancy.[12] It appears that on 22 December 1997, QCSC also filed a petition for cancellation of registration against the union.[13]

QCSC, for its part, contended that the union was not a legitimate labor union as it had a pending complaint for cancellation of certificate of registration; that there was no valid CBA; that it had not committed any unfair labor practice; and that the union had staged an illegal strike.[14]

On 29 December 1998, Labor Arbiter Joel S. Lustria promulgated a decision[15] (*Lustria* decision) finding QCSC guilty of unfair labor practice and ordering it to pay the affected employees their separation pay, backwages, and salary increase, totaling ₱27,504,864.46.[16] QCSC appealed from the labor arbiter's decision.[17] In turn, the union filed a motion to dismiss the appeal for non- perfection due to failure to post the appeal bond.[18] QCSC filed a motion for reduction of the appeal bond to FOUR MILLION PESOS (₱4,000,000.00).[19]

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[9] Records (Vol. 1), pp. 136-137.

[10] *Id.* at 142.

[11] *Id.* at 144-145.

[12] Records (Vol II), pp. 346-347, 358-359.

[13] *Id.* at 343-345.

[14] CA *rollo*, pp. 335-340.

[15] *Rollo,* pp. 175-192.

[16] *Rollo*, p. 192.

[17] *Id.* at 193-199.

[18] *Id.* at 204.

[19] *Id.* at 206.

On 4 January 2000, QCSC filed a supplement to its appeal, citing a decision (*Dinopol* decision) dated 9 October 1998 of Labor Arbiter Ernesto Dinopol declaring the strike of the union illegal. The dispositive portion reads:

> WHEREFORE, in view of the Union's having violated the no-strike-no-lockout provision of the Collective Bargaining Agreement, the strike it staged on August 12, 1998 is hereby declared illegal and consequently, pursuant to Article 264 of the Labor Code, the individual respondents, namely: **RONILO C. LEE, EDUARDO V. SANTIA, CECILLE C. PANGAN, ROMEO M. MORGA, GENARO C. BANDO AND ALEX J. SANTIAGO**, who admitted in paragraph 1 of their position paper that they are officers/members of the complaining Union are hereby declared to have lost their employment status.
>
> The claim for damages is hereby **DISMISSED** for lack of merit.
>
> SO ORDERED.[20]

Meanwhile, the National Labor Relations Commission (NLRC)[21] ordered the posting of an additional SIX MILLION PESO (₱6,000,000.00)-bond. And on 1 August 2001, it[22] rendered a decision granting the appeal and reversing the *Lustria* decision. It ratiocinated:

> We are now called upon to harmonize two conflicting decisions rendered by two different Labor Arbiters, as discussed above, in order to maintain uniformity of our Decision. Both Decisions involve the same rights and interests of the same contending parties.
>
> From all indications, Labor Arbiter Lustria was apparently of the impression that herein individual complainants still retain their employment status when he decided this case. He was unaware, presumably, of the existence of the Decision rendered in NLRC CASE NO. 00-09-0667-97 which has already attained finality when he issued his decision granting the monetary claims of herein individual complainants.

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[20] *Id.* at 219.

[21] Presided by Commissioner Rogelio I. Rayala and concurred in by Commissioners Vicente S.E. Veloso and Alberto R. Quimpo.

[22] Presided by Commissioner Roy V. Señeres, and concurred in by Commissioners Vicente S.E. Veloso and Alberto R. Quimpo.

Be that as it may, We are of the view that the Decision in NLRC CASE NO. 00-09-0663-97 must perforce prevail over the appealed Decision and the latter to yield to it. It must remain undisturbed following the established doctrine on primacy and finality of decision. It bears stressing at this juncture, at the risk of being repetitious, that in NLRC Case No. 00-09-0663-97 the employment status of herein individual complainants was already declared lost or forfeited as of August 12, 1998, the day the illegal strike was staged. From then on, they ceased to be employees of respondent Sports Club. The forfeiture of their employment status carries with it the extinction of their right to demand for and be entitled to the economic benefits accorded them by law and the existing CBA. For, such right is premised on the fact of employment.

Such being the case, it follows that the assailed decision did not create a demandable right or obligation, and therefore, any monetary award granted in their favor in the appealed decision pursuant to such right must necessarily be declared as wanting in legal basis, devoid of any force and effect. Compliance therewith can not be compelled as the respondent-appellant has nothing to comply.[23]

In said decision, the NLRC noted that forty-three (43) complainants had already entered into an amicable settlement with QCSC.

The other complainants (petitioners) meanwhile filed a motion for reconsideration which was denied by the NLRC. Thus, they filed a petition for *certiorari* under Rule 65 before the Court of Appeals. The petition was dismissed for lack of merit. Petitioners assailed the ruling of the NLRC for having been decided with grave abuse of discretion on two grounds: first, when it entertained the appeal despite the failure of respondent to post an appeal bond within the reglementary period and in ordering the reduction of the amount of the appeal bond to ₱10,000,000.00; and second, when it reversed the *Lustria* decision and upheld the *Dinopol* decision.

Relying heavily on the NLRC decision, the Court of Appeals dismissed the petition for *certiorari*.

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[23] CA *rollo*, pp. 43-45.

In the instant petition, petitioners insist that the requirement for perfecting an appeal before the NLRC had not been met because under the *Lustria* decision, QCSC was ordered to pay the sum of ₱25,004,442.22 but it merely posted ₱4,000,000.00 and filed a motion for reduction of the bond. Moreover, QCSC failed to provide a sufficient justification in support of its motion to reduce the bond. On the substantive matter, petitioners once again challenge the ruling of the NLRC in declaring them to have lost their employment contrary to the *Dinopol* decision which only affected a few of the employees who were union members. Participation in an illegal strike, according to petitioners, does not automatically result in termination. Likewise, they maintain that the award of backwages in the *Lustria* decision was grounded on the lay-offs effected by QCSC, which are considered constructive dismissals. Furthermore, petitioners assail the NLRC decision when it avoided giving a definitive ruling on the charge of unfair labor practice. They also counter that the labor arbiter had jurisdiction over the money claims pertaining to wage orders and increases mandated by the CBA in the absence of a valid grievance machinery and for gross violation of the CBA, which is considered an unfair labor practice.

This petition essentially presents two legal questions. First, do the simultaneous filing of the motion to reduce the appeal bond and posting of the reduced amount of bond within the reglementary period for appeal constitute substantial compliance with Article 223 of the Labor Code?

At the outset, it should be stressed that the right to appeal is not a natural right or a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law. The party who seeks to avail himself of the same must comply with the requirements of the rules. Failing to do so, the right to appeal is lost.[24]

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[24] *Colby Construction and Management Corporation v. National Labor Relations Commission*, G.R. No. 170099, 28 November 2007, 539 SCRA 159.

Article 223 of the Labor Code partly provides that:

Art. 223. Appeal. Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:

a. If there is *prima facie* evidence of abuse of discretion on the part of the Labor Arbiter;

b. If the decision, order or award was secured through fraud or coercion, including graft and corruption;

c. If made purely on questions of law; and

d. If serious errors in the findings of facts are raised which would cause grave or irreparable damage or injury to the appellant.

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

Likewise, Sections 4(a) and 6 of Rule VI of the New Rules of Procedure of the NLRC, as amended, provide:

SECTION 4. *Requisites for Perfection of Appeal.*— (a) The Appeal shall be filed within the reglementary period as provided in Section 1 of this Rule; shall be verified by appellant himself in accordance with Section 4, Rule 7 of the Rules of Court, with proof of payment of the required appeal fee and the posting of a cash or surety bond as provided in Section 6 of this Rule; shall be accompanied by a memorandum of appeal in three (3) legibly typewritten copies which shall state the grounds relied upon and the arguments in support thereof; the relief prayed for; and a statement of the date when the appellant received the appealed decision, resolution or order and a certificate of non-forum shopping with proof of service on the other party of such appeal. A mere notice of appeal without complying with the other requisites aforestated shall not stop the running of the period of perfecting an appeal.

SECTION 6. *Bond*.— In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected *only* upon the posting of a cash or surety bond. The appeal bond shall either be in cash or surety in an amount equivalent to the monetary award, exclusive of damages and attorney's fees.

x x x x x x x x x

No motion to reduce bond shall be entertained except on meritorious grounds and upon the posting of a bond in a reasonable amount in relation to the monetary award.

The filing of the motion to reduce bond without compliance with the requisites in the preceding paragraph shall not stop the running of the period to perfect an appeal.

Under the Rules, appeals involving monetary awards are perfected only upon compliance with the following mandatory requisites, namely: (1) payment of the appeal fees; (2) filing of the memorandum of appeal; and (3) payment of the required cash or surety bond.[25]

Thus, the posting of a bond is indispensable to the perfection of an appeal in cases involving monetary awards from the decision of the labor arbiter. The intention of the lawmakers to make the bond a mandatory requisite for the perfection of an appeal by the employer is clearly expressed in the provision that an appeal by the employer may be perfected "only upon the posting of a cash or surety bond." The word "only" makes it unmistakably plain that the lawmakers intended the posting of a cash or surety bond by the employer to be the essential and exclusive means by which an employer's appeal may be perfected. The word "may" refers to the perfection of an appeal as optional on the part of the defeated party, but not to the compulsory posting of an appeal bond, if he desires to appeal. The meaning and the intention of the legislature in enacting a statute must be determined from the language employed; and where there is no ambiguity in the words used, then there is no room for construction. The

[25] *Ciudad Fernandina Food Corporation Employees Union-Associate Labor Unions v. Court of Appeals*, G.R. No. 166594, 20 July 2006, 495 SCRA 807, 817.

filing of the bond is not only mandatory but also a jurisdictional requirement that must be complied with in order to confer jurisdiction upon the NLRC. Non-compliance with the requirement renders the decision of the labor arbiter final and executory. This requirement is intended to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the employer's appeal. It is intended to discourage employers from using an appeal to delay or evade their obligation to satisfy their employees' just and lawful claims.[26]

However, Section 6 of the New Rules of Procedure of the NLRC also mandates, among others, that no motion to reduce bond shall be entertained except on meritorious grounds and upon the posting of a bond in a reasonable amount in relation to the monetary award. Hence, the NLRC has the full discretion to grant or deny the motion to reduce the amount of the appeal bond.[27]

In addition, while the bond requirement on appeals involving a monetary award has been relaxed in certain cases, this can only be done where there was substantial compliance with the Rules; or where the appellants, at the very least, exhibited willingness to pay by posting a partial bond.[28]

This rule was given a liberal interpretation by this Court in *Nicol v. Footjoy Industrial Corporation*.[29] In said case, Footjoy Industrial Corporation was sued by its employees for illegal dismissal. The Labor Arbiter declared the employees as having been constructively terminated and ordered Footjoy Industrial Corporation to pay wage differentials, backwages and attorney's fees totaling ₱51,956,314.00. Footjoy Industrial Corporation appealed to the NLRC and moved to reduce its appeal bond to ₱10,000,000.00. The NLRC, however, denied Footjoy Industrial

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[26] *Accessories Specialist Inc. v. Alabanz*a, G.R. No. 168985, 23 July 2008.

[27] *Id*.

[28] *Colby Construction v. NLRC*, G.R. No. 170099, 28 November 2007, 539 SCRA 159.

[29] G.R. No. 159372, 27 July 2007, 528 SCRA 300.

Corporation's motion and later dismissed its appeal. The Court of Appeals reversed the NLRC. This Court through the Second Division ruled that the bond requirement on appeals involving monetary awards had been and could be relaxed in meritorious cases such as: (1) there was substantial compliance with the Rules; (2) the surrounding facts and circumstances constitute meritorious grounds to reduce the bond; (3) a liberal interpretation of the requirement of an appeal bond would serve the desired objective of resolving controversies on the merits; or (4) the appellants, at the very least, exhibited their willingness and/or good faith by posting a partial bond during the reglementary period.[30]

Applying these jurisprudential guidelines, we find and hold that the NLRC did not err in reducing the amount of the appeal bond and considering the appeal as having been filed within the reglementary period. As correctly observed by the NLRC:

> Since, in its Order of 29 February 2000, the Commission [with former Chairman Rogelio I. Rayala acting as Ponente] granted the motion to reduce bond, and in fact, directed respondent-appellant "to post an additional cash or surety bond in the amount of Six Million (₱6,000,000.00) a matter which respondent complied with on March 21, 2000, it then is clear that respondent's appeal was perfected on time. Complainants-movants' questioning them anew in their motion for reconsideration is quite futile because under Article 223 of the Labor Code, our aforesaid 29 February 2000 Order obtained finality 10 days from complainant Union's receipt thereof, a fact that is not being disputed here.[31] (citations omitted)

Moreover, the posting of the amount of ₱4,000,000.00 simultaneously with the filing of the motion to reduce the bond to that amount, as well as the filing of the memorandum of appeal, all within the reglementary period, altogether constitute substantial compliance with the Rules.

The NLRC's favorable ruling on QCSC's motion to reduce the appeal bond should be accorded due weight and respect absent any indication of grave error.

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[30] *Id.* at 318.

[31] *Rollo*, p. 62.

The second legal question deals with the validity of the NLRC decision, as affirmed by the Court of Appeals. We rule in favor of petitioners.

The assailed *Dinopol* decision involves a complaint for illegal strike filed by QCSC on the ground of a "no-strike no lockout" provision in the CBA. The challenged decision was rendered in accordance with law and is supported by factual evidence on record. Indeed, the grounds for declaring the strike, as alleged by the Union, were not substantially proven. In the notice of strike, the union did not state in particular the acts which allegedly constitute unfair labor practice. Moreover, by virtue of the "no-strike no lockout" provision in the CBA, the union was prohibited from staging an economic strike, *i.e.*, to force wage or other concessions from the employer which he is not required by law to grant. However, it should be noted that while the strike declared by the union was held illegal, only the union officers were declared as having lost their employment status. In effect, there was a ruling only with respect to some union members while the status of all others had remained disputed.

Then came the *Lustria* decision, issued two (2) months later, finding that QCSC had committed unfair labor practices against the union and accordingly granting backwages and separation pay in favor of 112 employees. The *Lustria* decision emanated from a complaint for unfair labor practice against QCSC. Culled from the union's pleadings were the specific acts committed by QCSC, such as:

1. Insulting of the Union President as evidenced by the *Salaysay* of Ma. Cecilia Pangan;
2. Cuddling and treating the minority union with favor, such as paying their salaries/wages fully and ahead of the incumbent union and as if it were the incumbent bargaining agents;
3. Discouraging the members of the incumbent union from continuing their membership with the incumbent union as evidenced by the *Pinagsamang Salaysay* of Ramiro Espinosa and Ronaldo Q. Lim;
4. Bribing union member and promising promotion if he will not join the strike as evidenced by the *Salaysay* of Bernard Delta;

5. Transferring union members to another job description;

6. Replacing them with members of minority union evidenced by Leslie Tamayo's *Salaysay*;

7. Subjecting one union member to a very tense confrontation in the General Manager's Office after she commented during the NCMB conference that the 201 file of the employees are intact, resulting to her being taken to the hospital for nervous breakdown; and

8. Requiring the union members to submit another information sheet, and failure to do so would mean no payment of their June 16-30, 1997 salary.[32]

Applying the totality of the conduct doctrine, Labor Arbiter Lustria held that QCSC had committed unfair labor practices.

There is no conflict between the *Dinopol* and the *Lustria* decisions. While both rulings involve the same parties and same issues, there is a distinction between the remedies sought by the parties in these two cases. In the *Dinopol* decision, it was QCSC which filed a petition to declare the illegality of the 12 August 1997 strike by the union. The consequence of the declaration of an illegal strike is termination from employment, which the Labor Arbiter did so rule in said case. However, not all union members were terminated. In fact, only a few union officers were validly dismissed in accordance with Article 264 of the Labor Code. Corollarily, the other union members who had merely participated in the strike but had not committed any illegal acts were not dismissed from employment. Hence, the NLRC erred in declaring the employment status of all employees as having been lost or forfeited by virtue of the *Dinopol* decision.

On the other hand, the *Lustria* decision involved the unfair labor practices alleged by the union with particularity. In said case, Labor Arbiter Lustria sided with the Union and found QCSC guilty of such practices. As a consequence, the affected employees were granted backwages and separation pay. The grant of backwages and separation pay however was not premised on the declaration of the illegality of the strike but on the finding

[32] CA *rollo*, p. 115.

that these affected employees were constructively dismissed from work, as evidenced by the layoffs effected by the company. As explained in the *Lustria* decision:

> Considering that the temporary lay-off of listed employees effected by the respondents on 16 August 1997 was without documentary evidence to determine its validity, it is our considered view and we so hold that said employees were constructively dismissed without just or authorized cause and observance of due process. This opinion finds support from the hard and cold fact of absence of prior notice, report with the regional office of the Department of Labor and Employment having jurisdiction over the area and they remain under lay-off status of employment. In conclusion, they are entitled to backwages and separation pay in lieu of reinstatement as prayed.[33]

Clearly, there are two separate decisions issued by two different labor arbiters involving the same parties and interests. Considering that the remedies sought by the parties in each case differ, these two rulings may co-exist.

Therefore, with respect to petitioners and union officers Alex J. Santiago, Ma. Cecilia Pangan, Ronilo E. Lee, and Genaro Bando, who apparently had been substituted by present petitioner Teresita Bando, the *Dinopol* decision declaring them as having lost their employment status still stands.

To recapitulate, the NLRC erred in setting aside the *Lustria* decision, as well as in deleting the award of backwages and separation pay, despite the finding that the affected employees had been constructively dismissed.

Based on the foregoing, the *Lustria* decision should be upheld and therefore reinstated except as regards the four petitioners.

WHEREFORE, the petition is *GRANTED IN PART*. The decision of the Court of Appeals affirming the NLRC ruling is *REVERSED AND SET ASIDE*. The decision of Labor Arbiter Lustria dated 29 December 1998 in NLRC Case No. 00-11-08181-97 granting the monetary claims of

[33] CA *rollo*, p. 121.

petitioners is *REINSTATED*, except with respect to petitioners Alex J. Santiago, Ma. Cecilia Pangan, Ronilo E. Lee and Teresita Bando.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Chico-Nazario,[*] and *Brion, JJ.*, concur.

THIRD DIVISION

[G.R. No. 165924. January 19, 2009]

RESTY JUMAQUIO, *petitioner, vs.* **HON. JOSELITO C. VILLAROSA, in his capacity as Presiding Judge of San Jose City Regional Trial Court, Branch 39,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; THE PRINCIPLE OF HIERARCHY OF COURTS SERVES AS A GENERAL DETERMINANT OF THE APPROPRIATE FORUM FOR THE SAID PETITION; RATIONALE.— Immediately apparent is that the instant petition disregards the hierarchy of courts. While our original jurisdiction to issue extraordinary writs is not exclusive – it is shared with the Court of Appeals (CA) and the RTC – the choice of where to file the petition for *certiorari* is not left entirely to the party seeking the writ. The principle of hierarchy of courts serves as a general determinant of the appropriate forum for the said petition. A becoming regard for judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first-level courts should be filed with the RTC;

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[*] As replacement of Justice Presbitero J. Velasco, Jr. per Administrative Circular No. 84-2007.

and those against the latter, with the CA. A direct recourse to this Court is warranted only where there are special and compelling reasons specifically alleged in the petition to justify such action. As a court of last resort, this Court should not be burdened with the task of dealing with causes in the first instance. This is necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to matters within its exclusive jurisdiction, and to prevent the further over-crowding of the Court's docket.

2. ID.; CRIMINAL PROCEDURE; MOTION TO QUASH; REMEDY WHEN THE MOTION IS DENIED.— Furthermore, as a rule, when a motion to quash in a criminal case is denied, petitioner's remedy is not *certiorari*, but to go to trial without prejudice to reiterating the special defenses invoked in his motion to quash. In the event that an adverse decision is rendered after trial on the merits, an appeal therefrom is the next appropriate legal step.

3. ID.; ID.; PROSECUTION OF OFFENSES; INFORMATION; WHAT CONTROLS IS NOT THE TITLE OF THE INFORMATION OR THE DESIGNATION OF THE OFFENSE BUT THE ACTUAL FACTS RECITED THEREIN; APPLICATION IN CASE AT BAR.— As correctly argued by the City Prosecutor, the questioned informations separately charge two distinct offenses of child abuse—Criminal Case No. SJC-78-04 for child abuse committed through the use of threatening words, and Criminal Case No. SJC-79-04 for child abuse through the infliction of physical injuries. Thus, contrary to his contention, petitioner is not in jeopardy of being convicted of grave threats and child abuse in the first case, and slight physical injuries and child abuse in the second. Though the crimes were erroneously designated, the averments in the informations clearly make out an offense of child abuse under Section 10(a) of R.A. No. 7610. Under the said law, "child abuse" refers to the maltreatment, whether habitual or not, of the child which includes psychological and physical abuse, cruelty, emotional maltreatment or any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being. In the first information, petitioner is charged with child abuse by uttering debasing, demeaning and degrading words to the minor. In the second, he is charged with child abuse by inflicting physical injuries that debase,

demean and degrade the dignity of the children as human beings. What controls is not the title of the information or the designation of the offense but the actual facts recited therein. Moreover, an information is not duplicitous if it charges several related acts, all of which constitute a single offense, although the acts may in themselves be distinct offenses. The specific acts are only alleged to complete the narration of facts.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Amado Espino, Jr. for respondent.

D E C I S I O N

NACHURA, *J.*:

Assailed through a *certiorari* petition before this Court are the September 7, 2004[1] and the September 28, 2004[2] Orders of the Regional Trial Court (RTC), Branch 39 of San Jose City in Criminal Case Nos. SJC-78-04 and SJC-79-04.

The case originates from an incident that happened on August 2, 2003, when petitioner Resty Jumaquio allegedly threatened and assaulted two young men, then ages 13 and 17. As narrated by the minors, in the morning of the said date, Resty, a neighbor, upon seeing the younger child, belted out his anger and yelled, "*Putang ina mong bata ka namumuro ka na sa akin, at susunugin ko 'yung pamilya mo*!"[3] (You, son of a bitch, I've had enough of you, I'll burn your family!). That evening too, while the minors and their mother were traversing the road fronting another neighbor's house, petitioner, who was then having a drinking session, cursed them. Aghast, the mother cursed him back. Resty thence threw a stone towards the older child, but missed him. When the children's father went out of their nearby house, Resty picked up another stone to fling towards the father, but

[1] Records, pp. 65-67.

[2] *Id.* at 78.

[3] *Id.* at 3.

the older child rushed to Resty to grab it. At that moment, Resty repeatedly punched the 17-year-old. The younger child came to the rescue, but he too received a blow on his left cheek. The family hurried home when Resty bellowed at his son for the latter to get a gun. Resty then pelted stones at the family's house, shouting, "*Putang ina ninyo, zone leader ako papatayin ko* [*kayong*] *lahat*!"[4] (You, sons of bitches, I am a zone leader, I will kill you all!).

On account of that altercation, two separate Informations[5] were filed with the RTC of San Jose City, which pertinently read as follows:

Criminal Case No. SJC-78-04

x x x x x x x x x

The undersigned Prosecutor II accuses RESTY JUMAQUIO, with the crime of GRAVE THREATS in relation to R.A. No. 7610, committed as follows:

That on or about August 2, 2003, in the City of San Jose, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there, willfully, unlawfully and feloniously threaten the minor [name withheld], a 13-year-old boy, with the infliction of a wrong amounting to a crime, that is, by uttering the following words, to wit:

"PUTANG INA MONG BATA KA NAMUMURO KA NA SA AKIN AT SUSUNUGIN KO YONG PAMILYA MO"

to the damage and prejudice of [name withheld].

That the above acts of the accused debases, degrades, and demeans the dignity of the complainant and impairs his normal growth and development.

CONTRARY TO LAW. April 29, 2004.

x x x x x x x x x

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[4] *Id.* at 3 and 5.

[5] *Rollo*, pp. 17-20.

Criminal Case No. SJC-79-04

x x x x x x x x x

The undersigned Prosecutor II accuses RESTY JUMAQUIO, with the crime of PHYSICAL INJURIES in relation to R.A. No. 7610, committed as follows:

> That on or about August 2, 2003, in the City of San Jose, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there, willfully, unlawfully and feloniously attack, box and hit the minors [names withheld], 13 years old and 17 years old, respectively, thereby causing physical injuries to the latter, which required medical treatment for a period of three to five (3 to 5) days, to their damage and prejudice.
>
> That the above acts of the accused debases, degrades, and demeans the dignity of the complainant (sic) and impairs their normal growth and development.
>
> CONTRARY TO LAW. April 29, 2004.

x x x x x x x x x[6]

The trial court consequently issued the warrant of arrest and fixed the bail at ₱80,000.00 for each case, which, on motion of petitioner, was reduced to ₱40,000.00 each in surety bond.[7]

After posting bail and before the arraignment, petitioner moved for the quashal of the informations for being duplicitous. He argued that, under the informations, he stood charged with several crimes — grave threats and violation of Republic Act (R.A.) No. 7610, and physical injuries and another violation of the aforesaid law; that grave threats in relation to R.A. No. 7610 could not be considered a crime; and that the said separate crimes could not even be complexed, as neither may be considered to fall within the ambit of Section 10, R.A. No. 7610.[8]

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[6] *Id.* at 17 and 19.

[7] Records, pp. 10-13.

[8] *Id.* at 50-54.

Following Section 3(e), Rule 117[9] of the Revised Rules on Criminal Procedure, the informations should therefore be quashed.[10]

In his opposition to the motion, the City Prosecutor countered that the allegations in the questioned informations, and not the designation of the crimes therein, should prevail. The informations charged separate violations of R.A. No. 7610 — Criminal Case No. SJC-78-04 for the single offense of child abuse committed through the use of threatening words, and Criminal Case No. SJC-79-04 for the separate offense of child abuse through the infliction of physical injuries.[11] The crimes committed by petitioner would be punishable under Section 10(a) of R.A. No. 7610.[12]

In the assailed September 7, 2004 Order,[13] the RTC denied the motion. The trial court further denied petitioner's motion for reconsideration in the likewise assailed September 28, 2004 Order.[14]

Discontented, petitioner filed directly before this Court the instant petition for *certiorari* under Rule 65.

We dismiss the petition.

Immediately apparent is that the instant petition disregards the hierarchy of courts. While our original jurisdiction to issue

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[9] Rule 117, Section 3(e) of the Revised Rules on Criminal Procedure pertinently provides:

Sec. 3. Grounds.—The accused may move to quash the complaint or information on any of the following grounds:

x x x x x x x x x

(e) That more than one offense is charged except in those cases in which existing laws prescribe a single punishment for various offenses;

x x x x x x x x x

[10] Records, p. 51.

[11] *Id.* at 58-60.

[12] *Id.* at 59-63.

[13] *Supra* note 1.

[14] *Supra* note 2.

extraordinary writs is not exclusive – it is shared with the Court of Appeals (CA) and the RTC – the choice of where to file the petition for *certiorari* is not left entirely to the party seeking the writ.[15] The principle of hierarchy of courts serves as a general determinant of the appropriate forum for the said petition. A becoming regard for judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first-level courts should be filed with the RTC; and those against the latter, with the CA.[16] A direct recourse to this Court is warranted only where there are special and compelling reasons specifically alleged in the petition to justify such action.[17] As a court of last resort, this Court should not be burdened with the task of dealing with causes in the first instance.[18] This is necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to matters within its exclusive jurisdiction, and to prevent the further over-crowding of the Court's docket.[19]

Here, petitioner directly lodged before us the *certiorari* petition, when he should have filed it in the CA. Clearly, the same ought to be dismissed.

Furthermore, as a rule, when a motion to quash in a criminal case is denied, petitioner's remedy is not *certiorari*, but to go to trial without prejudice to reiterating the special defenses invoked in his motion to quash. In the event that an adverse decision is rendered after trial on the merits, an appeal therefrom is the next appropriate legal step.[20]

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[15] *Tolentino v. People*, G.R. No. 170396, August 31, 2006, 500 SCRA 721, 725.

[16] *Abadilla v. Hofileña-Europa*, G.R. No. 146769, August 17, 2007, 530 SCRA 458, 466.

[17] *Quesada v. Department of Justice*, G.R. No. 150325, August 31, 2006, 500 SCRA 454, 459; *Commissioner of Internal Revenue v. Leal*, 440 Phil. 477, 484-485 (2002).

[18] *Enrico v. Heirs of Sps. Eulogio B. Medinaceli and Trinidad Catli-Medinaceli*, G.R. No. 173614, September 28, 2007, 534 SCRA 418, 426.

[19] *People v. Cuaresma*, G.R. No. 67787, April 18, 1989, 172 SCRA 415, 424.

[20] *De los Reyes v. People*, G.R. No. 138297, January 27, 2006, 480 SCRA 294, 298.

But even if we were to ignore petitioner's procedural transgressions, the petition must still be dismissed for lack of merit. As correctly argued by the City Prosecutor, the questioned informations separately charge two distinct offenses of child abuse—Criminal Case No. SJC-78-04 for child abuse committed through the use of threatening words, and Criminal Case No. SJC-79-04 for child abuse through the infliction of physical injuries. Thus, contrary to his contention, petitioner is not in jeopardy of being convicted of grave threats and child abuse in the first case, and slight physical injuries and child abuse in the second. Though the crimes were erroneously designated, the averments in the informations clearly make out an offense of child abuse under Section 10(a) of R.A. No. 7610.[21] Under the said law, "child abuse" refers to the maltreatment, whether habitual or not, of the child which includes psychological and physical abuse, cruelty, emotional maltreatment or any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being.[22] In the first information, petitioner is charged with child abuse by uttering debasing, demeaning and degrading words to the minor. In the second, he is charged with child abuse by inflicting physical injuries that debase, demean and degrade the dignity of the children as human beings. What controls is not the title of the information or the designation of the offense but the actual facts recited therein.[23] Moreover, an information is not duplicitous if it

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[21] Section 10(a) of R.A. No. 7610 reads:

Section 10. *Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development.*—

(a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period.

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[22] See Section 3(b) of R.A. No. 7610; see also *De Ocampo v. Secretary of Justice*, G.R. No. 147932, January 25, 2006, 480 SCRA 71, 86.

[23] *Malto v. People*, G.R. No. 164733, September 21, 2007, 533 SCRA 643, 657.

charges several related acts, all of which constitute a single offense, although the acts may in themselves be distinct offenses.[24] The specific acts are only alleged to complete the narration of facts.[25]

Parenthetically, the Court observes that the information in Criminal Case No. SJC-79-04 alleges that petitioner committed child abuse against two different offended parties. Inasmuch as petitioner does not object to the information on that ground, we refrain from any discussion on the matter.

With the foregoing disquisition, and with the view that the petition is limited to the propriety of the trial court's dismissal of the motion to quash, the Court finds it unnecessary to discuss the other issues raised in the petition.

WHEREFORE, premises considered, the instant petition is *DISMISSED*.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Chico-Nazario, and *Leonardo-de Castro,*[*] *JJ.,* concur.

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[24] *People v. Lava*, 138 Phil. 77, 110 (1969).

[25] *Id.*; *People v. Camerino*, 108 Phil. 79, 84 (1960).

[*] Additional member, per Special Order No. 546 dated January 5, 2009.

FIRST DIVISION

[G.R. No. 166387. January 19, 2009]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **ENRON SUBIC POWER CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACTS OF THE COURT OF TAX APPEALS; MAY BE ADOPTED *IN TOTO* BY THE SUPREME COURT ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS; SUSTAINED. — We adopt *in toto* the findings of fact of the CTA, as affirmed by the CA. In *Compagnie Financiere Sucres et Denrees v. CIR*, we held: We reiterate the well-established doctrine that as a matter of practice and principle, [we] will not set aside the conclusion reached by an agency, like the CTA, especially if affirmed by the [CA]. By the very nature of its function, it has dedicated itself to the study and consideration of tax problems and has necessarily developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority on its part, which is not present here.

2. TAXATION; NATIONAL INTERNAL REVENUE CODE, AS AMENDED; NOTICE OF ASSESSMENT; DEFINED AND CONSTRUED. — A notice of assessment is: [A] declaration of deficiency taxes issued to a [t]axpayer who fails to respond to a Pre-Assessment Notice (PAN) within the prescribed period of time, or whose reply to the PAN was found to be without merit. The Notice of Assessment shall inform the [t]axpayer of this fact, and that the report of investigation submitted by the Revenue Officer conducting the audit shall be given due course. The formal letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall **state the fact, the law, rules and regulations or jurisprudence on which the assessment is based, otherwise the formal letter of demand and the notice of assessment shall be void.** Section 228 of the NIRC provides that the taxpayer shall be informed in writing of the law and the facts on which the assessment is made. Otherwise, the

assessment is void. To implement the provisions of Section 228 of the NLRC, RR No. 12-99 was enacted. Section 3.1.4 of the revenue regulation reads: 3.1.4. *Formal Letter of Demand and Assessment Notice*. – The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. **The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void.** The same shall be sent to the taxpayer only by registered mail or by personal delivery. x x x It is clear from the foregoing that a taxpayer must be informed in writing of the legal and factual bases of the tax assessment made against him. The use of the word "shall" in these legal provisions indicates the mandatory nature of the requirements laid down therein.

3. ID.; ID.; ID.; THERE IS NO GOING AROUND THE MANDATE OF THE LAW THAT THE LEGAL AND FACTUAL BASES OF THE ASSESSMENT BE STATED IN WRITING IN THE FORMAL LETTER OF DEMAND ACCOMPANYING THE ASSESSMENT NOTICE; APPLICATION IN CASE AT BAR. — The advice of tax deficiency, given by the CIR to an employee of Enron, as well as the preliminary five-day letter, were not valid substitutes for the mandatory notice in writing of the legal and factual bases of the assessment. These steps were mere perfunctory discharges of the CIR's duties in correctly assessing a taxpayer. The requirement for issuing a preliminary or final notice, as the case may be, informing a taxpayer of the existence of a deficiency tax assessment is markedly different from the requirement of what such notice must contain. Just because the CIR issued an advice, a preliminary letter during the pre-assessment stage and a final notice, in the order required by law, does not necessarily mean that Enron was informed of the law and facts on which the deficiency tax assessment was made. The law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice. Thus, such cannot be presumed. Otherwise, the express provisions of Article 228 of the NIRC and RR No. 12-99 would be rendered nugatory. The alleged "factual bases" in the advice, preliminary letter and "audit working papers" did not suffice. There was no going around the mandate

of the law that the legal and factual bases of the assessment be stated in writing in the formal letter of demand accompanying the assessment notice.

4. ID.; ID.; ID.; THE TAXPAYER MUST BE INFORMED NOT ONLY OF THE LAW BUT ALSO OF THE FACTS ON WHICH THE ASSESSMENT IS MADE; RATIONALE. — We note that the old law merely required that the taxpayer be notified of the assessment made by the CIR. This was changed in 1998 and the taxpayer must now be informed not only of the law but also of the facts on which the assessment is made. Such amendment is in keeping with the constitutional principle that no person shall be deprived of property without due process. In view of the absence of a fair opportunity for Enron to be informed of the legal and factual bases of the assessment against it, the assessment in question was void. We reiterate our ruling in *Reyes v. Almanzor, et al.:* Verily, taxes are the lifeblood of the Government and so should be collected without unnecessary hindrance. However, such collection should be made in accordance with law as any arbitrariness will negate the very reason for the Government itself.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Quiason Makalintal Barot Torres & Ibarra 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 Commissioner of Internal Revenue (CIR) assails the November 24, 2004 decision[1] of the Court of Appeals (CA) annulling the formal assessment notice issued by the CIR against respondent Enron Subic Power Corporation

[1] Penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Romeo A. Brawner (deceased) and Mariano C. Del Castillo of the Ninth Division of the Court of Appeals. *Rollo*, pp. 68-74.

(Enron) for failure to state the legal and factual bases for such assessment.

Enron, a domestic corporation registered with the Subic Bay Metropolitan Authority as a freeport enterprise,[2] filed its annual income tax return for the year 1996 on April 12, 1997. It indicated a net loss of ₱7,684,948. Subsequently, the Bureau of Internal Revenue, through a preliminary five-day letter,[3] informed it of a proposed assessment of an alleged ₱2,880,817.25 deficiency income tax.[4] Enron disputed the proposed deficiency assessment in its first protest letter.[5]

On May 26, 1999, Enron received from the CIR a formal assessment notice[6] requiring it to pay the alleged deficiency income tax of ₱2,880,817.25 for the taxable year 1996. Enron protested this deficiency tax assessment.[7]

Due to the non-resolution of its protest within the 180-day period, Enron filed a petition for review in the Court of Tax Appeals (CTA). It argued that the deficiency tax assessment disregarded the provisions of Section 228 of the National Internal Revenue Code (NIRC), as amended,[8] and Section 3.1.4 of Revenue Regulations (RR) No. 12-99[9] by not providing the

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[2] It is entitled to a 5% preferential rate pursuant to RA 7227 (Bases Conversion and Development Act of 1992).

[3] *Rollo*, p. 78. Paragraph 8, Joint Stipulation of Facts and Issues, C.T.A. Case No. 5993, dated April 18, 2000, states: "Prior to the issuance of the FAN, the Petitioner was informed of the proposed assessment by the way of a Preliminary Five (5) day Letter From Revenue District Office No. 19; xxx."

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

[5] *Id.*, pp. 78, 81-88.

[6] FAN No. 019-44-96-0000371 dated May 12, 1999. *Id.*, p. 89.

[7] Dated June 14, 1999. *Id.*, pp. 90-101.

[8] Section 228. Protesting of Assessment. – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx

The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise the assessment shall be void.

[9] Dated September 6, 1999.

legal and factual bases of the assessment. Enron likewise questioned the substantive validity of the assessment.[10]

In a decision dated September 12, 2001, the CTA granted Enron's petition and ordered the cancellation of its deficiency tax assessment for the year 1996. The CTA reasoned that the assessment notice sent to Enron failed to comply with the requirements of a valid written notice under Section 228 of the NIRC and RR No. 12-99. The CIR's motion for reconsideration of the CTA decision was denied in a resolution dated November 12, 2001.

The CIR appealed the CTA decision to the CA but the CA affirmed it. The CA held that the audit working papers did not substantially comply with Section 228 of the NIRC and RR No. 12-99 because they failed to show the applicability of the cited law to the facts of the assessment. The CIR filed a motion for reconsideration but this was deemed abandoned when he filed a motion for extension to file a petition for review in this Court.

The CIR now argues that respondent was informed of the legal and factual bases of the deficiency assessment against it.

We adopt *in toto* the findings of fact of the CTA, as affirmed by the CA. In *Compagnie Financiere Sucres et Denrees v. CIR*,[11] we held:

We reiterate the well-established doctrine that as a matter of practice and principle, [we] will not set aside the conclusion reached by an agency, like the CTA, especially if affirmed by the [CA]. By the

[10] The arguments raised were: (a) the supervision fees reimbursed by the Subic Power Corporation (SBC) and Batangas Power Corporation (BPC) were not subject to tax as these represented the actual cost incurred by Enron in the performance of its obligations under the Operating and Maintenance Supervision Agreement; (b) the plant restoration cost incurred in 1996 should be allowed as a deductible expense; (c) the plant insurance expense formed part of its direct cost that should be allowed as a deduction from its "gross income earned"; and (d) the tax withheld by the National Power Corporation on its bank deposit interests should be allowed as tax credit.

[11] G.R. No. 133834, 28 August 2006, 499 SCRA 664, 669.

very nature of its function, it has dedicated itself to the study and consideration of tax problems and has necessarily developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority on its part, which is not present here.

The CIR errs in insisting that the notice of assessment in question complied with the requirements of the NIRC and RR No. 12-99.

A notice of assessment is:

> [A] declaration of deficiency taxes issued to a [t]axpayer who fails to respond to a Pre-Assessment Notice (PAN) within the prescribed period of time, or whose reply to the PAN was found to be without merit. The Notice of Assessment shall inform the [t]axpayer of this fact, and that the report of investigation submitted by the Revenue Officer conducting the audit shall be given due course.
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> The formal letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall **state the fact, the law, rules and regulations or jurisprudence on which the assessment is based, otherwise the formal letter of demand and the notice of assessment shall be void**. (emphasis supplied)[12]

Section 228 of the NIRC provides that the taxpayer shall be informed in writing of the law and the facts on which the assessment is made. Otherwise, the assessment is void. To implement the provisions of Section 228 of the NIRC, RR No. 12-99 was enacted. Section 3.1.4 of the revenue regulation reads:

> 3.1.4. *Formal Letter of Demand and Assessment Notice.* — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. **The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void.** The same shall be sent to the taxpayer only by registered mail or by personal delivery. xxx (emphasis supplied)

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[12] http://www.bir.gov.ph/taxpayerrights/taxpayerrights.htm.

It is clear from the foregoing that a taxpayer must be informed in writing of the legal and factual bases of the tax assessment made against him. The use of the word "shall" in these legal provisions indicates the mandatory nature of the requirements laid down therein. We note the CTA's findings:

> In [this] case, [the CIR] merely issued a formal assessment and indicated therein the supposed tax, surcharge, interest and compromise penalty due thereon. The Revenue Officers of the [the CIR] in the issuance of the Final Assessment Notice did not provide Enron with the written bases of the law and facts on which the subject assessment is based. [The CIR] did not bother to explain how it arrived at such an assessment. Moreso, he failed to mention the specific provision of the Tax Code or rules and regulations which were not complied with by Enron.[13]

Both the CTA and the CA concluded that the deficiency tax assessment merely itemized the deductions disallowed and included these in the gross income. It also imposed the preferential rate of 5% on some items categorized by Enron as costs. The legal and factual bases were, however, not indicated.

The CIR insists that an examination of the facts shows that Enron was properly apprised of its tax deficiency. During the pre-assessment stage, the CIR advised Enron's representative of the tax deficiency, informed it of the proposed tax deficiency assessment through a preliminary five-day letter and furnished Enron a copy of the audit working paper[14] allegedly showing in detail the legal and factual bases of the assessment. The CIR argues that these steps sufficed to inform Enron of the laws and facts on which the deficiency tax assessment was based.

We disagree. The advice of tax deficiency, given by the CIR to an employee of Enron, as well as the preliminary five-day letter, were not valid substitutes for the mandatory notice in writing of the legal and factual bases of the assessment. These steps were mere perfunctory discharges of the CIR's duties in

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[13] *Rollo*, p. 109.

[14] *Id.* at 114-118.

correctly assessing a taxpayer.[15] The requirement for issuing a preliminary or final notice, as the case may be, informing a taxpayer of the existence of a deficiency tax assessment is markedly different from the requirement of what such notice must contain. Just because the CIR issued an advice, a preliminary letter during the pre-assessment stage and a final notice, in the order required by law, does not necessarily mean that Enron was informed of the law and facts on which the deficiency tax assessment was made.

The law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice. Thus, such cannot be presumed. Otherwise, the express provisions of Article 228 of the NIRC and RR No. 12-99 would be rendered nugatory. The alleged "factual bases" in the advice, preliminary letter and "audit working papers" did not suffice. There was no going around the mandate of the law that the legal and factual bases of the assessment be stated in writing in the formal letter of demand accompanying the assessment notice.

We note that the old law merely required that the taxpayer be notified of the assessment made by the CIR. This was changed in 1998 and the taxpayer must now be informed not only of the law but also of the facts on which the assessment is made.[16] Such amendment is in keeping with the constitutional principle that no person shall be deprived of property without due process.[17] In view of the absence of a fair opportunity for Enron to be informed of the legal and factual bases of the assessment against it, the assessment in question was void. We reiterate our ruling in *Reyes v. Almanzor, et al.*:[18]

> Verily, taxes are the lifeblood of the Government and so should be collected without unnecessary hindrance. However, such collection should be made in accordance with law as any arbitrariness will negate the very reason for the Government itself.

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[15] *CIR v. Reyes*, G.R. No. 159694, 27 January 2006, 480 SCRA 382, 393.

[16] *Id.*

[17] CONSTITUTION, Art. III, Sec. 1.

[18] G.R. Nos. L-49839-46, 26 April 1991, 196 SCRA 322, 329.

WHEREFORE, the petition is hereby *DENIED*. The November 24, 2004 decision of the Court of Appeals is *AFFIRMED*.

No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 169956. January 19, 2009]

SPOUSES JONEL PADILLA and SARAH PADILLA, *petitioners, vs.* **ISAURO A. VELASCO, TEODORA A. VELASCO, DELIA A. VELASCO, VALERIANO A. VELASCO, JR., IDA A. VELASCO, AMELITA C. VELASCO, ERIBERTO C. VELASCO, JR., and CELIA C. VELASCO,** *respondents.*

SYLLABUS

1. CIVIL LAW; PROPERTY; POSSESSION; *ACCION PUBLICIANA*; FILING THEREOF, WHEN PROPER. — The instant case is for *accion publiciana,* or for recovery of the right to possess. This was a plenary action filed in the regional trial court to determine the better right to possession of realty independently of the title. *Accion publiciana* is also used to refer to an ejectment suit where the cause of dispossession is not among the grounds for forcible entry and unlawful detainer, or when possession has been lost for more than one year and can no longer be maintained under Rule 70 of the Rules of Court. The objective of the plaintiffs in *accion publiciana* is to recover possession only, not ownership.

2. ID.; ID.; ID.; ID.; PRESCRIBES AFTER THE LAPSE OF TEN YEARS.— Under Article 555(4) of the Civil Code of the

Philippines, the real right of possession is not lost till after the lapse of ten years. It is settled that the remedy of *accion publiciana* prescribes after the lapse of ten years.

3. ID.; ID.; ID.; ID.; ONLY IN CASES WHERE THE POSSESSION CANNOT BE RESOLVED WITHOUT RESOLVING THE ISSUE OF OWNERSHIP MAY THE TRIAL COURT DELVE INTO THE CLAIM OF OWNERSHIP; SUSTAINED. — Title to a registered land cannot be collaterally attacked. A separate action is necessary to raise the issue of ownership. In *accion publiciana*, the principal issue is possession, and ownership is merely ancillary thereto. Only in cases where the possession cannot be resolved without resolving the issue of ownership may the trial court delve into the claim of ownership. This rule is enunciated in *Refugia v. CA*, where the Court declared, *viz*.: Where the question of who has prior possession hinges on the question of who the real owner of the disputed portion is, the inferior court may resolve the issue of ownership and make a declaration as to who among the contending parties is the real owner. In the same vein, where the resolution of the issue of possession hinges on a determination of the validity and interpretation of the document of title or any other contract on which the claim of possession is premised, the inferior court may likewise pass upon these issues. This is because, and it must be so understood, that any such pronouncement made affecting ownership of the disputed portion is to be regarded merely as provisional, hence, does not bar nor prejudice an action between the same parties involving title to the land.

4. REMEDIAL LAW; CIVIL PROCEDURE; NEW TRIAL; MISTAKES OF LAWYERS, NOT A GROUND; CASE AT BAR. — It may be reiterated that mistakes of counsel as to the competency of witnesses, the sufficiency and relevancy of evidence, the proper defense, or the burden of proof, as well as his failure to introduce certain evidence or to summon witnesses and to argue the case, are not proper grounds for a new trial, unless the incompetence of counsel be so great that his client is prejudiced and prevented from fairly presenting his case. In this case, the illness of petitioners' counsel and his alleged failure to present additional evidence during the trial of the case do not constitute sufficient ground for a new trial. The Order issued by the trial court in its denial of the

motion for new trial filed by petitioners aptly explains the reason why a new trial is unnecessary.

APPEARANCES OF COUNSEL

Mikhail Lee L. Maxino and *Mercado and Partners Law Firm* for petitioners.

Leonardo M. Ragasa, Jr. for respondents.

D E C I S I O N

NACHURA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated February 11, 2005 and the Resolution[2] dated October 4, 2005 of the Court of Appeals (CA) in CA-G.R. CV No. 69997 entitled "*Isauro A. Velasco, Teodora A. Velasco, Delia A. Velasco, Valeriano A. Velasco, Jr., Ida A. Velasco, Amelita C. Velasco, Eriberto C. Velasco, Jr. and Celia C. Velasco v. Spouses Jonel Padilla and Sarah Padilla.*"

The Facts

The facts of the case are as follows:

Respondents are the heirs of Dr. Artemio A. Velasco (Artemio), who died single and without any issue on January 22, 1949. During his lifetime, Artemio acquired Lot No. 2161 consisting of 7,791 square meters situated at Barangay Pinagsanjan, Pagsanjan, Laguna, covered by Tax Declaration No. 4739. Artemio acquired the lot from spouses Brigido Sacluti and Melitona Obial, evidenced by a deed of sale dated February 14, 1944.

In October 1987, petitioners entered the property as trustees by virtue of a deed of sale executed by the Rural Bank of

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[1] Penned by Associate Justice Marina L. Buzon, with Associate Justices Mario L. Guariña III and Santiago Javier Ranada, concurring; *rollo*, pp. 94-105.

[2] *Rollo*, p. 132.

Pagsanjan in favor of spouses Bartolome Solomon, Jr. and Teresita Padilla (Solomon spouses).

Respondents demanded that petitioners vacate the property, but the latter refused. The matter was referred to the *barangay* for conciliation; however, the parties failed to reach an amicable settlement. Thereafter, petitioners caused the cutting of trees in the area, fenced it and built a house thereon. They harvested the crops and performed other acts of dominion over the property.

On October 14, 1991, respondents filed a complaint for *accion publiciana*, accounting and damages against petitioners before the Regional Trial Court (RTC) of Santa Cruz, Laguna. They asked the court to order petitioners to vacate the property and to pay moral and exemplary damages, attorney's fees and cost of suit.

Isauro A. Velasco (Isauro), the brother of the deceased Artemio, as administrator of the property, was presented as a witness. He testified that Artemio owned the property. As evidence thereof, he presented the *Kasulatan ng Bilihang Tuluyan* executed by spouses Brigido Sacluti and Melitona Obial in favor of Artemio, and declared that he (Isauro) was present during the signing of the instrument. He offered in evidence tax declarations and tax receipts covering Lot No. 2161 which were all in the name of Artemio. A certification from the Land Registration Authority (LRA) was likewise presented by Isauro which states that based on the records of the LRA, Decree No. 403348 was issued on October 10, 1930 covering Lot No. 2161.[3]

Rolando R. Flores, a geodetic engineer, also testified that on January 16, 1993, upon prior notice to petitioners, he conducted a survey of the land based on the technical description of the property and the map from the Bureau of Lands. The purpose of the survey was to verify if the area occupied by petitioners was Lot No. 2161. Upon his examination and based on his survey, he concluded that the land occupied by petitioners was Lot No. 2161.[4]

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[3] *Id.* at 107.

[4] *Id.* at 108.

On the other hand, petitioners averred that the Solomon spouses owned the property; that the said spouses bought it from the Rural Bank of Pagsanjan as evidenced by a deed of sale dated September 4, 1987; that the land was identified as Lot No. 76-pt, consisting of 10,000 square meters, located at Pinagsanjan, Pagsanjan, Laguna; and that the spouses authorized petitioners to occupy the land and introduce improvements thereon.

Petitioners further claimed that subsequent to the sale of the property to the Solomon spouses, Lot No. 76-pt. was levied on in Civil Case No. 320 under the jurisdiction of the Municipal Trial Court of Pagsanjan, Laguna. The case was entitled "*Rural Bank of Pagsanjan, Inc. v. Spouses Hector and Emma Velasco, Valeriano Velasco and Virginia Miso*." Petitioners alleged that Valeriano Velasco obtained a loan from the Rural Bank of Pagsanjan, with Hector Velasco as co-maker, and the land was mortgaged by Valeriano as collateral. Valeriano's failure to pay the loan caused the foreclosure of the land, and on September 17, 1980, Lot No. 76-pt was sold at a public auction by the Provincial Sheriff. The Rural Bank of Pagsanjan was the highest bidder.

Pedro Zalameda Trinidad, Jr. (Pedro), as a witness for the petitioners, testified that he was born in *Barangay* Pinagsanjan, Pagsanjan, Laguna, and had been residing there since birth. He said that based on his knowledge, the land belonged to Nonong (Valeriano) Velasco because he used to buy coconuts harvested from the said land and it was Nonong Velasco who caused the gathering of coconuts thereon.[5]

Petitioner Jonel Padilla also took the witness stand. He testified that Pedro was occupying the land when he initially visited it. A representative of the Rural Bank of Pagsanjan disclosed to him that the land previously belonged to Valeriano. He verified from the Municipal Assessor the technical description of the land, but no longer verified from the Bureau of Lands because he trusted the bank. Upon his recommendation, his sister and his brother-in-law purchased the property after verifying the

[5] *Id.* at 109.

supporting documents. It was his brother-in-law who went to the Bureau of Lands and found that it was Lot No. 2161.[6]

On July 27, 1999, the RTC rendered a Decision,[7] the dispositive portion of which reads:

> WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered in favor of the [respondents] ordering the [petitioners] to vacate the land presently occupied by them and restore possession thereof to the [respondents], to render an accounting of the proceeds from the crop harvested therefrom starting September 1987 up to the time the property is returned to the [respondents], and to remove at their expense all the structures they constructed thereon.[8]

Petitioners filed an appeal before the CA, but on February 11, 2005, the CA issued the assailed decision affirming the decision of the RTC. They consequently filed a motion for reconsideration. However, the same was denied in the assailed resolution dated October 4, 2005.

Hence, the instant petition.

The Issues

Petitioners anchor their petition on the following grounds:

> I. The alleged sale executed between Brigido Sacluti and Melitona Obial as seller and Dr. Artemio [Velasco] as buyer was never established, respondents having failed to present the original copy thereof during the trial despite their clear and categorical commitment to do so. Furthermore, the purported Original Certificate of Title issued in the name of Brigido Sacluti and Melitona Obial was never presented in evidence, thus, creating the presumption that had it been presented, the same would have been adverse to respondents.[9]

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[6] *Id.*

[7] Penned by Judge Leonardo L. Leonida, Regional Trial Court, Branch 27, Santa Cruz, Laguna; *rollo*, pp. 106-111.

[8] *Rollo*, p. 111.

[9] *Id.* at 269.

II. The spouses Solomon acquired the subject property from its lawful owner in good faith and for value.[10]

III. The spouses Solomon acquired the subject property at the public auction sale conducted by the provincial sheriff of Laguna based on the judgment and writ of execution issued by the Municipal Trial Court of Laguna against respondent Valeriano Velasco for non-payment of a loan considering that (1) the issuance of Tax Declaration No. 4624 in the name of respondent Valeriano Velasco is entitled to the presumption of regularity especially since respondents have not explained how and why it was wrongly issued in the name of their own brother, respondent Valeriano Velasco and without any of them taking any action to correct the alleged mistake; and (2) by their failure to assert their alleged ownership of the property and their inaction [by not] questioning the legal action taken by the bank against their co-respondent Valeriano Velasco and the subject property despite their full awareness since 1980, respondents are barred by estoppel from denying the title of the bank and the Solomon spouses.[11]

IV. The action *a quo* was barred by prescription considering that respondents filed their legal action against the petitioners only on October 14, 1991, more than ten (10) years after the bank had acquired the subject property on September 17, 1980 at the public auction conducted by the Provincial Sheriff of Laguna.[12]

V. At the very least, respondents are guilty of laches, they having slept on their rights for an unreasonable length of time such that to dispossess petitioners of the property after they had introduced substantial improvements thereon in good faith would result in undue damage and injury to them all due to the silence and inaction of respondents in asserting their alleged ownership over the property.[13]

VI. The evidence proves that Lot no. 2161 and Lot no. 76-pt are one and the same.[14]

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[10] *Id.* at 276.

[11] *Id.* at 278.

[12] *Id.* at 289.

[13] *Id.* at 291.

[14] *Id.* at 293.

VII. The failure of Atty. Asinas to present other witnesses, additional documents and to respond to certain pleadings brought about by his serious illnesses constitutes excusable negligence or incompetency to warrant a new trial considering that the Supreme Court itself had recognized "negligence or incompetency of counsel as a ground for new trial" especially if it has resulted in serious injustice or to an uneven playing field.[15]

VIII. The overwhelming testimonial and documentary evidence, if presented, would have altered the result and the decision now appealed from.[16]

IX. The petitioners should be awarded their counterclaim for exemplary damages, attorney's fees and litigation expenses.[17]

The arguments submitted by petitioners may be summed up in the following issues:

I. Who, as between the parties, have a better right of possession of Lot No. 2161;

II. Whether the complaint for *accion publiciana* has already prescribed; and

III. Whether the negligence of respondent's counsel entitles them to a new trial.

The Ruling of the Court

We deny the instant petition.

First. The instant case is for *accion publiciana,* or for recovery of the right to possess. This was a plenary action filed in the regional trial court to determine the better right to possession of realty independently of the title.[18] *Accion publiciana* is also used to refer to an ejectment suit where the cause of dispossession is not among the grounds for forcible entry and unlawful detainer, or when possession has been lost for more than one year and can no longer be maintained under Rule 70 of the Rules of

[15] *Id.* at 298.

[16] *Id.* at 307.

[17] *Id.* at 310.

[18] *Sps. Cruz v. Torres*, 374 Phil. 529, 533 (1999).

Court. The objective of the plaintiffs in *accion publiciana* is to recover possession only, not ownership.[19]

Based on the findings of facts of the RTC which were affirmed by the CA, respondents were able to establish lawful possession of Lot No. 2161 when the petitioners occupied the property. Lot No. 2161 was the subject of Decree No. 403348 based on the decision dated October 10, 1930 in Cadastre (Cad.) Case No. 11, LRC Record No. 208. The Original Certificate of Title to the land was issued to Brigido Sacluti and Melitona Obial. On February 14, 1944, the original owners of the land sold the same to Artemio. From the date of sale, until Artemio's death on January 22, 1949, he was in continuous possession of the land. When Artemio died, Isauro acted as administrator of the land with Tomas Vivero as caretaker. In 1987, petitioners occupied the property by virtue of a deed of sale between the Rural Bank of Pagsanjan and the Solomon spouses. The land bought by the Solomon spouses from the Bank is denominated as Lot No. 76-pt and previously owned by Valeriano. However, it was proved during trial that the land occupied by petitioners was Lot No. 2161 in the name of Artemio, whereas the land sold by the bank to the petitioners was Lot No. 76-pt.

Given this factual milieu, it can readily be deduced that respondents are legally entitled to the possession of Lot No. 2161.

It is a long-standing policy of this Court that the findings of facts of the RTC which were adopted and affirmed by the CA are generally deemed conclusive and binding. This Court is not a trier of facts and will not disturb the factual findings of the lower courts unless there are substantial reasons for doing so.[20]

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[19] *Natalia Realty, Inc. v. Court of Appeals*, 440 Phil. 1, 25 (2002).

[20] The exceptions to the general rule that the findings of facts of the RTC and the CA are deemed conclusive and binding to this Court are the following: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond

In the instant case, we find no exceptional reason to depart from this policy.

Second. The case filed by respondents for *accion publiciana* has not prescribed. The action was filed with the RTC on October 14, 1991. Petitioners dispossessed respondents of the property in October 1987. At the time of the filing of the complaint, only four (4) years had elapsed from the time of dispossession.

Under Article 555(4) of the Civil Code of the Philippines, the real right of possession is not lost till after the lapse of ten years. It is settled that the remedy of *accion publiciana* prescribes after the lapse of ten years.[21] Thus, the instant case was filed within the allowable period.

Third. Petitioners put in issue that Lot No. 2161 and Lot 76-pt are one and the same, and that the land was owned by Valeriano when it was foreclosed by the bank. This, in effect, is a collateral attack on the title over the property which is registered in the name of Artemio.

We cannot countenance this stance of the petitioners, and perforce, must strike it down. Title to a registered land cannot be collaterally attacked.[22] A separate action is necessary to raise the issue of ownership.

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the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of facts are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. (*Pilipinas Shell Petroleum Corporation v. Gobonseng, Jr.*, G.R. No. 163562, July 21, 2006, 496 SCRA 305, 316.)

[21] *Cutanda v. Heirs of Cutanda*, 390 Phil. 740, 751 (2000).

[22] Section 48 of Presidential Decree No. 1529 provides, thus:

Sec. 48. *Certificate not subject to collateral attack.* — A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law.

In *accion publiciana*, the principal issue is possession, and ownership is merely ancillary thereto. Only in cases where the possession cannot be resolved without resolving the issue of ownership may the trial court delve into the claim of ownership. This rule is enunciated in *Refugia v. CA*,[23] where the Court declared, *viz*.:

> Where the question of who has prior possession hinges on the question of who the real owner of the disputed portion is, the inferior court may resolve the issue of ownership and make a declaration as to who among the contending parties is the real owner. In the same vein, where the resolution of the issue of possession hinges on a determination of the validity and interpretation of the document of title or any other contract on which the claim of possession is premised, the inferior court may likewise pass upon these issues. This is because, and it must be so understood, that any such pronouncement made affecting ownership of the disputed portion is to be regarded merely as provisional, hence, does not bar nor prejudice an action between the same parties involving title to the land.

Fourth. Petitioners aver that they are entitled to a new trial due to the failure of their counsel in the proceedings before the RTC to present testimonial and documentary evidence necessary for them to obtain a favorable judgment. They maintain that the failure of their counsel to present these other evidence was due to counsel's lingering illness at that time, and therefore, constitutes excusable negligence.

It may be reiterated that mistakes of counsel as to the competency of witnesses, the sufficiency and relevancy of evidence, the proper defense, or the burden of proof, as well as his failure to introduce certain evidence or to summon witnesses and to argue the case, are not proper grounds for a new trial, unless the incompetence of counsel be so great that his client is prejudiced and prevented from fairly presenting his case.[24]

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[23] 327 Phil. 982, 1006 (1996).

[24] *Palanca v. The American Food Manufacturing Company*, 133 Phil. 872, 882 (1968); *People v. Manzanilla*, 43 Phil. 167, 169 (1922).

In this case, the illness of petitioners' counsel and his alleged failure to present additional evidence during the trial of the case do not constitute sufficient ground for a new trial. The Order[25] issued by the trial court in its denial of the motion for new trial filed by petitioners aptly explains the reason why a new trial is unnecessary, *viz.*:

> Assuming that Atty. Asinas failed to perform the imputed acts by reason of his ailments, still, the same is insufficient ground to grant a new trial. The evidence on record established the fact that [respondents] and their predecessors-in-interest have been in possession of the subject realty for a long time. Their possession was interrupted by [petitioners] who entered the property in [1987] pursuant to a deed of sale between the Rural Bank of Pagsanjan and spouses Bartolome C. Solomon and Teresita Padilla. Considering that this is an accion publiciana and [respondents'] earlier rightful possession of the subject parcel of land has been adequately established, the testimonial and documentary evidence sought to be adduced in a new trial would not adversely affect the findings of the Court. The ownership and possession of the property purchased by the Solomon spouses from the Rural Bank of Pagsanjan could be the subject of an appropriate action.

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

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Chico-Nazario, and *Leonardo-de Castro,*[*] *JJ.,* concur.

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[25] *Rollo,* p. 114.

[*] Additional member per Special Order No. 546 dated January 5, 2009.

THIRD DIVISION

[G.R. No. 170008. January 19, 2009]

DUTCH BOY PHILIPPINES, INC., *petitioner, vs.* **RONALD SENIEL substituted by LIGAYA QUIMPO and CESARIO SENIEL substituted by EDELMIRA P. SENIEL,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; FINDINGS OF FACTS; THE DIFFERENCE BETWEEN THE FINDINGS OF THE TRIAL AND APPELLATE COURTS LEADING TO ENTIRELY DISPARATE DISPOSITIONS IS REASON ENOUGH FOR THE SUPREME COURT TO REVIEW THE EVIDENCE ON RECORD. — We reiterate the well-entrenched principle that this Court is not a trier of facts and does not, as a rule, undertake a re-examination of the evidence presented by the parties. A number of exceptions have nevertheless been recognized. Indeed, the difference between the findings of the trial and appellate courts, leading to entirely disparate dispositions, is reason enough for this Court to review the evidence in this case.

2. ID.; ID.; BURDEN OF PROOF; PREPONDERANCE OF EVIDENCE; DEFINED AND CONSTRUED. — It is a basic rule in civil cases that the party having the burden of proof must establish his case by preponderance of evidence. Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto. Although the evidence adduced by plaintiff is stronger than that presented by defendant, a judgment cannot be entered in favor of the former, if his evidence is not sufficient to sustain his cause of action.

3. ID.; ID.; RULES OF ADMISSIBILITY; UNVERIFIED AND UNIDENTIFIED PRIVATE DOCUMENT CANNOT BE ACCORDED PROBATIVE VALUE; RATIONALE. — An

unverified and unidentified private document cannot be accorded probative value. It must be rejected because the party against whom it is presented is deprived of the right and opportunity to cross-examine the person to whom the statements or writings are attributed. Its executor or author should be presented as a witness to provide the other party the opportunity to question its contents. The petitioner's failure to present the author of the letter renders its contents suspect and of no probative value. Neither can we consider said letter as an extrajudicial admission of a conspirator against his co-conspirator. For one, the admission made by Joyohoy was made after the alleged conspiracy had ceased to exist. More importantly, the fact of conspiracy was not clearly established.

4. CIVIL LAW; DAMAGES; GOOD FAITH IS ALWAYS PRESUMED. — Good faith is always presumed, and it is the burden of the party claiming otherwise to adduce clear and convincing evidence to the contrary. No judgment for damages could arise where the source of injury, be it fraud, fault, or negligence, was not affirmatively established by competent evidence.

5. ID.; ID.; THE GRANT OF DAMAGES AND ATTORNEY'S FEES REQUIRES FACTUAL, LEGAL AND EQUITABLE JUSTIFICATION. — The CA, however, erred in awarding moral and compensatory damages in favor of Ronald and Cesario, as it did not disclose in the body of its decision the factual basis for such awards. Whenever such awards are made, the court must explicitly state in the body of its decision, and not merely in its dispositive portion, the legal reason for the award. In the present case, the appellate court awarded damages only in the dispositive portion of the decision, without stating therein clearly and distinctly the factual and legal bases thereof. Thus, following the doctrine enunciated in *Pang-oden v. Leonen* and *Ranola v. Court of Appeals*, said awards should be deleted. The grant of damages and attorney's fees requires factual, legal and equitable justification; its basis cannot be left to speculation or conjecture.

APPEARANCES OF COUNSEL

Laogan Baeza Llantino Law Offices for petitioner.
Roland B. Ebbah, Jr. for respondents.

D E C I S I O N

NACHURA, *J.*:

For review is the Court of Appeals Decision[1] dated June 30, 2005 in CA-G.R. CV No. 70870. The assailed decision, in turn, reversed and set aside the Regional Trial Court (RTC) Decision[2] dated December 29, 2000 in Civil Case No. 94-2720; and, consequently, dismissed the complaint filed by petitioner Dutch Boy Philippines, Inc. against Ronald[3] and Cesario[4] Seniel.

The factual and procedural antecedents follow:

Petitioner is a corporation engaged in manufacturing quality paint products and selling them through authorized dealers in various parts of the country.[5] Jonathan Joyohoy (Joyohoy), on the other hand, was a sales representative of petitioner for Mindanao, based in Davao City.[6]

Sometime between May and June 1994, petitioner conducted an audit of its sales accounts with its authorized dealers in Mindanao. In the course of the audit, petitioner discovered that its authorized dealers[7] had outstanding balances consisting

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[1] Penned by Associate Justice Magdangal M. de Leon, with Associate Justices Salvador J. Valdez, Jr. and Mariano C. del Castillo, concurring; *rollo*, pp. 67-85.

[2] Penned by Judge Teofilo L. Guadiz, Jr., *rollo*, pp. 49-65.

[3] Now deceased and substituted by his surviving spouse, Ligaya Quimpo Seniel; CA *rollo*, pp. 82-83.

[4] Now deceased and substituted by his surviving spouse, Edelmira P. Seniel; embodied in a Resolution dated June 30, 2008.

[5] *Rollo*, p. 135.

[6] *Id.* at 68.

[7] The concerned authorized dealers are as follows:

1. Uyanguren Hardware	₱ 7,051.31
2. Davao Paint Trade	₱ 159,799.36
3. New City Hardware	₱ 277,070.42
4. Davao Gold Star Hardware	₱ 31,897.00

of paint products withdrawn from the Certified Mindanao Marketing Corporation (CMMC) warehouse. Combining all the dealers' accountabilities yielded a total amount of ₱1,939,125.16.[8]

The above findings prompted petitioner to send letters of confirmation to the concerned dealers for the latter to confirm their respective balances. Upon receipt of said letters, the authorized dealers disclaimed their alleged accountabilities; and contended instead that the same had already been paid or that they never ordered/received the goods stated therein.[9] In view thereof, petitioner issued a Memorandum[10] to Joyohoy (being the sales representative in the area) requiring the latter to explain the transactions involving the concerned dealers and their corresponding accountabilities. In response, Joyohoy explained that the subject stocks were withdrawn from the warehouse by Ronald and Cesario Seniel, or their representatives and delivered to Teknik Marketing, a sole proprietorship[11] engaged as a painting contractor.[12]

For failure to collect the amount due it, petitioner commenced an action for *Collection of Sum of Money*[13] against Joyohoy, Ronald and Cesario. Petitioner claimed that the three defendants, in conspiracy, acted fraudulently in preparing sales invoices which were used to withdraw the subject paint products delivered to Teknik Marketing, to the damage and prejudice of petitioner. Petitioner likewise demanded from Joyohoy the delivery of such

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5. Davao Starlight Hardware	₱ 508,070.91
6. Butuan Champion Hardware	₱ 147,432.08
7. Pioneer Trading	₱ 39,163.16
8. Deco Arts	₱ 675,149.40
9. Supreme Merchant	₱ 2,564.92
10. Tagum Commercial Center	₱ 920.00

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

[9] *Id.*, at 69.

[10] Folder of Exhibits, p. 732.

[11] Registered in the name of Cesario Seniel.

[12] Folder of Exhibits, pp. 732-733.

[13] Records, pp. 1-12.

additional amounts representing the payments made by some authorized dealers which were not remitted by the sales agent.

In answer to petitioner's complaint, Ronald and Cesario admitted that they had transacted business with Joyohoy; specifically, the purchase of various paint products offered by him which they used for their painting projects. They, however, added that it was Joyohoy who prepared the necessary purchase orders, facilitated the delivery of the paint products and collected payments as well.[14] Ronald and Cesario disavowed participation in any fraudulent act committed by Joyohoy. For his part, Joyohoy denied liability and contended that it was Ronald and Cesario who received the paint products and were, thus, liable for petitioner's claims.[15]

On December 29, 2000, the RTC rendered a Decision in favor of petitioner and against Joyohoy, Ronald and Cesario, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the Court hereby renders judgment in favor of the plaintiff and against the defendants:

1) Ordering defendants Jonathan Joyohoy, Ronald Seniel and Cesario Seniel to pay, jointly and severally, the amount of ₱783,097.05 to the plaintiff together with the legal interest from the filing of the complaint;

2) Ordering defendant Jonathan Joyohoy to pay the plaintiff the following amounts:

a – ₱859,589.57 with legal interest from the filing of the complaint;

b – ₱147,432.08 with legal interest from the filing of the complaint;

3) attorney's fees in the amount of ₱100,000.00.

4) costs of suit.

SO ORDERED.[16]

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[14] *Rollo*, p. 71.

[15] *Id.*

[16] *Id.* at 64-65.

In arriving at this conclusion, the RTC gave credence to the positive testimonies of the witnesses for petitioner. The trial court believed that the subject paint products were withdrawn by Joyohoy, Ronald and Cesario, in fraud of petitioner. Hence, the monetary award in favor of petitioner.

On appeal to the Court of Appeals, the appellate court reversed and set aside the RTC decision, and dismissed the complaint as against Ronald and Cesario. The dispositive portion of the assailed CA decision is quoted hereunder:

> WHEREFORE, the appealed Decision is hereby **REVERSED** and **SET ASIDE** and the complaint as against appellants Ronald Seniel and Cesario Seniel is hereby **DISMISSED**. The Court hereby orders appellee to pay moral damages in the amount of Two Hundred Thousand (Php200,000.00) Pesos to each of the appellants and compensatory damages of One Hundred Thousand (Php100,000.00) Pesos each by reason of the wrongful attachment of their properties.
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> SO ORDERED.[17]

The appellate court declared that petitioner failed to adduce sufficient evidence to establish conspiracy between Joyohoy, on the one hand, and Ronald and Cesario, on the other. What was established, according to the CA, was simply the withdrawal of the subject paint products from petitioner's warehouse, upon the order of Joyohoy. Even if Ronald and Cesario indeed purchased paint products through Joyohoy, no anomaly can be attributed to the transaction considering that petitioner had previously done business with persons or entities who were not authorized dealers. Therefore, liability could attach only to Joyohoy and not to Ronald and Cesario.

Aggrieved, petitioner now comes before this Court in this petition for review on *certiorari*, anchored on the following grounds:

> A. WHETHER THE COURT OF APPEALS GRAVELY ERRED AND ABUSED ITS DISCRETION IN REVERSING AND SETTING ASIDE THE DECISION DATED DECEMBER 29, 2000 DECLARING THAT PETITIONER HEREIN AS

[17] *Id.* at 84-85.

PLAINTIFF WAS NOT ABLE TO SUFFICIENTLY ESTABLISH CONSPIRACY AMONG DEFENDANT JOYOHOY AND RESPONDENTS RONALD SENIEL AND CESARIO SENIEL DESPITE THE CLEAR FINDINGS OF FACT BY THE LOWER COURT THAT CONSPIRACY DID EXIST TO DEFRAUD HEREIN PETITIONER.

B. WHETHER THE COURT OF APPEALS ERRED IN ORDERING HEREIN PETITIONER TO PAY EACH [OF THE] RESPONDENTS MORAL DAMAGES IN THE AMOUNT OF ₱200,000 AND COMPENSATORY DAMAGES FOR ₱100,000 FOR WRONGFUL ATTACHMENT OF THEIR PROPERTIES.[18]

The petition is partly meritorious.

We reiterate the well-entrenched principle that this Court is not a trier of facts and does not, as a rule, undertake a re-examination of the evidence presented by the parties. A number of exceptions[19] have nevertheless been recognized.[20] Indeed,

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[18] *Id.* at 138.

[19] The following are the exceptions enumerated in *Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, April 28, 2004, 428 SCRA 79, 85-86:

1. when the findings are grounded entirely on speculation, surmises or conjectures;
2. when the inference made is manifestly mistaken, absurd or impossible;
3. when there is grave abuse of discretion;
4. when the judgment is based on a misapprehension of facts;
5. when the findings of facts are conflicting;
6. when in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
7. when the findings are contrary to the trial court;
8. when the findings are conclusions without citation of specific evidence on which they are based;
9. when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent;
10. when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record x x x.

[20] *Superlines Transportation Company, Inc. v. Philippine National Construction Company*, G.R. No. 169596, March 28, 2007, 519 SCRA 432, 441.

the difference between the findings of the trial and appellate courts, leading to entirely disparate dispositions, is reason enough for this Court to review the evidence in this case.[21]

After a careful evaluation of the records, we find no cogent reason to disturb the findings of fact and conclusions of law of the Court of Appeals. The appellate court is correct in saying that petitioner failed to sufficiently establish Ronald and Cesario's liability.

It is a basic rule in civil cases that the party having the burden of proof must establish his case by preponderance of evidence.[22] Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[23] Although the evidence adduced by plaintiff is stronger than that presented by defendant, a judgment cannot be entered in favor of the former, if his evidence is not sufficient to sustain his cause of action.[24]

Petitioner's cause of action in its complaint against Ronald and Cesario was the act of defraudation which they allegedly committed in conspiracy with Joyohoy. It is, therefore, imperative for petitioner to prove that fraud was committed and that conspiracy existed.

It was established that the goods were brought out of the warehouse upon the order of Joyohoy. Per his job description, Joyohoy should have delivered the products to the authorized dealers, collected their payments, then remitted his collections to petitioner's depositary bank.[25] Unfortunately for petitioner,

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[21] *Gajudo v. Traders Royal Bank*, G.R. No. 151098, March 21, 2006, 485 SCRA 108, 122.

[22] *Montanez v. Mendoza*, 441 Phil. 47, 56 (2002).

[23] *Ong v. Yap*, G.R. No. 146797, February 18, 2005, 452 SCRA 41, 49-50.

[24] *Ong v. Yap*, G.R. No. 146797, February 18, 2005, 452 SCRA 41, 50.

[25] *Rollo*, p. 135.

Joyohoy used his position as an authorized sales representative and abused the trust reposed in him, in misappropriating the subject paint products.

In finding Ronald and Cesario liable, the trial court relied on the testimony of the warehouseman Romeo Gutierrez (Romeo) that Joyohoy instructed him on several occasions to release to the former various paint products. The testimony of Manuel Antolin (Antolin) was also cited to show how the alleged defraudation was discovered by petitioner. Likewise adduced as evidence was the handwritten response letter sent by Joyohoy to petitioner stating that the subject paint products were withdrawn by Ronald and Cesario and/or their representatives.[26] Said pieces of evidence, however, lack probative value.

A thorough evaluation of the testimony of Romeo shows that, indeed, the subject paint products were withdrawn from the warehouse upon the authority and instruction of Joyohoy. However, it is wanting in details as to the alleged participation of Ronald and Cesario that would make them conspirators in defrauding petitioner. While petitioner claimed in its complaint that Ronald and Cesario had a hand in the preparation of fictitious sales orders and invoices, Romeo admitted in his testimony that he himself was the one who prepared them upon the instruction of Joyohoy. If at all, Ronald and Cesario's participation was limited to receiving the subject paint products. But apart from Romeo's bare allegation, there is no iota of evidence to show such fact of receipt. If we follow the procedure in releasing petitioner's products from the warehouse, as testified to by Romeo, the signature of the person receiving the goods was necessary. Yet again, the signature of Ronald and Cesario never appeared in any of the documentary evidence presented.

The testimony of Antolin establishes a disparity in the accounts, as appearing in petitioner's records and those of the dealers. It shows that Joyohoy was repeatedly involved in anomalous transactions by preparing fictitious sales invoices, withdrawing paint products from the warehouse, then selling them to various

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[26] Folder of Exhibits, pp. 733-734.

establishments in Mindanao with whom petitioner had no dealings. Thus, apart from the ₱783,097.05 liability charged to Joyohoy in concert with Ronald and Cesario, the trial court likewise made Joyohoy answerable for the amount of ₱859,589.57 arising from another illegal transaction.[27] However, notwithstanding the overwhelming evidence against Joyohoy, no clear evidence could link Ronald and Cesario to these fraudulent transactions. Besides, as correctly observed by the appellate court, sales transactions that were conducted with non-authorized dealers were sanctioned by petitioner.[28]

As to the letter of Joyohoy, wherein he narrated the participation of Ronald and Cesario, considering that he did not testify on the contents thereof, the same is hearsay. An unverified and unidentified private document cannot be accorded probative value. It must be rejected because the party against whom it is presented is deprived of the right and opportunity to cross-examine the person to whom the statements or writings are attributed. Its executor or author should be presented as a witness to provide the other party the opportunity to question its contents. The petitioner's failure to present the author of the letter renders its contents suspect and of no probative value.[29]

Neither can we consider said letter as an extrajudicial admission of a conspirator against his co-conspirator.[30] For one, the admission made by Joyohoy was made after the alleged conspiracy had ceased to exist. More importantly, the fact of conspiracy was not clearly established.[31]

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[27] *Rollo,* p. 65.

[28] *Id.* at 82-84.

[29] *Mallari v. People*, G.R. No. 153911, December 10, 2004, 446 SCRA 74, 97.

[30] Section 30, Rule 130 of the Revised Rules on Evidence provides:

Sec. 30. *Admission by conspirator.* — The act or declaration of a conspirator relating to the conspiracy during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration.

[31] The following are the requisites for the admissibility in evidence of the acts and declarations of a conspirator against his co-conspirator:

At this point, we reiterate that a party who alleges a fact has the burden of proving it. Whoever alleges fraud or mistake affecting a transaction must substantiate it, since it is presumed that a person takes ordinary care of his concerns, and that private transactions have been fair and regular.[32]

Good faith is always presumed, and it is the burden of the party claiming otherwise to adduce clear and convincing evidence to the contrary. No judgment for damages could arise where the source of injury, be it fraud, fault, or negligence, was not affirmatively established by competent evidence.[33]

In view of the foregoing, Ronald and Cesario cannot be held jointly and severally liable with Joyohoy. The CA was, therefore, correct in dismissing the complaint as against Ronald and Cesario.

The CA, however, erred in awarding moral and compensatory damages in favor of Ronald and Cesario, as it did not disclose in the body of its decision the factual basis for such awards. Whenever such awards are made, the court must explicitly state in the body of its decision, and not merely in its dispositive portion, the legal reason for the award.[34]

In the present case, the appellate court awarded damages only in the dispositive portion of the decision, without stating therein clearly and distinctly the factual and legal bases thereof. Thus, following the doctrine enunciated in *Pang-oden v. Leonen*[35]

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1. That the conspiracy be first proved by evidence other than the admission itself;

2. That the admission relates to the common object;

3. That it has been made while the declarant was engaged in carrying out the conspiracy; (Evidence, Francisco, Third Edition, pp. 202-204)

[32] *Memita v. Masongsong*, G.R. No. 150912, May 28, 2007, 523 SCRA 244, 256-257; *Mangahas v. Court of Appeals*, 364 Phil. 13, 21 (1999); see Cuenca *v. Atas*, G.R. No. 146214, October 5, 2007, 535 SCRA 48, 82.

[33] *Chiang Yia Min v. Court of Appeals*, 407 Phil. 944, 965 (2001).

[34] *Pang-oden v. Leonen*, G.R. No. 138939, December 6, 2006, 510 SCRA 93, 102; *Ranola v. Court of Appeals*, 379 Phil. 1, 13 (2000).

[35] G.R. No. 138939, December 6, 2006, 510 SCRA 93.

and *Ranola v. Court of Appeals*,[36] said awards should be deleted. The grant of damages and attorney's fees requires factual, legal and equitable justification; its basis cannot be left to speculation or conjecture.[37]

WHEREFORE, premises considered, the petition is *PARTIALLY GRANTED.* The Decision of the Court of Appeals dated June 30, 2005 in CA-G.R. CV No. 70870 is *AFFIRMED* subject to the *MODIFICATION* that the award of moral and compensatory damages is *DELETED*.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Chico-Nazario, and *Leonardo-de Castro,*[*] *JJ.*, concur.

EN BANC

[G.R. No. 172326. January 19, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALFREDO PASCUAL *Y* ILDEFONSO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; SPECIAL COMPLEX CRIMES; RAPE WITH HOMICIDE; AS A RULE, AN ACCUSED CAN BE CONVICTED EVEN IF NO EYEWITNESS IS AVAILABLE SO LONG AS SUFFICIENT CIRCUMSTANTIAL EVIDENCE IS PRESENTED BY THE PROSECUTION TO PROVE BEYOND DOUBT THAT THE ACCUSED COMMITTED THE CRIME; RATIONALE.— It is settled that

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[36] 379 Phil. 1, (2000).

[37] *Pang-oden v. Leonen*, G.R. No. 138939, December 6, 2006, 510 SCRA 93, 102; *Ranola v. Court of Appeals*, 379 Phil. 1, 13(2000).

[*] Additional member, per Special Order No. 546 dated January 5, 2009.

in the special complex crime of rape with homicide, both the rape and the homicide must be established beyond reasonable doubt. In this regard, we have held that the crime of rape is difficult to prove because it is generally unwitnessed and very often only the victim is left to testify for herself. It becomes even more difficult when the complex crime of rape with homicide is committed because the victim could no longer testify. Thus, in crimes of rape with homicide, as here, resort to circumstantial evidence is usually unavoidable. Considering that no one witnessed the commission of the crime charged herein, the weight of the prosecution's evidence must then be appreciated in light of the well-settled rule that an accused can be convicted even if no eyewitness is available, as long as sufficient circumstantial evidence is presented by the prosecution to prove beyond doubt that the accused committed the crime.

2. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT FOR CONVICTION. — Circumstantial evidence consists of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience. Under Section 4, Rule 133 of the Revised Rules of Court, circumstantial evidence is sufficient for conviction if the following requisites concur: (a) there is more than one circumstance; (b) the facts from which the inferences are derived have been established; and (c) the combination of all the circumstances is such as to warrant a finding of guilt beyond reasonable doubt. Verily, for circumstantial evidence to be sufficient to support a conviction, all the circumstances must be consistent with each other, consistent with the hypothesis that accused is guilty and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt. Thus, a judgment of conviction based on circumstantial evidence can be sustained only when the circumstances proved form an unbroken chain which leads to a fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the culprit.

3. ID.; ID.; ADMISSIBILITY; EXCEPTION TO HEARSAY RULE; PART OF THE *RES GESTAE*; REQUISITES; PRESENT IN CASE AT BAR. — Part of the *res gestae* and admissible in

evidence as an exception to the hearsay rule were Divina's utterances to Gorospe after seeing the dead and raped body of the victim, *i.e.*, "*May nagyari sa itaas at galing doon si Boyet*," and her subsequent narration of seeing the accused-appellant going out of the victim's room and running away therefrom. In *People v. Cantonjos* the Court held that: *Res gestae* utterances refer to those exclamations and statements made by either the participants, victims, or spectators to a crime immediately before, during, or after the commission of the crime, when the circumstances are such that the statements were made as a spontaneous reaction or utterance inspired by the excitement of the occasion and there was no opportunity for the declarant to deliberate and to fabricate a false statement. A declaration is deemed part of the *res gestae* and thus admissible in evidence as an exception to the hearsay rule when the following requisites concur: (1) the principal act, the *res gestae*, is a startling occurrence; (2) the statements were made before the declarant had time to contrive or devise; and (3) the statements must concern the occurrence in question and its immediately attending circumstances. The aforementioned requisites are present in this case. The *res gestae* or the startling event is the rape and death of the victim. The statements of Divina to Gorospe were made spontaneously and before she had the time to contrive or devise such declarations, and said statements all concerned the occurrence in question or the immediately attending circumstances thereof.

4. ID.; ID.; TESTIMONIAL EVIDENCE; THE PRESUMPTION IS THAT THE WITNESS IS NOT ACTUATED BY IMPROPER MOTIVE. — In the absence of evidence that the witnesses for the prosecution were actuated by improper motive, the presumption is that they were not so actuated and their testimonies are entitled to full faith and credit.

5. CRIMINAL LAW; SPECIAL COMPLEX CRIMES; RAPE WITH HOMICIDE; DENIAL AND ALIBI AS DEFENSES; INTRINSICALLY WEAK AND MUST BE SUPPORTED BY STRONG EVIDENCE OF NON-CULPABILITY IN ORDER TO BE CREDIBLE. — Thus, accused-appellant's twin defenses of denial and alibi pale in the light of the array of circumstantial evidence presented by the prosecution. Equally damning is accused-appellant's failure to prove with clear and convincing evidence that he was at another place at the time the crime

was committed or to demonstrate the impossibility of his presence at the scene of the crime when the same was committed. Denial is intrinsically a weak defense and must be supported by strong evidence of non-culpability in order to be credible. Correspondingly, courts view the defense of alibi with suspicion and caution, not only because it is inherently weak and unreliable, but also because it can be fabricated easily.

6. REMEDIAL LAW; EVIDENCE; FLIGHT AS AN INDICATION OF GUILT; PRESENT IN CASE AT BAR. — Furthermore, this Court cannot ignore the positive testimony on record that accused-appellant was seen running away from the scene of the crime immediately before the discovery thereof. If accused-appellant was as innocent as he claimed to be, he should have immediately cleared himself of suspicion. Instead, accused-appellant stayed at his friend's house for six or seven days, despite having learned from his wife he was a suspect in the crime. Undoubtedly, accused-appellant's flight is an indication of his guilt or of a guilty mind. "*Indeed, the wicked man flees though no man pursueth, but the righteous are as bold as a lion*."

7. CRIMINAL LAW; SPECIAL COMPLEX CRIMES; RAPE WITH HOMICIDE; WHILE DNA ANALYSIS OF THE VICTIM'S VAGINAL SMEAR SHOWED NO COMPLETE PROFILE OF THE ACCUSED-APPELLANT, THE SAME DOES NOT ENTITLE HIM TO AN ACQUITTAL; RATIONALE. — Here, while the DNA analysis of the victim's vaginal smear showed no complete profile of the accused-appellant, the same is not conclusive considering that said specimen was already stained or contaminated which, according to the forensic chemist, Aida Villoria-Magsipoc, deters a complete and good result for DNA profiling. She explained in her testimony that generally, with the vaginal smear, they could see if there is a male profile in the smear. However in this case, when they received the vaginal smear on the stained slide, the same had already undergone serological analysis. Hence, according to the chemist, the DNA testing conducted on the specimen subject of this case was inconclusive. In light of this flawed procedure, we hold that the result of the DNA examination does not entitle accused-appellant to an acquittal.

8. ID.; ID.; ID.; IMPOSABLE PENALTY. — Rape with Homicide under Article 335 of the Revised Penal Code, in relation to

Republic Act (R.A.) 7659, provides that when by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death. However, in view of the subsequent passage of R.A. No. 9346, entitled "An Act Prohibiting the Imposition of the Death Penalty in the Philippines," which was signed into law on June 24, 2006, the Court is mandated to impose on the accused-appellant the penalty of *reclusion perpetua.*

9. ID.; ID.; ID.; CIVIL LIABILITY; PROPER AMOUNT FOR THE AWARD OF CIVIL INDEMNITY AND OTHER DAMAGES; AFFIRMED. — We likewise affirm the CA's additional award of ₱100,000.00 as civil indemnity pursuant to current jurisprudence that in cases of rape with homicide, civil indemnity in the amount of ₱100,000.00 should be awarded to the heirs of the victim. As to moral damages, recent jurisprudence allows the amount of ₱75,000.00 to be awarded in cases of rape with homicide. Thus, the ₱50,000.00 award given by the court below as moral damages should be increased to ₱75,000.00. The ₱25,000.00 exemplary damages, however, should be deleted because under Article 2230 of the New Civil Code, exemplary damages in criminal cases may be imposed when the crime was committed with one or more aggravating circumstances, and there is none in this case. The rest of the awards given by the trial court are affirmed.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Under review is the Decision[1] dated December 9, 2005 of the Court of Appeals (CA) in *CA-G.R. CR.-HC No. 01493* finding accused-appellant **Alfredo Pascual *y* Ildefonso *alias* "BOYET"** guilty beyond reasonable doubt of the crime of Rape with Homicide and sentencing him to suffer the penalty of death.

[1] Penned by now Presiding Justice Conrado M. Vasquez, Jr. with Associate Justice Juan Q. Enriquez and former Associate Justice Vicente Q. Roxas, concurring; *rollo*, pp. 3-23.

Said decision affirmed that of the Regional Trial Court (RTC), Branch 211, Mandaluyong City, albeit with the modification that granted an additional award of ₱100,000.00 as civil indemnity to the heirs of the deceased-victim.

The conviction of accused-appellant stemmed from an Amended Information[2] dated February 23, 2001, filed with the RTC for the crime designated as Rape with Homicide and Robbery, the accusatory portion of which reads:

> That on or about the 25th day of December 2000 in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, by the use of force and intimidation, did then and there willfully, unlawfully and feloniously, lie and have carnal knowledge of one LORELYN PACUBAS *y* TAMAYO, against the latter's will and consent.
>
> During the occasion or by reason of the rape with intent to kill and taking advantage of superior strength, covered the face of said victim with a pillow, thus suffocating her which ultimately led to her instantaneous death. Likewise, during or on occasion of the rape with intent to gain and by means of force, violence and intimidation employed upon the person of Lorelyn Pacubas *y* Tamayo, did then and there willfully, unlawfully and feloniously take, steal and carry away the following, to wit:
>
> a). one (1) gold necklace with pendant
>
> b). one (1) pair of gold earring
>
> c). college ring
>
> d). Seiko lady's wristwatch
>
> all in the total amount of ₱10,000.00 more or less, belonging to victim Lorelyn Pacubas *y* Tamayo, to the damage and prejudice of the latter.

When arraigned, appellant pleaded not guilty to the charge. Trial thereafter ensued.

During trial, the prosecution presented seven (7) witnesses; namely, Rodolfo Jundos, Jr. and Arlene Gorospe, both neighbors

[2] CA *rollo*, pp.13-14.

of the victim; Eduardo Velasco, a friend of the victim's sister; Police officers (PO)2 Fernando Aguilan and Police Inspector (P/Insp.) Russel Leysa; Dr. Felimon Porciuncula, Jr., the Philippine National Police (PNP) medico-legal officer; and Lorenza Pacubas, the victim's mother. The prosecution's version of the facts, as narrated in the decision under review, follows:

> The incident xxx happened in a room at the second floor of House No. 724, Ballesteros St., Barangay New Zaniga, Mandaluyong City. The sketch of the house (Exh. A, p. 148 Records) shows it has three (3) rooms; on the first floor, one occupied by Arlene Gorospe and family (Exh. A-1); the second, by Alfredo Pascual and his family (Exh. A-2); and the third is the residence of Rodolfo Jundos, Jr. and his family. On the second floor is another room occupied by the family of the victim Lorelyn Pacubas *y* Tamayo (*alias* Ling-Ling) and her siblings.
>
> Last December 24, 2000, at around 10:00 o'clock in the evening, Rodolfo Jundos, Jr. was preparing to celebrate *noche buena* with his son and the accused-appellant, Alfredo Pascual who was with Christopher, his 2-year old youngest child. Alfredo Pascual appeared to have had liquor already. For three (3) instances, the accused would ask permission to go inside the house as he was already sleepy and drunk but nonetheless will return 10 to 15 minutes later, twice still with the child and only to continue drinking every time he returned. On the third time, he was without the child anymore and partake (sic) of liquor until 1:00 o'clock a.m. when he left, leaving Rodolfo Jundos, Jr. alone just outside the aforesaid house at 724 Ballesteros St. (Exh. A-8). Twenty (20) minutes later, Divina Pascual, appellant's wife, came out the house looking for her husband. When informed that the latter had already left, Divina started looking for him inside the house and later in the billiard hall 10 or 15 minutes away. Moments later, Divina went passed (sic) the place where Rodolfo Jundos, Jr. was drinking, rushing upstairs to the second floor of the house. Soon after, Jundos saw Divina chasing Alfredo running out towards the gate at the same time asked (sic) Jundos for help saying "*Kuya, tulungan mo ako, si Boyet*" (referring to Alfredo Pascual). Thinking that Alfredo Pascual was making trouble, Rodolfo Jundos, Jr. joined the chase but could not catch up as Alfredo was running very fast. So Divina told him to instead go upstairs as the accused might have done something wrong to Ling-ling (Lorelyn) [T.S.N. pp. 4-11, October 24, 2002]. Rodolfo Jundos, Jr. is the husband of appellant's older sister, Laarni.

Together, Jundos and Divina rushed to the second floor. As the place was dark, they switched on the light and there they saw Ling-ling (Lorelyn Pacubas) flat on her back on the floor almost naked with arms and legs open, her panty and shorts down to her ankle and t-shirt pulled up above the breast with blood on the right breast. They tried to wake up Ling-ling but the latter was already dead. Rodolfo Jundos, Jr. was shocked at what he saw. Divina got hysterical and repeatedly told Arlene Gorospe what happened (T.S.N., *supra*, pp. 11-14). It did not take long before policemen from the Southern Command (SOCO) arrived.

That same morning Rodolfo Jundos, Jr. gave his statement before PO2 Fernando Aguilan (Exh. C, p. 150, Records) and so did Divina Gorospe Pascual (Exh. D, p. 151). Arlene Gorospe likewise executed his Sinumpaang Salaysay that same day, December 25, 2000, before Police Inspector Efren Pascua Jugo. (Exh. B, p. 149, Records) It was this witness Arlene Gorospe who prepared the sketch (Exh. A, p. 148, Records). Later in (sic) that fateful morning, police investigators appeared in (sic) the scene of the incident and took pictures of the place and the victim while still lying on the floor (Exhs. E, E-1 to E-7 and F-1 to F-5 xxx, p. 152, Records).

After proper police investigation and coordination, the victim, Lorelyn Pacubas, was brought to the PNP Crime Laboratory, for autopsy and the examination of the blood found in the place of the incident (Medico Legal Report No. S 056 00, Exh. M, p. 162, Records). The printed underwear with suspected seminal stains was likewise examined. Medico-Legal Report No. R-007-00 (Exh. N, p. 163, Records) reveal absence of semen. In Medico-Legal Report No. M 932 00 (Exh. O, p. 164, Records), it was determined that the cause of death was asphyxia by smothering. The same report gave the following *postmortem* findings on the injuries sustained by the victim:

POSTMORTEM FINDINGS

Fairly developed, fairly nourished, female cadaver in *rigor mortis* with *postmortem* lividity at the dependent portions of the body. Conjunctivae are pale. Lips and nailbeds are cyanotic.

HEAD

1) Lacerated wound, upper lip, measuring 0.8 x 0.5 cm, along the anterior midline.

2) Contusion, right cheek, measuring 5 x 4 cm, 7 cm from the anterior midline.

TRUNK

1) Contusion, right pectoral region, measuring 3 x 2 cm, 11 cm from the anterior midline.

2) Lacerated wound, right nipples, measuring 0.6 x 0.1 cm.

3) Contusion, right pectoral region, measuring 5 x 4 cm, 10 cm from the anterior midline.

4) Contusion, sternal region, measuring 3 x 1 cm, along the anterior midline.

5) Contusion, left inguinal region, measuring 5 x 3.5 cm, 10 cm from the anterior midline.

The stomach is full of partially digested food particles.

EXTREMITY

1) Contusion, proximal 3rd of the right forearm measuring 4 x 2 cm, 4 cm lateral to its posterior midline.

2) Contusion, right ring finger, measuring 0.5 x 0.3 cm.

LARYNX, TRACHEA AND ESOPHAGUS

The larynx, trachea and esophagus are markedly congested and cyanotic with petechial hemorrhages.

x x x x x x x x x

GENITAL

There is abundant growth of pubic hair, labia majora are full, convex and co-aptated with pinkish brown labia minora presenting in between. On separating the same disclosed a fleshy type **hymen with deep healed lacerations at 3, 6 and 9 o'clock positions with an abraded posterior fourchette, measuring 1 x 0.4 cm.**

Vaginal and peri urethral smears are POSITIVE for spermatozoa.

x x x x x x x x x

CONCLUSION:

Cause of death is Asphyxia by smothering. (p. 164, Records)

with the corresponding location of the said wounds on the attached sketches of the head (Exh. P, p. 165, Records) and the human body in the anatomical sketch (Exh. Q, p. 166, Records).[3] (Emphasis ours)

Accused-appellant denied the charges against him. He alleged that on December 24, 2000, he was drinking with Rodolfo Jundos, Jr. and the latter's son outside their residence from 10:00 p.m. until 1:00 a.m. of December 25, 2000. When he came home, he had a fight with his wife Divina Pascual (Divina) because the latter allegedly wouldn't permit him to go to a friend's house in Sta. Mesa, Manila, as he was already drunk. Nonetheless, so accused-appellant claims, he still went to Sta. Mesa and stayed at his friend's house for more or less six days.[4] Upon learning from his wife that Lorelyn Pacubas was raped and killed and that he was the suspect therein, he requested his wife to contact and coordinate with Major Peñalosa for his voluntary surrender. On cross-examination, accused-appellant admitted that he knew Lorelyn Pacubas was staying alone on the second floor of the house on that fateful night, as her two (2) other siblings had already gone home to the province.[5] Moreover, he admitted having called his wife on December 25, 2000, and was then told about the crime which happened to Lorelyn Pacubas and that he was the suspect thereof.[6]

Defense witness Carlito Santos (Carlito) corroborated accused-appellant's testimony of having stayed in his house for six (6) days. Carlito testified that at about 2:00 o'clock in the early morning of December 25, 2000, accused-appellant

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[3] *Rollo*, pp. 3-6.

[4] TSN, September 8, 2003, p. 3; Records, p. 410.

[5] TSN, October 6, 2003, p. 8; Records, p. 423.

[6] *Id.* pp. 10-11; Records, pp. 425-426.

arrived at his (Carlito's) house and told the witness that he (accused-appellant) had a fight with his wife, Divina.[7]

Another defense witness, Aida Viloria-Magsipoc, forensic chemist of the National Bureau of Investigation (NBI), testified on the result of the DNA analysis which she conducted on the specimens submitted by the trial court consisting of the victim's vaginal smear and panty. According to her, no DNA sample from the suspect was present on the aforesaid specimens.[8] On cross-examination, she declared that based on DNA testing, she could not determine if a woman was raped or not. She further declared that in this case, it was possible that the stained vaginal smear prevented a complete and good result for the DNA profiling. Upon being questioned by the court, the forensic chemist confirmed that DNA testing on the subject specimens was inconclusive and that the result was not good, as the specimens submitted, *i.e.*, the stained vaginal smear and the dirty white panty, had already undergone serological analysis.[9]

In a decision[10] dated March 11, 2004, the trial court rendered judgment, as follows:

> WHEREFORE, finding accused, ALFREDO PASCUAL *Y* ILDEFONSO *alias* "BOYET" GUILTY beyond reasonable doubt of the crime of Rape with Homicide, under the circumstances prescribed in Article 266-A of the Revised Penal Code, as amended, absent any modifying circumstance to aggravate or mitigate criminal liability, the court hereby sentences him to suffer the penalty of DEATH.
>
> He is also ordered to pay the heirs of the victim the amount of Php63,000.00 as actual damages; the amount of Php50,000.00 as moral damages; the amount of Php25,000.00 as exemplary damages; Php28,000.00 as burial expenses and the amount of Php250,000.00 for loss of earnings. Additional actual expenses incurred not supported by receipts are denied pursuant to Article 2199 of the Civil Code.

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[7] TSN, November 17, 2003, p. 3; Records, p. 436.

[8] TSN, June 11, 2003, p. 15; Records, p. 396.

[9] TSN, July 2, 2003, pp. 1-5; Records, pp. 399-403.

[10] CA *rollo,* pp. 29-54.

In so far as the charge of robbery is concerned, the same is hereby ordered DISMISSED, it appearing that the valuables and other personal belongings of the victim are intact.

The accused is likewise ordered to pay the costs of the suit.

SO ORDERED.[11]

The case was directly elevated to this Court for automatic review. However, in a Resolution[12] dated July 26, 2005 and pursuant to our ruling in *People v. Mateo*[13] the case was transferred to the CA.

In its Decision[14] dated December 9, 2005**,** the CA affirmed with modification the trial court's decision. Dispositively, the CA decision reads:

IN VIEW OF ALL THE FOREGOING, the appealed decision is hereby **AFFIRMED** with the **modification** that the heirs of Lorelyn Pacubas is further awarded the amount of ₱100,000.00 as civil indemnity, in addition to the other damages in the lower court's judgment. Costs *de oficio*.

SO ORDERED.

In view of the foregoing, accused-appellant comes again to this Court for a final review of his case.

In a Resolution[15] dated June 13, 2006, the Court required the parties to file their respective supplemental briefs, if they so desired. In their respective Manifestations,[16] the parties waived the filing of supplemental briefs and instead merely adopted their earlier briefs before the CA.

Two (2) questions present themselves for resolution in this case. *First*, was the circumstantial evidence presented against

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[11] CA *rollo*, p. 111.

[12] *Id.* at 165.

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

[14] *Supra* note 1.

[15] *Rollo*, p. 25.

[16] *Id.* at pp. 26-27 & 28-29.

the accused-appellant sufficient for his conviction? *Second*, does the result of the DNA examination entitle the accused-appellant to an acquittal?

We answer the first question in the affirmative.

It is settled that in the special complex crime of rape with homicide, both the rape and the homicide must be established beyond reasonable doubt.[17] In this regard, we have held that the crime of rape is difficult to prove because it is generally unwitnessed and very often only the victim is left to testify for herself. It becomes even more difficult when the complex crime of rape with homicide is committed because the victim could no longer testify. Thus, in crimes of rape with homicide, as here, resort to circumstantial evidence is usually unavoidable.[18]

Considering that no one witnessed the commission of the crime charged herein, the weight of the prosecution's evidence must then be appreciated in light of the well-settled rule that an accused can be convicted even if no eyewitness is available, as long as sufficient circumstantial evidence is presented by the prosecution to prove beyond doubt that the accused committed the crime.[19]

Circumstantial evidence consists of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience.[20] Under Section 4, Rule 133 of the Revised Rules of Court, circumstantial evidence is sufficient for conviction if the following requisites concur:

(a) there is more than one circumstance; (b) the facts from which the inferences are derived have been established; and (c) the combination of all the circumstances is such as to warrant a finding of guilt beyond reasonable doubt.

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[17] *People v. Nanas*, G.R. No. 137299, August 21, 2001, 362 SCRA 452, 464.

[18] *Id*.

[19] *People v. Yatar*, G.R. No. 150224, May 19, 2004, 428 SCRA 504, 513.

[20] *People v. Darilay*, G.R. Nos. 139751-52, January 26, 2004, 421 SCRA 45, 61.

Verily, for circumstantial evidence to be sufficient to support a conviction, all the circumstances must be consistent with each other, consistent with the hypothesis that accused is guilty and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt.[21] Thus, a judgment of conviction based on circumstantial evidence can be sustained only when the circumstances proved form an unbroken chain which leads to a fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the culprit.

Here, the circumstances testified to by the prosecution witnesses lead to the inevitable conclusion that the accused-appellant is the author of the crime charged.

The chain of events that led to the subject unfortunate incident was candidly narrated by Rodolfo Jundos, Jr. Said witness testified that on December 24, 2000 at 10:00 p.m., he, together with his family and other relatives, was preparing for their small celebration outside the house; that accused-appellant (who appeared to be already drunk) was also there together with his 2-year-old child; that accused-appellant stayed with them up to 1:00 a.m. of December 25; that during the course of his stay with the group, accused-appellant left twice to go inside the house but kept on coming back to continue drinking; that when accused-appellant left for the third time, he did not come back anymore leaving him (Jundos) alone as his son, Christopher, also left to go to some other place.[22] Some 20 minutes later, accused-appellant's wife, Divina, asked him about the whereabouts of the accused-appellant and he instructed her to look for her husband in several places. Having failed to locate accused-appellant, Divina went back inside the house.[23] What transpired next can be gleaned from the following pertinent portions of Jundos' testimony:

"Q- When you are still on that particular place where you are drinking alone, do you remember any unusual incident that happened?

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[21] *Id.*

[22] TSN., October 24, 2002, pp. 3-6; Records, pp. 355-358.

[23] *Id.,* pp. 7-9; Records, pp. 359-361.

A- Yes sir.

Q- What is that incident?

A- *'Nong umuwi na po si Divina sa kanila nong sinabi nya na napapagod na sya, maya-maya po ay nakita ko si Divina na nag-tatatakbo, dumaan po doon sa harap ko at nag-tatatakbo patungong itaas po.'*

Q- *Itaas ng*?

A- Second floor sir.

x x x x x x x x x

Q- And what happened after Divina went up stairs of the second floor?

A- *Nakita ko po na naghahabulan si Divina at yong asawa nya si Alfredo Pascual.*

Q- Did you see where did they came from?

A- *'Hindi ko po nakita kong saan sila naggaling, ang nakita ko lang dito po sa gilid ko papuntang gate.*

Q- So, you see them coming out of that building and proceeding towards the gate?

A- Yes sir.

Q- And who was ahead?

A- Alfredo Pascual sir.

Q- And what was Divina doing at that time?

A- She's chasing Alfredo Pascual.

Q- Did you hear her saying something?

A- Yes sir.

Q- What [did] she say?

A- *Humihingi po sya sa akin ng tulong, sabi nya po, "kuya tulongan mo ako si Boyet" kasi ang palayaw po ni Alfredo Pascual e Boyet.*

Q- And what was your interpretation then when you heard her asking for your help, this Divina, the wife of the accused?

A- *'Ang pagkaintindi ko po na humihingi si Divina ng tulong, akala ko po nagwala kasi lasing po, kaya humihingi po ng tulong yong asawa, kaya (po) ako po'y tumakbo doon at naki-nakipaghabol po sa kanila.'*

Q- And what happened next after that?

A- *'Tumakbo rin po ako at nakihabol rin ako sa kanila, pero nong nandoon na po ako sa kalsada, yong street po naming Ballesteros, nasa kalagitnaan na po ako, nakita ko na po si Divina at sinalubong na po ako, ang sabi sa akin, "kuya hindi na maabutan kasi mabilis tumakbo tulungan mo nalang ako, samahan mo ako, aakyat tayo sa taas kasi baka kung anong ginawa nya don kay Ling-Ling, the victim in this case."*

Q- So, what did you do when Divina ask for your assistance?

A- *'Sinamahan ko po, umakyat po kami sa second floor at nakita namin sa second floor, madilim, parang walang sindi ang mga ilaw.'*

Q- What was the condition of the door going inside the second floor when you went up?

A- Open sir.

Q- And did you and Divina do when you were already (inside) in the second floor?

A- *'Hinanap po nami yong mga switches, kasi ako po bihirang bihira po akong makaakyat don kaya sabi ko kay Divina hanapin natin yong switch kasi hindi ko kabisado rito, yon kinakapa po naming kong saan po yong mga switches, habang kinakapa po naming yong mga switches tapos pinupukpok ko po yong dingding tapos nag-tatawag po ako ng pangalan ni Ling-Ling, "Ling saan ka naroon."*

Q- And then what happened next?

A- *'Yan po habang hinahanap po naming yong mga switches at kinakatok po naming yong mga dingding bigla pong sumigaw si Divina na "kuya halika dito" ng marining ko po na tinatawag yong pangalan ko e lumapit po ako kung saan sya naroon."*

Q- What happened next?

A- *'Nandon po sya sa loob ng kwarto, bukas po yong pinto, doon nakita ko po si Ling-Ling, yong biktima.*

Q- Where was the victim at the first time or instance that you saw her at that particular time?

A- At the floor sir.

Q- What was the physical appearance of the victim when you first saw her?

A- When I first saw the victim she was lieing (sic) in the floor with open arms (sic) and open legs and her short and panty was already loose off down to her ankle and her (the) shirt is up.

Q- Up to where?

A- *'Nakataas po, labas ang kanyang "didi" at nakita ko pong may dugo sa gilid."*

Q- Where did you find the blood?

A- On her left side breast sir.

Q- On that particular instance, when heard Divina calling for help, was there already light inside that house?

A- There was a light sir.

Q- Where was that light coming from?

A- Came from the ceiling.

Q- Inside the room where Divina found the body of the victim?

A- Yes sir.

x x x x x x x x x

Q- When you first enter that room where you find the body of the victim Lorelyn Bacubas, what was the condition of the room?

A- *'Nakita ko po na magulo yong kama tapos yong drawer na lagayan ng mga damit kasi salamin po yong ibaba may mga basag po at may mga patak ng dugo.'*

Q- What else did you find?

A- *'May scissor po sa left side ng braso nya, sa gilid po.'*

x x x x x x x x x

Q- What did you do when you saw the victim in this case already sprawled on the floor?

A- *'Nung nakita na naming hindi na gumagalaw si Ling-Ling at ang pagkaalam namin ay patay na, bumaba na po kami.'*

x x x x x x x x x

Q- After you went down, what did you do next?

A- *'Pag-baba po namin ni Divina, tumakbo po kami don sa pinto, sa bahay po ng bayaw ko at humingi po kami ng tulong.'*

Q- Who is your brother-in-law?
A- Arleen Gorospe sir.

x x x x x x x x x

Q- What did you do with Arleen Gorospe?
A- ***'Pag-bukas po ng pinto, una pong pumasok si Divina at nag-hysterical na nagsisigaw na Manang Rose, yong asawa po ni Arleen Gorospe, si Ling-Ling ginahasa at pinatay ni Boyet.'***

Q- And what next happened?
A- *'Sinalaysay po ni Divina, pero ako po'y na shock at napaupo na lang ako sa sopa, umakyat din po si Arleen sa taas at may tumawag na rin ng pulis."*[24] (Emphasis Ours)

Arlene Gorospe corroborated the testimony of Jundos that in the early morning of December 25, 2000, Jundos and the accused-appellant's wife, Divina, knocked at his door to inform him of the incident after which he immediately proceeded upstairs and saw the victim naked and lifeless with her t-shirt pulled up.[25]

Prior to the discovery of her dead body, Jundos also testified that the victim was alone in her room on the second floor of the house.[26] This fact was known to accused-appellant who admitted as much in his cross-examination.[27] Eduardo Velasco, who used to visit the sister of the victim and have drinks with accused-appellant, testified that the latter confided to him his love for the victim.[28]

PO2 Fernando Aguilan and P/Insp. Russel Leysa testified that upon arrival at the place where the subject incident happened on December 25, 2000 at about 2:30 a.m., they found the lifeless body of the victim lying on the floor naked, with bloodstain on

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[24] TSN, October 24, 2002, pp. 9-13; Records, pp. 361-365.

[25] TSN, October 17, 2001, p. 6; Records, p. 240.

[26] TSN, October 24, 2002, p. 6; Records, p. 366.

[27] TSN , October 6, 2003, p. 8; Records, p. 423.

[28] TSN, December 5, 2002, p. 3; Records, p. 329.

her clothes and appearing lifeless.[29] The police also found at the scene of the crime the victim's belongings scattered all over the place.

Dr. Felimon Porciuncula, who conducted the post-mortem examination on the cadaver of the victim on the morning of December 25, 2000, testified that the victim died of asphyxia by smothering. The doctor also testified that apart from contusions, "*hymenal lacerations were discovered on the body at 3, 6 and 9 o'clock positions, but there is an abrasion or abrated posterior… meaning that the injury was fresh*"[30] or was inflicted right before the death of the victim.[31] Dr. Porciuncula further testified that spermatozoa was found in the vagina of the victim.[32]

Furthermore, the statements of accused-appellant's wife, Divina, immediately after the fateful incident all the more convince the Court as to accused-appellant's guilt. Part of the *res gestae* and admissible in evidence as an exception to the hearsay rule were Divina's utterances to Gorospe after seeing the dead and raped body of the victim, *i.e.*, "*May nagyari sa itaas at galing doon si Boyet*," and her subsequent narration of seeing the accused-appellant going out of the victim's room and running away therefrom.[33]

In *People v. Cantonjos*[34] the Court held that:

> *Res gestae* utterances refer to those exclamations and statements made by either the participants, victims, or spectators to a crime immediately before, during, or after the commission of the crime, when the circumstances are such that the statements were made as a spontaneous reaction or utterance inspired by the excitement of the occasion and there was no opportunity for the declarant to deliberate

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[29] TSN November 7, 2001, p. 2; Records p. 249.

[30] TSN November 28, 2001 p. 8; Records, p. 313.

[31] *Id.*, p. 19; Records, p. 324.

[32] *Id.*, pp. 9-10; records, pp. 314-315.

[33] TSN, October 17, 2001, p. 6; Records, p. 240.

[34] G.R. No. 136748, November 21, 2001, 370 SCRA 105, 118-119.

and to fabricate a false statement. A declaration is deemed part of the *res gestae* and thus admissible in evidence as an exception to the hearsay rule when the following requisites concur: (1) the principal act, the *res gestae*, is a startling occurrence; (2) the statements were made before the declarant had time to contrive or devise; and (3) the statements must concern the occurrence in question and its immediately attending circumstances.

The aforementioned requisites are present in this case. The *res gestae* or the startling event is the rape and death of the victim. The statements of Divina to Gorospe were made spontaneously and before she had the time to contrive or devise such declarations, and said statements all concerned the occurrence in question or the immediately attending circumstances thereof.

In the absence of evidence that the witnesses for the prosecution were actuated by improper motive, the presumption is that they were not so actuated and their testimonies are entitled to full faith and credit.[35]

Here, accused-appellant claimed that at 2 o'clock on the morning of December 25, 2000, he was at his friend's house in Sta. Mesa, having left his house in Mandaluyong because of a quarrel with his wife, Divina. Prosecution witness Jundos' testimony, however, positively placed the accused-appellant near the scene of the crime at the same time on December 25, 2000. Surely, between the positive assertions of the prosecution witness and the negative averments of accused-appellant, the former indisputably deserve more credence and evidentiary weight.[36]

Thus, accused-appellant's twin defenses of denial and alibi pale in the light of the array of circumstantial evidence presented by the prosecution. Equally damning is accused-appellant's failure to prove with clear and convincing evidence that he was at

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[35] *Velasco v. People*, G.R. No. 166479, February 28, 2006, 483 SCRA 649, 668.

[36] *People v. Dela Cruz*, G.R. No. 152176, October 1, 2003, 412 SCRA 503, 509.

another place at the time the crime was committed or to demonstrate the impossibility of his presence at the scene of the crime when the same was committed.

Denial is intrinsically a weak defense and must be supported by strong evidence of non-culpability in order to be credible. Correspondingly, courts view the defense of alibi with suspicion and caution, not only because it is inherently weak and unreliable, but also because it can be fabricated easily.[37]

Furthermore, this Court cannot ignore the positive testimony on record that accused-appellant was seen running away from the scene of the crime immediately before the discovery thereof. If accused-appellant was as innocent as he claimed to be, he should have immediately cleared himself of suspicion. Instead, accused-appellant stayed at his friend's house for six or seven days, despite having learned from his wife he was a suspect in the crime. Undoubtedly, accused-appellant's flight is an indication of his guilt or of a guilty mind. *"Indeed, the wicked man flees though no man pursueth, but the righteous are as bold as a lion."*[38]

Accused-appellant makes much of the result of the DNA analysis conducted by the NBI that his profile was not in the victim's vaginal smear. Hence, he argues he is innocent of the crime charged.

In *People v. Yatar*, we held that in assessing the probative value of DNA evidence, courts should consider, *inter alia*, the following factors: how the samples were collected, how they were handled, the possibility of contamination of the samples, the procedure followed in analyzing the samples, whether the proper standards and procedures were followed in conducting the tests, and the qualification of the analyst who conducted the tests.[39]

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[37] *People v. Dela Cruz*, G.R. No. 152176, October 1, 2003, 412 SCRA 503, 508-509.

[38] *Id.*

[39] *Supra* note 19, at p. 515.

Here, while the DNA analysis of the victim's vaginal smear showed no complete profile of the accused-appellant, the same is not conclusive considering that said specimen was already stained or contaminated which, according to the forensic chemist, Aida Villoria-Magsipoc, deters a complete and good result for DNA profiling. She explained in her testimony that generally, with the vaginal smear, they could see if there is a male profile in the smear. However in this case, when they received the vaginal smear on the stained slide, the same had already undergone serological analysis. Hence, according to the chemist, the DNA testing conducted on the specimen subject of this case was inconclusive.[40] In light of this flawed procedure, we hold that the result of the DNA examination does not entitle accused-appellant to an acquittal.

Viewed in its entirety, the evidence in this case inevitably leads to the conclusion that accused-appellant is guilty beyond reasonable doubt of the special complex crime of Rape with Homicide.

Rape with Homicide under Article 335 of the Revised Penal Code, in relation to Republic Act (R.A.) 7659, provides that when by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death. However, in view of the subsequent passage of R.A. No. 9346, entitled "An Act Prohibiting the Imposition of the Death Penalty in the Philippines," which was signed into law on June 24, 2006, the Court is mandated to impose on the accused-appellant the penalty of *reclusion perpetua*.

We likewise affirm the CA's additional award of ₱100,000.00 as civil indemnity pursuant to current jurisprudence[41] that in cases of rape with homicide, civil indemnity in the amount of ₱100,000.00 should be awarded to the heirs of the victim. As to moral damages, recent jurisprudence allows the amount of

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[40] TSN, July 2, 2003, pp. 1-5; Records, pp. 399-403.

[41] *People v. Sevilleno*, G.R. No. 152954, March 10, 2004, 425 SCRA 247, 257; *People v. Darilay* G.R. Nos. 139751-52, January 26, 2004, 421 SCRA 45, 64.

₱75,000.00 to be awarded in cases of rape with homicide.[42] Thus, the ₱50,000.00 award given by the court below as moral damages should be increased to ₱75,000.00. The ₱25,000.00 exemplary damages, however, should be deleted because under Article 2230 of the New Civil Code, exemplary damages in criminal cases may be imposed when the crime was committed with one or more aggravating circumstances, and there is none in this case. The rest of the awards given by the trial court are affirmed.

WHEREFORE, the appealed decision of the CA in *CA-G.R. CR HC No. 01493* is hereby *AFFIRMED with MODIFICATION*. Accused-appellant is found guilty beyond reasonable doubt of the crime of rape with homicide and is hereby sentenced to suffer the penalty of *reclusion perpetua* and to pay the heirs of the victim, Lorelyn Pacubas, the amounts of ₱100,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱63,000.00 as actual damages, ₱28,000.00 as burial expenses and ₱250,000.00 for loss of earnings.

No costs.

SO ORDERED.

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

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[42] *People v. Sevilleno, id.* at p. 258.

THIRD DIVISION

[G.R. Nos. 175769-70. January 19, 2009]

ABS-CBN BROADCASTING CORPORATION, *petitioner, vs.* **PHILIPPINE MULTI-MEDIA SYSTEM, INC., CESAR G. REYES, FRANCIS CHUA (ANG BIAO), MANUEL F. ABELLADA, RAUL B. DE MESA, AND ALOYSIUS M. COLAYCO,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; INTELLECTUAL PROPERTY CODE; BROADCASTING AND REBROADCASTING, DISTINGUISHED. — Section 202.7 of the IP (Intellectual Property) Code defines **broadcasting** as "the transmission by wireless means for the public reception of sounds or of images or of representations thereof; such transmission by satellite is also 'broadcasting' where the means for decrypting are provided to the public by the broadcasting organization or with its consent." On the other hand, **rebroadcasting** as defined in Article 3(g) of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, otherwise known as the 1961 Rome Convention, of which the Republic of the Philippines is a signatory, is "the simultaneous broadcasting by one broadcasting organization of the broadcast of another broadcasting organization."

2. ID. ID.; BROADCASTING, WHEN PRESENT; ELEMENTS; EXPLAINED.— The Director-General of the IPO correctly found that PMSI is not engaged in rebroadcasting and thus cannot be considered to have infringed ABS-CBN's broadcasting rights and copyright, thus: That the Appellant's [herein respondent PMSI] subscribers are able to view Appellee's [herein petitioner ABS-CBN] programs (Channels 2 and 23) at the same time that the latter is broadcasting the same is undisputed. The question however is, would the Appellant in doing so be considered engaged in broadcasting. Section 202.7 of the IP Code states that broadcasting means "the transmission by wireless means for the public reception of sounds or of images or of representations thereof; such transmission by satellite is

also 'broadcasting' where the means for decrypting are provided to the public by the broadcasting organization or with its consent." Section 202.7 of the IP Code, thus, provides two instances wherein there is broadcasting, to wit: 1. The transmission by wireless means for the public reception of sounds or of images or of representations thereof; and 2. The transmission by satellite for the public reception of sounds or of images or of representations thereof where the means for decrypting are provided to the public by the broadcasting organization or with its consent. It is under the second category that Appellant's DTH satellite television service must be examined since it is satellite-based. The elements of such category are as follows: 1. There is transmission of sounds or images or of representations thereof; 2. The transmission is through satellite; 3. The transmission is for public reception; and 4. The means for decrypting are provided to the public by the broadcasting organization or with its consent. It is only the presence of all the above elements can a determination that the DTH is broadcasting and consequently, rebroadcasting Appellee's signals in violation of Sections 211 and 177 of the IP Code, may be arrived at. Accordingly, this Office is of the view that the transmission contemplated under Section 202.7 of the IP Code presupposes that the origin of the signals is the broadcaster. Hence, a program that is broadcasted is attributed to the broadcaster. In the same manner, the rebroadcasted program is attributed to the rebroadcaster. x x x Aptly, it is imperative to discern the nature of broadcasting. When a broadcaster transmits, the signals are scattered or dispersed in the air. Anybody may pick-up these signals. There is no restriction as to its number, type or class of recipients. To receive the signals, one is not required to subscribe or to pay any fee. One only has to have a receiver, and in case of television signals, a television set, and to tune-in to the right channel/frequency. The definition of broadcasting, wherein it is required that the transmission is wireless, all the more supports this discussion. Apparently, the undiscriminating dispersal of signals in the air is possible only through wireless means. The use of wire in transmitting signals, such as cable television, limits the recipients to those who are connected. Unlike wireless transmissions, in wire-based transmissions, it is not enough that one wants to be connected and possesses the equipment. The service provider, such as cable television companies may

choose its subscribers. The only limitation to such dispersal of signals in the air is the technical capacity of the transmitters and other equipment employed by the broadcaster. While the broadcaster may use a less powerful transmitter to limit its coverage, this is merely a business strategy or decision and not an inherent limitation when transmission is through cable.

3. ID.; ID.; PROHIBITION ON REBROADCASTING DOES NOT EXTEND TO CABLE RETRANSMISSION; RATIONALE. — The Director-General of the IPO and the Court of Appeals also correctly found that PMSI's services are similar to a cable television system because the services it renders fall under cable "retransmission," as described in the Working Paper, to wit: (G) Cable Retransmission 47. When a radio or television program is being broadcast, it can be retransmitted to new audiences by means of cable or wire. In the early days of cable television, it was mainly used to improve signal reception, particularly in so-called "shadow zones," or to distribute the signals in large buildings or building complexes. With improvements in technology, cable operators now often receive signals from satellites before retransmitting them in an unaltered form to their subscribers through cable. 48. In principle, cable retransmission can be either simultaneous with the broadcast over-the-air or delayed (deferred transmission) on the basis of a fixation or a reproduction of a fixation. Furthermore, they might be unaltered or altered, for example through replacement of commercials, etc. **In general, however, the term "retransmission" seems to be reserved for such transmissions which are both simultaneous and unaltered. 49. The Rome Convention does not grant rights against unauthorized cable retransmission. Without such a right, cable operators can retransmit both domestic and foreign over the air broadcasts simultaneously to their subscribers without permission from the broadcasting organizations or other rightholders and without obligation to pay remuneration.** Thus, while the Rome Convention gives broadcasting organizations the right to authorize or prohibit the rebroadcasting of its broadcast, however, this protection does not extend to cable retransmission. The retransmission of ABS-CBN's signals by PMSI – which functions essentially as a cable television – does not therefore constitute rebroadcasting in violation of the former's intellectual property rights under the IP Code.

4. ID.; ID.; LIMITATIONS ON COPYRIGHT; APPLICATION IN CASE AT BAR. — It must be emphasized that the law on copyright is not absolute. The IP Code provides that: Sec. 184. Limitations on Copyright. - 184.1. Notwithstanding the provisions of Chapter V, the following acts shall not constitute infringement of copyright: x x x (h) The use made of a work by or under the direction or control of the Government, by the National Library or by educational, scientific or professional institutions where such use is in the public interest and is compatible with fair use; The carriage of ABS-CBN's signals by virtue of the must-carry rule in Memorandum Circular No. 04-08-88 is under the direction and control of the government though the NTC which is vested with exclusive jurisdiction to supervise, regulate and control telecommunications and broadcast services/facilities in the Philippines. The imposition of the must-carry rule is within the NTC's power to promulgate rules and regulations, as public safety and interest may require, to encourage a larger and more effective use of communications, radio and television broadcasting facilities, and to maintain effective competition among private entities in these activities whenever the Commission finds it reasonably feasible. x x x Indeed, intellectual property protection is merely a means towards the end of making society benefit from the creation of its men and women of talent and genius. This is the essence of intellectual property laws, and it explains why certain products of ingenuity that are concealed from the public are outside the pale of protection afforded by the law. It also explains why the author or the creator enjoys no more rights than are consistent with public welfare. Further, as correctly observed by the Court of Appeals, the must-carry rule as well as the legislative franchises granted to both ABS-CBN and PMSI are in consonance with state policies enshrined in the Constitution, specifically Sections 9, 17, and 24 of Article II on the Declaration of Principles and State Policies.

5. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CHARGES; THE COMPLAINANT HAS THE BURDEN OF PROVING BY SUBSTANTIAL EVIDENCE THE ALLEGATIONS IN THE COMPLAINT. — Administrative charges cannot be based on mere speculation or conjecture. The complainant has the burden of proving by substantial evidence the allegations in the complaint. Mere allegation is not evidence, and is not equivalent to proof.

6. REMEDIAL LAW; APPEALS; FINDINGS OF FACTS OF ADMINISTRATIVE BODIES CHARGED WITH SPECIFIC FIELD OF EXPERTISE, AFFORDED GREAT WEIGHT BY THE COURTS; SUSTAINED. — The findings of facts of administrative bodies charged with their specific field of expertise, are afforded great weight by the courts, and in the absence of substantial showing that such findings are made from an erroneous estimation of the evidence presented, they are conclusive, and in the interest of stability of the governmental structure, should not be disturbed. Moreover, the factual findings of the Court of Appeals are conclusive on the parties and are not reviewable by the Supreme Court. They carry even more weight when the Court of Appeals affirms the factual findings of a lower fact-finding body, as in the instant case. x x x In *Eastern Telecommunications Philippines, Inc. v. International Communication Corporation*, we held: The NTC, being the government agency entrusted with the regulation of activities coming under its special and technical forte, and possessing the necessary rule-making power to implement its objectives, is in the best position to interpret its own rules, regulations and guidelines. The Court has consistently yielded and accorded great respect to the interpretation by administrative agencies of their own rules unless there is an error of law, abuse of power, lack of jurisdiction or grave abuse of discretion clearly conflicting with the letter and spirit of the law.

7. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL INQUIRY; ESSENTIAL REQUISITE THEREOF; THE RESOLUTION OF THE CONSTITUTIONAL QUESTION MUST BE NECESSARY IN DECIDING THE CASE; NOT PRESENT IN CASE AT BAR. — One of the essential requisites for a successful judicial inquiry into constitutional questions is that the resolution of the constitutional question must be necessary in deciding the case. In *Spouses Mirasol v. Court of Appeals*, we held: As a rule, the courts will not resolve the constitutionality of a law, if the controversy can be settled on other grounds. The policy of the courts is to avoid ruling on constitutional questions and to presume that the acts of the political departments are valid, absent a clear and unmistakable showing to the contrary. To doubt is to sustain. This presumption is based on the doctrine of separation of powers. This means that the measure had first been carefully

studied by the legislative and executive departments and found to be in accord with the Constitution before it was finally enacted and approved. The instant case was instituted for violation of the IP Code and infringement of ABS-CBN's broadcasting rights and copyright, which can be resolved without going into the constitutionality of Memorandum Circular No. 04-08-88. As held by the Court of Appeals, the only relevance of the circular in this case is whether or not compliance therewith should be considered manifestation of lack of intent to commit infringement, and if it is, whether such lack of intent is a valid defense against the complaint of petitioner.

8. ID.; ID.; ID.; THE QUESTION OF CONSTITUTIONALITY MUST BE RAISED AT THE EARLIEST OPPORTUNITY; RATIONALE. — In *Philippine National Bank v. Palma*, we ruled that for reasons of public policy, the constitutionality of a law cannot be collaterally attacked. 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. As a general rule, the question of constitutionality must be raised at the earliest opportunity so that if not raised in the pleadings, ordinarily it may not be raised in the trial, and if not raised in the trial court, it will not be considered on appeal. In *Philippine Veterans Bank v. Court of Appeals*, we held: We decline to rule on the issue of constitutionality as all the requisites for the exercise of judicial review are not present herein. **Specifically, the question of constitutionality will not be passed upon by the Court unless, at the first opportunity, it is properly raised and presented in an appropriate case, adequately argued, and is necessary to a determination of the case, particularly where the issue of constitutionality is the very *lis mota* presented.** x x x

9. ID.; SPECIAL CIVIL ACTIONS; INDIRECT CONTEMPT; HOW INITIATED. — Indirect contempt may either be initiated (1) *motu proprio* by the court by issuing an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt or (2) by the filing of a verified petition, complying with the requirements for filing initiatory pleadings.

10. ID.; ID.; ID.; PROCEEDINGS IS CRIMINAL IN NATURE; EFFECT. — It bears stressing that the proceedings for punishment of indirect contempt are criminal in nature. The

modes of procedure and rules of evidence adopted in contempt proceedings are similar in nature to those used in criminal prosecutions. While it may be argued that the Court of Appeals should have ordered respondents to comment, the issue has been rendered moot in light of our ruling on the merits. To order respondents to comment and have the Court of Appeals conduct a hearing on the contempt charge when the main case has already been disposed of in favor of PMSI would be circuitous. Where the issues have become moot, there is no justiciable controversy, thereby rendering the resolution of the same of no practical use or value.

APPEARANCES OF COUNSEL

Poblador Bautista & Reyes for petitioner.
Rodrigo Berenguer & Guno for respondents.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition for review on *certiorari*[1] assails the July 12, 2006 Decision[2] of the Court of Appeals in CA-G.R. SP Nos. 88092 and 90762, which affirmed the December 20, 2004 Decision of the Director-General of the Intellectual Property Office (IPO) in Appeal No. 10-2004-0002. Also assailed is the December 11, 2006 Resolution[3] denying the motion for reconsideration.

Petitioner ABS-CBN Broadcasting Corporation (ABS-CBN) is licensed under the laws of the Republic of the Philippines to engage in television and radio broadcasting.[4] It broadcasts television programs by wireless means to Metro Manila and

[1] *Rollo*, pp. 65-178.

[2] *Id.* at 8-43.

[3] *Id.* at 54-57.

[4] ABS-CBN was granted a franchise under Republic Act No. 7966, entitled AN ACT GRANTING THE ABS-CBN BROADCASTING CORPORATION A FRANCHISE TO CONSTRUCT, INSTALL, OPERATE AND MAINTAIN TELEVISION AND RADIO BROADCASTING STATIONS IN THE PHILIPPINES, AND FOR OTHER PURPOSES.

nearby provinces, and by satellite to provincial stations through Channel 2 on Very High Frequency (VHF) and Channel 23 on Ultra High Frequency (UHF). The programs aired over Channels 2 and 23 are either produced by ABS-CBN or purchased from or licensed by other producers.

ABS-CBN also owns regional television stations which pattern their programming in accordance with perceived demands of the region. Thus, television programs shown in Metro Manila and nearby provinces are not necessarily shown in other provinces.

Respondent Philippine Multi-Media System, Inc. (PMSI) is the operator of Dream Broadcasting System. It delivers digital direct-to-home (DTH) television *via* satellite to its subscribers all over the Philippines. Herein individual respondents, Cesar G. Reyes, Francis Chua, Manuel F. Abellada, Raul B. De Mesa, and Aloysius M. Colayco, are members of PMSI's Board of Directors.

PMSI was granted a legislative franchise under Republic Act No. 8630[5] on May 7, 1998 and was given a Provisional Authority by the National Telecommunications Commission (NTC) on February 1, 2000 to install, operate and maintain a nationwide DTH satellite service. When it commenced operations, it offered as part of its program line-up ABS-CBN Channels 2 and 23, NBN, Channel 4, ABC Channel 5, GMA Channel 7, RPN Channel 9, and IBC Channel 13, together with other paid premium program channels.

However, on April 25, 2001,[6] ABS-CBN demanded for PMSI to cease and desist from rebroadcasting Channels 2 and 23. On April 27, 2001,[7] PMSI replied that the rebroadcasting was in accordance with the authority granted it by NTC and its

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[5] AN ACT GRANTING THE PHILIPPINE MULTI-MEDIA SYSTEM, INC., A FRANCHISE TO CONSTRUCT, INSTALL, ESTABLISH, OPERATE AND MAINTAIN RADIO AND TELEVISION STATIONS IN THE PHILIPPINES.

[6] *Rollo*, p. 316.

[7] *Id.* at 317.

obligation under NTC Memorandum Circular No. 4-08-88,[8] Section 6.2 of which requires all cable television system operators operating in a community within Grade "A" or "B" contours to carry the television signals of the authorized television broadcast stations.[9]

Thereafter, negotiations ensued between the parties in an effort to reach a settlement; however, the negotiations were terminated on April 4, 2002 by ABS-CBN allegedly due to PMSI's inability to ensure the prevention of illegal retransmission and further rebroadcast of its signals, as well as the adverse effect of the rebroadcasts on the business operations of its regional television stations.[10]

On May 13, 2002, ABS-CBN filed with the IPO a complaint for "Violation of Laws Involving Property Rights, with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction," which was docketed as IPV No. 10-2002-0004. It alleged that PMSI's unauthorized rebroadcasting of Channels 2 and 23 infringed on its broadcasting rights and copyright.

On July 2, 2002, the Bureau of Legal Affairs (BLA) of the IPO granted ABS-CBN's application for a temporary restraining order. On July 12, 2002, PMSI suspended its retransmission of Channels 2 and 23 and likewise filed a petition for *certiorari* with the Court of Appeals, which was docketed as CA-G.R. SP No. 71597.

Subsequently, PMSI filed with the BLA a Manifestation reiterating that it is subject to the must-carry rule under Memorandum Circular No. 04-08-88. It also submitted a letter dated December 20, 2002 of then NTC Commissioner Armi Jane R. Borje to PMSI stating as follows:

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[8] Revised Rules and Regulations Governing Cable Television Systems in the Philippines.

[9] 6.2. Mandatory Coverage

6.2.1. A cable TV system operating in a community which is within the Grade A or Grade B contours of an authorized TV broadcast station or stations must carry the TV signals of these stations.

[10] *Rollo*, p. 322.

This refers to your letter dated December 16, 2002 requesting for regulatory guidance from this Commission in connection with the application and coverage of NTC Memorandum Circular No. 4-08-88, particularly Section 6 thereof, on mandatory carriage of television broadcast signals, to the direct-to-home (DTH) pay television services of Philippine Multi-Media System, Inc. (PMSI).

Preliminarily, both DTH pay television and cable television services are broadcast services, the only difference being the medium of delivering such services (*i.e.* the former by satellite and the latter by cable). Both can carry broadcast signals to the remote areas, thus enriching the lives of the residents thereof through the dissemination of social, economic, educational information and cultural programs.

The DTH pay television services of PMSI is equipped to provide nationwide DTH satellite services. Concededly, PMSI's DTH pay television services covers very much wider areas in terms of carriage of broadcast signals, including areas not reachable by cable television services thereby providing a better medium of dissemination of information to the public.

In view of the foregoing and the spirit and intent of NTC memorandum Circular No. 4-08-88, particularly section 6 thereof, on mandatory carriage of television broadcast signals, DTH pay television services should be deemed covered by such NTC Memorandum Circular.

For your guidance. (Emphasis added)[11]

On August 26, 2003, PMSI filed another Manifestation with the BLA that it received a letter dated July 24, 2003 from the NTC enjoining strict and immediate compliance with the must-carry rule under Memorandum Circular No. 04-08-88, to wit:

Dear Mr. Abellada:

Last July 22, 2003, the National Telecommunications Commission (NTC) received a letter dated July 17, 2003 from President/COO Rene Q. Bello of the International Broadcasting Corporation (IBC-Channel 13) complaining that your company, Dream Broadcasting System, Inc., has cut-off, without any notice or explanation whatsoever,

[11] *Id.* at 852.

to air the programs of IBC-13, a free-to-air television, to the detriment of the public.

We were told that, until now, this has been going on.

Please be advised that as a direct broadcast satellite operator, operating a direct-to-home (DTH) broadcasting system, with a provisional authority (PA) from the NTC, your company, along with cable television operators, are mandated to strictly comply with the existing policy of NTC on mandatory carriage of television broadcast signals as provided under Memorandum Circular No. 04-08-88, also known as the Revised Rules and Regulations Governing Cable Television System in the Philippines.

This mandatory coverage provision under Section 6.2 of said Memorandum Circular, requires all cable television system operators, operating in a community within the Grade "A" or "B" contours to "must-carry" the television signals of the authorized television broadcast stations, one of which is IBC-13. Said directive equally applies to your company as the circular was issued to give consumers and the public a wider access to more sources of news, information, entertainment and other programs/contents.

This Commission, as the governing agency vested by laws with the jurisdiction, supervision and control over all public services, which includes direct broadcast satellite operators, and taking into consideration the paramount interest of the public in general, hereby directs you to immediately restore the signal of IBC-13 in your network programs, pursuant to existing circulars and regulations of the Commission.

For strict compliance. (Emphasis added)[12]

Meanwhile, on October 10, 2003, the NTC issued Memorandum Circular No. 10-10-2003, entitled "Implementing Rules and Regulations Governing Community Antenna/Cable Television (CATV) and Direct Broadcast Satellite (DBS) Services to Promote Competition in the Sector." Article 6, Section 8 thereof states:

As a general rule, the reception, distribution and/or transmission by any CATV/DBS operator of any television signals without any

[12] *Id*. at 853-854.

agreement with or authorization from program/content providers are prohibited.

On whether Memorandum Circular No. 10-10-2003 amended Memorandum Circular No. 04-08-88, the NTC explained to PMSI in a letter dated November 3, 2003 that:

To address your query on whether or not the provisions of MC 10-10-2003 would have the effect of amending the provisions of MC 4-08-88 on mandatory carriage of television signals, the answer is in the negative.

x x x x x x x x x

The Commission maintains that, MC 4-08-88 remains valid, subsisting and enforceable.

Please be advised, therefore, that **as duly licensed direct-to-home satellite television service provider authorized by this Commission, your company continues to be bound by the guidelines provided for under MC 04-08-88, specifically your obligation under its mandatory carriage provisions, in addition to your obligations under MC 10-10-2003.** (Emphasis added)

Please be guided accordingly.[13]

On December 22, 2003, the BLA rendered a decision[14] finding that PMSI infringed the broadcasting rights and copyright of ABS-CBN and ordering it to permanently cease and desist from rebroadcasting Channels 2 and 23.

On February 6, 2004, PMSI filed an appeal with the Office of the Director-General of the IPO which was docketed as Appeal No. 10-2004-0002. On December 23, 2004, it also filed with the Court of Appeals a "Motion to Withdraw Petition; Alternatively, Memorandum of the Petition for *Certiorari*" in CA-G.R. SP No. 71597, which was granted in a resolution dated February 17, 2005.

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[13] *Id*. at 857.

[14] *Id*. at 567-590. Penned by Estrellita Beltran-Abelardo, Director, Bureau of Legal Affairs.

On December 20, 2004, the Director-General of the IPO rendered a decision[15] in favor of PMSI, the dispositive portion of which states:

> WHEREFORE, premises considered, the instant appeal is hereby GRANTED. Accordingly, Decision No. 2003-01 dated 22 December 2003 of the Director of Bureau of Legal Affairs is hereby REVERSED and SET ASIDE.
>
> Let a copy of this Decision be furnished the Director of the Bureau of Legal Affairs for appropriate action, and the records be returned to her for proper disposition. The Documentation, Information and Technology Transfer Bureau is also given a copy for library and reference purposes.
>
> SO ORDERED.[16]

Thus, ABS-CBN filed a petition for review with prayer for issuance of a temporary restraining order and writ of preliminary injunction with the Court of Appeals, which was docketed as CA-G.R. SP No. 88092.

On July 18, 2005, the Court of Appeals issued a temporary restraining order. Thereafter, ABS-CBN filed a petition for contempt against PMSI for continuing to rebroadcast Channels 2 and 23 despite the restraining order. The case was docketed as CA- G.R. SP No. 90762.

On November 14, 2005, the Court of Appeals ordered the consolidation of CA-G.R. SP Nos. 88092 and 90762.

In the assailed Decision dated July 12, 2006, the Court of Appeals sustained the findings of the Director-General of the IPO and dismissed both petitions filed by ABS-CBN.[17]

ABS-CBN's motion for reconsideration was denied, hence, this petition.

ABS-CBN contends that PMSI's unauthorized rebroadcasting of Channels 2 and 23 is an infringement of its broadcasting

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[15] *Id*. at 793-811. Penned by Director-General Emma C. Francisco.

[16] *Id*. at 811.

[17] *Id*. at 43.

rights and copyright under the Intellectual Property Code (IP Code);[18] that Memorandum Circular No. 04-08-88 excludes DTH satellite television operators; that the Court of Appeals' interpretation of the must-carry rule violates Section 9 of Article III[19] of the Constitution because it allows the taking of property for public use without payment of just compensation; that the Court of Appeals erred in dismissing the petition for contempt docketed as CA-G.R. SP No. 90762 without requiring respondents to file comment.

Respondents, on the other hand, argue that PMSI's rebroadcasting of Channels 2 and 23 is sanctioned by Memorandum Circular No. 04-08-88; that the must-carry rule under the Memorandum Circular is a valid exercise of police power; and that the Court of Appeals correctly dismissed CA-G.R. SP No. 90762 since it found no need to exercise its power of contempt.

After a careful review of the facts and records of this case, we affirm the findings of the Director-General of the IPO and the Court of Appeals.

There is no merit in ABS-CBN's contention that PMSI violated its broadcaster's rights under Section 211 of the IP Code which provides in part:

Chapter XIV
BROADCASTING ORGANIZATIONS

Sec. 211. Scope of Right. — Subject to the provisions of Section 212, broadcasting organizations shall enjoy the exclusive right to carry out, authorize or prevent any of the following acts:

211.1. The rebroadcasting of their broadcasts;

x x x x x x x x x

Neither is PMSI guilty of infringement of ABS-CBN's copyright under Section 177 of the IP Code which states that

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[18] Republic Act No. 8923, effective January 1, 1998.

[19] Article III, Section 9 provides: "Private property shall not be taken for public use without just compensation."

copyright or economic rights shall consist of the exclusive right to carry out, authorize or prevent the public performance of the work (Section 177.6), and other communication to the public of the work (Section 177.7).[20]

Section 202.7 of the IP Code defines **broadcasting** as "the transmission by wireless means for the public reception of sounds or of images or of representations thereof; such transmission by satellite is also 'broadcasting' where the means for decrypting are provided to the public by the broadcasting organization or with its consent."

On the other hand, **rebroadcasting** as defined in Article 3(g) of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, otherwise known as the 1961 Rome Convention, of which the Republic of the Philippines is a signatory,[21] is "the simultaneous broadcasting by one broadcasting organization of the broadcast of another broadcasting organization."

The Director-General of the IPO correctly found that PMSI is not engaged in rebroadcasting and thus cannot be considered to have infringed ABS-CBN's broadcasting rights and copyright, thus:

> That the Appellant's [herein respondent PMSI] subscribers are able to view Appellee's [herein petitioner ABS-CBN] programs (Channels 2 and 23) at the same time that the latter is broadcasting the same is undisputed. The question however is, would the Appellant in doing so be considered engaged in broadcasting. Section 202.7 of the IP Code states that broadcasting means

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[20] Sec. 177. Copy or Economic Rights. - Subject to the provisions of Chapter VIII, copyright or economic rights shall consist of the exclusive right to carry out, authorize or prevent the following acts:

x x x x x x x x x

177.6. Public performance of the work; and

177.7. Other communication to the public of the work (Sec. 5, P. D. No. 49a)

[21] Entered into force on September 25, 1984. source: http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=17.

> "the transmission by wireless means for the public reception of sounds or of images or of representations thereof; such transmission by satellite is also 'broadcasting' where the means for decrypting are provided to the public by the broadcasting organization or with its consent."

Section 202.7 of the IP Code, thus, provides two instances wherein there is broadcasting, to wit:

1. The transmission by wireless means for the public reception of sounds or of images or of representations thereof; and
2. The transmission by satellite for the public reception of sounds or of images or of representations thereof where the means for decrypting are provided to the public by the broadcasting organization or with its consent.

It is under the second category that Appellant's DTH satellite television service must be examined since it is satellite-based. The elements of such category are as follows:

1. There is transmission of sounds or images or of representations thereof;
2. The transmission is through satellite;
3. The transmission is for public reception; and
4. The means for decrypting are provided to the public by the broadcasting organization or with its consent.

It is only the presence of all the above elements can a determination that the DTH is broadcasting and consequently, rebroadcasting Appellee's signals in violation of Sections 211 and 177 of the IP Code, may be arrived at.

Accordingly, this Office is of the view that the transmission contemplated under Section 202.7 of the IP Code presupposes that the origin of the signals is the broadcaster. Hence, a program that is broadcasted is attributed to the broadcaster. In the same manner, the rebroadcasted program is attributed to the rebroadcaster.

In the case at hand, Appellant is not the origin nor does it claim to be the origin of the programs broadcasted by the Appellee. Appellant did not make and transmit on its own but merely carried the existing signals of the Appellee. When Appellant's subscribers view Appellee's

programs in Channels 2 and 23, they know that the origin thereof was the Appellee.

Aptly, it is imperative to discern the nature of broadcasting. When a broadcaster transmits, the signals are scattered or dispersed in the air. Anybody may pick-up these signals. There is no restriction as to its number, type or class of recipients. To receive the signals, one is not required to subscribe or to pay any fee. One only has to have a receiver, and in case of television signals, a television set, and to tune-in to the right channel/frequency. The definition of broadcasting, wherein it is required that the transmission is wireless, all the more supports this discussion. Apparently, the undiscriminating dispersal of signals in the air is possible only through wireless means. The use of wire in transmitting signals, such as cable television, limits the recipients to those who are connected. Unlike wireless transmissions, in wire-based transmissions, it is not enough that one wants to be connected and possesses the equipment. The service provider, such as cable television companies may choose its subscribers.

The only limitation to such dispersal of signals in the air is the technical capacity of the transmitters and other equipment employed by the broadcaster. While the broadcaster may use a less powerful transmitter to limit its coverage, this is merely a business strategy or decision and not an inherent limitation when transmission is through cable.

Accordingly, the nature of broadcasting is to scatter the signals in its widest area of coverage as possible. On this score, it may be said that making public means that accessibility is undiscriminating as long as it [is] within the range of the transmitter and equipment of the broadcaster. That the medium through which the Appellant carries the Appellee's signal, that is via satellite, does not diminish the fact that it operates and functions as a cable television. It remains that the Appellant's transmission of signals via its DTH satellite television service cannot be considered within the purview of broadcasting. x x x

x x x x x x x x x

This Office also finds no evidence on record showing that the Appellant has provided decrypting means to the public indiscriminately. Considering the nature of this case, which is punitive in fact, the burden of proving the existence of the elements constituting the acts punishable rests on the shoulder of the complainant.

Accordingly, this Office finds that there is no rebroadcasting on the part of the Appellant of the Appellee's programs on Channels 2 and 23, as defined under the Rome Convention.[22]

Under the Rome Convention, rebroadcasting is "the simultaneous broadcasting by one broadcasting organization of the broadcast of another broadcasting organization." The Working Paper[23] prepared by the Secretariat of the Standing Committee on Copyright and Related Rights defines broadcasting organizations as "entities that take the financial and editorial responsibility for the selection and arrangement of, and investment in, the transmitted content."[24] Evidently, PMSI would not qualify as a broadcasting organization because it does not have the aforementioned responsibilities imposed upon broadcasting organizations, such as ABS-CBN.

ABS-CBN creates and transmits its own signals; PMSI merely carries such signals which the viewers receive in its unaltered form. PMSI does not produce, select, or determine the programs to be shown in Channels 2 and 23. Likewise, it does not pass itself off as the origin or author of such programs. Insofar as Channels 2 and 23 are concerned, PMSI merely retransmits the same in accordance with Memorandum Circular 04-08-88. With regard to its premium channels, it buys the channels from content providers and transmits on an as-is basis to its viewers. Clearly, PMSI does not perform the functions of a broadcasting organization; thus, it cannot be said that it is engaged in rebroadcasting Channels 2 and 23.

The Director-General of the IPO and the Court of Appeals also correctly found that PMSI's services are similar to a cable television system because the services it renders fall under cable "retransmission," as described in the Working Paper, to wit:

(G) Cable Retransmission

47. When a radio or television program is being broadcast, it can be retransmitted to new audiences by means of cable or wire. In the

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[22] *Rollo*, pp. 805-809.

[23] Eighth Session, Geneva, November 4-8, 2002.

[24] *Id*. at paragraph 58, page 12.

early days of cable television, it was mainly used to improve signal reception, particularly in so-called "shadow zones," or to distribute the signals in large buildings or building complexes. With improvements in technology, cable operators now often receive signals from satellites before retransmitting them in an unaltered form to their subscribers through cable.

48. In principle, cable retransmission can be either simultaneous with the broadcast over-the-air or delayed (deferred transmission) on the basis of a fixation or a reproduction of a fixation. Furthermore, they might be unaltered or altered, for example through replacement of commercials, etc. **In general, however, the term "retransmission" seems to be reserved for such transmissions which are both simultaneous and unaltered.**

49. The Rome Convention does not grant rights against unauthorized cable retransmission. Without such a right, cable operators can retransmit both domestic and foreign over the air broadcasts simultaneously to their subscribers without permission from the broadcasting organizations or other rightholders and without obligation to pay remuneration.[25] (Emphasis added)

Thus, while the Rome Convention gives broadcasting organizations the right to authorize or prohibit the rebroadcasting of its broadcast, however, this protection does not extend to cable retransmission. The retransmission of ABS-CBN's signals by PMSI – which functions essentially as a cable television – does not therefore constitute rebroadcasting in violation of the former's intellectual property rights under the IP Code.

It must be emphasized that the law on copyright is not absolute. The IP Code provides that:

Sec. 184. Limitations on Copyright. —

184.1. Notwithstanding the provisions of Chapter V, the following acts shall not constitute infringement of copyright:

x x x x x x x x x

(h) The use made of a work by or under the direction or control of the Government, by the National Library or by educational,

[25] *Id*. at paragraphs 47-49, page 10.

scientific or professional institutions where such use is in the public interest and is compatible with fair use;

The carriage of ABS-CBN's signals by virtue of the must-carry rule in Memorandum Circular No. 04-08-88 is under the direction and control of the government though the NTC which is vested with exclusive jurisdiction to supervise, regulate and control telecommunications and broadcast services/facilities in the Philippines.[26] The imposition of the must-carry rule is within

[26] E.O. No. 546, Sec. 15. Functions of the Commission. The Commission shall exercise the following functions:

a. Issue Certificate of Public Convenience for the operation of communications utilities and services, radio communications systems, wire or wireless telephone or telegraph systems, radio and television broadcasting system and other similar public utilities;

b. Establish, prescribe and regulate areas of operation of particular operators of public service communications; and determine and prescribe charges or rates pertinent to the operation of such public utility facilities and services except in cases where charges or rates are established by international bodies or associations of which the Philippines is a participating member or by bodies recognized by the Philippine Government as the proper arbiter of such charges or rates;

c. Grant permits for the use of radio frequencies for wireless telephone and telegraph systems and radio communication systems including amateur radio stations and radio and television broadcasting systems;

d. Sub-allocate series of frequencies of bands allocated by the International Telecommunications Union to the specific services;

e. Establish and prescribe rules, regulations, standards, specifications in all cases related to the issued Certificate of Public Convenience and administer and enforce the same;

f. Coordinate and cooperate with government agencies and other entities concerned with any aspect involving communications with a view to continuously improve the communications service in the country;

g. Promulgate such rules and regulations, as public safety and interest may require, to encourage a larger and more effective use of communications, radio and television broadcasting facilities, and to maintain effective competition among private entities in these activities whenever the Commission finds it reasonably feasible;

h. Supervise and inspect the operation of radio stations and telecommunications facilities;

i. Undertake the examination and licensing of radio operators;

the NTC's power to promulgate rules and regulations, as public safety and interest may require, to encourage a larger and more effective use of communications, radio and television broadcasting facilities, and to maintain effective competition among private entities in these activities whenever the Commission finds it reasonably feasible.[27] As correctly observed by the Director-General of the IPO:

Accordingly, the "Must-Carry Rule" under NTC Circular No. 4-08-88 falls under the foregoing category of limitations on copyright. This Office agrees with the Appellant [herein respondent PMSI] that the "Must-Carry Rule" is in consonance with the principles and objectives underlying Executive Order No. 436,[28] to wit:

> The Filipino people must be given wider access to more sources of news, information, education, sports event and entertainment programs other than those provided for by mass media and afforded television programs to attain a well informed, well-versed and culturally refined citizenry and enhance their socio-economic growth:
>
> WHEREAS, cable television (CATV) systems could support or supplement the services provided by television broadcast facilities, local and overseas, as the national information highway to the countryside.[29]

The Court of Appeals likewise correctly observed that:

[T]he very intent and spirit of the NTC Circular will prevent a situation whereby station owners and a few networks would have unfettered power to make time available only to the highest bidders, to communicate only their own views on public issues, people, and to permit on the air only those with whom they agreed – contrary to the state policy that the (franchise) grantee like the petitioner, private

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j. Undertake, whenever necessary, the registration of radio transmitters and transceivers; and

k. Perform such other functions as may be prescribed by law.

[27] *Id.*, Section 15 (g).

[28] PRESCRIBING POLICY GUIDELINES TO GOVERN THE OPERATIONS OF CABLE TELEVISION IN THE PHILIPPINES.

[29] *Rollo*, p. 810.

respondent and other TV station owners, shall provide at all times sound and balanced programming and assist in the functions of public information and education.

This is for the first time that we have a structure that works to accomplish explicit state policy goals.[30]

Indeed, intellectual property protection is merely a means towards the end of making society benefit from the creation of its men and women of talent and genius. This is the essence of intellectual property laws, and it explains why certain products of ingenuity that are concealed from the public are outside the pale of protection afforded by the law. It also explains why the author or the creator enjoys no more rights than are consistent with public welfare.[31]

Further, as correctly observed by the Court of Appeals, the must-carry rule as well as the legislative franchises granted to both ABS-CBN and PMSI are in consonance with state policies enshrined in the Constitution, specifically Sections 9,[32] 17,[33] and 24[34] of Article II on the Declaration of Principles and State Policies.[35]

ABS-CBN was granted a legislative franchise under Republic Act No. 7966, Section 1 of which authorizes it "to construct, operate and maintain, for commercial purposes and in the public

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[30] *Id*. at 42.

[31] Fr. Ranhillo Callangan Aquino, *Intellectual Property Law: Comments and Annotations*, 2003, p. 5.

[32] SEC. 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.

[33] SEC. 17. The State shall give priority to education, science and technology, arts, culture, and sports to foster patriotism and nationalism, accelerate social progress, and promote total human liberation and development.

[34] SEC. 24. The State recognizes the vital role of communication and information in nation-building.

[35] *Rollo*, p. 40.

interest, television and radio broadcasting in and throughout the Philippines x x x." Section 4 thereof mandates that it "shall provide adequate public service time to enable the government, through the said broadcasting stations, to reach the population on important public issues; provide at all times sound and balanced programming; promote public participation such as in community programming; assist in the functions of public information and education x x x."

PMSI was likewise granted a legislative franchise under Republic Act No. 8630, Section 4 of which similarly states that it "shall provide adequate public service time to enable the government, through the said broadcasting stations, to reach the population on important public issues; provide at all times sound and balanced programming; promote public participation such as in community programming; assist in the functions of public information and education x x x." Section 5, paragraph 2 of the same law provides that "the radio spectrum is a finite resource that is a part of the national patrimony and the use thereof is a privilege conferred upon the grantee by the State and may be withdrawn anytime, after due process."

In *Telecom. & Broadcast Attys. of the Phils., Inc. v. COMELEC*,[36] the Court held that a franchise is a mere privilege which may be reasonably burdened with some form of public service. Thus:

> All broadcasting, whether by radio or by television stations, is licensed by the government. Airwave frequencies have to be allocated as there are more individuals who want to broadcast than there are frequencies to assign. A franchise is thus a privilege subject, among other things, to amendment by Congress in accordance with the constitutional provision that "any such franchise or right granted . . . shall be subject to amendment, alteration or repeal by the Congress when the common good so requires."
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> x x x x x x x x x

Indeed, provisions for COMELEC Time have been made by amendment of the franchises of radio and television broadcast stations and, until the present case was brought, such provisions had not been

[36] 352 Phil. 153 (1998).

thought of as taking property without just compensation. Art. XII, §11 of the Constitution authorizes the amendment of franchises for "the common good." What better measure can be conceived for the common good than one for free air time for the benefit not only of candidates but even more of the public, particularly the voters, so that they will be fully informed of the issues in an election? "[I]t is the right of the viewers and listeners, not the right of the broadcasters, which is paramount."

Nor indeed can there be any constitutional objection to the requirement that broadcast stations give free air time. Even in the United States, there are responsible scholars who believe that government controls on broadcast media can constitutionally be instituted to ensure diversity of views and attention to public affairs to further the system of free expression. For this purpose, broadcast stations may be required to give free air time to candidates in an election. Thus, Professor Cass R. Sunstein of the University of Chicago Law School, in urging reforms in regulations affecting the broadcast industry, writes:

x x x x x x x x x

In truth, radio and television broadcasting companies, which are given franchises, do not own the airwaves and frequencies through which they transmit broadcast signals and images. They are merely given the temporary privilege of using them. Since a franchise is a mere privilege, the exercise of the privilege may reasonably be burdened with the performance by the grantee of some form of public service. x x x[37]

There is likewise no merit to ABS-CBN's claim that PMSI's carriage of its signals is for a commercial purpose; that its being the country's top broadcasting company, the availability of its signals allegedly enhances PMSI's attractiveness to potential customers;[38] or that the unauthorized carriage of its signals by PMSI has created competition between its Metro Manila and regional stations.

ABS-CBN presented no substantial evidence to prove that PMSI carried its signals for profit; or that such carriage adversely

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[37] *Id.* at 171-174.

[38] *Rollo*, pp. 129-130.

affected the business operations of its regional stations. Except for the testimonies of its witnesses,[39] no studies, statistical data or information have been submitted in evidence.

Administrative charges cannot be based on mere speculation or conjecture. The complainant has the burden of proving by substantial evidence the allegations in the complaint.[40] Mere allegation is not evidence, and is not equivalent to proof.[41]

Anyone in the country who owns a television set and antenna can receive ABS-CBN's signals for free. Other broadcasting organizations with free-to-air signals such as GMA-7, RPN-9, ABC-5, and IBC-13 can likewise be accessed for free. No payment is required to view the said channels[42] because these broadcasting networks do not generate revenue from subscription from their viewers but from airtime revenue from contracts with commercial advertisers and producers, as well as from direct sales.

In contrast, cable and DTH television earn revenues from viewer subscription. In the case of PMSI, it offers its customers premium paid channels from content providers like Star Movies, Star World, Jack TV, and AXN, among others, thus allowing its customers to go beyond the limits of "Free TV and Cable TV."[43] It does not advertise itself as a local channel carrier because these local channels can be viewed with or without DTH television.

Relevantly, PMSI's carriage of Channels 2 and 23 is material in arriving at the ratings and audience share of ABS-CBN and its programs. These ratings help commercial advertisers and producers decide whether to buy airtime from the network. Thus, the must-carry rule is actually advantageous to the

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[39] *Id.* at 134.

[40] *Artuz v. Court of Appeals*, 417 Phil. 588, 597 (2001).

[41] *Navarro v. Clerk of Court*, A.M. No. P-05-1962, February 17, 2005, 451 SCRA 626, 629.

[42] *Rollo*, Comment, p. 1249.

[43] http://www.dreamsatellite.com/about.htm

broadcasting networks because it provides them with increased viewership which attracts commercial advertisers and producers.

On the other hand, the carriage of free-to-air signals imposes a burden to cable and DTH television providers such as PMSI. PMSI uses none of ABS-CBN's resources or equipment and carries the signals and shoulders the costs without any recourse of charging.[44] Moreover, such carriage of signals takes up channel space which can otherwise be utilized for other premium paid channels.

There is no merit to ABS-CBN's argument that PMSI's carriage of Channels 2 and 23 resulted in competition between its Metro Manila and regional stations. ABS-CBN is free to decide to pattern its regional programming in accordance with perceived demands of the region; however, it cannot impose this kind of programming on the regional viewers who are also entitled to the free-to-air channels. It must be emphasized that, as a national broadcasting organization, one of ABS-CBN's responsibilities is to scatter its signals to the widest area of coverage as possible. That it should limit its signal reach for the sole purpose of gaining profit for its regional stations undermines public interest and deprives the viewers of their right to access to information.

Indeed, television is a business; however, the welfare of the people must not be sacrificed in the pursuit of profit. The right of the viewers and listeners to the most diverse choice of programs available is paramount.[45] The Director-General correctly observed, thus:

> The "Must-Carry Rule" favors both broadcasting organizations and the public. It prevents cable television companies from excluding broadcasting organization especially in those places not reached by signal. Also, the rule prevents cable television companies from depriving viewers in far-flung areas the enjoyment of programs

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[44] *Rollo*, p. 810.

[45] *Telecom. & Broadcast Attys. of the Phils., Inc v. COMELEC*, 352 Phil. 153, 173 (1998).

available to city viewers. In fact, this Office finds the rule more burdensome on the part of the cable television companies. The latter carries the television signals and shoulders the costs without any recourse of charging. On the other hand, the signals that are carried by cable television companies are dispersed and scattered by the television stations and anybody with a television set is free to pick them up.

With its enormous resources and vaunted technological capabilities, Appellee's [herein petitioner ABS-CBN] broadcast signals can reach almost every corner of the archipelago. That in spite of such capacity, it chooses to maintain regional stations, is a business decision. That the "Must-Carry Rule" adversely affects the profitability of maintaining such regional stations since there will be competition between them and its Metro Manila station is speculative and an attempt to extrapolate the effects of the rule. As discussed above, Appellant's DTH satellite television services is of limited subscription. There was not even a showing on part of the Appellee the number of Appellant's subscribers in one region as compared to non-subscribing television owners. In any event, if this Office is to engage in conjecture, such competition between the regional stations and the Metro Manila station will benefit the public as such competition will most likely result in the production of better television programs."[46]

All told, we find that the Court of Appeals correctly upheld the decision of the IPO Director-General that PMSI did not infringe on ABS-CBN's intellectual property rights under the IP Code. The findings of facts of administrative bodies charged with their specific field of expertise, are afforded great weight by the courts, and in the absence of substantial showing that such findings are made from an erroneous estimation of the evidence presented, they are conclusive, and in the interest of stability of the governmental structure, should not be disturbed.[47]

Moreover, the factual findings of the Court of Appeals are conclusive on the parties and are not reviewable by the Supreme Court. They carry even more weight when the Court of Appeals

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[46] *Rollo*, pp. 810-811.

[47] *Ocampo v. Salalila*, 382 Phil. 522, 532 (2000).

affirms the factual findings of a lower fact-finding body,[48] as in the instant case.

There is likewise no merit to ABS-CBN's contention that the Memorandum Circular excludes from its coverage DTH television services such as those provided by PMSI. Section 6.2 of the Memorandum Circular requires all cable television system operators operating in a community within Grade "A" or "B" contours to carry the television signals of the authorized television broadcast stations.[49] The rationale behind its issuance can be found in the whereas clauses which state:

> Whereas, Cable Television Systems or Community Antenna Television (CATV) have shown their ability to offer additional programming and to carry much improved broadcast signals in the remote areas, thereby enriching the lives of the rest of the population through the dissemination of social, economic, educational information and cultural programs;
>
> Whereas, the national government supports the promotes the orderly growth of the Cable Television industry within the framework of a regulated fee enterprise, which is a hallmark of a democratic society;
>
> Whereas, public interest so requires that monopolies in commercial mass media shall be regulated or prohibited, hence, to achieve the same, the cable TV industry is made part of the broadcast media;
>
> Whereas, pursuant to Act 3846 as amended and Executive Order 205 granting the National Telecommunications Commission the authority to set down rules and regulations in order to protect the public and promote the general welfare, the National Telecommunications Commission hereby promulgates the following rules and regulations on Cable Television Systems;

The policy of the Memorandum Circular is to carry improved signals in remote areas for the good of the general public and to promote dissemination of information. In line with this policy,

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[48] *Gala v. Ellice Agro-Industrial Corporation*, G.R. No. 156819, December 11, 2003, 418 SCRA 431, 444.

[49] *Supra* note 9.

it is clear that DTH television should be deemed covered by the Memorandum Circular. Notwithstanding the different technologies employed, both DTH and cable television have the ability to carry improved signals and promote dissemination of information because they operate and function in the same way.

In its December 20, 2002 letter,[50] the NTC explained that both DTH and cable television services are of a similar nature, the only difference being the medium of delivering such services. They can carry broadcast signals to the remote areas and possess the capability to enrich the lives of the residents thereof through the dissemination of social, economic, educational information and cultural programs. Consequently, while the Memorandum Circular refers to cable television, it should be understood as to include DTH television which provides essentially the same services.

In *Eastern Telecommunications Philippines, Inc. v. International Communication Corporation*,[51] we held:

> The NTC, being the government agency entrusted with the regulation of activities coming under its special and technical forte, and possessing the necessary rule-making power to implement its objectives, is in the best position to interpret its own rules, regulations and guidelines. The Court has consistently yielded and accorded great respect to the interpretation by administrative agencies of their own rules unless there is an error of law, abuse of power, lack of jurisdiction or grave abuse of discretion clearly conflicting with the letter and spirit of the law.[52]

With regard to the issue of the constitutionality of the must-carry rule, the Court finds that its resolution is not necessary in the disposition of the instant case. One of the essential requisites for a successful judicial inquiry into constitutional questions is that the resolution of the constitutional question must be necessary

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[50] *Supra* note 11.

[51] G.R. No. 135992, January 31, 2006, 481 SCRA 163.

[52] *Id*. at 166-167.

in deciding the case.[53] In *Spouses Mirasol v. Court of Appeals*,[54] we held:

> As a rule, the courts will not resolve the constitutionality of a law, if the controversy can be settled on other grounds. The policy of the courts is to avoid ruling on constitutional questions and to presume that the acts of the political departments are valid, absent a clear and unmistakable showing to the contrary. To doubt is to sustain. This presumption is based on the doctrine of separation of powers. This means that the measure had first been carefully studied by the legislative and executive departments and found to be in accord with the Constitution before it was finally enacted and approved.[55]

The instant case was instituted for violation of the IP Code and infringement of ABS-CBN's broadcasting rights and copyright, which can be resolved without going into the constitutionality of Memorandum Circular No. 04-08-88. As held by the Court of Appeals, the only relevance of the circular in this case is whether or not compliance therewith should be considered manifestation of lack of intent to commit infringement, and if it is, whether such lack of intent is a valid defense against the complaint of petitioner.[56]

The records show that petitioner assailed the constitutionality of Memorandum Circular No. 04-08-88 by way of a collateral attack before the Court of Appeals. In *Philippine National Bank v. Palma*,[57] we ruled that for reasons of public policy, the constitutionality of a law cannot be collaterally attacked. 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.[58]

As a general rule, the question of constitutionality must be raised at the earliest opportunity so that if not raised in the

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[53] *Meralco v. Secretary of Labor*, 361 Phil. 845, 867 (1999).

[54] 403 Phil. 760 (2001).

[55] *Id.* at 774.

[56] *Rollo*, p. 41; citing the Decision of the Director-General of the IPO.

[57] G.R. No. 157279, August 9, 2005, 466 SCRA 307.

[58] *Id.* at 322-323.

pleadings, ordinarily it may not be raised in the trial, and if not raised in the trial court, it will not be considered on appeal.[59] In *Philippine Veterans Bank v. Court of Appeals*,[60] we held:

> We decline to rule on the issue of constitutionality as all the requisites for the exercise of judicial review are not present herein. **Specifically, the question of constitutionality will not be passed upon by the Court unless, at the first opportunity, it is properly raised and presented in an appropriate case, adequately argued, and is necessary to a determination of the case, particularly where the issue of constitutionality is the very *lis mota* presented.** x x x[61]

Finally, we find that the dismissal of the petition for contempt filed by ABS-CBN is in order.

Indirect contempt may either be initiated (1) *motu proprio* by the court by issuing an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt or (2) by the filing of a verified petition, complying with the requirements for filing initiatory pleadings.[62]

ABS-CBN filed a verified petition before the Court of Appeals, which was docketed CA G.R. SP No. 90762, for PMSI's alleged disobedience to the Resolution and Temporary Restraining Order, both dated July 18, 2005, issued in CA-G.R. SP No. 88092. However, after the cases were consolidated, the Court of Appeals did not require PMSI to comment on the petition for contempt. It ruled on the merits of CA-G.R. SP No. 88092 and ordered the dismissal of both petitions.

ABS-CBN argues that the Court of Appeals erred in dismissing the petition for contempt without having ordered respondents to comment on the same. Consequently, it would have us reinstate

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[59] Joaquin G. Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary*, p. 858 (1996), citing *People v. Vera*, 65 Phil. 56 (1937).

[60] G.R. No. 132561, June 30, 2005, 462 SCRA 336.

[61] *Id*. at 349.

[62] *Montenegro v. Montenegro*, G.R. No. 156829, June 8, 2004.

CA-G.R. No. 90762 and order respondents to show cause why they should not be held in contempt.

It bears stressing that the proceedings for punishment of indirect contempt are criminal in nature. The modes of procedure and rules of evidence adopted in contempt proceedings are similar in nature to those used in criminal prosecutions.[63] While it may be argued that the Court of Appeals should have ordered respondents to comment, the issue has been rendered moot in light of our ruling on the merits. To order respondents to comment and have the Court of Appeals conduct a hearing on the contempt charge when the main case has already been disposed of in favor of PMSI would be circuitous. Where the issues have become moot, there is no justiciable controversy, thereby rendering the resolution of the same of no practical use or value.[64]

WHEREFORE, the petition is *DENIED*. The July 12, 2006 Decision of the Court of Appeals in CA-G.R. SP Nos. 88092 and 90762, sustaining the findings of the Director-General of the Intellectual Property Office and dismissing the petitions filed by ABS-CBN Broadcasting Corporation, and the December 11, 2006 Resolution denying the motion for reconsideration, are *AFFIRMED*.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and *Leonardo-de Castro,*[*] *JJ.,* concur.

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[63] *Soriano v. Court of Appeals*, G.R. No. 128938, June 4, 2004, 431 SCRA 1, 7-8.

[64] *Delgado v. Court of Appeals*, G.R. No. 137881, August 19, 2005, 467 SCRA 418, 428.

[*] Designated as additional member of the Third Division in view of the retirement of Associate Justice Ruben T. Reyes, per Special Order No. 546 dated January 5, 2009.

THIRD DIVISION

[G.R. No. 177607. January 19, 2009]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **PACITA AGRICULTURAL MULTI-PURPOSE, COOPERATIVE, INC., represented by its President, AGNES CUENCA and its Manager, Hon. MARCELO AGUIRRE, JR.,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LAND REFORM LAW; JUST COMPENSATION; VARIOUS COMPUTATIONS, DISTINGUISHED. —** Under Presidential Decree No. 27, Executive Order No. 228 and A.O. No. 13, the following: formula is used to compute the land value for *palay*: LV = 2.5 x AGP x GSP x $(1.06)^n$ Where: LV = Land Value, AGP = Average Gross Production in cavan of 50 kilos in accordance with DAR Memorandum Circular No. 26, series of 1973, ₱35 = Government Support Price for palay in 1972 pursuant to Executive Order No. 228, n = number of years from date of tenancy up to effectivity date of A. O. No. 13. On the other hand, Section 18 of Republic Act No. 6657 mandates that the LBP shall compensate the landowner in such amount as may be agreed upon by the landowner, the DAR and the LBP or as may be finally determined by the court as the just compensation for the land. According to Section 17 of Republic Act No. 6657, in determining just compensation, the cost of acquisition of the land, the current value of the like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

2. **ID.; ID.; ID.; COMPUTATION USING VALUES AT THE TIME OF PAYMENT; SUSTAINED. —** The instant case involves a closely similar factual milieu as that in *Natividad* and *Meneses*.

The DAR acquired the subject property in 1972 through its Operation Land Transfer Program, pursuant to Presidential Decree No. 27. Since then, the subject property has already been distributed to the farmer-beneficiaries who, since then, have exclusively possessed the same and harvested its produce. Eventually, the Emancipation Patents were issued in the beneficiaries' favor. Even after the lapse of 23 years – from 1972, when the DAR took the subject land property, until 1995, when respondent filed its Petition before the SAC - the full payment of just compensation due respondent has yet to be made by petitioner. These circumstances, the same as in *Natividad* and *Meneses*, make it more equitable for the SAC to determine the just compensation due the respondent for the remainder of the subject property using values at the time of its payment.

APPEARANCES OF COUNSEL

Jose M.A. Quimboy and Noel B. Marquez for petitioner.
Lyndon P. Caña for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court are the Decision[2] dated 12 December 2005 and Resolution[3] dated 20 April 2007 of the Court of Appeals in CA-G.R. CV No. 73774. The appellate court decided to reverse and set aside the Decision[4] of the Special Agrarian Court (SAC) dated 18 May 2000 in CA-G.R. CV No. 73774, and resolved to deny the Motion for Reconsideration of petitioner.

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[1] *Rollo*, pp. 24-58.

[2] Penned by Associate Justice Ramon M. Bato, Jr. with Associate Justices Isaias P. Dicdican and Apolinario D. Bruselas, Jr., concurring; *rollo*, pp. 10-18.

[3] *Id.* at 7-8.

[4] Penned by Judge Demosthenes L. Magallanes; *id.* at 141-147.

The factual antecedents of the case are as follows:

The eight parcels of land disputed in this case are all located in Barangay Ayungon, La Carlota City, Negros Occidental, and contain an aggregate area of 34.95 hectares, more or less (collectively referred to herein as the subject property). The subject property was previously covered by Transfer Certificates of Title (TCTs) No. T-567, No. T-1203, No. T-1204, No. T-1205, No. T-1208, No. T-1209, No. T-1210, and No. T-1213 of the Registry of Deeds for the City of La Carlota in the name of the Ayungon Agricultural Corporation (AAC).

Sometime in 1972, the Department of Agrarian Reform (DAR) acquired the subject property under its Operation Land Transfer Program, pursuant to Presidential Decree No. 27.[5] The subject property was thereafter distributed to farmer-beneficiaries. From the years 1978 to 1983, Certificates of Land Transfer (CLTs) were issued to the said beneficiaries, and from the years 1986 to 1990, the corresponding Emancipation Patents (EPs) were granted.[6]

On 10 February 1986 and 3 March 1987, petitioner Land Bank of the Philippines (LBP) paid in favor of the AAC the amount of ₱35,778.70, the value of only two out of the eight parcels of land comprising the subject property taken by the DAR in 1972, particularly, those covered by TCTs No. T-567 and No. T-1205.[7]

On 28 May 1987, respondent Pacita Agricultural Multi-Purpose Cooperative, Inc. purchased the subject property from the AAC.[8] By the latter part of the year 1987, respondent inquired from

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[5] DECREEING THE EMANCIPATION OF TENANTS FROM THE BONDAGE OF THE SOIL, TRANSFERRING TO THEM THE OWNERSHIP OF THE LAND THEY TILL AND PROVIDING THE INSTRUMENTS AND MECHANISM THEREFOR.

[6] Records, pp. 98-149.

[7] *Rollo*, pp. 123 and 251.

[8] The Deed of Absolute Sale between the parties was not attached to the records of this case, but the sale is not disputed by any of the parties herein; *id.* at 351.

the petitioner about the balance of payment for the six other parcels of land constituting the subject property.

On 13 November 1987, petitioner, through its Assistant Vice President Ruben V. Mabagos, sent a letter[9] to respondent, stating that the value of the remaining parcels of land was pegged at **₱148,172.21**.[10] Respondent, however, refused to accept this valuation.

In the interregnum, Republic Act No. 6657[11] was signed into law by then President Corazon Aquino. The said law took effect on 15 June 1988, after it was published in two newspapers of general circulation. Republic Act No. 6657 was enacted to promote social justice to the landless farmers and provide "a more equitable distribution and ownership of land with due regard for the rights of landowners to just compensation and to the ecological needs of the nation.[12] Section 4 of Republic Act No. 6657 provides that the Comprehensive Agrarian Reform Law public and private agricultural lands including other lands of the public domain suitable for agriculture. Section 7 provides that rice and corn lands under Presidential Decree No. 27, among other lands, will comprise Phase One of the acquisition

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[9] The letter was actually addressed to Mr. Juancho G. Aguirre who was designated therein as the Vice President of the Ayungon Agricultural Corporation (*id.* at 122). In its Memorandum before this Court, however, respondent states that the said letter was sent to them (*id.* at 352).

[10] Petitioner arrived at this figure by, first, multiplying 34.8397 (the total area transferred, in hectares) by ₱8,000 (the price per hectare of the land). The resulting product will then be equal to ₱278,717.6 (the land value). [**34.8397 x ₱8,000 = ₱278,717.60**].

From the above product, the amount of ₱94,766.69 (lease rentals paid by the farmer-beneficiaries to the landowner) will be deducted. The difference will then be equal to ₱183,950.91 (the total net land value). [**₱278, 717.6 - ₱94,766.69 = ₱183,950.91**].

Finally, from the above difference, the amount of ₱35,778.70 (payments made by Land Bank for the first two parcels of land) will be deducted. The resulting difference will then be equal to ₱148,172.21 (balance). [**₱183,950.91 - ₱35,778.70 = ₱148,172.21**].

[11] The Comprehensive Agrarian Reform Law of 1988.

[12] Section 2, Republic Act No. 6657.

plan and distribution program. Section 75 states that the provisions of Presidential Decree No. 27 and Executive Order No. 228[13] and No. 229,[14] and other laws not inconsistent with Republic Act No. 6657 shall have suppletory effect.[15]

In a Memorandum[16] dated 12 August 1994 addressed to respondent, petitioner reiterated that the value of the remaining subject property amounted only to **₱148,172.21**. In the same Memorandum, petitioner required respondent to submit certain documentary requirements so that full payment for the subject property could be finally effected. Respondent, through counsel, protested petitioner's proposed value for the remainder of the subject property and requested a revaluation.[17]

In October 1994, the DAR issued Administrative Order No. 13, Series of 1994 (A. O. No. 13),[18] which imposed, on the value of land not yet paid to the landowner, an increment of six percent (6%) yearly interest, compounded from the date of coverage, with 21 October 1972 as the earliest date, up to 21 October 1994.

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[13] DECLARING FULL LAND OWNERSHIP TO QUALIFIED FARMER-BENEFICIARIES COVERED BY PRESIDENTIAL DECREE NO. 27; DETERMINING THE VALUE OF REMAINING UNVALUED RICE AND CORN LANDS SUBJECT TO PRESIDENTIAL DECREE NO. 27; AND PROVIDING FOR THE MANNER OF PAYMENT BY THE FARMER-BENEFICIARY AND MODE OF COMPENSATION TO THE LANDOWNER (17 July 1987).

[14] PROVIDING FOR THE MECHANISM FOR THE IMPLEMENTATION OF THE COMPREHENSIVE AGRARIAN REFORM PROGRAM. (22 July 1987).

[15] *Land Bank of the Philippines v. Heirs of Angel T. Domingo*, G.R. No. 168533, 4 February 2008, 543 SCRA 627, 640.

[16] *Rollo*, p. 123.

[17] *Id.* at 124-126.

[18] RULES AND REGULATIONS GOVERNING THE GRANT OF INCREMENT OF SIX PERCENT (6%) YEARLY INTEREST COMPOUNDED ANNUALLY ON LANDS COVERED UNDER PRESIDENTIAL DECREE NO. 27 AND EXECUTIVE ORDER NO. 228; *id.* at 237-238.

Petitioner then adjusted its proposed valuation for the remaining portions of the subject property by adding the increment provided under A. O. No. 13, thus, increasing the same to **₱537,538.34**.[19] Respondent still rejected the said amount, contending that petitioner committed a mistake in computing the increment.

Feeling aggrieved and without any other recourse, respondent filed, on 18 September 1995, a Petition for Land Valuation and Determination of Just Compensation[20] before the Regional Trial Court of Negros Occidental against petitioner. The case was docketed as SPL. CAR CASE NO. 95-08 and was raffled to Branch 54, the designated Special Agrarian Court (SAC).

In an Order dated 24 January 1996, the SAC allowed the amendment of the respondent's Petition therein so it may include additional parties for a complete determination of the case. In the Amended Petition in SPL. CAR CASE NO. 95-08,[21] the DAR, as well as the farmer-beneficiaries of the subject property, were named as additional respondents. In its Amended Petition in SPL. CAR CASE NO. 95-08, herein respondent prayed that the just compensation to be paid by petitioner for the rest of the subject property be fixed at the amount of ₱2,763,622.50[22]

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[19] The amount of ₱388,487.73 was added to ₱148,172.21; *id.* at 128-129.

[20] Records, pp. 2-8.

[21] *Id.* at 110-117.

[22] Respondent arrived at the amount of **₱2,763,622.50** by using the following formula provided for in A. O. No. 13 and E. O. No. 228, namely:

LV = (2.5 x AGP x ₱35) x (1.06)^n,
where:
LV = Land Value,
AGP = Average Gross Production in cavan of 50 kilos in accordance with DAR Memorandum Circular No. 26, series of 1973,
₱35 = Government Support Price for *palay* in 1972 pursuant to E.O. No. 228,
n = number of years from date of tenancy up to the effectivity date of A.O. No. 13.
Thus,
LV = (2.5 x AGP x ₱35) x (1.06)^n
= (2.5 x 45 x P35) x (1.06)(22)
LV = ₱97,822.50

or higher. In the alternative, respondent prayed that Executive Order No. 228 and A.O. No. 13 be declared unconstitutional for being violative of the due process clause of the Constitution and the principle of just compensation.

On 18 May 2000, the SAC promulgated its Decision, decreeing that the valuation prescribed in Presidential Decree No. 27 and Executive Order No. 228, which enactments have already been declared constitutional, must be strictly applied. The dispositive portion of the decision reads:

> WHEREFORE, judgment is hereby rendered as follows:
>
> 1. The [herein petitioner], Land Bank of the Philippines, is hereby ordered to pay [herein respondent] for the remaining 26.2514 hectares of rice land taken under Presidential Decree No. 27 in October 1972, valuated at 112.5 cavans of 50 kilo *palay* per sack per hectare, and computed in accordance with Executive Order No. 228, plus [an] increment of six percent (6%) interest and compounded per annum effective October 21, 1972 until fully paid;[23]
>
> 2. The rights acquired by the farmer beneficiaries under Presidential Decree No. 27 shall be recognized and respected; and
>
> 3. No pronouncement as to costs.[24]

Respondent filed a Motion for Clarificatory Order,[25] alleging that the Decision of the SAC merely provided for a formula to be used in determining the value of the land but did not provide the exact amount therefor. Acting thereon, the SAC issued a Clarificatory Order[26] on 22 June 2000, with the following decree:

The above result was multiplied by 30 (number of hectares of land covered by the title still unpaid for. Thus:

₱97,822.50 x 30 = ₱2,763,622.50 (Records, p. 114).

[23] The computation is as follows:

$LV = (2.5 \times 45 \text{ cavans} \times GSP) \times (1.06)^n$

$= (112.5 \text{ cavans} \times GSP)$

[24] *Rollo*, p. 147.

[25] Records, pp. 383-385.

[26] *Id.* at 390-391.

WHEREFORE, par. (1) of the dispositive portion of the DECISION dated May 18, 2000, (sic) is hereby amended to read as follows:

> 1) The [herein petitioner], Land Bank of the Philippines, is hereby ordered to pay [herein respondent] for the remaining 28.2514 hectares of rice land taken under Presidential Decree No. 27 on October 21, 1972 valuated at 112.5 cavans of 50-kilo *palay* per sack per hectare and computed in accordance with Executive Order No. 228, plus increment of six (6%) percent interests (sic) and compounded per annum effective October 21, 1972 until fully paid, and with the present accrued amount of ₱506,649.28.

Unsatisfied, respondent filed a Motion for Reconsideration[27] of the SAC Decision dated 18 May 2000 and Order dated 22 June 2000, but the same was denied by the SAC in an Order[28] dated 20 September 2001.

Respondent, thus, filed an Appeal with the Court of Appeals under Rule 41 of the Rules of Court, which was docketed as CA-G.R. CV No. 73774.

On 12 December 2005, the Court of Appeals promulgated its assailed Decision, the pertinent portions of which provide:

> We find for the [herein respondent].
>
> **There is no doubt that PD 27 and the implementing rule EO 228 are constitutional.** Their constitutionality has been upheld in the landmark case of *Association of Small Landowners vs. DAR* and reiterated in a long line of cases. That notwithstanding, this Court opines that the application of the formula under PD 27 and EO 228 in arriving at the just compensation in the case at bar is not only unjust, but is also oppressive to the rights of [respondent].
>
> Be it noted that the lands subject matter of this case were taken in 1972, but remained unpaid to this day. The compensation offered by the [herein petitioner] in the amount of ₱148,172.21 for the remaining lands was based on the land valuation some 20 years ago, at the time of its taking in 1972, pursuant to PD 27. EO 228, series of 1987 declared that the valuation of rice and corn lands covered

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[27] *Rollo*, pp. 183-187.

[28] *Id.* at 188-189.

by PD 27 shall be based on the *average gross production* determined by the Barangay Committee on Land Production in accordance with Department Memo Circular No. 26, series of 1973 and related issuances and regulation (sic) of the DAR. The *average gross production* per hectare shall be *multiplied by two and a half (2.5)*, the product of which shall be *multiplied by thirty-five pesos (₱35.00)*, government support price for one cavan of 50 kilos of *palay* on October 21, 1972, or *thirty-one pesos (₱31.00)*, the government support price for one cavan of 50 kilos of corn on October 21, 1972, and the amount arrived at shall be the value of the rice and corn land, as the case may be, for the purpose of determining its cost to the farmer and compensation to the land owner (sic). **Following a literal interpretation of said rule, the price of rice and corn lands today would be based on prices 20 years ago. If such were the case, it would clearly result in an injustice to the landowner. No further argument is needed to illustrate the unjustness of fixing the price of *palay* at ₱35.00 per cavan even if the payment will be made now.**

The determination of just compensation under PD 27 is not final or conclusive. Determination of just compensation is a judicial prerogative. Section 2 of Executive Order No. 228, however, may serve as a guiding principle, or one of the factors in determining just compensation, but may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount. A perusal of the assailed decision shows that in arriving at the just compensation to be paid to the landowner, the lower court strictly applied the provisions of PD 27 and EO 228, anchoring its argument solely on the ground that the lands were taken pursuant to the said law, and even went on to state that the courts in treating the valuation under PD 27 are bound by the formula set by law and there is not much room for discretion as in the cases under the CARP. To reiterate, the determination of just compensation is a task unmistakably within the prerogative of the courts. **In determining just compensation, not only must the courts consider the value of the land, but also other factors as well, in accordance with the particular circumstances of each case. The resolution of just compensation cases for the taking of lands under agrarian reform is, after all, essentially a judicial function.**

Pertinent hereto is the recent case of *Land Bank of the Philippines vs. Eli G. Natividad, et al.*, which we partly quote hereunder, *viz*:

"Land Bank's contention that the property was acquired for purposes of agrarian reform on October 21, 1972, the time of the effectivity of PD 27, ergo just compensation should be based on the value of the property as of that time and not at the time of possession in 1993, is likewise erroneous. In *Office of the President, Malacañang, Manila v. Court of Appeals*, we ruled that the seizure of the landholding did not take place on the date of effectivity of PD 27 but would take effect on the payment of just compensation.

Under the factual circumstances of this case, the agrarian reform process is still incomplete as the just compensation to be paid private respondents has yet to be settled. Considering the passage of Republic Act No. 6657 (RA 6657) before the completion of this process, the just compensation should be determined and the process concluded under the said law. Indeed, RA 6657 is the applicable law, with PD 27 and EO 228 having only suppletory effect.

x x x x x x x x x

That just compensation should be determined in accordance with RA 6657, and not PD 27 and EO 228, is especially imperative considering that just compensation should be the full and fair equivalent of the property taken from its owner by the expropriator, the equivalent being real, substantial, full and ample."[29] (Emphasis ours.)

On the application of the provisions of Republic Act No. 6657, the Court of Appeals further elucidated that:

Moreover, Section 75 of RA 6657 clearly states that the provisions of PD 27 and EO 228 shall only have a suppletory effect. Section 7 of the Act also provides –

"SECTION 7. Priorities. – The DAR, in coordination with the PARC shall plan and program the acquisition and distribution of all agricultural lands through a period of 10 years from the effectivity of this Act. Lands shall be acquired and distributed as follows:

Phase One: Rice and Corn lands under P.D. 27; all idle or abandoned lands; all private lands voluntarily offered by the

[29] *Id.* at 15-17.

> owners for agrarian reform; . . . and all other lands owned by the government devoted to or suitable for agriculture, which shall be acquired and distributed immediately upon the effectivity of this Act, with the implementation to be completed within a period of not more than four (4) years."

This eloquently demonstrates that RA 6657 includes PD 27 lands among the properties which the DAR shall acquire and distribute to the landless. And to facilitate the acquisition and distribution thereof, Sections 16, 17 and 18 of the Act should be adhered to. In *Association of Small Landowners of the Philippines vs. Secretary of Agrarian Reform*[,] this Court applied the provisions of RA 6657 to rice and corn lands when it upheld the constitutionality of the payment of just compensation for PD 27 lands through the different modes stated in Sec. 18." (sic)[30]

Accordingly, the Court of Appeals disposed of the case in this manner:

WHEREFORE, the appeal is **GRANTED**. The Decision appealed from is **REVERSED** and **SET ASIDE**. The instant case is hereby remanded to the Regional Trial Court, Branch 54, Bacolod City sitting as a Special Agrarian Court (SAC) for the recomputation of the value of the subject lands based on Sections 16, 17 and 18 of RA 6657.[31]

Petitioner moved for the reconsideration[32] of the afore-quoted Decision, but the appellate court denied the same in its assailed Order dated 20 April 2007.

Petitioner, thus, filed the Petition at bar, contending that the Court of Appeals committed serious errors of law in the following instances:

I.

WHEN IT RENDERED THE QUESTIONED DECISION RETROACTIVELY APPLYING R.A. NO. 6657 TO A LAND ACQUIRED UNDER P.D. NO. 27/E.O. NO. 228, IN EFFECT DISREGARDING THE AFOREMENTIONED LAWS AND THE

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[30] *Id.* at 17.

[31] *Id.* at 18.

[32] *Id.* at 74-90.

SUPREME COURT RULING IN G.R. NO. 148223 TITLED (sic) "*FERNANDO GABATIN, ET AL., VS. LAND BANK OF THE PHILIPPINES,*" (25 NOVEMBER 2005).

II.

WHEN IT FAILED TO TAKE MANDATORY JUDICIAL NOTICE TO (sic) THE GOVERNMENT SUPPORT PRICE (GSP) FOR [*PALAY*] PRESCRIBED IN P.D. NO. 27/E.O. NO. 228 AMOUNTING TO THIRTY FIVE PESOS (PHP 35.00) FOR ONE (1) CAVAN OF 50 KILOS OF [*PALAY*].

III.

WHEN IT CONSIDERED P.D. NO. 27/E.O. 228 INFERIOR TO R.A. NO. 6657 NOTWITHSTANDING THE SUPREME COURT RULING IN *SIGRE VS. COURT OF APPEALS* THAT THESE LAWS OPERATE DISTINCTLY FROM EACH OTHER.

Petitioner challenges the ruling of the Court of Appeals insofar as it retroactively applied Republic Act No. 6657 to the instant case, in spite of the fact that the said law does not provide for any retroactive application. Petitioner argues that the 12 December 2005 Decision of the Court of Appeals runs afoul of the pronouncement laid down in *Gabatin v. Land Bank of the Philippines*.[33] In said case, the Court held that the taking of private lands under the agrarian reform program was deemed effected on 21 October 1972, when the landowners were deprived of ownership over their lands in favor of qualified beneficiaries, pursuant to Executive Order No. 228 and by virtue of Presidential Decree No. 27. Hence, in computing the value of the land for the payment of just compensation to the landowner, the time of taking in 1972 should be made the basis. In such event, petitioner avers that no injustice will be inflicted upon the respondent, inasmuch as the latter is entitled to receive the increment of six percent (6%) yearly interest compounded annually pursuant to DAR A.O. No. 13, Series of 1994. Finally, petitioner contends that, although Section 75 of Republic Act No. 6657[34]

[33] G.R. No. 148223, 25 November 2004, 444 SCRA 176.

[34] SEC. 75. *Suppletory Application of Existing Legislation*. -The provisions of Republic Act No. 3844 as amended, Presidential Decree Nos. 27 and 266 as amended, Executive Order Nos. 228 and 229, both Series of

states that Presidential Decree No. 27 and Executive Order No. 228 shall have suppletory effect, these two executive issuances are not in any way inferior to Republic Act No. 6657, nor have they been superseded by the statute.

The instant Petition is without merit.

Under Presidential Decree No. 27, Executive Order No. 228[35] and A.O. No. 13, the following formula is used to compute the land value for *palay*:

$$LV = 2.5 \times AGP \times GSP \times (1.06)^n$$

Where:

LV = Land Value,

AGP = Average Gross Production in cavan of 50 kilos in accordance with DAR Memorandum Circular No. 26, series of 1973,

₱35 = Government Support Price for *palay* in 1972 pursuant to Executive Order No. 228,

n = number of years from date of tenancy up to effectivity date of A. O. No. 13.

On the other hand, Section 18 of Republic Act No. 6657 mandates that the LBP shall compensate the landowner in such

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1987; and other laws not inconsistent with this Act shall have suppletory effect.

[35] Under Section 2, E.O. No. 228, the value of rice and corn lands is determined as follows: Sec. 2. Henceforth, the valuation of rice and corn lands covered by P.D. No. 27 shall be based on the average gross production determined by the *Barangay* Committee on Land Production in accordance with Department Memorandum Circular No. 26, series of 1973, and related issuances and regulations of the Department of Agrarian Reform. The average gross production per hectare shall be multiplied by two and a half (2.5), the product of which shall be multiplied by Thirty-Five Pesos (₱35), the government support price for one *cavan* of 50 kilos of *palay* on October 21, 1972, or Thirty-One Pesos (₱31), the government support price for one *cavan* of 50 kilos of corn on October 21, 1972, and the amount arrived at shall be the value of the rice and corn land, as the case may be, for the purpose of determining its cost to the farmer and compensation to the landowner.

amount as may be agreed upon by the landowner, the DAR and the LBP or as may be finally determined by the court as the just compensation for the land. According to Section 17 of Republic Act No. 6657, in determining just compensation, the cost of acquisition of the land, the current value of the like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

In *Gabatin v. Land Bank of the Philippines*,[36] the formula under Presidential Decree No. 27, Executive Order No. 228 and A.O. No. 13 was applied. In *Gabatin*, the crux of the case was the valuation of the GSP for one cavan of *palay*. In said case, the SAC fixed the government support price (GSP) of *palay* at the current price of ₱400 as basis for the computation of the payment, and not the GSP at the time of the taking in 1972. On appeal by therein respondent Land Bank of the Philippines, the Court of Appeals reversed the ruling of the SAC. The case was then elevated to this Court, wherein therein petitioners set forth, *inter alia*, the issue of whether just compensation in kind (*palay*) shall be appraised at the price of the commodity at the time of the taking or at the time it was ordered paid by the SAC. The Court declared that the reckoning period should be the time when the land was taken in 1972, based on the following ratiocination:

> We must stress, at the outset, that the taking of private lands under the agrarian reform program partakes of the nature of an expropriation proceeding. In a number of cases, we have stated that in computing the just compensation for expropriation proceedings, it is the value of the land at the time of the taking, not at the time of the rendition of judgment, which should be taken into consideration. **This being so, then in determining the value of the land for the payment**

[36] *Supra* note 33.

of just compensation, the time of taking should be the basis. In the instant case, since the dispute over the valuation of the land depends on the rate of the GSP used in the equation, it necessarily follows that the GSP should be pegged at the time of the taking of the properties.

In the instant case, the said taking of the properties was deemed effected on 21 October 1972, when the petitioners were deprived of ownership over their lands in favor of qualified beneficiaries, pursuant to E.O. No. 228 and by virtue of P.D. No. 27. The GSP for one cavan of *palay* at that time was at ₱35. Prescinding from the foregoing discussion, the GSP should be fixed at said rate, which was the GSP at the time of the taking of the subject properties.[37] (Emphases ours.)

Since *Gabatin*, however, the Court has decided several cases in which it found it more equitable to determine just compensation based on the value of said property at the time of payment, foremost of which is *Land Bank of the Philippines v. Natividad*,[38] cited by the Court of Appeals in its Decision assailed herein.

In *Natividad*, the parcels of agricultural land involved were acquired from their owners for purposes of agrarian reform on 21 October 1972, the time of the effectivity of Presidential Decree No. 27. Still, as late as the year 1993, the landowners were yet to be paid the value of their lands. Thus, the landowners filed a petition before the trial court for the determination of just compensation. The trial court therein ruled in favor of the landowners, declaring that Presidential Decree No. 27 and Executive Order No. 228 were mere guidelines in the determination of just compensation. Said court likewise fixed the just compensation on the basis of the evidence presented on the valuation of the parcels of land in 1993, not the value thereof as of the time of acquisition in 1972. Therein petitioner Land Bank of the Philippines sought a review of the Decision of the trial court before this Court. This Court found that the petition for review of therein petitioner Lank Bank of the Philippines was unmeritorious, to wit:

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[37] *Id.* at 190-191.

[38] G.R. No. 127198, 16 May 2005, 458 SCRA 441.

Land Bank's contention that the property was acquired for purposes of agrarian reform on October 21, 1972, the time of the effectivity of PD 27, *ergo* just compensation should be based on the value of the property as of that time and not at the time of possession in 1993, is likewise erroneous. In *Office of the President, Malacañang, Manila v. Court of Appeals*, we ruled that the seizure of the landholding did not take place on the date of effectivity of PD 27 but would take effect on the payment of just compensation.

Under the factual circumstances of this case, the agrarian reform process is still incomplete as the just compensation to be paid private respondents has yet to be settled. Considering the passage of Republic Act No. 6657 (RA 6657) before the completion of this process, the just compensation should be determined and the process concluded under the said law. Indeed, RA 6657 is the applicable law, with PD 27 and EO 228 having only suppletory effect, conformably with our ruling in *Paris v. Alfeche.* [416 Phil. 473.]

Section 17 of RA 6657 which is particularly relevant, providing as it does the guideposts for the determination of just compensation, reads as follows:

> Sec. 17. *Determination of Just Compensation.* - In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farm-workers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

It would certainly be inequitable to determine just compensation based on the guideline provided by PD 27 and EO 228 considering the DAR's failure to determine the just compensation for a considerable length of time. That just compensation should be determined in accordance with RA 6657, and not PD 27 or EO 228, is especially imperative considering that just compensation should be the full and fair equivalent of the property taken from its owner

by the expropriator, the equivalent being real, substantial, full and ample.[39] (Emphases ours.)

In *Meneses v. Secretary of Agrarian Reform*,[40] the Court applied its ruling in *Natividad*. The landowners in *Meneses* were likewise deprived of their property in 1972, which land has since been distributed and titles already distributed to farmer-beneficiaries in accordance with the provisions of Presidential Decree No. 27 and Executive Order No. 228. However, up to the year 1993, no payment or rentals were made for the land. Thus, the landowners filed a complaint for determination and payment of just compensation. The trial court ruled that since the land was taken from the owners on 21 October 1972 under the Operation Land Transfer pursuant to Presidential Decree No. 27, just compensation must be based on the value of the property at the time of taking. The appeal by the landowners to the Court of Appeals was dismissed. The landowners, thus, elevated the case to this Court. On the issue of the payment of just compensation, the Court adjudged:

> The Court also finds that the CA erred in sustaining the RTC ruling that just compensation in this case should be based on the value of the property at the time of taking, October 21, 1972, which is the effectivity date of P.D. No. 27.
>
> Respondent correctly cited the case of *Gabatin v. Land Bank of the Philippines* [444 SCRA 176], where the Court ruled that "in computing the just compensation for expropriation proceedings, it is the value of the land at the time of the taking (or October 21, 1972, the effectivity date of P.D. No. 27), not at the time of the rendition of judgment, which should be taken into consideration." x x x.
>
> It should also be pointed out, however, that in the more recent case of *Land Bank of the Philippines vs. Natividad*, [458 SCRA 441] the Court categorically ruled: "the seizure of the landholding did not take place on the date of effectivity of P.D. No. 27 but would take effect on the payment of just compensation." x x x.

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[39] *Id.* at 451-452.

[40] G.R. No. 156304, 23 October 2006, 505 SCRA 90.

Under the circumstances of this case, the Court deems it more equitable to apply the ruling in the *Natividad case*. x x x.

x x x x x x x x x

As previously noted, the property was expropriated under the Operation Land Transfer scheme of P.D. No. 27 way back in 1972. More than 30 years have passed and petitioners are yet to benefit from it, while the farmer-beneficiaries have already been harvesting its produce for the longest time. Events have rendered the applicability of P.D. No. 27 inequitable. Thus, the provisions of R.A. No. 6657 should apply in this case.[41]

In the even more recent case, *Lubrica v. Land Bank of the Philippines*,[42] the Court also adhered to *Natividad*, *viz*:

The *Natividad* case reiterated the Court's ruling in *Office of the President v. Court of Appeals* [413 Phil. 711] that the expropriation of the landholding did not take place on the effectivity of P.D. No. 27 on October 21, 1972 but seizure would take effect on the payment of just compensation judicially determined.

Likewise, in the recent case of *Heirs of Francisco R. Tantoco, Sr. v. Court of Appeals* [489 SCRA 590], we held that expropriation of landholdings covered by R.A. No. 6657 take place, not on the effectivity of the Act on June 15, 1988, but on the payment of just compensation.

In the instant case, petitioners were deprived of their properties in 1972 but have yet to receive the just compensation therefor. The parcels of land were already subdivided and distributed to the farmer-beneficiaries thereby immediately depriving petitioners of their use. Under the circumstances, it would be highly inequitable on the part of the petitioners to compute the just compensation using the values at the time of the taking in 1972, and not at the time of the payment, considering that the government and the farmer-beneficiaries have already benefited from the land although ownership thereof have not yet been transferred in their names. Petitioners were deprived of their properties without payment of just compensation which, under the law, is a prerequisite before the property can be taken away from its owners. The transfer of possession and ownership of

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41 *Id.* at 100-102.

42 G.R. No. 170220, 20 November 2006, 507 SCRA 415.

the land to the government are conditioned upon the receipt by the landowner of the corresponding payment or deposit by the DAR of the compensation with an accessible bank. Until then, title remains with the landowner.

Our ruling in *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform* [175 SCRA 343] is instructive, thus:

> It is true that P.D. No. 27 expressly ordered the emancipation of tenant-farmer as October 21, 1972 and declared that he shall "be deemed the owner" of a portion of land consisting of a family-sized farm except that "no title to the land owned by him was to be actually issued to him unless and until he had become a full-fledged member of a duly recognized farmer's cooperative." It was understood, however, that full payment of the just compensation also had to be made first, conformably to the constitutional requirement.
>
> When E.O. No. 228, categorically stated in its Section 1 that:
>
> > All qualified farmer-beneficiaries are now deemed full owners as of October 21, 1972 of the land they *acquired* by virtue of Presidential Decree No. 27 (Emphasis supplied.)
>
> it was obviously referring to lands already validly acquired under the said decree, after proof of full-fledged membership in the farmers' cooperatives and full payment of just compensation. x x x.[43]

The instant case involves a closely similar factual milieu as that in *Natividad* and *Meneses*. The DAR acquired the subject property in 1972 through its Operation Land Transfer Program, pursuant to Presidential Decree No. 27. Since then, the subject property has already been distributed to the farmer-beneficiaries who, since then, have exclusively possessed the same and harvested its produce. Eventually, the Emancipation Patents were issued in the beneficiaries' favor. Even after the lapse of 23 years – from 1972, when the DAR took the subject land

[43] *Id.* at 422-423.

property, until 1995, when respondent filed its Petition before the SAC - the full payment of just compensation due respondent has yet to be made by petitioner. These circumstances, the same as in *Natividad* and *Meneses*, make it more equitable for the SAC to determine the just compensation due the respondent for the remainder of the subject property using values at the time of its payment.

WHEREFORE, in light of the foregoing, the Petition for Review under Rule 45 of the Rules of Court is hereby *DENIED*. The assailed Decision dated 12 December 2005 and the Resolution dated 20 April 2007 of the Court of Appeals in CA-G.R. CV No. 73774 are hereby *AFFIRMED in toto*. Costs against petitioner.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Nachura, and *Leonardo-de Castro,*[*] *JJ.*, concur.

THIRD DIVISION

[G.R. No. 178799. January 19, 2009]

FIRST UNITED CONSTRUCTORS CORPORATION, *petitioner, vs.* **PORO POINT MANAGEMENT CORPORATION (PPMC), THE SPECIAL BIDS & AWARDS COMMITTEE (SBAC) of PPMC, ATTY. FELIX S. RACADIO, and SATRAP CONSTRUCTION COMPANY, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; SHOULD BE FILED NOT LATER THAN SIXTY DAYS

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[*] Per Special Order No. 546, Associate Justice Teresita J. Leonardo-De Castro is designated to sit as an additional member of this division in view of Associate Justice Ruben T. Reyes.

FROM THE NOTICE OF THE JUDGMENT, ORDER OR RESOLUTION. — Section 4, Rule 65 of the 1997 Rules of Civil Procedure provides that a special civil action for *certiorari* shall be filed not later than sixty (60) days from the notice of the judgment, order or resolution. FUCC admitted that it received the PPMC decision on March 27, 2007. However, it filed this petition assailing the said decision only on July 30, 2007. It is, therefore, too late in the day for FUCC, via this petition, to assail the PPMC decision which rated its bid as failed.

2. ID.; ID.; ID.; VIOLATION OF THE DOCTRINE OF JUDICIAL HIERARCHY; PRESENT IN CASE AT BAR. — FUCC violated the doctrine of judicial hierarchy in filing this petition for *certiorari* directly with this Court. Section 58 is clear that petitions for the issuance of a writ of *certiorari* against the decision of the head of the procuring agency, like PPMC, should be filed with the Regional Trial Court. Indeed, the jurisdiction of the RTC over petitions for *certiorari* is concurrent with this Court. However, such concurrence does not allow unrestricted freedom of choice of the court forum. A direct invocation of the Supreme Court's original jurisdiction to issue this writ should be allowed only when there are special and important reasons, clearly and specifically set out in the petition.

3. ID.; PROVISIONAL REMEDIES; INJUNCTION; PROSCRIPTION UNDER RA NO. 8795 DOES NOT INCLUDE PERMANENT INJUNCTION. — RA No. 8975 enjoins all courts, except the Supreme Court, from issuing any temporary restraining order, preliminary injunction, or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity to restrain, prohibit or compel the bidding or awarding of a contract or project of the national government. The proscription, however, covers only temporary restraining orders or writs but not decisions on the merits granting permanent injunction. Therefore, while trial courts below are prohibited by RA No. 8795 from issuing TROs or preliminary restraining orders pending the adjudication of the case, said statute, however, does not explicitly proscribe the issuance of a permanent injunction granted by a court of law arising from an adjudication of a case on the merits. As we explained in *Alvarez v. PICOP Resources, Inc*.: x x x Republic Act No. 8975 merely proscribes the issuance of temporary restraining orders

and writs of preliminary injunction and preliminary mandatory injunction. [It] cannot, under pain of violating the Constitution, deprive the courts of authority to take cognizance of the issues raised in the principal action, as long as such action and the relief sought are within their jurisdiction.

4. POLITICAL LAW; STATE POLICIES; SPECIAL BIDS AND AWARDS COMMITTEE; PRESUMPTION OF REGULARITY IN THE BIDDING, UPHELD; RATIONALE. — The invitation to bid contains a reservation for PPMC to reject any bid. It has been held that where the right to reject is so reserved, the lowest bid, or any bid for that matter, may be rejected on a mere technicality. The discretion to accept or reject bid and award contracts is vested in the government agencies entrusted with that function. This discretion is of such wide latitude that the Courts will not interfere therewith or direct the committee on bids to do a particular act or to enjoin such act within its prerogatives unless it is apparent that it is used as a shield to a fraudulent award; or an unfairness or injustice is shown; or when in the exercise of its authority, it gravely abuses or exceeds its jurisdiction. Thus, where PPMC as advertiser, availing itself of that right, opts to reject any or all bids, the losing bidder has no cause to complain or right to dispute that choice, unless fraudulent acts, injustice, unfairness or grave abuse of discretion is shown. FUCC alleges that SBAC and PPMC, along with the SCCI and five (5) other bidders, colluded *to rig the results of the re-bidding* so that SCCI would emerge as the so-called lowest bidder. The record, however, is bereft of any proof to substantiate the allegation. Neither is there any evidence offered to establish unfairness, injustice, caprice or arbitrariness on the part of the SBAC or the PPMC in awarding the contract to SCCI, the lowest bidder. The presumption of regularity of the bidding must thus be upheld.

APPEARANCES OF COUNSEL

Ruben L. Almadro for petitioner.

The Government Corporate Counsel for public respondent.

Defensor Villamor & Tolentino Law Offices for private respondent.

D E C I S I O N

NACHURA, *J.*:

First United Constructors Corporation (FUCC) filed this special civil action for *certiorari* and prohibition with prayer for the issuance of a temporary restraining order, seeking to annul (i) the re-bidding of the contract for the Upgrading of the San Fernando Airport Project, Phase I, held on May 8, 2007; (ii) the Notice of Award[1] dated May 23, 2007 to Satrap Construction Company, Inc. (SCCI); and (iii) Notice to Proceed[2] dated May 29, 2007 also to SCCI. FUCC also seeks to permanently enjoin the Special Bids and Awards Committee (SBAC) and Poro Point Management Corporation (PPMC) from implementing the Contract[3] in favor of SCCI.

The factual antecedents are as follows:

On January 26, 2007, PPMC approved the Contract for the Upgrading of the San Fernando Airport Phase I. The SBAC then issued invitations to reputable contractors to pre-qualify for the project.

FUCC and two (2) other contractors - C.M. Pancho Construction, Inc. (C.M. Pancho) and EEI-New Kanlaon Construction, Inc. Joint Venture (EEI-New Kanlaon JV) responded to the invitation and were pre-qualified to bid for the project. However, upon evaluation, none of the pre-qualified bidders was chosen. C.M. Pancho was disqualified because it did not possess the required minimum years of experience in airport projects, while EEI New Kanlaon JV was disqualified because it did not submit a special license to bid as joint venture. FUCC's technical proposal, on the other hand, obtained a failing mark because it failed to submit the automated weather observation system (AWOS) and its authorized representative did not sign some pages of the narrative construction method and the tax

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[1] *Rollo*, p. 68.

[2] *Id.* at 75.

[3] *Id.* at 69-74.

returns. FUCC sought reconsideration of the SBAC decision, but it was denied.[4]

FUCC then filed a protest[5] with the PPMC. On March 26, 2007, Atty. Felix S. Racadio, PPMC Head, resolved FUCC's protest, *viz.*:

> In sum, based on the issues raised and [the] arguments presented by FUCC, this **OFFICE** finds **NO REVERSIBLE ERROR committed by SBAC, both on its findings of 06 March 2007 (giving FUCC the FAILED rating) and 12 March 2007 (denial of FUCC's Motion for Reconsideration)**.
>
> In addition to the "NO REVERSIBLE ERROR FINDING," there exists a **PRESUMPTION OF REGULARITY OF OFFICIAL ACTION OF A PUBLIC OFFICER**. In the case at bar, such presumption applies. The burden of proof lies with the FUCC. On this score, FUCC failed to even just scratch the surface of the same.
>
> The proceedings and findings of SBAC, in the Pre-Qualification stage not having been put into issue by the PROTEST, then, FUCC had opted to leave them as they were, thus, let them remain **UNDISTURBED**.
>
> WHEREFORE, in view of the foregoing, the PROTEST filed by FUCC which is under consideration is hereby **DISMISSED** for lack of merit.
>
> The **FILING FEE** paid by FUCC, the protestant, via Metro Bank Cashier's Check No. 0600018513, dated March 19, 2007, in the amount of **Four Million Seven Hundred Twenty-One Thousand Pesos (₱4,721,000.00), Philippine Currency,** which is equivalent to one [percent] (%) of the ABC being **NON-REFUNDABLE** (Sec. 55.1, IRR-A, RA 1984), the same is hereby ordered **FORFEITED in favor of PPMC**.
>
> SO ORDERED.[6]

SBAC then scheduled a re-bidding and issued new invitations to bid for the project. To enjoin the re-bidding set on May 8,

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[4] *Id.* at 98-101.

[5] *Id.* at 102.

[6] *Id.* at 135-136.

2007, FUCC filed a petition for injunction with prayer for the issuance of a preliminary injunction or temporary restraining order (TRO) with the Regional Trial Court (RTC) of La Union, docketed as Civil Case No. 7274.

On May 2, 2007, the RTC issued a TRO which, however, was lifted on May 4, 2007 because under Section 3 of Republic Act No. 8975,[7] no court, except the Supreme Court, shall issue a TRO or injunction or prohibit the bidding or award of a government infrastructure project. SBAC thus proceeded with the re-bidding of the project on May 8, 2007 and awarded the project to SCCI as the lowest qualified bidder.[8] The Contract[9] for the project was signed, and a notice to proceed[10] was served on SCCI on May 29, 2007.

FUCC filed an amended petition with the RTC to enjoin the implementation of the project. The Office of the Government Corporate Counsel (OGCC) moved to dismiss the petition for lack of jurisdiction.

Pending resolution of OGCC's motion to dismiss, FUCC moved for the dismissal of its amended petition, which was granted by the RTC on July 4, 2007, to wit:

> Acting on the above-stated notice of dismissal, this Court hereby confirms the dismissal of the amended petition, in effect the dismissal of the whole action, without prejudice, pursuant to Sec. 1, Rule 17 of the Rules of Court.
>
> WHEREFORE, this case is hereby DISMISSED.
>
> SO ORDERED.[11]

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[7] An Act to Ensure the Expeditious Implementation and Completion of Government Infrastructure Projects by Prohibiting Lower Courts from Issuing Temporary Restraining Orders, Preliminary Injunctions or Preliminary Mandatory Injunctions, Providing Penalties for Violations Thereof, and for Other Purposes.

[8] *Rollo*, p. 68.

[9] *Id.* at 69-74.

[10] *Id.* at 75.

[11] *Id.* at 78.

Claiming that there is no appeal, or any speedy and adequate remedy in the ordinary course of law, FUCC comes to us *via* this petition. It also asks for the issuance of a TRO to enjoin the implementation of the project, asserting that SCCI is not qualified to undertake the project and the award clearly poses a real threat to the public welfare and safety. In its November 12, 2007 Resolution, this Court denied FUCC's application for the issuance of a TRO for lack of merit.

FUCC filed this petition praying for the following relief, *viz.*:

> (a) That upon receipt of this Petition, a Temporary Restraining Order (TRO) be issued enjoining the implementation of the contract for the Upgrading of the San Fernando Airport Project, Phase I with respondent [SCCI] as the contractor;
>
> (b) That after proper proceeding, judgment be rendered: (1) permanently enjoining the implementation of the contract for the Upgrading of the San Fernando Airport Project, Phase I with respondent [SCCI] as the contractor; (2) declaring the re-bidding of the contract for the Upgrading of the San Fernando Airport Project, Phase I on 08 May 2007 illegal and nullifying the results thereof; (3) annulling the Notice of Award dated 23 May 2007, the Contract for the Upgrading of the San Fernando Airport, Phase I entered into, by and between respondent PPMC and respondent [SCCI] on 29 May 2007, and the Notice to Proceed dated 29 May 2007; and (4) directing respondent SBAC and/or respondent PPMC and/or respondent Atty. Recadio to reconsider the "Failed" rating of the bid of FUCC, open the Financial Proposal Envelope submitted by FUCC during the original bidding, declare FUCC as the winning bidder, and forthwith award the contract to FUCC, as the winning bidder and being the only qualified contractor for the project.[12]

It asserts that SBAC and PPMC committed grave abuse of discretion in disqualifying its bid, in denying its protest, in conducting a re-bidding and in awarding the project to SCCI. It insists that it is the only qualified contractor for the project and prays that it be declared the winning bidder.

We dismiss the petition.

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[12] *Id.* at 62-63.

Republic Act (RA) No. 9184, or the *Government Procurement Reform Act*, outlines the procedure to assail decisions of the SBAC in this wise:

SEC. 55. *Protests on Decisions of the BAC*. – Decisions of BAC in all stages of procurement may be protested to the head of the procuring entity and shall be in writing. Decisions of the BAC may be protested by filing a verified position paper and paying a nonrefundable protest fee. The amount of protest fee and the periods during which the protests may be filed and resolved shall be specified in the IRR.

SEC. 56. *Resolution of Protests*. - The protests shall be resolved strictly on the basis of records of the BAC. Up to a certain amount specified in the IRR, the decisions of the Head of the Procuring Entity shall be final.

SEC. 57. *Non-interruption of the Bidding Process*. – In no case shall any protest taken from any decision treated in this Article stay or delay the bidding process. Protests must first be resolved before any award is made.

SEC. 58. *Resort to Regular Courts; Certiorari*. – Court action may be resorted only after the protest contemplated in this Article shall have been completed. Cases that are filed in violation of the process specified in this Article shall be dismissed for lack of jurisdiction. The regional trial court shall have jurisdiction over final decisions of the head of the procuring entity. Court actions shall be governed by Rule 65 of the 1997 Rules of Civil Procedure.

This provision is without prejudice to any law conferring on the Supreme Court the sole jurisdiction to issue temporary restraining orders and injunctions relating to Infrastructure Projects of Government.

FUCC challenged the decision of SBAC in a protest filed with Atty. Racadio of the PPMC who affirmed the SBAC decision. Instead of filing a petition for *certiorari*, as provided in Section 58, FUCC filed a petition for injunction with prayer for the issuance of a temporary restraining order and/or preliminary injunction with the RTC. FUCC, however, later moved for its dismissal theorizing that the RTC had no jurisdiction over petitions

for injunction. Thereafter, it filed this petition for *certiorari* with this Court.

Section 4, Rule 65 of the 1997 Rules of Civil Procedure provides that a special civil action for *certiorari* shall be filed not later than sixty (60) days from the notice of the judgment, order or resolution.[13] FUCC admitted that it received the PPMC decision on March 27, 2007.[14] However, it filed this petition assailing the said decision only on July 30, 2007. It is, therefore, too late in the day for FUCC, via this petition, to assail the PPMC decision which rated its bid as failed.

Besides, FUCC violated the doctrine of judicial hierarchy in filing this petition for *certiorari* directly with this Court. Section 58 is clear that petitions for the issuance of a writ of *certiorari* against the decision of the head of the procuring agency, like PPMC, should be filed with the Regional Trial Court. Indeed, the jurisdiction of the RTC over petitions for *certiorari* is concurrent with this Court. However, such concurrence does not allow unrestricted freedom of choice of the court forum. A direct invocation of the Supreme Court's original jurisdiction to issue this writ should be allowed only when there are special and important reasons, clearly and specifically set out in the petition.[15]

In the present case, FUCC adduced no special and important reason why direct recourse to this Court should be allowed. Thus, we reaffirm the judicial policy that this Court will not entertain a direct invocation of its jurisdiction unless the redress desired cannot be obtained in the appropriate lower courts, and exceptional and compelling circumstances justify the resort to the extraordinary remedy of a writ of *certiorari*.

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[13] Sec. 4. *When and where to file petition.* – The petition shall be filed not later than sixty (60) days from notice of judgment, order or resolution. In case a motion for reconsideration or new trial is filed, whether such, motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion.

[14] See Petition, *rollo*, p. 20.

[15] *Page-Tenorio v. Tenorio*, G.R. No. 138490, November 24, 2004, 443 SCRA 560, 568.

Similarly, the RTC is the proper venue to hear FUCC's prayer for permanent injunction. Unquestionably, RA No. 8975[16] enjoins all courts, except the Supreme Court, from issuing any temporary restraining order, preliminary injunction, or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity to restrain, prohibit or compel the bidding or awarding of a contract or project of the national government. The proscription, however, covers only temporary restraining orders or writs but not decisions on the merits granting permanent injunction. Therefore, while courts below are prohibited by RA No. 8795 from issuing TROs or preliminary restraining

[16] SEC. 3. *Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions, Preliminary Mandatory Injunctions*. — No court, except the Supreme Court, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity, whether public or private, acting under the government direction, to restrain, prohibit or compel the following acts:

(a) Acquisition, clearance and development of the right-of-way and/or site or location of any national government project;

(b) Bidding or awarding of contract/project of the national government as defined under Section 2 hereof;

(c) Commencement, prosecution, execution, implementation, [or] operation of any such contract or project;

(d) Termination or rescission of any such contract/project; and

(e) The undertaking or authorization of any other lawful activity necessary for such contract/project.

This prohibition shall apply in all cases, disputes or controversies instituted by a private party, including but not limited to cases filed by bidders or those claiming to have rights through such bidders involving such contract/project. This prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise. The applicant shall file a bond, in an amount to be fixed by the court, which bond shall accrue in favor of the government if the court should finally decide that the applicant was not entitled to the relief sought.

If after due hearing the court finds that the award of the contract is null and void, the court may, if appropriate under the circumstances, award the contract to the qualified and winning bidder or order a rebidding of the same, without prejudice to any liability that the guilty party may incur under existing laws.

orders pending the adjudication of the case, said statute, however, does not explicitly proscribe the issuance of a permanent injunction granted by a court of law arising from an adjudication of a case on the merits.[17]

As we explained in *Alvarez v. PICOP Resources, Inc.*:[18]

> x x x Republic Act No. 8975 merely proscribes the issuance of temporary restraining orders and writs of preliminary injunction and preliminary mandatory injunction. [It] cannot, under pain of violating the Constitution, deprive the courts of authority to take cognizance of the issues raised in the principal action, as long as such action and the relief sought are within their jurisdiction.

Clearly, except for the prayer for the issuance of a TRO or preliminary injunction, the issues raised by FUCC and the relief it sought are within the jurisdiction of the RTC. It is a procedural *faux pas* for FUCC to invoke the original jurisdiction of this Court over the issuance of a writ of *certiorari* and permanent injunction.

In any event, the invitation to bid contains a reservation for PPMC to reject any bid. It has been held that where the right to reject is so reserved, the lowest bid, or any bid for that matter, may be rejected on a mere technicality.[19] The discretion to accept or reject bid and award contracts is vested in the government agencies entrusted with that function. This discretion is of such wide latitude that the Courts will not interfere therewith or direct the committee on bids to do a particular act or to enjoin such act within its prerogatives unless it is apparent that it is used as a shield to a fraudulent award;[20] or an unfairness

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[17] *Bases Conversion and Development Authority v. Uy*, G.R. No. 144062, November 2, 2006, 506 SCRA 524, 540.

[18] G.R. Nos. 162243, 164516 and 171875, November 29, 2006, 508 SCRA 498, 531.

[19] *National Power Corporation v. Philipp Brothers Oceanic, Inc.*, 421 Phil. 532, 545.

[20] *Bureau Veritas v. Office of the President*, G.R. No. 101678, February 3, 1992, 205 SCRA 705, 717-718.

or injustice is shown;[21] or when in the exercise of its authority, it gravely abuses or exceeds its jurisdiction. Thus, where PPMC as advertiser, availing itself of that right, opts to reject any or all bids, the losing bidder has no cause to complain or right to dispute that choice, unless fraudulent acts, injustice, unfairness or grave abuse of discretion is shown.

FUCC alleges that SBAC and PPMC, along with the SCCI and five (5) other bidders, colluded *to rig the results of the re-bidding* so that SCCI would emerge as the so-called lowest bidder. The record, however, is bereft of any proof to substantiate the allegation. Neither is there any evidence offered to establish unfairness, injustice, caprice or arbitrariness on the part of the SBAC or the PPMC in awarding the contract to SCCI, the lowest bidder. The presumption of regularity of the bidding must thus be upheld.

As we explained in *JG Summit Holdings, Inc. v. Court of Appeals*:[22]

> The discretion to accept or reject a bid and award contracts is vested in the Government agencies entrusted with that function. The discretion given to the authorities on this matter is of such wide latitude that the Courts will not interfere therewith, unless it is apparent that it is used as a shield to a fraudulent award (*Jalandoni v. NARRA*, 108 Phil. 486 [1960]). x x x The exercise of this discretion is a policy decision that necessitates prior inquiry, investigation, comparison, evaluation, and deliberation. This task can best be discharged by the Government agencies concerned, not by the Courts. The role of the Courts is to ascertain whether a branch or instrumentality of the Government has transgressed its constitutional boundaries. But the Courts will not interfere with executive or legislative discretion exercised within those boundaries. Otherwise, it strays into the realm of policy decision-making.
>
> It is only upon a clear showing of grave abuse of discretion that the Courts will set aside the award of a contract made by a government entity. Grave abuse of discretion implies a capricious, arbitrary and

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[21] *JG Summit Holdings, Inc. v. Court of Appeals*, 458 Phil. 581, 615 (2003).

[22] G.R. No. 124293, January 31, 2005, 450 SCRA 169, citing *Bureau Veritas v. Office of the President*, 205 SCRA 705, 717-719 (1992).

whimsical exercise of power (*Filinvest Credit Corp. v. Intermediate Appellate Court*, No. 65935, 30 September 1988, 166 SCRA 155). The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, as to act at all in contemplation of law, where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility *(Litton Mills, Inc. v. Galleon Trader, Inc., et al[.],* L-40867, 26 July 1988, 163 SCRA 489).

Accordingly, there being no showing of grave abuse of discretion, FUCC has no valid ground to demand annulment of the contract between PPMC and SCCI.

WHEREFORE, the petition is *DISMISSED*. The assailed Decision of the PPMC is *AFFIRMED*.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Chico-Nazario, and *Leonardo-de Castro,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 179880. January 19, 2009]

ROBERTO TOTANES, *petitioner, vs.* **CHINA BANKING CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT; CONCLUSIVE ON THE PARTIES AND NOT REVIEWABLE BY THE SUPREME COURT.— We reiterate the well-established principle that factual findings of the trial court are conclusive on the parties and not reviewable by this Court – and they carry even more weight when the CA affirms these findings, as in the present case. We are not duty-bound to

[*] Additional member per Special Order No. 546 dated January 5, 2009.

analyze and weigh all over again the evidence already considered in the proceedings below.

2. CIVIL LAW; SPECIAL CONTRACTS; SURETYSHIP; CONTINUING SURETY AGREEMENT; CONSTRUED. — The fact that the contract of suretyship was signed by the petitioner prior to the execution of the promissory note does not negate the former's liability. The contract entered into by the petitioner is commonly known as a continuing surety agreement. Of course, a surety is not bound to any particular principal obligation until that principal obligation is born. But there is no theoretical or doctrinal impediment for us to say that the suretyship agreement itself is valid and binding even before the principal obligation intended to be secured thereby is born, any more than there would be in saying that obligations which are subject to a condition precedent are valid and binding before the occurrence of the condition precedent. Comprehensive or continuing surety agreements are, in fact, quite commonplace in present day financial and commercial practice. A bank or financing company which anticipates entering into a series of credit transactions with a particular company, normally requires the projected principal debtor to execute a continuing surety agreement along with its sureties. By executing such an agreement, the principal places itself in a position to enter into the projected series of transactions with its creditor; with such suretyship agreement, there would be no need to execute a separate surety contract or bond for each financing or credit accommodation extended to the principal debtor. As surety, petitioner's liability is joint and several. He does not insure the solvency of the debtor, but rather the debt itself.

3. ID.; ID.; ID.; LIABILITY OF THE SURETY, EXPLAINED. — Suretyship arises upon the solidary binding of a person – deemed the surety – with the principal debtor, for the purpose of fulfilling an obligation. The prestation is not an original and direct obligation for the performance of the surety's own act, but merely accessory or collateral to the obligation contracted by the principal. Although a surety contract is secondary to the principal obligation, the liability of the surety is direct, primary and absolute, or equivalent to that of a regular party to the undertaking. A surety becomes liable for the debt and duty of the principal obligor even without possessing a direct or personal interest in the obligations constituted by the latter.

APPEARANCES OF COUNSEL

Oliver O. Olaybal for petitioner.
Lim Vigilia Alcala Dumlao Alameda and Casiding for respondent.

R E S O L U T I O N

NACHURA, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court, filed by petitioner Roberto Totanes against respondent China Banking Corporation, assails the Court of Appeals (CA) Decision[1] dated June 26, 2007 and its Resolution[2] dated September 19, 2007, in CA-G.R. CV No. 68795.

The facts, as found by the appellate court, are as follows:

Petitioner and Manuel Antiquera (Antiquera) maintained their individual savings and current accounts with respondent in the latter's Legaspi City Branch. Petitioner and Antiquera, in conspiracy with respondent's branch manager Ronnie Lou Marquez (Marquez), allegedly engaged in what is commonly known in banking as "kiting operation," by manipulating the handling and operations of their deposit accounts.[3] Petitioner and Antiquera, likewise, effected transfers of funds to each other's accounts by drawing checks from their respective current accounts and depositing the same with the other's accounts by way of debit and credit memos, all in connivance with Marquez, to make it appear that their respective accounts were sufficiently funded, when in truth and in fact, they were not.[4]

On July 9, 1986, Antiquera duly executed and delivered Promissory Note No. 2081 in favor of the respondent, whereby

[1] Penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Bienvenido L. Reyes and Aurora Santiago-Lagman, concurring; *rollo*, pp. 8-19.

[2] *Rollo*, p. 21.

[3] *Id.* at 9.

[4] *Id.* at 9-10.

he promised to pay the latter on July 16, 1986, the sum of ₱150,000.00 with 24% interest per annum until fully paid. On July 29, 1986, Antiquera executed Promissory Note No. 2099 for another ₱150,000.00, payable on August 5, 1986, with the same rate of interest. Antiquera agreed in both promissory notes that he would pay an additional amount by way of penalty, equivalent to 1/10 of 1% per day of the total amount due from date of default until full payment.[5]

To secure the aforesaid obligations, a surety agreement form was executed and signed by Antiquera as principal and the petitioner as surety.[6] As surety, petitioner bound himself to pay jointly and severally with Antiquera, the latter's obligation with the respondent. His liability, however, was limited to ₱300,000.00, plus interest.[7]

For the alleged acts of defraudation committed by Antiquera, Marquez and the petitioner; and for failure of Antiquera to pay his obligations covered by the promissory notes, respondent instituted a complaint for sum of money with damages. Antiquera and the petitioner were declared in default, hence, *ex parte* hearings ensued.

After trial, the RTC rendered a Decision[8] in favor of the respondent, but dismissed the case as against the petitioner.

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[5] *Id.* at 10.

[6] *Id.* at 11.

[7] *Id.* at 14.

[8] The dispositive portion of the RTC decision, as quoted by the CA, reads:

WHEREFORE, above premises considered, judgment is hereby rendered –

1. Ordering the dismissal of the case against defendant Roberto Totanes;

2. Ordering defendants spouses Elenita Antiquera and Manuel Antiquera and defendant Ronnie Lou Marquez to pay plaintiff, jointly and severally, the amount of ₱2,850,000.00 plus interest at 14% per annum from the date of the filing of the complaint until fully paid;

3. Ordering defendants spouses Elenita Antiquera and Manuel Antiquera and defendant Ronnie Lou Marquez to pay plaintiff jointly and severally, the amount of ₱300,000.00, covered by the two promissory notes plus interest at the rate of 22% per annum from the date of the filing of the complaint until fully paid;

On motion for reconsideration, the RTC reversed itself but only insofar as it dismissed the case against the petitioner.[9] Consequently, petitioner was held jointly and severally liable with Antiquera for ₱300,000.00 with 22% interest per annum until fully paid.[10]

Petitioner appealed the aforesaid order to the CA. Petitioner, however, failed to persuade the appellate court which affirmed the RTC's disposition. The CA sustained the validity of the continuing surety agreement signed by petitioner. The suretyship, according to the CA, was not limited to a single transaction; rather, it contemplated a future course of dealing, covering a series of transactions, generally for an indefinite time or until revoked.[11] To buttress its conclusion, the CA cited *Atok Finance Corporation v. Court of Appeals*,[12] which it held to be "on-all-fours" with the instant case. Finally, the CA declared that petitioner's liability as a surety was not negated by the trial court's finding that he did not, in any way, participate in the alleged "kiting operations" or connive with Antiquera in committing the acts of defraudation, saying that petitioner's liability as a surety was separate and distinct from the fraudulent acts of which he was found innocent.[13]

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4. Ordering defendants spouses Elenita Antiquera and Manuel Antiquera and defendant Ronnie Lou Marquez to pay plaintiff, jointly and severally, the penalty charges on the two promissory notes at the rate of 36% per annum each from the date of the filing of the complaint until fully paid;

5. Ordering defendants spouses Elenita Antiquera and Manuel Antiquera and defendant Ronnie Lou Marquez to pay plaintiff, jointly and severally, attorney's fees equivalent to 10% of the total amount collectible;

6. Ordering defendants spouses Elenita Antiquera and Manuel Antiquera and defendant Ronnie Lou Marquez to pay the litigation expenses in the amount of ₱35,161.10; and to pay the costs of the suit.

SO ORDERED. (*Id.* at 11-12.)

[9] *Rollo*, p. 12.

[10] *Id.* at 8-9.

[11] *Id.* at 15.

[12] G.R. No. 80078, May 18, 1993, 222 SCRA 232.

[13] *Rollo*, p. 18.

Petitioner now comes before us in this petition for review on *certiorari* raising the following errors:

1) THE ASSAILED DECISION MISTAKENLY AND UNLAWFULLY HELD PETITIONER LIABLE FOR THE DEBT OF ANOTHER INDIVIDUAL, MANUEL ANTIQUERA. UNDER THE GENERAL RULE ON "RELATIVITY OF CONTRACT," RESPONDENT IS NOT LIABLE FOR THE CONTRACTUAL OBLIGATION OF MANUEL ANTIQUERA. NONE OF THE RECOGNIZED EXCEPTIONS APPLY TO PETITIONER. PETITIONER IS NOT THE MAKER, CO-MAKER, INDORSER, AGENT, BROKER, ACCOMMODATION PARTY, GUARANTOR OR SURETY OF MANUEL ANTIQUERA.

2) RESPONDENT IS ESTOPPED FROM ENFORCING THE LOAN TRANSACTIONS (*i.e.*, SURETY AGREEMENT AND PROMISSORY NOTES) RESPONDENT CLAIMS TO BE VOID OR UNAUTHORIZED FOR LACK OF APPROVAL BY RESPONDENT'S BOARD OF DIRECTORS, AS REQUIRED IN RESPONDENT'S POLICY STATEMENTS DATED OCTOBER 19, 1983 (EXHIBIT E) AND SEPTEMBER 26, 1986 (EXHIBIT F).

3) THE ASSAILED DECISION MISINTERPRETED AND MISAPPLIED THE RULING IN "*ATOK FINANCE CORPORATION VS. COURT OF APPEALS*" WHICH CONCERNED ITSELF WITH THE APPLICABILITY OF THE PERFECTED SURETY AGREEMENT IN RELATION TO FUTURE OBLIGATIONS, WHILE IN THE PRESENT CASE THE ISSUE IS THE PERFECTION OF THE CREDIT LINE AND THE SUPPORTING SURETY AGREEMENT.

4) ASSUMING THE CREDIT LINE AND THE SUPPORTING SURETY AGREEMENT EXIST, THE UNILATERAL LOAN EXTENSIONS GRANTED BY RESPONDENT TO MANUEL ANTIQUERA HAD RESULTED IN THE EXTINGUISHMENT OF PETITIONER'S OBLIGATION, IF ANY, UNDER THE SURETY AGREEMENT.[14]

In fine, the issue for resolution is whether the petitioner may be held jointly and severally liable with Antiquera for the latter's unsettled obligation with the respondent.

We rule in the affirmative.

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[14] *Id.* at 28.

Petitioner's liability was based on the surety agreement he executed and signed freely and voluntarily. He, however, argues that said agreement was not perfected because the principal obligation, which is the credit line, did not materialize. As such, being a stranger to any contract entered into by Antiquera with the respondent, he should not be held liable.

Both the trial and appellate courts recognized the genuineness and due execution of the promissory notes signed by Antiquera. We find no cogent reason to depart from such conclusion. These documents undoubtedly show the perfection of the principal contract, that is, the contract of loan; and consequently, the perfection of the accessory contract of suretyship.

We reiterate the well-established principle that factual findings of the trial court are conclusive on the parties and not reviewable by this Court – and they carry even more weight when the CA affirms these findings, as in the present case. We are not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below.[15]

From the terms of the contract, it appears that petitioner jointly and severally undertook, bound himself and warranted to the respondent "the prompt payment ***of all*** overdrafts, ***promissory notes,*** discounts, letters of credit, drafts, bills of exchange, and other obligations of every kind and nature, including trust receipts and discounts of drafts, bills of exchange, promissory notes, etc. x x x ***for which the Principal(s) may now be indebted or may hereafter become indebted to the Creditor.***"[16]

The fact that the contract of suretyship was signed by the petitioner prior to the execution of the promissory note does not negate the former's liability. The contract entered into by the petitioner is commonly known as a continuing surety agreement. Of course, a surety is not bound to any particular principal obligation until that principal obligation is born. But there is no theoretical or doctrinal impediment for us to say

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[15] *Goldenrod, Inc. v. Court of Appeals*, 418 Phil. 492, 497-498 (2001); see *Fortune Motors (Phils.) Corporation v. CA*, 335 Phil. 315, 330 (1997).

[16] *Rollo*, p. 14.

that the suretyship agreement itself is valid and binding even before the principal obligation intended to be secured thereby is born, any more than there would be in saying that obligations which are subject to a condition precedent are valid and binding before the occurrence of the condition precedent.[17]

Comprehensive or continuing surety agreements are, in fact, quite commonplace in present day financial and commercial practice. A bank or financing company which anticipates entering into a series of credit transactions with a particular company, normally requires the projected principal debtor to execute a continuing surety agreement along with its sureties. By executing such an agreement, the principal places itself in a position to enter into the projected series of transactions with its creditor; with such suretyship agreement, there would be no need to execute a separate surety contract or bond for each financing or credit accommodation extended to the principal debtor.[18]

As surety, petitioner's liability is joint and several. He does not insure the solvency of the debtor, but rather the debt itself.[19]

Suretyship arises upon the solidary binding of a person – deemed the surety – with the principal debtor, for the purpose of fulfilling an obligation.[20] The prestation is not an original and direct obligation for the performance of the surety's own act, but merely accessory or collateral to the obligation contracted by the principal.[21] Although a surety contract is secondary to the principal obligation, the liability of the surety is direct, primary and absolute, or equivalent to that of a regular party to the undertaking. A surety becomes liable for the debt and duty of

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[17] *South City Homes, Inc. v. BA Finance Corporation*, 423 Phil. 84, 94 (2001), citing *Fortune Motors (Phils.) Corporation v. CA*, *supra* note 15, at 326.

[18] *Id.* at 95

[19] *Tiu Hiong Guan v. Metropolitan Bank and Trust Company*, G.R. No. 144339, August 9, 2006, 498 SCRA 246, 251.

[20] *Id.* at 252; *Philippine Bank of Communications v. Lim*, G.R. No. 158138, April 12, 2005, 455 SCRA 714, 721.

[21] *Philippine Bank of Communications v. Lim*, *supra*.

the principal obligor even without possessing a direct or personal interest in the obligations constituted by the latter.[22]

WHEREFORE, premises considered, the petition is *DENIED* for lack of merit. The Decision of the Court of Appeals dated June 26, 2007 and its Resolution dated September 19, 2007, in CA-G.R. CV No. 68795, are *AFFIRMED*.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Chico-Nazario, and *Leonardo-de Castro,*[*] *JJ.,* concur.

EN BANC

[G.R. No. 180088. January 19, 2009]

MANUEL B. JAPZON, *petitioner, vs.* **COMMISSION ON ELECTIONS and JAIME S. TY,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; CITIZENSHIP; REPUBLIC ACT NO. 9225; GOVERNS THE MANNER IN WHICH A NATURAL-BORN FILIPINO MAY REACQUIRE OR RETAIN HIS PHILIPPINE CITIZENSHIP DESPITE ACQUIRING A FOREIGN CITIZENSHIP. — It bears to point out that Republic Act No. 9225 governs the manner in which a natural-born Filipino may reacquire or retain his Philippine citizenship despite acquiring a foreign citizenship, and provides for his rights and liabilities under such circumstances. A close scrutiny of said statute would reveal that it does not at all touch

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[22] *Tiu Hiong Guan v. Metropolitan Bank and Trust Company*, *supra* note 19, at 252.

[*] Additional member per Special Order No. 546 dated January 5, 2009.

on the matter of residence of the natural-born Filipino taking advantage of its provisions. Republic Act No. 9225 imposes no residency requirement for the reacquisition or retention of Philippine citizenship; nor does it mention any effect of such reacquisition or retention of Philippine citizenship on the current residence of the concerned natural-born Filipino. Clearly, Republic Act No. 9225 treats citizenship independently of residence. This is only logical and consistent with the general intent of the law to allow for dual citizenship. Since a natural-born Filipino may hold, at the same time, both Philippine and foreign citizenships, he may establish residence either in the Philippines or in the foreign country of which he is also a citizen.

2. ID.; ID.; ID.; DUAL CITIZENSHIP; QUALIFICATIONS OF THOSE WHO WILL RUN FOR PUBLIC OFFICE; ENUMERATION. — Residency in the Philippines only becomes relevant when the natural-born Filipino with dual citizenship decides to run for public office. For a natural born Filipino, who reacquired or retained his Philippine citizenship under Republic Act No. 9225, to run for public office, he must: (1) meet the qualifications for holding such public office as required by the Constitution and existing laws; and (2) make a personal and sworn renunciation of any and all foreign citizenships before any public officer authorized to administer an oath. x x x The other requirement of Section 5(2) of Republic Act No. 9225 pertains to the qualifications required by the Constitution and existing laws. Article X, Section 3 of the Constitution left it to Congress to enact a local government code which shall provide, among other things, for the **qualifications**, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units. Pursuant to the foregoing mandate, Congress enacted Republic Act No. 7160, the Local Government Code of 1991, Section 39 of which lays down the following qualifications for local elective officials: SEC. 39. *Qualifications*. — (a) An elective local official must be a citizen of the Philippines; a registered voter in the *barangay*, municipality, city or province or, in the case of a member of the *sangguniang panlalawigan, sangguniang panlungsod*, or *sanggunian bayan*, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or

any other local language or dialect. x x x (c) Candidates for the position of mayor or vice mayor of independent component cities, component cities, or municipalities must be at least twenty-one (21) years of age on election day.

3. ID.; ID.; ID.; ID.; ID.; THE DECISIVE FACTOR IN DETERMINING WHETHER OR NOT AN INDIVIDUAL HAS SATISFIED THE RESIDENCY QUALIFICATION IS THE FACT OF RESIDENCE; SUSTAINED IN CASE AT BAR. — Ultimately, the Court recapitulates in *Papandayan, Jr.* that it is the fact of residence that is the decisive factor in determining whether or not an individual has satisfied the residency qualification requirement. x x x the Court has previously ruled that absence from residence to pursue studies or practice a profession or registration as a voter other than in the place where one is elected, does not constitute loss of residence. The Court also notes, that even with his trips to other countries, Ty was actually present in the Municipality of General Macarthur, Eastern Samar, Philippines, for at least nine of the 12 months preceding the 14 May 2007 local elections. Even if length of actual stay in a place is not necessarily determinative of the fact of residence therein, it does strongly support and is only consistent with Ty's avowed intent in the instant case to establish residence/domicile in the Municipality of General Macarthur, Eastern Samar. Finally, when the evidence of the alleged lack of residence qualification of a candidate for an elective position is weak or inconclusive and it clearly appears that the purpose of the law would not be thwarted by upholding the victor's right to the office, the will of the electorate should be respected. For the purpose of election laws is to give effect to, rather than frustrate, the will of the voters. To successfully challenge Ty's disqualification, Japzon must clearly demonstrate that Ty's ineligibility is so patently antagonistic to constitutional and legal principles that overriding such ineligibility and thereby giving effect to the apparent will of the people would ultimately create greater prejudice to the very democratic institutions and juristic traditions that our Constitution and laws so zealously protect and promote. In this case, Japzon failed to substantiate his claim that Ty is ineligible to be Mayor of the Municipality of General Macarthur, Eastern Samar, Philippines.

4. ID.; ID.; ID.; RESIDENCE DISTINGUISHED FROM DOMICILE; APPLICATION IN CASE AT BAR. — The term "residence" is to be understood not in its common acceptation as referring to "dwelling" or "habitation," but rather to "domicile" or legal residence, that is, "the place where a party actually or constructively has his permanent home, where he, no matter where he may be found at any given time, eventually intends to return and remain (*animus manendi*)." A domicile of origin is acquired by every person at birth. It is usually the place where the child's parents reside and continues until the same is abandoned by acquisition of new domicile (domicile of choice). In *Coquilla*, the Court already acknowledged that for an individual to acquire American citizenship, he must establish residence in the USA. Since Ty himself admitted that he became a naturalized American citizen, then he must have necessarily abandoned the Municipality of General Macarthur, Eastern Samar, Philippines, as his domicile of origin; and transferred to the USA, as his domicile of choice.

5. REMEDIAL LAW; APPEALS; FINDINGS OF FACTS OF QUASI-JUDICIAL AGENCIES; ACCORDED RESPECT, EVEN FINALITY WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE; EXPLAINED. — It is axiomatic that factual findings of administrative agencies, such as the COMELEC, which have acquired expertise in their field are binding and conclusive on the Court. An application for *certiorari* against actions of the COMELEC is confined to instances of grave abuse of discretion amounting to patent and substantial denial of due process, considering that the COMELEC is presumed to be most competent in matters falling within its domain. The Court even went further to say that the rule that factual findings of administrative bodies will not be disturbed by courts of justice, except when there is absolutely no evidence or no substantial evidence in support of such findings, should be applied with greater force when it concerns the COMELEC, as the framers of the Constitution intended to place the COMELEC—created and explicitly made independent by the Constitution itself—on a level higher than statutory administrative organs. The factual finding of the COMELEC *en banc* is therefore binding on the Court. The findings of facts of quasi-judicial agencies which have acquired expertise in the specific matters entrusted to their jurisdiction are accorded by this Court not only respect but even finality if they are supported by substantial evidence.

Only substantial, not preponderance, of evidence is necessary. Section 5, Rule 133 of the Rules of Court provides that in cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

APPEARANCES OF COUNSEL

Santos Cruz and Partners for petitioner.
The Solicitor General for public respondent.
Karl Arian A. Castillo for private respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review on *Certiorari* under Rules 64[1] and 65[2] of the Revised Rules of Court seeking to annul and set aside the Resolution[3] dated 31 July 2007 of the First Division of public respondent Commission on Elections (COMELEC) and the Resolution[4] dated 28 September 2007 of COMELEC *en banc*, in SPA No. 07-568, for having been rendered with grave abuse of discretion, amounting to lack or excess of jurisdiction.

Both petitioner Manuel B. Japzon (Japzon) and private respondent Jaime S. Ty (Ty) were candidates for the Office of Mayor of the Municipality of General Macarthur, Eastern Samar, in the local elections held on 14 May 2007.

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[1] Review of Judgments and Final Orders or Resolutions of the Commission on Elections and the Commission on Audit.

[2] *Certiorari*, Prohibition and *Mandamus*.

[3] Penned by Commissioner Romeo A. Brawner with Presiding Commissioner Resurreccion Z. Borra, concurring; *rollo*, pp. 29-36.

[4] Penned by Commissioner Nicodemo T. Ferrer with Chairman Benjamin S. Abalos, Sr. and Commissioners Resurreccion Z. Borra, Florentino A. Tuason, Jr., Romeo A. Brawner, and Rene V. Sarmiento, concurring; *id.* at 37-40.

On 15 June 2007, Japzon instituted SPA No. 07-568 by filing before the COMELEC a Petition[5] to disqualify and/or cancel Ty's Certificate of Candidacy on the ground of material misrepresentation. Japzon averred in his Petition that Ty was a former natural-born Filipino, having been born on 9 October 1943 in what was then Pambujan Sur, Hernani Eastern Samar (now the Municipality of General Macarthur, Eastern Samar) to spouses Ang Chim Ty (a Chinese) and Crisanta Aranas Sumiguin (a Filipino). Ty eventually migrated to the United States of America (USA) and became a citizen thereof. Ty had been residing in the USA for the last 25 years. When Ty filed his Certificate of Candidacy on 28 March 2007, he falsely represented therein that he was a resident of Barangay 6, Poblacion, General Macarthur, Eastern Samar, for one year before 14 May 2007, and was not a permanent resident or immigrant of any foreign country. While Ty may have applied for the reacquisition of his Philippine citizenship, he never actually resided in Barangay 6, Poblacion, General Macarthur, Eastern Samar, for a period of one year immediately preceding the date of election as required under Section 39 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991. In fact, even after filing his application for reacquisition of his Philippine citizenship, Ty continued to make trips to the USA, the most recent of which was on 31 October 2006 lasting until 20 January 2007. Moreover, although Ty already took his Oath of Allegiance to the Republic of the Philippines, he continued to comport himself as an American citizen as proven by his travel records. He had also failed to renounce his foreign citizenship as required by Republic Act No. 9225, otherwise known as the Citizenship Retention and Reacquisition Act of 2003, or related laws. Hence, Japzon prayed for in his Petition that the COMELEC order the disqualification of Ty from running for public office and the cancellation of the latter's Certificate of Candidacy.

In his Answer[6] to Japzon's Petition in SPA No. 07-568, Ty admitted that he was a natural-born Filipino who went to the USA to work and subsequently became a naturalized American

[5] Records, pp. 1-3.

[6] *Id.* at 28-34.

citizen. Ty claimed, however, that prior to filing his Certificate of Candidacy for the Office of Mayor of the Municipality of General Macarthur, Eastern Samar, on 28 March 2007, he already performed the following acts: (1) with the enactment of Republic Act No. 9225, granting dual citizenship to natural-born Filipinos, Ty filed with the Philippine Consulate General in Los Angeles, California, USA, an application for the reacquisition of his Philippine citizenship; (2) on 2 October 2005, Ty executed an Oath of Allegiance to the Republic of the Philippines before Noemi T. Diaz, Vice Consul of the Philippine Consulate General in Los Angeles, California, USA; (3) Ty applied for a Philippine passport indicating in his application that his residence in the Philippines was at A. Mabini St., Barangay 6, Poblacion, General Macarthur, Eastern Samar. Ty's application was approved and he was issued on 26 October 2005 a Philippine passport; (4) on 8 March 2006, Ty personally secured and signed his Community Tax Certificate (CTC) from the Municipality of General Macarthur, in which he stated that his address was at Barangay 6, Poblacion, General Macarthur, Eastern Samar; (5) thereafter, on 17 July 2006, Ty was registered as a voter in Precinct 0013A, Barangay 6, Poblacion, General Macarthur, Eastern Samar; (6) Ty secured another CTC dated 4 January 2007 again stating therein his address as Barangay 6, Poblacion, General Macarthur, Eastern Samar; and (7) finally, Ty executed on 19 March 2007 a duly notarized Renunciation of Foreign Citizenship. Given the aforementioned facts, Ty argued that he had reacquired his Philippine citizenship and renounced his American citizenship, and he had been a resident of the Municipality of General Macarthur, Eastern Samar, for more than one year prior to the 14 May 2007 elections. Therefore, Ty sought the dismissal of Japzon's Petition in SPA No. 07-568.

Pending the submission by the parties of their respective Position Papers in SPA No. 07-568, the 14 May 2007 elections were already held. Ty acquired the highest number of votes and was declared Mayor of the Municipality of General Macarthur, Eastern Samar, by the Municipal Board of Canvassers on 15 May 2007.[7]

[7] *Id.* at 51.

Following the submission of the Position Papers of both parties, the COMELEC First Division rendered its Resolution[8] dated 31 July 2007 in favor of Ty.

The COMELEC First Division found that Ty complied with the requirements of Sections 3 and 5 of Republic Act No. 9225 and reacquired his Philippine citizenship, to wit:

> Philippine citizenship is an indispensable requirement for holding an elective public office, and the purpose of the citizenship qualification is none other than to ensure that no alien, *i.e.*, no person owing allegiance to another nation, shall govern our people and our country or a unit of territory thereof. Evidences revealed that [Ty] executed an **Oath of Allegiance** before Noemi T. Diaz, Vice Consul of the Philippine Consulate General, Los Angeles, California, U.S.A. on October 2, 2005 and executed a **Renunciation of Foreign Citizenship** on March 19, 2007 in compliance with R.A. [No.] 9225. Moreover, neither is [Ty] a candidate for or occupying public office nor is in active service as commissioned or non-commissioned officer in the armed forces in the country of which he was naturalized citizen.[9]

The COMELEC First Division also held that Ty did not commit material misrepresentation in stating in his Certificate of Candidacy that he was a resident of Barangay 6, Poblacion, General Macarthur, Eastern Samar, for at least one year before the elections on 14 May 2007. It reasoned that:

> Although [Ty] has lost his domicile in [the] Philippines when he was naturalized as U.S. citizen in 1969, the reacquisition of his Philippine citizenship and subsequent acts thereof proved that he has been a resident of Barangay 6, Poblacion, General Macarthur, Eastern Samar for at least one (1) year before the elections held on 14 May 2007 as he represented in his certificate of candidacy[.]
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> As held in *Coquilla vs. Comelec*:
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> > "The term 'residence' is to be understood not in its common acceptation as referring to 'dwelling' or 'habitation,' but rather to 'domicile' or legal residence, that is, 'the place where a party actually or constructively has his permanent home, where he, no

[8] *Rollo,* pp. 29-36.

[9] *Id.* at 33.

matter where he may be found at any given time, eventually intends to return and remain (*animus manendi*).' A domicile of origin is acquired by every person at birth. It is usually the place where the child's parents reside and continues until the same is abandoned by acquisition of new domicile (domicile of choice).

In the case at bar, petitioner lost his domicile of origin in Oras by becoming a U.S. citizen after enlisting in the U.S. Navy in 1965. From then on and until November 10, 2000, when he reacquired Philippine citizenship, petitioner was an alien without any right to reside in the Philippines save as our immigration laws may have allowed him to stay as a visitor or as a resident alien.

Indeed, residence in the United States is a requirement for naturalization as a U.S. citizen. Title 8, §1427(a) of the United States Code provides:

Requirements of naturalization: Residence

(a) No person, except as otherwise provided in this subchapter, shall be naturalized unless such applicant, (1) year immediately preceding the date of filing his application for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his petition has been physically present therein for periods totaling at least half of that time, and who has resided within the State or within the district of the Service in the United States in which the applicant filed the application for at least three months, (2) has resided continuously within the United States from the date of the application up to the time of admission to citizenship, and (3) during all period referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. (Emphasis added)

In *Caasi v. Court of Appeals*, this Court ruled that **immigration to the United States by virtue of a 'greencard,' which entitles one to reside permanently in that country, constitutes abandonment of domicile in the Philippines. With more reason then does naturalization in a foreign country result in an abandonment of domicile in the Philippines.**

Records showed that after taking an Oath of Allegiance before the Vice Consul of the Philippine Consulate General on October 2, 2005, [Ty] applied and was issued a Philippine passport on October 26, 2005; and secured a community tax certificate from the Municipality of General Macarthur on March 8, 2006. Evidently, [Ty] was already a resident of Barangay 6, Poblacion, General Macarthur, Eastern Samar for more than one (1) year before the elections on May 14, 2007.[10] (Emphasis ours.)

The dispositive portion of the 31 July 2007 Resolution of the COMELEC First Division, thus, reads:

WHEREFORE, premises considered, the petition is **DENIED** for lack of merit.[11]

Japzon filed a Motion for Reconsideration of the foregoing Resolution of the COMELEC First Division. On 28 September 2007, the COMELEC *en banc* issued its Resolution[12] denying Japzon's Motion for Reconsideration and affirming the assailed Resolution of the COMELEC First Division, on the basis of the following ratiocination:

We have held that a Natural born Filipino who obtains foreign citizenship, and subsequently spurns the same, is by clear acts of repatriation a Filipino Citizen and hence qualified to run as a candidate for any local post.

x x x x x x x x x

It must be noted that absent any showing of irregularity that overturns the prevailing status of a citizen, the presumption of regularity remains. Citizenship is an important aspect of every individual's constitutionally granted rights and privileges. This is essential in determining whether one has the right to exercise pre-determined political rights such as the right to vote or the right to be elected to office and as such rights spring from citizenship.

Owing to its primordial importance, it is thus presumed that every person is a citizen of the country in which he resides; that citizenship

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[10] *Id.* at 34-35.

[11] *Id.* at 35.

[12] *Id.* at 37-40.

once granted is presumably retained unless voluntarily relinquished; and that the burden rests upon who alleges a change in citizenship and allegiance to establish the fact.

Our review of the Motion for Reconsideration shows that it does not raise any new or novel issues. The arguments made therein have already been dissected and expounded upon extensively by the first Division of the Commission, and there appears to be no reason to depart from the wisdom of the earlier resolution. We thus affirm that [Ty] did not commit any material misrepresentation when he accomplished his Certificate of Candidacy. The only ground for denial of a Certificate of Candidacy would be when there was material misrepresentation meant to mislead the electorate as to the qualifications of the candidate. There was none in this case, thus there is not enough reason to deny due course to the Certificate of Candidacy of Respondent James S. Ty.[13]

Failing to obtain a favorable resolution from the COMELEC, Japzon proceeded to file the instant Petition for *Certiorari*, relying on the following grounds:

A. THE COMMISSION ON ELECTIONS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT CAPRICIOUSLY, WHIMSICALLY AND WANTONLY DISREGARDED THE PARAMETERS SET BY LAW AND JURISPRUDENCE FOR THE ACQUISITION OF A NEW DOMICILE OF CHOICE AND RESIDENCE.[14]

B. THE COMMISSION ON ELECTIONS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT CAPRICIOUSLY, WHIMSICALLY AND WANTONLY REFUSED TO CANCEL [TY'S] CERTIFICATE OF CANDIDACY, AND CONSEQUENTLY DECLARE [JAPZON] AS THE DULY ELECTED MAYOR OF GEN. MACARTHUR, EASTERN SAMAR.[15]

Japzon argues that when Ty became a naturalized American citizen, he lost his domicile of origin. Ty did not establish his

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

[14] *Id.* at 10.

[15] *Id.* at 18.

residence in the Municipality of General Macarthur, Eastern Samar, Philippines, just because he reacquired his Philippine citizenship. The burden falls upon Ty to prove that he established a new domicile of choice in General Macarthur, Eastern Samar, a burden which he failed to discharge. Ty did not become a resident of General Macarthur, Eastern Samar, by merely executing the Oath of Allegiance under Republic Act No. 9225.

Therefore, Japzon asserts that Ty did not meet the one-year residency requirement for running as a mayoralty candidate in the 14 May 2007 local elections. The one-year residency requirement for those running for public office cannot be waived or liberally applied in favor of dual citizens. Consequently, Japzon believes he was the only remaining candidate for the Office of Mayor of the Municipality of General Macarthur, Eastern Samar, and is the only placer in the 14 May 2007 local elections.

Japzon prays for the Court to annul and set aside the Resolutions dated 31 July 2007 and 28 September 2007 of the COMELEC First Division and *en banc*, respectively; to issue a new resolution denying due course to or canceling Ty's Certificate of Candidacy; and to declare Japzon as the duly elected Mayor of the Municipality of General Macarthur, Eastern Samar.

As expected, Ty sought the dismissal of the present Petition. According to Ty, the COMELEC already found sufficient evidence to prove that Ty was a resident of the Municipality of General Macarthur, Eastern Samar, one year prior to the 14 May 2007 local elections. The Court cannot evaluate again the very same pieces of evidence without violating the well-entrenched rule that findings of fact of the COMELEC are binding on the Court. Ty disputes Japzon's assertion that the COMELEC committed grave abuse of discretion in rendering the assailed Resolutions, and avers that the said Resolutions were based on the evidence presented by the parties and consistent with prevailing jurisprudence on the matter. Even assuming that Ty, the winning candidate for the Office of Mayor of the Municipality of General Macarthur, Eastern Samar, is indeed disqualified from running

in the local elections, Japzon as the second placer in the same elections cannot take his place.

The Office of the Solicitor General (OSG), meanwhile, is of the position that Ty failed to meet the one-year residency requirement set by law to qualify him to run as a mayoralty candidate in the 14 May 2007 local elections. The OSG opines that Ty was unable to prove that he intended to remain in the Philippines for good and ultimately make it his new domicile. Nonetheless, the OSG still prays for the dismissal of the instant Petition considering that Japzon, gathering only the second highest number of votes in the local elections, cannot be declared the duly elected Mayor of the Municipality of General Macarthur, Eastern Samar, even if Ty is found to be disqualified from running for the said position. And since it took a position adverse to that of the COMELEC, the OSG prays from this Court to allow the COMELEC to file its own Comment on Japzon's Petition. The Court, however, no longer acted on this particular prayer of the COMELEC, and with the submission of the Memoranda by Japzon, Ty, and the OSG, it already submitted the case for decision.

The Court finds no merit in the Petition at bar.

There is no dispute that Ty was a natural-born Filipino. He was born and raised in the Municipality of General Macarthur, Eastern Samar, Philippines. However, he left to work in the USA and eventually became an American citizen. On 2 October 2005, Ty reacquired his Philippine citizenship by taking his Oath of Allegiance to the Republic of the Philippines before Noemi T. Diaz, Vice Consul of the Philippine Consulate General in Los Angeles, California, USA, in accordance with the provisions of Republic Act No. 9225.[16] At this point, Ty still held dual citizenship, *i.e.*, American and Philippine. It was only on 19 March 2007 that Ty renounced his American citizenship before

[16] According to Section 2 of Republic Act No. 9225, natural-born citizens of the Philippines who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country are deemed to have reacquired their Philippine citizenship upon taking the oath of allegiance to the Republic of the Philippines.

a notary public and, resultantly, became a pure Philippine citizen again.

It bears to point out that Republic Act No. 9225 governs the manner in which a natural-born Filipino may reacquire or retain[17] his Philippine citizenship despite acquiring a foreign citizenship, and provides for his rights and liabilities under such circumstances. A close scrutiny of said statute would reveal that it does not at all touch on the matter of residence of the natural-born Filipino taking advantage of its provisions. Republic Act No. 9225 imposes no residency requirement for the reacquisition or retention of Philippine citizenship; nor does it mention any effect of such reacquisition or retention of Philippine citizenship on the current residence of the concerned natural-born Filipino. Clearly, Republic Act No. 9225 treats citizenship independently of residence. This is only logical and consistent with the general intent of the law to allow for dual citizenship. Since a natural-born Filipino may hold, at the same time, both Philippine and foreign citizenships, he may establish residence either in the Philippines or in the foreign country of which he is also a citizen.

Residency in the Philippines only becomes relevant when the natural-born Filipino with dual citizenship decides to run for public office.

Section 5(2) of Republic Act No. 9225 reads:

SEC. 5. *Civil and Political Rights and Liabilities.* — Those who retain or reacquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:

x x x x x x x x x

(2) Those seeking elective public office in the Philippines shall meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of the filing of

[17] Depending on when the concerned natural-born Filipino acquired foreign citizenship: if **before** the effectivity of Republic Act No. 9225 on 17 September 2003, he may **reacquire** his Philippine citizenship; and if **after** the effectivity of the said statute, he may **retain** his Philippine citizenship.

the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath.

Breaking down the afore-quoted provision, for a natural born Filipino, who reacquired or retained his Philippine citizenship under Republic Act No. 9225, to run for public office, he must: (1) meet the qualifications for holding such public office as required by the Constitution and existing laws; and (2) make a personal and sworn renunciation of any and all foreign citizenships before any public officer authorized to administer an oath.

That Ty complied with the second requirement is beyond question. On **19 March 2007**, he personally executed a Renunciation of Foreign Citizenship before a notary public. By the time he filed his Certificate of Candidacy for the Office of Mayor of the Municipality of General Macarthur, Eastern Samar, on **28 March 2007**, he had already effectively renounced his American citizenship, keeping solely his Philippine citizenship.

The other requirement of Section 5(2) of Republic Act No. 9225 pertains to the qualifications required by the Constitution and existing laws.

Article X, Section 3 of the Constitution left it to Congress to enact a local government code which shall provide, among other things, for the **qualifications**, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units.

Pursuant to the foregoing mandate, Congress enacted Republic Act No. 7160, the Local Government Code of 1991, Section 39 of which lays down the following qualifications for local elective officials:

SEC. 39. *Qualifications.* — (a) An elective local official must be a citizen of the Philippines; a registered voter in the *barangay*, municipality, city or province or, in the case of a member of the *sangguniang panlalawigan*, *sangguniang panlungsod*, or *sanggunian bayan*, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the

day of the election; and able to read and write Filipino or any other local language or dialect.

x x x x x x x x x

(c) Candidates for the position of mayor or vice mayor of independent component cities, component cities, or municipalities must be at least twenty-one (21) years of age on election day.

The challenge against Ty's qualification to run as a candidate for the Office of Mayor of the Municipality of General Macarthur, Eastern Samar, centers on his purported failure to meet the one-year residency requirement in the said municipality.

The term "residence" is to be understood not in its common acceptation as referring to "dwelling" or "habitation," but rather to "domicile" or legal residence, that is, "the place where a party actually or constructively has his permanent home, where he, no matter where he may be found at any given time, eventually intends to return and remain (*animus manendi*)."[18]

A domicile of origin is acquired by every person at birth. It is usually the place where the child's parents reside and continues until the same is abandoned by acquisition of new domicile (domicile of choice). In *Coquilla*,[19] the Court already acknowledged that for an individual to acquire American citizenship, he must establish residence in the USA. Since Ty himself admitted that he became a naturalized American citizen, then he must have necessarily abandoned the Municipality of General Macarthur, Eastern Samar, Philippines, as his domicile of origin; and transferred to the USA, as his domicile of choice.

As has already been previously discussed by this Court herein, Ty's reacquisition of his Philippine citizenship under Republic Act No. 9225 had no automatic impact or effect on his residence/domicile. He could still retain his domicile in the USA, and he did not necessarily regain his domicile in the Municipality of General Macarthur, Eastern Samar, Philippines. Ty merely had the option to again establish his domicile in the Municipality of

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[18] *Coquilla v. Commission on Elections*, 434 Phil. 861, 871-872 (2002).

[19] *Id.*

General Macarthur, Eastern Samar, Philippines, said place becoming his new domicile of choice. The length of his residence therein shall be determined from the time he made it his domicile of choice, and it shall not retroact to the time of his birth.

How then could it be established that Ty indeed established a new domicile in the Municipality of General Macarthur, Eastern Samar, Philippines?

In *Papandayan, Jr. v. Commission on Elections*,[20] the Court provided a summation of the different principles and concepts in jurisprudence relating to the residency qualification for elective local officials. Pertinent portions of the *ratio* in *Papandayan* are reproduced below:

> Our decisions have applied certain tests and concepts in resolving the issue of whether or not a candidate has complied with the residency requirement for elective positions. The principle of *animus revertendi* has been used to determine whether a candidate has an "intention to return" to the place where he seeks to be elected. Corollary to this is a determination whether there has been an "abandonment" of his former residence which signifies an intention to depart therefrom. In *Caasi v. Court of Appeals*, this Court set aside the appealed orders of the COMELEC and the Court of Appeals and annulled the election of the respondent as Municipal Mayor of Bolinao, Pangasinan on the ground that respondent's immigration to the United States in 1984 constituted an abandonment of his domicile and residence in the Philippines. Being a green card holder, which was proof that he was a permanent resident or immigrant of the United States, and in the absence of any waiver of his status as such before he ran for election on January 18, 1988, respondent was held to be disqualified under §68 of the Omnibus Election Code of the Philippines (Batas Pambansa Blg. 881).
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> In *Co v. Electoral Tribunal of the House of Representatives*, respondent Jose Ong, Jr. was proclaimed the duly elected representative of the 2nd District of Northern Samar. The House of Representatives Electoral Tribunal (HRET) upheld his election against claims that he was not a natural born Filipino citizen and a resident of Laoang, Northern Samar. In sustaining the ruling of the HRET, this Court, citing *Faypon v. Quirino*, applied the concept of *animus*

[20] 430 Phil. 754, 768-770 (2002).

revertendi or "intent to return," stating that his absence from his residence in order to pursue studies or practice his profession as a certified public accountant in Manila or his registration as a voter other than in the place where he was elected did not constitute loss of residence. The fact that respondent made periodical journeys to his home province in Laoag revealed that he always had *animus revertendi*.

In *Abella v. Commission on Elections and Larrazabal v. Commission on Elections*, it was explained that the determination of a person's legal residence or domicile largely depends upon the intention that may be inferred from his acts, activities, and utterances. In that case, petitioner Adelina Larrazabal, who had obtained the highest number of votes in the local elections of February 1, 1988 and who had thus been proclaimed as the duly elected governor, was disqualified by the COMELEC for lack of residence and registration qualifications, not being a resident nor a registered voter of Kananga, Leyte. The COMELEC ruled that the attempt of petitioner Larrazabal to change her residence one year before the election by registering at Kananga, Leyte to qualify her to run for the position of governor of the province of Leyte was proof that she considered herself a resident of Ormoc City. This Court affirmed the ruling of the COMELEC and held that petitioner Larrazabal had established her residence in Ormoc City, not in Kananga, Leyte, from 1975 up to the time that she ran for the position of Provincial Governor of Leyte on February 1, 1988. There was no evidence to show that she and her husband maintained separate residences, *i.e.*, she at Kananga, Leyte and her husband at Ormoc City. The fact that she occasionally visited Kananga, Leyte through the years did not signify an intention to continue her residence after leaving that place.

In *Romualdez v. RTC, Br. 7, Tacloban City*, the Court held that "domicile" and "residence" are synonymous. The term "residence," as used in the election law, imports not only an intention to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of such intention. "Domicile" denotes a fixed permanent residence to which when absent for business or pleasure, or for like reasons, one intends to return. In that case, petitioner Philip G. Romualdez established his residence during the early 1980's in Barangay Malbog, Tolosa, Leyte. It was held that the sudden departure from the country of petitioner, because of the EDSA People's Power Revolution of 1986, to go into self-exile in the United States until favorable conditions had been established, was not voluntary

so as to constitute an abandonment of residence. The Court explained that in order to acquire a new domicile by choice, there must concur (1) residence or bodily presence in the new locality, (2) an intention to remain there, and (3) an intention to abandon the old domicile. There must be *animus manendi* coupled with *animus non revertendi*. The purpose to remain in or at the domicile of choice must be for an indefinite period of time; the change of residence must be voluntary; and the residence at the place chosen for the new domicile must be actual.

Ultimately, the Court recapitulates in *Papandayan, Jr.* that it is the fact of residence that is the decisive factor in determining whether or not an individual has satisfied the residency qualification requirement.

As espoused by Ty, the issue of whether he complied with the one-year residency requirement for running for public office is a question of fact. Its determination requires the Court to review, examine and evaluate or weigh the probative value of the evidence presented by the parties before the COMELEC.

The COMELEC, taking into consideration the very same pieces of evidence presently before this Court, found that Ty was a resident of the Municipality of General Macarthur, Eastern Samar, one year prior to the 14 May 2007 local elections. It is axiomatic that factual findings of administrative agencies, such as the COMELEC, which have acquired expertise in their field are binding and conclusive on the Court. An application for *certiorari* against actions of the COMELEC is confined to instances of grave abuse of discretion amounting to patent and substantial denial of due process, considering that the COMELEC is presumed to be most competent in matters falling within its domain.[21]

The Court even went further to say that the rule that factual findings of administrative bodies will not be disturbed by courts of justice, except when there is absolutely no evidence or no substantial evidence in support of such findings, should be applied with greater force when it concerns the COMELEC, as the framers of the Constitution intended to place the COMELEC—

[21] *Matalam v. Commission on Elections,* 338 Phil. 447, 470 (1997).

created and explicitly made independent by the Constitution itself—on a level higher than statutory administrative organs. The factual finding of the COMELEC *en banc* is therefore binding on the Court.[22]

The findings of facts of quasi-judicial agencies which have acquired expertise in the specific matters entrusted to their jurisdiction are accorded by this Court not only respect but even finality if they are supported by substantial evidence. Only substantial, not preponderance, of evidence is necessary. Section 5, Rule 133 of the Rules of Court provides that in cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[23]

The assailed Resolutions dated 31 July 2007 and 28 September 2007 of the COMELEC First Division and *en banc*, respectively, were both supported by substantial evidence and are, thus, binding and conclusive upon this Court.

Ty's intent to establish a new domicile of choice in the Municipality of General Macarthur, Eastern Samar, Philippines, became apparent when, immediately after reacquiring his Philippine citizenship on 2 October 2005, he applied for a Philippine passport indicating in his application that his residence in the Philippines was at A. Mabini St., Barangay 6, Poblacion, General Macarthur, Eastern Samar. For the years 2006 and 2007, Ty voluntarily submitted himself to the local tax jurisdiction of the Municipality of General Macarthur, Eastern Samar, by paying community tax and securing CTCs from the said municipality stating therein his address as A. Mabini St., Barangay 6, Poblacion, General Macarthur, Eastern Samar. Thereafter, Ty applied for and was registered as a voter on 17 July 2006 in Precinct 0013A, Barangay 6, Poblacion, General Macarthur, Eastern Samar.

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[22] *Dagloc v. Commission on Elections*, 463 Phil. 263, 288 (2003); *Mastura v. Commission on Elections*, 349 Phil. 423, 429 (1998).

[23] *Hagonoy Rural Bank v. National Labor Relations Commission*, 349 Phil. 220, 232 (1998).

In addition, Ty has also been bodily present in the Municipality of General Macarthur, Eastern Samar, Philippines, since his arrival on **4 May 2006**, inarguably, just a little over a year prior to the 14 May 2007 local elections. Japzon maintains that Ty's trips abroad during said period, *i.e.*, to Bangkok, Thailand (from 14 to 18 July 2006), and to the USA (from 31 October 2006 to 19 January 2007), indicate that Ty had no intention to permanently reside in the Municipality of General Macarthur, Eastern Samar, Philippines. The COMELEC First Division and *en banc*, as well as this Court, however, view these trips differently. The fact that Ty did come back to the Municipality of General Macarthur, Eastern Samar, Philippines, after said trips, is a further manifestation of his *animus manendi* and *animus revertendi*.

There is no basis for this Court to require Ty to stay in and never leave at all the Municipality of General Macarthur, Eastern Samar, for the full one-year period prior to the 14 May 2007 local elections so that he could be considered a resident thereof. To the contrary, the Court has previously ruled that absence from residence to pursue studies or practice a profession or registration as a voter other than in the place where one is elected, does not constitute loss of residence.[24] The Court also notes, that even with his trips to other countries, Ty was actually present in the Municipality of General Macarthur, Eastern Samar, Philippines, for at least nine of the 12 months preceding the 14 May 2007 local elections. Even if length of actual stay in a place is not necessarily determinative of the fact of residence therein, it does strongly support and is only consistent with Ty's avowed intent in the instant case to establish residence/ domicile in the Municipality of General Macarthur, Eastern Samar.

Japzon repeatedly brings to the attention of this Court that Ty arrived in the Municipality of General Macarthur, Eastern Samar, on 4 May 2006 only to comply with the one-year residency requirement, so Ty could run as a mayoralty candidate in the 14 May 2007 elections. In *Aquino v. COMELEC*,[25] the Court

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[24] *Co v. Electoral Tribunal of the House of Representatives*, G.R. Nos. 92191-92, 30 July 1991, 199 SCRA 692, 715-716.

[25] G.R. No. 120265, 18 September 1995, 248 SCRA 400.

did not find anything wrong in an individual changing residences so he could run for an elective post, for as long as he is able to prove with reasonable certainty that he has effected a change of residence for election law purposes for the period required by law. As this Court already found in the present case, Ty has proven by substantial evidence that he had established residence/domicile in the Municipality of General Macarthur, Eastern Samar, by 4 May 2006, a little over a year prior to the 14 May 2007 local elections, in which he ran as a candidate for the Office of the Mayor and in which he garnered the most number of votes.

Finally, when the evidence of the alleged lack of residence qualification of a candidate for an elective position is weak or inconclusive and it clearly appears that the purpose of the law would not be thwarted by upholding the victor's right to the office, the will of the electorate should be respected. For the purpose of election laws is to give effect to, rather than frustrate, the will of the voters.[26] To successfully challenge Ty's disqualification, Japzon must clearly demonstrate that Ty's ineligibility is so patently antagonistic to constitutional and legal principles that overriding such ineligibility and thereby giving effect to the apparent will of the people would ultimately create greater prejudice to the very democratic institutions and juristic traditions that our Constitution and laws so zealously protect and promote. In this case, Japzon failed to substantiate his claim that Ty is ineligible to be Mayor of the Municipality of General Macarthur, Eastern Samar, Philippines.

WHEREFORE, premises considered, the instant Petition for *Certiorari* is *DISMISSED*.

SO ORDERED.

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

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[26] *Papandayan, Jr. v. Commission on Elections, supra* note 20 at 773-774.

THIRD DIVISION

[G.R. No. 181037. January 19, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **SAIDAMEN MACATINGAG *y* NAMRI *alias* SAI,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS. — The elements necessary for the prosecution of illegal sale of drugs are (1) the identity of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.

2. ID.; ID.; BUY-BUST OPERATION; COMMON AND ACCEPTED MODE OF APPREHENDING THOSE INVOLVED IN ILLEGAL SALE OF PROHIBITED OR REGULATED DRUGS; RATIONALE. — In this jurisdiction, the conduct of a buy-bust operation is a common and accepted mode of apprehending those involved in illegal sale of prohibited or regulated durgs. It has been proven to be an effective way of unveiling the identities of drug dealers and of luring them out of obscurity. It catches the violator *in flagrante delicto* and the police officers conducting the operation are not only authorized but duty-bound to apprehend the violator and to search him for anything that may have been part of or used in the commission of the crime.

3. ID.; ID.; IMPOSABLE PENALTY. — All told, We see no reason to disturb the findings of the trial court that appellant is guilty beyond reasonable doubt of illegal sale of a dangerous drug, as defined and penalized in Section 5, Article II of R.A. No. 9165. Under said provision, the illegal sale of any dangerous drug, regardless of its quantity and purity, is punishable by life imprisonment to death and a fine of ₱500,000.00 to ₱10,000,000.00. For illegally selling 25.23 grams of shabu, and there being no modifying circumstance alleged in the Information, the trial court, as sustained by the Court of Appeals,

correctly imposed the penalty of life imprisonment in accordance with Article 63 (2) of the Revised Penal Code and a fine of ₱500,000.00.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT THEREON, ACCORDED RESPECT WHEN NO GLARING ERRORS, GROSS MISAPPREHENSION OF FACTS, OR SPECULATIVE, ARBITRARY, AND UNSUPPORTED CONCLUSIONS CAN BE GATHERED FROM SUCH FINDINGS; RATIONALE. — Prosecutions involving illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operation. It is a fundamental rule that findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals.

5. ID.; ID.; ID.; POSITIVE IDENTIFICATION OF THE ACCUSED FURTHER WEAKEN'S THE DEFENSE OF DENIAL AND ALIBI; CASE AT BAR. — The Court has consistently stressed that denial, like alibi, is a weak defense that becomes even weaker in the face of positive identification of the accused by prosecution witnesses. Moreover, appellant failed to adduce clear and convincing evidence to overturn the presumption that the arresting officers regularly performed their duties. It was not shown, by any satisfactory degree of proof, that said policemen were impelled by ill-motives to testify against him. There is, therefore, no basis to suspect the veracity of their testimonies.

6. ID.; ID.; REAL EVIDENCE; THE INTEGRITY OF THE EVIDENCE IS PRESUMED TO BE PRESERVED UNLESS THERE IS A SHOWING OF BAD FAITH, ILL WILL, OR PROOF THAT THE EVIDENCE HAS BEEN TAMPERED WITH; APPLICATION IN CASE AT BAR.— It is thus evident that the identity of the *corpus delicti* has been properly preserved and established by the prosecution. Besides, the integrity of

the evidence is presumed to be preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. The appellant in this case has the burden to show that the evidence was tampered or meddled with to overcome a presumption of regularity in the handling of exhibits by public officers and a presumption that public officers properly discharge their duties. Appellant failed to discharge such burden. This Court has held that non-compliance with Section 21, Article II of R.A. No. 9165 will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.

APPEARANCES OF COUNSEL

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

D E C I S I O N

YNARES-SANTIAGO, *J.*:

For review is the Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 01487, which affirmed *in toto* the June 16, 2005 Decision[2] of the Regional Trial Court of San Pablo, Laguna, Branch 32 in Criminal Case No. 14730-SP(04), finding appellant Saidamen Macatingag *y* Namri guilty beyond reasonable doubt of the crime of Violation of Section 5, Article II of Republic Act No. 9165, also known as the "Comprehensive Dangerous Drugs Act of 2002."

In its Brief for the Appellee,[3] the Office of the Solicitor General (OSG) presents the prosecution's version of the facts as follows:

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[1] *Rollo*, pp. 2-17; penned by Associate Justice Fernanda Lampas-Peralta and concurred in by Associate Justices Edgardo P. Cruz and Normandie B. Pizarro.

[2] Records, pp. 86-99; penned by Judge Zorayda Herradura-Salcedo.

[3] CA *rollo*, pp. 83-92.

On January 17, 2004, about 8:00 o'clock in the morning, the members of the Philippine National Police (PNP) in Camp Vicente Lim in Canlubang, Calamba City formed a buy-bust team because of a report from a confidential informant about the drug pushing activities of a certain "Sai," who later turned out to be appellant. The team was composed of P/Sr. Insp. Julius Cesar V. Ablan, as leader, and PO3 Marino A. Garcia as the *poseur-buyer* and PO3 Danilo Leona as the arresting officer, as well as two police officers. After discussing the buy-bust procedure including the pre-arranged signal which is the removal of PO3 Garcia's cap, and the preparation of two ₱500.00 bills initialed with "MAG," the police authorities immediately proceeded to the target area at the vicinity of Phase I, Villa Antonio, San Pablo City.

Upon arriving thereat about 11:30 o'clock in the morning of that day, PO3 Garcia and the confidential informant waited for appellant at the entrance gate of Villa Antonio Subdivision in San Pablo City. Some twenty (20) minutes later, appellant arrived sporting black pants and dark gray t-shirt. PO3 Garcia was introduced to appellant as the prospective buyer. Appellant, on the other hand, asked PO3 Garcia about the money amounting to ₱52,500.00. PO3 Garcia then pulled out an envelope containing the two ₱500.00 bills with the boodle money from his pocket, and demanded the drugs. Appellant thereafter pulled out from his pocket one plastic sachet and handed it to PO3 Garcia. Immediately upon giving appellant the marked money, PO3 Garcia lost no time in giving the pre-arranged signal to PO3 Leona. PO3 Leona thereupon hurriedly seized from appellant the marked money, while PO3 Garcia recovered the plastic sachet containing suspected *shabu* from appellant. The policemen thereafter brought appellant to their station in Canlubang, Calamba City. PO3 Garcia marked the seized plastic sachet with markings "A" and "MAG" representing his initials, and the date and time of arrest. After making an inventory on the seized suspected *shabu*, the police authorities requested for the laboratory examination thereof with the PNP Crime Laboratory.

The seized suspected sachet of *shabu* was shown positive for Methamphetamine Hydrochloride weighing 25.23 grams per Chemistry Report No. D-54-04 issued by P/Insp. Lorna R. Tria, Forensic Chemical Officer of PNP Crime Laboratory.[4]

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[4] *Id.* at 87-88.

On January 19, 2004, appellant was charged with Violation of Section 5, Article II of R.A. No. 9165,[5] in an Information[6] that reads:

[5] Section 5, Article II of R.A. No. 9165: *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.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemical trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

[6] Records, p. 1.

That on or about January 17, 2004, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, did then and there willfully, unlawfully and feloniously sell 25.23 grams of Methamphetamine Hydrochloride (*shabu*), a dangerous drug, without being authorized by law.

CONTRARY TO LAW.[7]

Appellant pleaded not guilty to the offense charged.[8] He maintained that he was at home with his wife on January 17, 2004 when four armed men suddenly entered their house, seized his money, placed handcuffs on his wrists, and forcibly brought him to the police headquarters in Bgy. Canlubang. He averred that he was not allowed to talk with anybody when he was incarcerated for two days and that he was alone during the preliminary investigation. Thereafter, he was transferred to the **Bureau of Jail Management and Penology** (BJMP) in San Pablo City, where he was formally charged with selling *shabu*.

On June 16, 2005, the trial court rendered judgment convicting appellant of Violation of Section 5, Article II of R.A. No. 9165, the dispositive portion of which reads:

WHEREFORE, IN VIEW OF THE FOREGOING CONSIDERATIONS, accused SAIDAMEN MACATINGAG *Y* NAMRI *alias* "SAI" is found GUILTY beyond reasonable doubt of the crime of Violation of Section 5, Article II of Republic Act 9165 also known as the "Comprehensive Dangerous Drugs Act of 2002", and there being no mitigating circumstance, accused is hereby sentenced to suffer a penalty of LIFE IMPRISONMENT and a fine of FIVE HUNDRED THOUSAND PESOS (₱500,000.00), and to pay the costs.

The effects of the crime are ordered confiscated in favor of the government. The custodian of the *shabu* subject of the case is hereby ordered to submit the same to the Dangerous Drugs Board for proper disposition within 48 hours from receipt of a copy of this judgment and the latter is given 48 hours from receipt of the same to submit an acknowledgment receipt to this Court to form part of the records of this case.

SO ORDERED.[9]

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[7] *Id.*

[8] *Id.* at 19.

[9] *Id.* at 99.

The trial court found that all the elements of the crime charged were present and proven beyond reasonable doubt by the evidence of the prosecution and the testimonies of the poseur-buyer and the arresting officer who are presumed to have performed their duties regularly. It disregarded the allegations of the defense that appellant was a victim of a frame-up and that he was not arrested pursuant to a valid buy-bust operation.

On July 31, 2007, the Court of Appeals rendered the assailed Decision which affirmed *in toto* the ruling of the trial court. The appellate court held that the constitutional right of appellant against warrantless arrest and search was not violated; that appellant failed to assail the legality of the arrest and the seizure of the sachet of *shabu* prior to his arraignment or at any stage in the proceedings of the trial court; that the arrest was pursuant to a buy-bust operation which is a valid form of entrapment of felons in the execution of their criminal plan; and that the search conducted on appellant was incidental to a lawful arrest.[10] The appellate court also gave more weight and credence to the testimonies of the members of the buy-bust team because they were not shown to have been impelled by ill-motives in testifying against appellant.

Hence, this petition.[11]

Appellant avers that the trial court and the Court of Appeals gravely erred in giving undue credence to the testimonies of the police officers and in upholding the presumption of regularity in the performance of their official functions. He also assails the validity of his arrest because the police officers were not armed with any warrant when he was arrested. Finally, he assails the propriety of the chain of custody of the *shabu* allegedly seized from him due to the non-observation of Section 21, Article II of R.A. No. 9165.[12]

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[10] *Rollo*, p. 7.

[11] *Id.* at 19.

[12] Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia*

The elements necessary for the prosecution of illegal sale of drugs are (1) the identity of the buyer and the seller, the object,

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and/or Laboratory Equipment. The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

(4) After the filing of the criminal case, the Court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/paraphernalia and/or laboratory equipment, and through the PDEA shall within twenty-four (24) hours thereafter proceed with the destruction or burning of the same, in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender: *Provided*,

and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.[13]

These elements have been proven to be present in the instant case. PO3 Garcia who acted as the poseur-buyer, categorically testified about the buy-bust operation – from the time he was

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That those item/s of lawful commerce, as determined by the Board, shall be donated, used or recycled for legitimate purposes: *Provided, further*, That a representative sample, duly weighed and recorded is retained;

(5) The Board shall then issue a sworn certification as to the fact of destruction or burning of the subject item/s which, together with the representative sample/s in the custody of the PDEA, shall be submitted to the court having jurisdiction over the case. In all instances, the representative sample/s shall be kept to a minimum quantity as determined by the Board;

(6) The alleged offender or his/her representative or counsel shall be allowed to personally observe all of the above proceedings and his/her presence shall not constitute an admission of guilt. In case the said offender or accused refuses or fails to appoint a representative after due notice in writing to the accused or his/her counsel within seventy-two (72) hours before the actual burning or destruction of the evidence in question, the Secretary of Justice shall appoint a member of the public attorney's office to represent the former;

(7) After the promulgation and judgment in the criminal case wherein the representative sample/s was presented as evidence in court, the trial prosecutor shall inform the Board of the final termination of the case and, in turn, shall request the court for leave to turn over the said representative sample/s to the PDEA for proper disposition and destruction within twenty-four (24) hours from receipt of the same; and

(8) Transitory Provision: a) Within twenty-four (24) hours from the effectivity of this Act, dangerous drugs defined herein which are presently in possession of law enforcement agencies shall, with leave of court, be burned or destroyed, in the presence of representatives of the Court, DOJ, Department of Health (DOH) and the accused/and or his/her counsel, and, b) Pending the organization of the PDEA, the custody, disposition, and burning or destruction of seized/surrendered dangerous drugs provided under this Section shall be implemented by the DOH.

[13] *People of the Philippines v. Del Monte*, G.R. No. 179940, April 23, 2008, 552 SCRA 627.

introduced by the informant to appellant as the buyer of the *shabu*; to the time when appellant agreed to the sale; to the actual exchange of the marked money and the heat-sealed sachet containing a white crystalline substance; and until the apprehension of appellant, to wit:

A I myself together with confidential informant just walked, as well as the area and waited the poseur at the agreed place situated at the vicinity of entrance of Villa Antonio, San Pablo City.

Q You were waiting for the suspects at the entrance of Villa San Antonio and then what else transpired next?

A After more or less 20 minutes of waiting ma'am we saw a man wearing a black pants and dark gray t-shirts arrived in our position, it was introduced our confidential informant, he was introduced our confidential that as the poseur, likewise I was also introduced as the seller, [sic] I was also introduced by the confidential informant as the buyer.

Q Who are the supposed to be the buyer, you were introduced as a buyer?

A Yes, ma'am.

FISCAL LAGMAN

Q And this suspect who was the seller, is he present in Court today?

A Yes, ma'am.

Q Would you kindly point to him?

A The 6th man from the Steel Cabinet.

INTERPRETER

Makikitayo, anong pangalan mo?

ACCUSED

Saidamen Macatingag po.

x x x x x x x x x

FISCAL LAGMAN

Q So, after the introductions were made what happened?

A The seller identified the money, ma'am, which is amounting to ₱52,500.00.

FISCAL LAGMAN

Q What did you do?

A I immediately pull out from my pocket the envelope which is contained the 2 pieces of ₱500 bills and the bodol money as agreed amount of ₱52,500. Likewise as also the seller if it has a dangerous drugs, ma'am.

Q And then what happened?

A I immediately pulled out 1 plastic sachet from his pocket and handed it over to me ma'am.

Q One (1) plastic sachet was handed to you?

A Yes, ma'am.

Q After you handed that money?

A No, ma'am we handed first to me the sachet and he demanded the payment of sachet, ma'am.

x x x x x x x x x

FISCAL LAGMAN

Q What happened after the exchanged of the money and plastic sachet?

A After I gave him the buy bust money as agreed upon before we discovered as the bodol money, I immediately executed the pre-arranged signal which is remove my cap, ma'am.

Q After you removed your cap, what happened?

A I saw PO3 Leona arrived and assisted me, after the arresting.

Q While you were arresting this Saidamen, this accused, what did you do as a matter of procedure, what did you tell him?

A We informed him the constitutional rights, ma'am. PO2 Leona was able to recovered this custody control of bodol money.

x x x x x x x x x

Q So, after that, where did you bring Saidamen?

A We immediately brought him at our office at Camp Vicente Lim, Canlubang, Laguna together with confiscated pieces of evidence for proper disposition.

Q You said that you were able to buy 1 plastic sachet of *shabu* that was supposed to be worth of ₱52,500, would you be

able to identify the plastic sachet if you will be shown to you?

A Yes, ma'am.

Q What markings did you place if any?

A I put my exhibit A, my initials, the date and time of arrest included the month and year, ma'am.

Q I am showing to you exhibit F, would you kindly tell us if this is the one that you brought from Saidamen Macatingag?

A Yes, ma'am.[14]

PO3 Leona, the back-up arresting officer during the buy-bust operation corroborated PO3 Garcia's testimony, thus:

Q After you placed yourself 10 meters a way from the house, from the site and likewise Marino Garcia and the informant and the fence near the site, what happened thereafter?

A I saw a person came out from that way near the hollow blocks fence wearing black pants and green t-shirt and I saw they were talking with our confidential informant.

FISCAL COMILANG

Q Could you see the person who just arrived and talked with your confidential informant on said occasion, is he in Court?

A Yes, sir.

Q Could you please point to him if he is present?

INTERPRETER

Witness pointed to a person who gave us his name as Saidamen Macatingag.

FISCAL COMILANG

Q Now, Mr. Witness after the confidential informant and the accused had a conversation what did if any transpired after this conversation?

A After 30 minutes I saw the pre-arranged signal that this PO3 Marino Garcia will remove his cap.

Q You mean to say or to impress this court that Mr. Witness that the informant and Mr. Garcia were together when they had a transaction with the accused?

[14] TSN, April 20, 2004, pp. 9-14.

A Yes, sir because the confidential informant introduced Mr. Marino Garcia to the accused.

x x x x x x x x x

FISCAL COMILANG

Q After you saw PO3 Marino Garcia removed his cap, what did you do after that?

A I went to the area to help PO3 Garcia.

Q What if any did you find out after helping PO3 Marino Garcia?

A I arrested Saidamen and I removed from him the 2 pieces of ₱500 the bodol money.

x x x x x x x x x

Q Now after recovering that 2 ₱500 bills from the accused what will be, were you able to recover?

A I recovered from the accused the money and it was SPO3 Marino Garcia who recovered the 25 grams of *shabu* conducted.[15]

Prosecutions involving illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operation.[16] It is a fundamental rule that findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals.[17]

The testimonies of police officers Garcia and Leona, and the sachet of *shabu* sold by appellant sufficiently proved the crime

[15] TSN, August 24, 2004, pp. 14-15, 17-18.

[16] *People of the Philippines v. Hajili*, 447 Phil. 283, 295-296 (2003).

[17] *People of the Philippines v. Bayani*, G.R. No. 179150, June 17, 2008, 554 SCRA 741.

charged. Moreover, the prosecution was able to establish that the substance recovered from appellant was indeed *shabu*.[18]

In view of these testimonies and evidence of the prosecution, appellant's denial must fail. The Court has consistently stressed that denial, like alibi, is a weak defense that becomes even weaker in the face of positive identification of the accused by prosecution witnesses.[19] Moreover, appellant failed to adduce clear and convincing evidence to overturn the presumption that the arresting officers regularly performed their duties. It was not shown, by any satisfactory degree of proof, that said policemen were impelled by ill-motives to testify against him. There is, therefore, no basis to suspect the veracity of their testimonies.

With regard to the validity of his arrest, evidence shows that appellant was the subject of a buy-bust operation. In this jurisdiction, the conduct of a buy-bust operation is a common and accepted mode of apprehending those involved in illegal sale of prohibited or regulated drugs. It has been proven to be an effective way of unveiling the identities of drug dealers and of luring them out of obscurity.[20] It catches the violator *in flagrante delicto* and the police officers conducting the operation are not only authorized but duty-bound to apprehend the violator and to search him for anything that may have been part of or used in the commission of the crime.[21]

Finally, this Court likewise finds no merit in appellant's contention that the police officers failed to comply with the guidelines on the chain of custody and disposition of the seized sachet of *shabu* as provided in Section 21, Article II of R.A. No. 9165. Testimonies of prosecution witnesses convincingly state that the integrity and the evidentiary value of the seized item was properly preserved by the apprehending officers. P03 Garcia testified that he marked the sachet of *shabu* with his

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[18] Records, p. 11.

[19] *People of the Philippines v. Delmendo*, 357 Phil. 363, 373 (1998).

[20] *People of the Philippines v. Naquita*, G.R. No. 180511, July 28, 2008, SC *E-Library*.

[21] *People of the Philippines v. Juatan*, 329 Phil. 331, 338 (1996).

initials, and the date and time of appellant's arrest.[22] PO3 Leona confirmed that he had seen PO3 Garcia mark the same sachet of *shabu* sold by appellant; that a letter of request for the examination of said sachet was made; and such request was received by the regional crime laboratory office. Thus:

Q Were you able to see that the *shabu* was actually was you said that recovered PO3 Marino Garcia from the accused?
A Yes, sir.

COURT

Q Did you put your initial in the specimen?
A I was only accompanied Marino Garcia in bringing to the crime lab.

FISCAL COMILANG

Q Since you have seen Mr. Witness the actual *shabu* was taken from the accused, do you know if Mr. Garcia placed any reference on the said article, if any?
A Yes, sir, the initial of Marino Garcia.

Q What is that initial?
A MAG.

Q Mr. Witness, why do you know that police officer Marino Garcia actually placed his initial on the said specimen or item?
A Everytime that we conducted the buy bust, it is our SOP to place the marking.

Q Mr. Witness I will show you that item confiscated Marino Garcia from the accused on the alleged of the item, could you identify it?
A Yes, sir.

Q I will show to you now the plastic sachet big plastic sachet which contained white crystalline substance, could you please tell us what is the relationship of this item from that item allegedly taken by Marino Garcia from the accused on which marking was placed?
A This is the item which is recovered from the accused. Mr. Garcia placed his initial.

[22] TSN, April 20, 2004, p. 14.

Q What is MAG?
A MAG referred to Marino A. Garcia.

x x x x x x x x x

Q After the specimen and the accused were transferred to the investigator of Regional director what happened to the accused and the specimen?

A The investigator prepared a paper for the filing of the…and prepared a letter request for the examination.

Q Would you specify what are those documents prepared by the investigator as pre-requisite of filing of this case?

A We prepared the letter request for the crime lab request for the accused we first report to the effect…did not suffer physical injury.

x x x x x x x x x

Q Do you know if this document was actually received by the addressee?
A Yes, sir, because I was with them.

Q What proof that this document was actually received by the addressee?
A There was a stamp marked of receipt, sir.[23]

As can be gleaned from the foregoing, the seized sachet of *shabu* was immediately marked for proper identification and, thereafter, forwarded to the Crime Laboratory for examination. The Chemistry Report of the Regional Crime Laboratory Office stated that the specimen submitted by the apprehending officers indeed bore the marking "Exh. A MAG 171200-01-14" and that the same gave positive result to the tests for the presence of Methamphetamine Hydrochloride. Forensic Chemical Officer Tria confirmed on the witness stand that she examined the specimen submitted by the PDEA and that she was the one who prepared the Chemistry Report No. D-54-04.[24]

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[23] TSN, August 24, 2004, pp. 18-20, and 21-22.

[24] TSN, April 13, 2004, pp. 4-6.

It is thus evident that the identity of the *corpus delicti* has been properly preserved and established by the prosecution. Besides, the integrity of the evidence is presumed to be preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. The appellant in this case has the burden to show that the evidence was tampered or meddled with to overcome a presumption of regularity in the handling of exhibits by public officers and a presumption that public officers properly discharge their duties.[25] Appellant failed to discharge such burden.

This Court has held that non-compliance with Section 21, Article II of R.A. No. 9165 will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.[26]

In *People of the Philippines v. Del Monte*,[27] it was held that:

> Under Section 3 of Rule 128 of the Rules of Court, evidence is admissible when it is relevant to the issue and is not excluded by the law or these rules. For evidence to be inadmissible, there should be a law or rule which forbids its reception. If there is no such law or rule, the evidence must be admitted subject only to the evidentiary weight that will accorded it by the courts. One example is that provided in Section 31 of Rule 132 of the Rules of Court wherein a party producing a document as genuine which has been altered and appears to be altered after its execution, in a part material to the question in dispute, must account for the alteration. His failure to do so shall make the document inadmissible in evidence. This is clearly provided for in the rules.
>
> We do not find any provision or statement in said law or in any rule that will bring about the non-admissibility of the confiscated

[25] *People of the Philippines v. Miranda*, G.R. No. 174773, October 2, 2007, 534 SCRA 552, 568.

[26] *People of the Philippines v. Naquita*, *supra* note 20.

[27] *Supra* note 13.

and/or seized drugs due to non-compliance with Section 21 of Republic Act No. 9165. The issue therefore, if there is non-compliance with said section, is not of admissibility, but of weight — evidentiary merit or probative value — to be given the evidence. The weight to be given by the courts on said evidence depends on the circumstances obtaining in each case.[28]

All told, We see no reason to disturb the findings of the trial court that appellant is guilty beyond reasonable doubt of illegal sale of a dangerous drug, as defined and penalized in Section 5, Article II of R.A. No. 9165. Under said provision, the illegal sale of any dangerous drug, regardless of its quantity and purity, is punishable by life imprisonment to death and a fine of ₱500,000.00 to ₱10,000,000.00.

For illegally selling 25.23 grams of *shabu*, and there being no modifying circumstance alleged in the Information, the trial court, as sustained by the Court of Appeals, correctly imposed the penalty of life imprisonment in accordance with Article 63 (2) of the Revised Penal Code[29] and a fine of ₱500,000.00.

WHEREFORE, the instant appeal is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CR-HC No. 01487 dated July 31, 2007, sustaining the conviction of appellant Saidamen Macatingag *y* Namri for violation of Section 5, Article II of Republic Act No. 9165, and imposing upon him the penalty of life imprisonment and a fine of ₱500,000.00 is hereby *AFFIRMED*.

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[28] *Id.* at 637.

[29] REVISED PENAL CODE (1932), Art. 63, par. 2: *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:

x x x x x x x x x

2. When there are neither mitigating nor aggravating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.

SO ORDERED.

Carpio,[*] *Austria-Martinez, Chico-Nazario,* and *Leonardo-de Castro,*[**] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 183567. January 19, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **AVELINO DELA PEÑA, JR.,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF A CRIME; ELEMENTS.— In a criminal case, the prosecution must prove two things: (1) the fact of the crime; and (2) the fact that the accused is the perpetrator of the crime. Here, there is no question on the existence of the first element, as in fact, the killing of Danilo is admitted by the parties. The appellant only puts in issue the second. The Court finds, however, that, in this case, the prosecution fulfilled its bounden duty to establish the identity of the assailant as the perpetrator of the crime.

2. ID.; EVIDENCE; TESTIMONY OF A SINGLE WITNESS; WHEN SUFFICIENT TO SUPPORT A CONVICTION. — It should be emphasized that the testimony of a single eyewitness, if positive and credible, is sufficient to support a conviction even in a charge of murder. Relationship does not necessarily give rise to any presumption of bias or ulterior motive, nor does it impair the credibility of witnesses or tarnish their testimonies.

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[*] In lieu of Associate Justice Antonio Eduardo B. Nachura.

[**] Designated as additional member of the Third Division in view of the retirement of Associate Justice Ruben T. Reyes, per Special Order No. 546 dated January 5, 2009.

3. ID.; ID.; POSITIVE IDENTIFICATION OF THE ACCUSED PREVAILS OVER ALIBI AND DENIAL.— Positive identification, where categorical and consistent, without any showing of ill-motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial which, if not substantiated by clear and convincing proof, are negative and self-serving evidence undeserving of weight in law. The appellant had not shown that it was physically impossible for him to be present at the time and place of the crime.

4. ID.; ID.; CREDIBILITY OF WITNESSES; FINDINGS AND CONCLUSIONS OF THE TRIAL COURT WHEN AFFIRMED BY THE APPELLATE COURT, GENERALLY CONCLUSIVE AND BINDING UPON THE SUPREME COURT; RATIONALE. — Findings and conclusions of trial courts on the credibility of witnesses enjoy, as a rule, a badge of respect, for trial courts have the advantage of observing the demeanor of witnesses as they testify. Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath—all of which are useful aids for an accurate determination of a witness' honesty and sincerity. The trial court's findings are even accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated, and which, if properly considered, would alter the result of the case. It must also be emphasized that, here, the CA affirmed the findings of the RTC. In this regard, it is settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court.

5. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; WHEN PRESENT. — The essence of treachery is the sudden and unexpected attack by the aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victim. In this case, the victim was unarmed; and was attacked from behind and at close range. The assailant further hid behind the window to mask his presence and identity.

APPEARANCES OF COUNSEL

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

D E C I S I O N

NACHURA, *J.*:

For the final review of the Court is the trial court's conviction of appellant Avelino dela Peña, Jr. for murder. In the September 21, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00133, the appellate court, on intermediate review, affirmed with modification in the award of damages, the August 1, 2001 Decision[2] of the Regional Trial Court (RTC) of Bugasong, Antique, Branch 64, in Criminal Case No. B-0234.

The antecedent facts and proceedings follow:

On March 8, 1997, at around 7:00 in the evening, the victim, the late Danilo M. Sareño, and his wife, Maria, illuminated by a torch and kerosene lamp,[3] were having dinner at their residence in Centro Binangbang, Barbaza, Antique.[4] In the course of the meal, Danilo stood up to get rice from the pot on the stove, one and a half meters away from the dining table.[5] Maria then momentarily saw Danilo's uncle and their neighbor, appellant Avelino, standing outside the house and behind the window (with bamboo grills) near the stove. In an instant, the appellant aimed and fired a gun at Danilo's back while he was scooping rice from the pot. Hysterical and shocked, Maria rushed to her husband, and shouted for help.[6] Haplessly, however, Danilo was already dead on arrival at the hospital.[7]

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[1] Penned by Associate Justice Antonio L. Villamor, with Associate Justices Isaias P. Dicdican and Stephen C. Cruz, concurring; *rollo*, pp. 5-18.

[2] Records, pp. 170-180.

[3] TSN, March 3, 1999, p. 3.

[4] TSN, January 20, 1999, pp. 7-8.

[5] TSN, March 3, 1999, p. 14.

[6] *Id.* at 2-8.

[7] TSN, January 20, 1999, p. 12.

In the morning of the following day, March 9, the victim's body was autopsied by Dr. Divina M. Ruiz, Municipal Health Officer of Barbaza, Antique.[8] The cause of death was medically reported as "[c]ardiorespiratory arrest secondary to gunshot wound at the level of the 9th rib, back, right 1.5 inches from the midspinal column hitting the right ventricle of the heart and secondary to massive hemorrhage of the thoracic cavity due to rupture of the right ventricle of the heart."[9] Dr. Ruiz recovered the slug of the bullet at the said portion of the heart, and turned the same over to the authorities.[10] The gunshot wound had gunpowder indicating that the muzzle of the gun was near the body of the victim. There was no exit wound.[11]

The wife of the deceased formally lodged a complaint against the appellant on April 22, 1997.[12] In the October 27, 1997 Information[13] filed with the RTC of Bugasong, Antique, Branch 64, the appellant was charged as follows:

x x x x x x x x x

The undersigned Assistant Provincial Prosecutor accuses Avelino dela Peña, Jr. of the crime of Murder, committed as follows:

That on or about the 8th day of March, 1997, in the Municipality of Barbaza, Province of Antique, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused being then armed with an illegally possessed firearm (caliber 38 revolver), with intent to kill and with treachery, did then and there, willfully, unlawfully and feloniously attack, assault and shoot with said caliber 38 revolver one Danilo Sareño thereby inflicting gunshot wound on his body which caused his instantaneous death.

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[8] TSN, November 5, 1998, pp. 2-3.

[9] Records, p. 4.

[10] TSN, November 5, 1998, p. 10.

[11] *Id.* at 6-7.

[12] Records, p. 7.

[13] *Id.* at 21.

Contrary to the provisions of Article 248 of the Revised Penal Code, as amended by R.A. 7659.

San Jose, Antique; October 27, 1997.[14]

When the warrant for his arrest was served, the appellant could not be found within the jurisdiction of the municipality. The police learned that he was in Manila at an unknown address.[15] On August 27, 1998, the appellant was finally apprehended[16] within the vicinity of St. Anthony's College in the municipality while he was driving a tricycle.[17]

During the arraignment on September 17, 1998, the appellant entered a plea of not guilty.[18] In his defense, he denied that he was the one who shot Danilo. He further claimed that on the date and time the shooting happened, he was at his best friend's (Eddie Limod's) house in another *barangay* four kilometers away from the scene of the crime, to ask for boat passes from his friend because he was leaving for Manila the following day. He left his friend's house at 11:00 in the evening. He later learned from his mother and siblings that it was his brother, Eldred, who shot Danilo. On the morning of March 9, 1997, he boarded the *M/V Romblon* bound for Manila.[19]

Eddie Limod corroborated appellant's alibi.[20] Gonzalo Sareño, the father of the victim, likewise testified in appellant's favor, and claimed that, after he heard the gunshot, he peeped through his window (his house was about 8 arm's length away from Danilo's house[21]) and saw Eldred running away from the crime scene.[22]

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[14] *Id.*

[15] *Id.* at 26-A.

[16] *Id.* at 27.

[17] TSN, August 31, 2000, p. 8.

[18] Records, p. 31.

[19] TSN, August 31, 2000, pp. 3-16.

[20] TSN, May 6, 1999, pp. 2-15.

[21] TSN, April 4, 2001, p. 4.

[22] *Id.* at 14.

On August 1, 2001, the trial court rendered its Decision[23] finding the accused guilty beyond reasonable doubt of murder. The dispositive portion of the court's decision reads:

> In view thereof, this Court finds the accused guilty beyond reasonable doubt of the crime of Murder punished under Article 248 of the Revised Penal Code and in the absence of any aggravating or mitigating circumstance he is hereby sentenced to *Reclusion Perpetua* and the accessories thereof.
>
> Accused is ordered to pay the heirs of deceased Danilo Sareño the amount of ₱50,000.00 as indemnity for his death.
>
> SO ORDERED.[24]

The appellant timely filed his Notice of Appeal[25] on December 19, 2001. On June 3, 2002, he was received at the New Bilibid Prison for commitment.[26] In the September 20, 2004 Resolution[27] of the Court in G.R. No. 152448, we transferred the case to the appellate court for appropriate action and disposition following our ruling in *People v. Mateo*.[28]

On September 21, 2007, the CA, as aforesaid, affirmed, with modification in the award of damages, the decision of the trial court.[29] The dispositive portion of the appellate court's decision reads:

> WHEREFORE, premises considered, the assailed *Decision* of the RTC, 6th Judicial Region, Branch 64, Bugasong, Antique, in Criminal Case No. B-0234, convicting appellant, Avelino dela Peña, Jr., guilty beyond reasonable doubt of Murder, is hereby AFFIRMED with MODIFICATION, in that appellant is directed to pay the heirs of Danilo Sareño the amounts of ₱50,000.00 as moral

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[23] *Supra* note 2.

[24] Records, p. 180.

[25] *Id.* at 181.

[26] CA *rollo*, pp. 64, 74.

[27] *Id.* at 141.

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

[29] *Supra* note 1.

damages and ₱25,000.00 as exemplary damages in addition to civil indemnity.

No costs.

SO ORDERED.[30]

The Court now finally reviews the trial and the appellate courts' uniform conviction of the appellant for murder.

We affirm. The appellant is guilty beyond reasonable doubt of the murder of Danilo M. Sareño.

In a criminal case, the prosecution must prove two things: (1) the fact of the crime; and (2) the fact that the accused is the perpetrator of the crime.[31] Here, there is no question on the existence of the first element, as in fact, the killing of Danilo is admitted by the parties. The appellant only puts in issue the second. The Court finds, however, that, in this case, the prosecution fulfilled its bounden duty to establish the identity of the assailant as the perpetrator of the crime.

It should be emphasized that the testimony of a single eyewitness, if positive and credible, is sufficient to support a conviction even in a charge of murder.[32] Relationship does not necessarily give rise to any presumption of bias or ulterior motive, nor does it impair the credibility of witnesses or tarnish their testimonies.[33]

In this case, the eyewitness account of Maria, the wife of the victim, was clear, sincere and truthful; and her identification of appellant Avelino as the assailant was positive and categorical, thus:

COURT:

> Before you saw the accused you were eating already your supper?

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[30] CA *rollo*, pp. 158-159.

[31] *People v. Delmo*, 439 Phil. 212, 255 (2002).

[32] *People v. Zeta*, G.R. No. 178541, March 27, 2008, 549 SCRA 541, 559.

[33] *People v. Cariño*, G.R. No. 131117, June 15, 2004, 432 SCRA 547, 581.

A: I was eating and he stood up to scoop rice when the incident happened, Your Honor.

Q: How did you happen to see the accused?
A: He was just standing there, Your Honor and the distance is very near, Your Honor.

Q You have seen the accused standing before your husband got rice from the rice pot?
A: Yes, he stood up and right after he stood up he shot him, Your Honor.

Q: In other words the accused is already outside of your grills while your husband was going to scoop rice?
A: Yes, he was waiting for my husband to stand up, Your Honor.

Q: What did you do or what did you say when you saw the accused standing beside the grills of your kitchen?
A: When my husband stood up to scoop rice he was just at the back standing and he immediately shot my husband, Your Honor.

Q: Now, that was the first time you saw the accused, or when was the first time you saw the accused? You said the accused was standing then your husband went to get rice and the accused shot your husband, was it the first time you saw the accused when he shot your husband?
A : Yes, Your Honor.

COURT:

And what was he doing when you first saw him? You stand up and demonstrate.
A: When my husband stood up to scoop rice he immediately put his hand in the window grill and shot my husband between the bamboo grills, Your Honor.

Q: What hand was holding the gun?
A: I did not notice what hand was holding the firearm but I noticed that the gun fired, Your Honor.

Q: Did his hand enter the bamboo grills that you are mentioning before?
A: No, only the gun, Your Honor.

Q: Now, how did you know that it was the accused who shot your husband when you said there was a bamboo grill?
A: Because there was a bright light coming from our neighbor's house, Your Honor.

Q: Inside your house there is also a light?
A: Yes, Your Honor.

Q: What kind of light?
A: Kerosene lamp and torch lamp, Your Honor.

Q: And when the accused shot your husband did you see the face of the accused?
A: Yes, Your Honor.

Q: How long have you known the accused?
A: Seven (7) years, Your Honor.

Q: And he is your neighbor?
A: Yes, Your Honor.

COURT:
Immediate neighbor?
A: Yes, Your Honor.

Q: Now, when you saw the accused shot your husband what did the accused do after that?
A: He ran away, Your Honor.[34]

The Court notes that the eyewitness and the assailant were no strangers to each other, and that the scene of the crime was sufficiently illuminated. Surely, it is not fanciful to stress that even under less favorable circumstances a familiar face would considerably reduce any error in identifying the assailant.[35] It has also been consistently ruled in prior cases that the illumination produced by a kerosene lamp is sufficient to allow identification of persons.[36]

Positive identification, where categorical and consistent, without any showing of ill-motive on the part of the eyewitness

[34] TSN, March 3, 1999, pp. 16-18.

[35] *People v. Bagsit*, 456 Phil. 623, 631 (2003).

[36] *People v. Dagpin*, G.R. No. 149560, June 10, 2004, 431 SCRA 643, 658.

testifying on the matter, prevails over alibi and denial which, if not substantiated by clear and convincing proof, are negative and self-serving evidence undeserving of weight in law.[37] The appellant had not shown that it was physically impossible for him to be present at the time and place of the crime.[38]

Thus, we find no reason to disturb the trial court's reliance on the testimony of eyewitness Maria. Findings and conclusions of trial courts on the credibility of witnesses enjoy, as a rule, a badge of respect, for trial courts have the advantage of observing the demeanor of witnesses as they testify.[39] Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath—all of which are useful aids for an accurate determination of a witness' honesty and sincerity. The trial court's findings are even accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated, and which, if properly considered, would alter the result of the case.[40] It must also be emphasized that, here, the CA affirmed the findings of the RTC. In this regard, it is settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court.[41]

As to the testimony of the victim's father, we likewise agree with the trial court that—

> His testimony seem[s] to this court disincredible (sic). In the first place he did not see the shooting because he only peeped out of the window when he heard a gun explosion and saw Eldred leaving the place running.[42]

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[37] *People v. Baltazar*, 455 Phil. 320, 331 (2003); *People v. Berdin*, 462 Phil. 290, 304 (2003).

[38] *People v. Delmo*, *supra* note 31, at 259.

[39] *People v. Malolot*, G.R. No. 174063, March 14, 2008, 548 SCRA 676, 688.

[40] *People v. Cariño*, *supra* note 33, at 571.

[41] *Ingal v. People*, G.R. No. 173282, March 4, 2008, 547 SCRA 632, 652.

[42] Records, p. 178.

The RTC also correctly ruled that treachery attended the killing, thus:

> It is undisputed that the gunshot wound sustained by the victim was located at the left back portion of the chest and he has no other injuries apart from this wound. Thus, it is evident that the victim was shot from behind, with his back towards the assailant. It has many times been held that treachery exists when the defenseless victim was shot from behind and that this shows that accused had employed means of attack which offered no risk to himself from any defensive or retaliatory act which the victim might have taken. It is clear, therefore, that the victim has not even thought that he will be shot by the accused while scooping with a laddle (sic) rice inside the pot. Accused employed deliberately the kind of attack which offered no risk to himself what the victim might do.
>
> Treachery was employed by the accused because he sought the cover of darkness to shot (sic) the victim to avoid his recognition. Accused likewise shot the victim while he was behind the railings of the kitchen and it would be hard for the victim to retaliate even if he had the knowledge that he could be shot by the accused. With all these circumstances attendant to the instant case no doubt could be entertained by this court that the accused shot the victim treacherously.
>
> Nighttime, however, as aggravating circumstance is absorbed by treachery.[43]

The essence of treachery is the sudden and unexpected attack by the aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victim.[44] In this case, the victim was unarmed; and was attacked from behind and at close range. The assailant further hid behind the window to mask his presence and identity.

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[43] *Id.* at 179.

[44] *People v. Villa*, G.R. No. 179278, March 28, 2008, 550 SCRA 480, 498; *People v. Malolot*, *supra* note 39, at 690; *Ingal v. People*, *supra* note 41, at 654-655.

Finally, we find no reason to disturb the penalty imposed and the amount of damages awarded by the CA, as they are all in accord with law and current jurisprudence.

WHEREFORE, premises considered, the September 21, 2007 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00133 is *AFFIRMED*.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Chico-Nazario, and *Leonardo-de Castro,*[*] *JJ.,* concur.

THIRD DIVISION

[A.M. No. MTJ-09-1729. January 20, 2009]
(Formerly OCA I.P.I No. 07-1910-MTJ)

NORYN S. TAN, *petitioner, vs.* **JUDGE MARIA CLARITA CASUGA-TABIN, Municipal Trial Court in Cities, Branch 4, Baguio City,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; REVISED RULE ON SUMMARY PROCEDURE; ARREST OF ACCUSED; FAILURE OF THE ACCUSED TO APPEAR DURING THE ARRAIGNMENT DOES NOT JUSTIFY THE ISSUANCE OF WARRANT FOR HIS ARREST WHERE HE WAS NOT ACTUALLY NOTIFIED OF THE SAME.— Whenever a criminal case falls under the Summary Procedure, the general rule is that the court shall *not* order the arrest of the accused, *unless* the accused fails to appear whenever required. This is clearly provided in Section 16 of the 1991 Revised Rule on Summary Procedure xxx. While it is true that the Rules of Court provides for presumptions, one of

[*] Additional member per Special Order No. 546 dated January 5, 2009.

which is that official duty has been regularly performed, such presumption should not be the sole basis of a magistrate in concluding that a person called to court has failed to appear as required, which in turn justifies the issuance of a warrant for her arrest, when such notice was not actually addressed to her residence but to the police in her city. So basic and fundamental is a person's right to liberty that it should not be taken lightly or brushed aside with the presumption that the police through which the notice had been sent, actually served the same on complainant whose address was not even specified.

2. ID.; ID.; ID.; ID.; ISSUANCE OF ARREST WARRANT UNJUSTIFIED IN CASE AT BAR.— Section 12 of the 1983 Rules on Summary Procedure was not reproduced in the 1991 Revised Rules on Summary Procedure, while Section 10 was revised and portions thereof reproduced in Sections 12 and 16 of the 1991 Rules on Summary Procedure. Granting, *arguendo,* that Sections 10 and 12 of the 1983 Rules on Summary Procedure in Special Cases were not repealed by the 1991 Revised Rules, still it does not justify the warrant of arrest issued in this case. Section 12 talks of instances when bails are required, one of which is when the accused does not reside in the place where the violation of the law or ordinance was committed. It does not state, however, that a warrant of arrest shall immediately issue even without actual notice to the accused. Respondent's interpretation ascribes to the rules those which were not expressly stated therein and unduly expands their meaning.

3. JUDICIAL ETHICS; JUDGES; ISSUANCE OF WARRANT OF ARREST AGAINST THE ACCUSED IN VIOLATION OF THE SUMMARY PROCEDURE RULE CONSTITUTE GRAVE ABUSE OF AUTHORITY.— Whatever the real reasons behind respondent's issuance of complainant's warrant of arrest — whether from the mistaken belief that complainant was actually notified, or the presumption that the police had served a copy of the order on complainant or that the rules allow immediate issuance of warrants of arrests whenever the accused does not reside in the locality where the crime was committed — the fact is, respondent failed to uphold the rules, for which she should be held administratively liable. The Court has held that a judge commits grave abuse of authority when she hastily issues a warrant of arrest against the accused in violation of

the summary procedure rule that the accused should first be notified of the charges against him and given the opportunity to file his counter-affidavits and countervailing evidence.

4. ID.; ID.; WHEN THE LAW IS SUFFICIENTLY BASIC, A JUDGE OWES IT TO HER OFFICE TO KNOW AND SIMPLY APPLY IT.— While judges may not always be subjected to disciplinary action for every erroneous order or decision they render, that relative immunity is not a license to be negligent, abusive and arbitrary in their prerogatives. If judges wantonly misuse the powers vested in them by law, there will not only be confusion in the administration of justice but also oppressive disregard of the basic requirements of due process. While there appears to be no malicious intent on the part of respondent, such lack of intent, however, cannot completely free her from liability. When the law is sufficiently basic, a judge owes it to her office to know and simply apply it.

5. ID.; ID.; PENALTY OF FINE IMPOSED UPON RESPONDENT JUDGE FOR GRAVE ABUSE OF AUTHORITY.— Considering that this is respondent's first administrative infraction in her more than 8 years of service in the judiciary, which serves to mitigate her liability, the Court holds the imposition of a fine in the amount of ₱10,000.00 to be proper in this case.

APPEARANCES OF COUNSEL

Cesar B. Brillantes for complainant.

R E S O L U T I O N

AUSTRIA-MARTINEZ, *J.*:

Noryn S. Tan (complainant) filed a Complaint dated April 2, 2007 against Judge Maria Clarita Casuga-Tabin (respondent) of the Municipal Trial Court in Cities (MTCC), Branch 4, Baguio City for denial of due process relative to Criminal Case No. 118628.

Complainant avers: On November 9, 2006, the Philippine National Police (PNP) Quezon City Police District (QCPD) served her a warrant of arrest dated October 13, 2006, issued by the MTCC Baguio City, Branch 4, presided by respondent,

relative to Criminal Case No. 118628 for alleged violation of *Batas Pambansa Blg*. 22. It was only then that she learned for the first time that a criminal case was filed against her before the court. She was detained at the Quezon City Hall Complex Police Office and had to post bail of ₱1,000.00 before the Office of the Executive Judge of the Regional Trial Court (RTC) of Quezon City for her temporary release. Upon verification, she learned that respondent issued on August 8, 2006 an Order directing her to appear before the court on October 10, 2006 for arraignment. It was sent by mail to PNP Quezon City for service to her. However, she did not receive any copy of the Order and up to the present has not seen the same; hence, she was not able to attend her arraignment. She also found out that there was no proof of service of the Order or any notice to her of the arraignment. This notwithstanding, respondent issued a warrant for her arrest. Complainant alleges that she was deeply aggrieved and embarrassed by the issuance of the warrant for her arrest despite the fact that she was never notified of her arraignment. Complainant prayed that the appropriate investigation be conducted as to the undue issuance of a warrant for her arrest.[1]

In her Comment[2] dated July 5, 2007, respondent answered: She issued the warrant of arrest because when the case was called for appearance, the complainant, as accused therein, failed to appear. Prior to the issuance of the warrant of arrest, her staff sent by registered mail the court's Order dated August 8, 2006 addressed to complainant "through the Chief of Police, PNP, 1104, Quezon City" directing complainant to appear on October 10, 2006 at 8:30 a.m. for the arraignment and preliminary conference in Criminal Case No. 118628, as proven by Registry Receipt No. 0310. It is true that the return on the court's Order dated August 8, 2006 had not yet been made by the QC Police on or before October 10, 2006. Nonetheless, she issued the warrant of arrest in good faith and upon the following grounds:

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[1] *Rollo*, pp. 3-5.

[2] The Office of the Court Administrator (OCA) referred the Complaint to respondent for her Comment in a 1st Indorsement dated April 20, 2007, *id*. at 28.

(a) under Sec. 3 of Rule 131[3] of the Rules of Court, the court was entitled to presume that on October 10, 2006, after the lapse of a little over two months, official duty had been regularly performed and a letter duly directed and mailed had been received in the regular course of mail; and (b) Sec. 12 of the 1983 Rule on Summary Procedure in Special Cases provides that bail may be required where the accused does not reside in the place where the violation of the law or ordinance was committed. The warrant of arrest she issued was meant to implement this provision, which was not repealed by the 1991 Revised Rule on Summary Procedure, since complainant is a resident of Quezon City and not of Baguio City. If her interpretation was erroneous, she (respondent) believes that an administrative sanction for such error would be harsh and unsympathetic. She has nothing personal against complainant and did not want to embarrass or humiliate her. She issued the warrant in the honest belief that her act was in compliance with the rules. She prays that the case against her be dismissed and that a ruling on the interpretation of Secs. 10 & 12, of the 1983 Rule on Summary Procedure in Special Cases, in relation to Sec. 16 of the 1991 Revised Rule on Summary Procedure be made for the guidance of the bench and bar.[4]

The OCA, in its agenda report dated September 28, 2007, recommended that the case be dismissed for lack of merit. It held: Prior to the filing of the information, a preliminary investigation was conducted by the provincial prosecutor resulting in the Resolution dated July 11, 2006 recommending the filing of the case; it was incredulous for complainant to claim that she came to learn for the first time of the filing of the criminal case when the warrant of arrest was served on her; furthermore, there was already a complete service of notice as contemplated

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[3] Sec. 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

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

in Sec. 10, Rule 13[5] of the Rules of Court; hence the requirement of notice was fully satisfied by the service of the Order dated August 8, 2006 and the completion of the service thereof.[6]

Adopting the recommendation of the OCA, the Court on November 12, 2007 issued a Resolution dismissing the case for lack of merit.[7]

Complainant filed a Motion for Reconsideration dated January 8, 2008 alleging: The issue in this case was not whether complainant was aware of the criminal complaint against her, but whether the issuance of a warrant of arrest against her despite the absence of notice should be administratively dealt with; complainant was never notified of the arraignment; thus, she was not able to attend the same; respondent admitted in her Comment that no return had yet been made on or before October 10, 2006, the date respondent ordered the warrant to be issued; her explanation of good faith was therefore unjustifiable; neither could respondent invoke the presumption of regularity of performance of official duty, since the complainant did not actually receive any notice; respondent in an Order dated March 14, 2007 admitted that since she did not usually wear eyeglasses during hearings, she thought that the acknowledgment receipt at the back of the Order referred to the copy sent to complainant; later scrutiny, however, showed that it pertained to the one sent to the prosecutor's office; Section 10, Rule 13 of the Rules of Court did not apply to the instant case; the Order was addressed and sent to PNP Quezon City; assuming that the Order was properly served on the PNP, it was not equivalent to a service on complainant; there was no actual delivery of the Order to the complainant; hence, there was no personal service; neither was it served by ordinary

[5] Section 10. *Completeness of service*. — Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of ten (10) days after mailing, unless the court otherwise provides. Service by registered mail is complete upon actual receipt by the addressee, or after five (5) days from the date he received the first notice of the postmaster, whichever date is earlier.

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

[7] *Rollo*, p. 34.

mail or by registered mail; thus, the rule on completeness of service had not been satisfied; complainant was not aware of and therefore did not attend the preliminary investigation of her case; no proof can be shown that she was ever notified of the said preliminary investigation, much less of the filing of the same.[8]

In a Resolution dated April 16, 2008, the Court required respondent to Comment on complainant's Motion for Reconsideration.[9]

Complainant filed a Comment stating: Complainant's motion did not raise any new issue or ground that would merit the reconsideration of the Court's November 12, 2007 Resolution; complainant failed to rebut the presumption that she was notified of the scheduled arraignment; what complainant propounded was a mere self-serving denial that she never received the subpoena intended for her; there was no explanation why she would be able to receive a warrant of arrest; which was coursed in the same manner as the subpoena, in a little less than a month, but allegedly to receive the subpoena in almost two months; if complainant's assertion was to be believed, the effect would be to paralyze the operation of courts in the provinces that had to inevitably rely on the police resources of Metro Manila; arraignments could not proceed and trials could not go on; it was reasonable to follow as a rule that once a pleading or any other official document was received in the ordinary course of sending them, it must be presumed that others of the same nature were also delivered to the named addressees; to believe otherwise would be to delay justice for those residing outside Metro Manila.[10]

The Court finds the Motion for Reconsideration to be impressed with merit.

Whenever a criminal case falls under the Summary Procedure, the general rule is that the court shall *not* order the arrest of

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[8] *Id.* at 38-43.

[9] *Id.* at 47.

[10] *Rollo*, pp. 48-49.

the accused, *unless* the accused fails to appear whenever required.[11] This is clearly provided in Section 16 of the 1991 Revised Rule on Summary Procedure which states:

> Sec. 16. *Arrest of accused.* — **The court shall not order the arrest of the accused except for failure to appear whenever required.** Release of the person arrested shall either be in bail or on recognizance by a responsible citizen acceptable to the court. (Emphasis supplied)

In this case, respondent claims that the issuance of a warrant for the arrest of complainant was justified, since complainant failed to appear during the arraignment in spite of an order requiring her to do so. Respondent admits, however, that a copy of the Order dated August 8, 2006, was sent to complainant "*through the Chief of Police, PNP, 1104, Quezon City.*"

While it is true that the Rules of Court provides for presumptions, one of which is that official duty has been regularly performed, such presumption should not be the sole basis of a magistrate in concluding that a person called to court has failed to appear as required, which in turn justifies the issuance of a warrant for her arrest, when such notice was not actually addressed to her residence but to the police in her city. So basic and fundamental is a person's right to liberty that it should not be taken lightly or brushed aside with the presumption that the police through which the notice had been sent, actually served the same on complainant whose address was not even specified.

Respondent further admitted in her Comment dated July 5, 2007 that when she proceeded with the arraignment on October 10, 2006 as scheduled, no return had yet been made by the Quezon City Police.[12] Nevertheless, she issued the warrant of arrest, arguing that she did so on the presumption that regular duty had been performed, and that the Order had been received in the regular course of mail; and since Sec. 12 of the 1983 Rules on Summary Procedure provides that bail may be required where the accused does not reside in the place where the violation of the law or ordinance was committed, the warrant of arrest

[11] *Guillen v. Nicolas,* 360 Phil. 1, 12 (1998).

[12] *Rollo,* p. 28.

she issued was justified since complainant is a resident of Quezon City and not of Baguio City.

The Court disagrees.

Sections 10 and 12 of the 1983 Rules on Summary Procedure in Special Cases (As Amended) state:

> Sec. 10. *Duty of the Court.* — On the basis of the complaint of information and the affidavits accompanying the same, the court shall make a preliminary determination whether to dismiss the case outright for being patently without basis or merit, or to require further proceedings to be taken. In the latter case, the court *may set the case for immediate arraignment of an accused under custody, and if he pleads guilty, may render judgment forthwith. If he pleads not guilty, and in all other cases, the court* shall issue an order, accompanied by copies of all the affidavits submitted by the complainant, directing the defendant(s) to appear and submit his counter-affidavit and those of his witnesses at a specified date not later than ten (10) days from receipt thereof.
>
> **Failure on the part of the defendant to appear whenever required, shall cause the issuance of a warrant for his arrest** if the court shall find that a probable cause exists after an examination in writing and under oath or affirmation of the complainant and his witnesses. (Emphasis supplied)
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> x x x x x x x x x
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> Sec. 12. *Bail not required; Exception.* — No bail shall be required except when a warrant of arrest is issued in accordance with Section 10 hereon *or where the accused (a) is a recidivist; (b) is fugitive from justice; (c) is charged with physical injuries; (d) does not reside in the place where the violation of the law or ordinance was committed, or (e) has no known residence.*

Section 12 of the 1983 Rules on Summary Procedure was not reproduced in the 1991 Revised Rules on Summary Procedure, while Section 10 was revised and portions thereof reproduced in Sections 12[13] and 16 of the 1991 Rules on Summary Procedure.

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[13] Sec. 12. Duty of court. —

(a) If commenced by complaint. — On the basis of the complaint and the affidavits and other evidence accompanying the same, the court may dismiss

Granting, *arguendo*, that Sections 10 and 12 of the 1983 Rules on Summary Procedure in Special Cases were not repealed by the 1991 Revised Rules, still it does not justify the warrant of arrest issued in this case. Section 12 talks of instances when bails are required, one of which is when the accused does not reside in the place where the violation of the law or ordinance was committed. It does not state, however, that a warrant of arrest shall immediately issue even without actual notice to the accused. Respondent's interpretation ascribes to the rules those which were not expressly stated therein and unduly expands their meaning.

The Court also notes that in an Order dated March 14, 2007, a copy of which was attached by complainant to her Motion for Reconsideration, respondent admitted that:

> As a point of clarification, **during the hearing on October 10, 2006, when the case was called and the accused failed to appear, the Court verified from the staff if the Accused was notified to which said staff answered in the affirmative,** showing to the Court a copy of the Order dated August 8, 2006, setting this case for Appearance of the Accused on October 10, 2006. **At the back of the Order was an attached Acknowledgment Receipt. A quick glance of the said receipt, and without eyeglasses of the Presiding Judge, as she does not usually wear one during Court sessions, made this Court believed that indeed, that was the Acknowledgment Receipt proving that the Accused was served with a copy of the said Order.**
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> **The attention of the Court was called upon receipt of the Accused's Motion for Clarification and a closer look on the Acknowledgment**

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the case outright for being patently without basis or merit and order the release of the accused if in custody.

(b) If commenced by information. — When the case is commenced by information, or is not dismissed pursuant an order which, together with copies of the affidavits and other evidence submitted by the prosecution, shall require the accused to submit his counter-affidavit and the affidavits of his witnesses as well as any evidence in his behalf, serving copies thereof on the complainant or prosecutor not later than ten (10) days from receipt of said order. The prosecution may file reply affidavits within ten (10) days after receipt of the counter-affidavits of the defense.

Receipt shows that the same was for the City Prosecutor's Office. x x x[14] (Emphasis supplied)

From this, it can be inferred that respondent issued the warrant of arrest on the mistaken belief that complainant was actually notified of the arraignment. A closer scrutiny of the records however showed that the Acknowledgment Receipt pertained to the copy of the City Prosecutor's Office and not that of complainant's.

Whatever the real reasons behind respondent's issuance of complainant's warrant of arrest — whether from the mistaken belief that complainant was actually notified, or the presumption that the police had served a copy of the order on complainant or that the rules allow immediate issuance of warrants of arrests whenever the accused does not reside in the locality where the crime was committed — the fact is, respondent failed to uphold the rules, for which she should be held administratively liable.

The Court has held that a judge commits grave abuse of authority when she hastily issues a warrant of arrest against the accused in violation of the summary procedure rule that the accused should first be notified of the charges against him and given the opportunity to file his counter-affidavits and countervailing evidence.[15]

While judges may not always be subjected to disciplinary action for every erroneous order or decision they render, that relative immunity is not a license to be negligent, abusive and arbitrary in their prerogatives. If judges wantonly misuse the powers vested in them by law, there will not only be confusion in the administration of justice but also oppressive disregard of the basic requirements of due process.[16] While there appears to be no malicious intent on the part of respondent, such lack

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[14] *Rollo,* p. 46.

[15] *Daiz v. Adason,* 353 Phil. 1, 7 (1998).

[16] *Id.* at 7-8.

of intent, however, cannot completely free her from liability.[17] When the law is sufficiently basic, a judge owes it to her office to know and simply apply it.[18]

Considering that this is respondent's first administrative infraction in her more than 8 years of service in the judiciary,[19] which serves to mitigate her liability, the Court holds the imposition of a fine in the amount of ₱10,000.00 to be proper in this case.[20]

WHEREFORE, Judge Maria Clarita Casuga-Tabin, Municipal Trial Court in Cities, Branch 4, Baguio City is hereby found guilty of abuse of authority for which she is fined in the sum of ₱10,000.00.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Nachura, and *Leonardo-de Castro,*[*] *JJ.*, concur.

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[17] *Aguilar v. Dalanao*, 388 Phil. 717, 724 (2000).

[18] *Martinez Sr. v. Paguio*, 442 Phil. 517, 526 (2002); *Aguilar v. Dalanao*, *supra* note 17.

[19] Per verification with the Records Division, OCA-OAS; respondent served as Researcher/Branch Clerk of Court at the RTC Baguio City from June 5, 1986 up to September 3, 1990; she served at the Public Attorney's Office from 1990 to 2004; and took her oath in her present post on February 9, 2004.

[20] See *Daiz v. Adason*, *supra* note 15, at 9.

[*] In lieu of Justice Ruben T. Reyes, per Special Order No. 546 dated January 5, 2009.

FIRST DIVISION

[A.M. No. P-06-2251. January 20, 2009]

CECILIA T. FAELNAR, *complainant, vs.* **FELICIDAD DADIVAS PALABRICA, COURT STENOGRAPHER III, REGIONAL TRIAL COURT, BRANCH 11, MANOLO FORTICH, BUKIDNON,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CHARGE OF DISHONESTY AND FALSIFICATION; LACK OF CONNECTION BETWEEN THE INFRACTIONS AND THE DUTIES AND RESPONSIBILITIES OF THE EMPLOYEE CHARGED WILL NOT ABSOLVE HER FROM LIABILITY. — Verily, the bulk of cases pertaining to misrepresentation and falsification of the Personal Data Sheet (PDS) and other official documents merely touches on the professional realm of the employee. In the present state of our jurisprudence, these cases usually fall into two categories: either misrepresentations were made as to the educational attainment and professional achievements of the employee in order to gain unwarranted advantage over more qualified individuals, or the employee concealed information that would have hurt his eligibility to the position being applied for. Though respondent's infraction does not fall squarely within the abovementioned categories, respondent still cannot claim that the lack of connection between her infractions and her duties and responsibilities as court stenographer absolves her from any liability. It must be remembered that the accomplishment of the PDS is a requirement under the Civil Service Rules and Regulations in connection with employment in the government. As such, it is well settled that the accomplishment of untruthful statements therein is intimately connected with such employment. The same rationale applies to the accomplishment of the Statement of Assets and Liabilities (SAL) and other official documents, which are likewise done under oath and required by law to be submitted regularly. Hence, in ***Orfila v. Arellano***, where we held that the indication of a false birthdate in one's PDS constitutes falsification, the connection between the acts punished and the duties of the employee charged was not even

raised as an issue. Similarly, in ***Quinsay v. Avellaneda***, we did not hesitate to rule that the making of untruthful statements in the application for PhilHealth Form I and the submission of a spurious marriage contract likewise constituted dishonesty and falsification.

2. ID.; ID.; ID.; ID.; TO WARRANT THE PENALTY OF DISMISSAL, THE DISHONESTY NEED NOT BE COMMITTED IN THE COURSE OF THE PERFORMANCE OF DUTY BY THE EMPLOYEE CHARGED; RATIONALE.— Notwithstanding that the making of untruthful statements in official documents is ultimately connected with one's employment, it bears stressing that dishonesty, to warrant the penalty of dismissal, need not be committed in the course of the performance of duty by the person charged. In ***Remolona v. CSC***, we reiterated the rationale for this rule, as first enunciated in ***Nera v. Garcia***, thus: xxx The rationale for the rule is that if a government officer or employee is dishonest or is guilty of oppression or grave misconduct, even if said defects of character are not connected with his office, they affect his right to continue in office. The Government cannot tolerate in its service a dishonest official, even if he performs his duties correctly and well, because by reason of his government position, he is given more and ample opportunity to commit acts of dishonesty against his fellow men, even against offices and entities of the government other than the office where he is employed; and by reason of his office, he enjoys and possesses a certain influence and power which renders the victims of his grave misconduct, oppression and dishonesty less disposed and prepared to resist and to counteract his evil acts and actuations. The private life of an employee cannot be segregated from his public life. Dishonesty inevitably reflects on the fitness of the officer or employee to continue in office and the discipline and morale of the service. Hence, whether or not respondent's dishonest acts were connected to her capacity as a court stenographer is clearly irrelevant. As a court personnel, respondent is enjoined to adhere to the exacting standards of morality and decency in her professional and private conduct in order to preserve the good name and integrity of the courts of justice.

3. ID.; ID.; ID.; ID.; DEFENSE OF GOOD FAITH NECESSITATES HONESTY OF INTENTION, FREE FROM ANY KNOWLEDGE OF CIRCUMSTANCES THAT OUGHT TO HAVE PROMPTED

THE EMPLOYEE CHARGED TO UNDERTAKE AN INQUIRY.— Respondent should be reminded that good faith necessitates honesty of intention, free from any knowledge of circumstances that ought to have prompted him to undertake an inquiry. In the instant case, no good faith can be attributed to respondent. In the first place, it is not disputed that respondent's documents, specifically the PDS and SAL, were accomplished in 2005, when respondent's marriage had already been registered for years. Hence, at that time, respondent's excuse of uncertainty as to her marital status no longer existed. The only remaining conclusion is that she knowingly and maliciously concealed the fact of her marriage when she indicated that she was single. Secondly, assuming that the respondent has not yet registered her marriage to this day, we do not see how she can be free of any knowledge of circumstances that ought to have prompted her to undertake an inquiry as to whether or not she should declare herself to be either "married" or "single." As an employee of the Court, respondent had been exposed for decades to a world where legalisms and legalities yield the direst of consequences. Considering that she had the invaluable resource of being surrounded by the knowledgeable men and women of the bar and the bench, we are baffled how respondent could not have possibly questioned the consequences of her actions when she was already concealing information and lying under oath in her official documents.

4. ID.; ID.; ID.; ID.; NO AMOUNT OF MATERIAL NEED, CONVENIENCE, OR URGENCY CAN JUSTIFY THE COMMISSION OF ILLEGAL ACTS, MUCH LESS, WHEN DONE BY AN EMPLOYEE OF THE JUDICIARY.— Moreover, we cannot sustain respondent's attempt of justifying her acts in the interest of economy and practicality. Her explanations that she only hid the fact of her marriage out of necessity and practical purpose, as it would have been impractical for her husband to fly over to the Philippines should the need for his signature in official documents arise, is simply unacceptable. Respondent ought to have been aware that no amount of material need, convenience, or urgency can justify the commission of illegal acts, much less, when done by an employee of the judiciary.

5. ID.; ID.; ID.; ID.; WHEN OFFICIAL DOCUMENTS ARE FALSIFIED, THE INTENT TO INJURE A THIRD PERSON

NEED NOT BE PRESENT.— Finally, we cannot sustain respondent's attempt to escape liability by claiming that she did not have any intention to defraud or cheat the government nor cause injury to anyone. Well entrenched is the rule that when official documents are falsified, the intent to injure a third person need not be present because the principal thing punished is the violation of the public faith and the destruction of the truth as therein proclaimed. In the case of respondent who has been employed with the judiciary for several years, this rule should all the more be stringently applied.

6. ID.; ID.; ID.; ID.; DISHONESTY IS A MALEVOLENT ACT THAT HAS NO PLACE IN THE JUDICIARY.— It cannot be gainsaid that every person involved in the dispensation of justice, from the highest official to the lowest clerk, must live up to the strictest standards of integrity, probity, uprightness, honesty and diligence in the public service. We say it again: dishonesty is a malevolent act that has no place in the judiciary. All told, we remain dauntless in our resolve in chastising any conduct, act or omission on the part of those involved in the administration of justice which would violate the highest standards of public accountability.

D E C I S I O N

PUNO, *C.J.*:

For resolution is an administrative complaint filed by Atty. Cecilia T. Faelnar, former Clerk of Court VI of Branch 11 of the Regional Trial Court (RTC) of Manolo Fortich, Bukidnon, against Felicidad Dadivas Palabrica, former Court Stenographer III of the same branch, for Dishonesty, Falsification of Public Documents, Violation of Republic Act No. 6713 and Violation of Article XI of the Constitution. This administrative case, originally docketed as OCA IPI No. 05-2298-P, was filed on September 19, 2005 before the Office of the Court Administrator (OCA).

In her administrative complaint, complainant alleged that respondent, by declaring her civil status to be single in her Personal Data Sheets (PDS) and in her Statement of Assets

and Liabilities (SAL) for CY 2003 and 2004, when in fact she has been married since July 1995, "**defrauded, cheated and deceived the judiciary** in misrepresenting a **material fact** in several official documents."[1] Complainant likewise charged respondent with the making of the same false declaration as to her civil status in other official documents, including her Phil. Health record, and her loan applications with the GSIS and the SC Savings and Loan Association.

In her comment, respondent prayed for the outright dismissal of the administrative complaint against her on the ground of forum shopping and for utter lack of merit. With regard to the disputed entry in her PDS, respondent maintained that she submitted a number of copies to the Office of the Clerk of Court; that she personally and manually accomplished all her forms, albeit admittedly she gave more attention to her service record, considering her long history in public service; that due to the tedious character of accomplishing several forms, she inadvertently and by mistake indicated on one of her PDS that she was "single"; and that nevertheless, she had categorically indicated in all her other forms that she is married.[2]

As to the disputed entry in her SAL, respondent avers that while it appears that she had entered "n/a" in the space provided for the name of spouse, the same is immaterial and irrelevant because the SAL "deals mainly on assets and liabilities, net worth, disclosure of business interest and financial conditions of the employees"; that her omission is justified as there is even no need to mention that she is married especially since she has made it clear that everything stated in her entries was owned by her and that per a certification from the Municipal Assessor of Manolo Fortich, Bukidnon, her husband did not own any real property; that her omission was prompted by good faith, practical purpose, urgency and convenience; and that in view of the fact that her husband is an Australian citizen living abroad, respondent perceived it better to state "N/A" in the blank provided for the name of spouse, as she was apprehensive

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[1] *Rollo,* p. 3.

[2] *Id.,* pp. 13-15.

that it would be expensive for her husband to fly in from abroad for the lone purpose of signing documents should the need arise; that her omission, which was made with her husband's knowledge and consent, did not cause the government or any third person injury or damage; and lastly, respondent contends that such omission has already been rectified when she submitted a PDS indicating that she is married, and that in any case, the filing of a PDS is foreign to the office and functions of respondent in her capacity as stenographer.[3]

After the parties exchanged pleadings, this Court, in a Resolution dated July 5, 2006,[4] required the parties to manifest their willingness to submit the present administrative matter for resolution based on the pleadings filed. In compliance thereof, respondent submitted a Manifestation stating that she is willing to submit the case for resolution on the basis of the pleadings submitted.[5] Complainant, on the other hand, requested to set the case for formal investigation and for the conduct of hearings for the presentation of testimonial and additional documentary evidence.[6] Hence, in a Resolution dated September 20, 2006, we directed that this case be redocketed as a regular administrative matter.[7] On January 22, 2007, we resolved to refer the matter to the Executive Judge of the RTC, Manolo Fortich, Bukidnon, for investigation, report and recommendation.[8]

In a letter dated March 12, 2007, Executive Judge Jose U. Yamut, Sr. informed this Court that respondent had tendered her resignation as court stenographer, and was already outside the country during the course of the investigation.[9] Meanwhile,

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[3] *Id.*, pp. 16-17.

[4] *Id.*, p. 174.

[5] *Id.*, p. 175.

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

[7] *Id.*, p. 178.

[8] *Id.*, p. 179.

[9] *Id.*, p. 183.

complainant was dismissed from service per an *En Banc* decision promulgated on September 3, 2006.[10]

In her manifestation dated March 1, 2007,[11] respondent waived her right to appear during the investigation of the case. Nonetheless, she ventured to have this case dismissed for being moot and academic, arguing that the Court has lost jurisdiction over her person when she resigned from her job and took up residence in Australia. For her part, complainant filed a counter manifestation praying that the investigation be given due course, contending that this Court was not divested of jurisdiction over the respondent's person because it had already acquired jurisdiction over respondent when the latter filed her Comment and other pleadings. Furthermore, complainant argued that respondent's resignation did not render the case moot and academic since the act sought to be corrected was performed by respondent in the course of her employment as a public servant.[12]

Acting on complainant's counter manifestation, Executive Judge Yamut gave due course to the investigation and found that respondent's claim of inadvertence lacked merit, the inevitable conclusion being that respondent indeed intended to make it appear in her official documents that she was single. Despite these findings, respondent's act was considered a mere error in judgment for which respondent could not be punished. Therefore, in his Final Report dated November 17, 2007, the investigating judge recommended the dismissal of the instant administrative case for lack of merit, to wit:

> Not all the elements for falsification are present in the instant case. Specifically, the fourth element is absent. There is no evidence on record to show that respondent's hiding the truth about her civil status was made with the wrongful intent of injuring a third person or the government. It does not also appear that respondent benefited herself unjustly or advanced her own interest when she hid her true

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[10] *Ibid.*

[11] *Id.,* p. 185.

[12] *Id.,* p. 189.

marital status. Neither does it appear that she committed the same with the end view of concealing her real identity to evade criminal prosecution or civil liability. On the other hand, respondent's submission that she made an error of judgment in filling out the subject documents appears convincing considering the peculiar circumstances surrounding her case. It is not easy to decide whether to write married or single in a document requiring disclosure of the same when the marriage is not registered. Is she considered by law to be married or not? To the layman, the answer to the question is not that easy.[13]

Per this Court's resolution dated February 18, 2008, the Final Report was referred to the OCA for evaluation, report and recommendation.

In its Memorandum dated April 22, 2008, the OCA concluded that respondent committed misrepresentation and falsification of public documents. Respondent's claim of inadvertence was not given credence due to the repetition of the incident of misrepresentation, thus:

> xxx Indubitably, respondent submitted documents to the court wherein she indicated that she was single although in fact, she was already married to one Ricardo P. Balito since July 8, 1995. Her argument that this was done due to inadvertence could have been acceptable and could have bailed her out from any liability if the same happened only once or twice. Records will show, however, that respondent did it for a number of times thereby negating her claim that her error was due to mere inadvertence. Clearly, therefore, respondent committed falsification of public documents which is a specie of dishonesty.[14]

Hence, in view of respondent's resignation from the service, the OCA recommended that, in lieu of her dismissal, respondent be fined in the amount of Forty Thousand Pesos (₱40,000), to be deducted from whatever benefits she is still entitled to receive.[15]

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[13] *Id.*, p. 4.

[14] *Id.*, p. 3.

[15] *Ibid.*

We concur with the findings of the OCA and adopt its recommendations in full.

In the present case, respondent would have us believe that she is not liable for dishonesty as her failure to state the fact of her marriage in her personal information documents did not affect her qualifications and functions as a court stenographer. In effect, respondent seeks impunity for her misrepresentation and dishonest acts by emphasizing the absolute dichotomy between her personal and professional capacities.

We reject respondent's contention.

Verily, the bulk of cases pertaining to misrepresentation and falsification of the PDS and other official documents merely touches on the professional realm of the employee. In the present state of our jurisprudence, these cases usually fall into two categories: either misrepresentations were made as to the educational attainment and professional achievements of the employee in order to gain unwarranted advantage over more qualified individuals,[16] or the employee concealed information

[16] As in the case of a carpenter who claimed in his PDS that he had already completed High School, so that he may qualify to be promoted to the position of Carpenter General Foreman, *Re: Anonymous Complaint Against Mr. Rodel M. Gabriel*, A.M. No. 2005-18-SC, April 19, 2006, 487 SCRA 370, 376; an employee seeking to be promoted to the position of Deputy Clerk of Court who misrepresented in her PDS that she finished her pre-law degree, notwithstanding that she only finished High School, *Benoajan v. Lacson*, A.M. No. P-1551, January 15, 1979, 88 SCRA 46; a clerk who pretended to be a holder of a bachelor degree, *Diaz v. People*, G.R. No. 65006, October 31, 1990, 191 SCRA 86; a Human Resources Management Officer I of this Court who indicated in his PDS that he passed the career service professional examinations when in fact he did not, *Civil Service Commission v. Sta. Ana*, A.M. No. OCA-01-5, August 1, 2002, 386 SCRA 9; an employee of this Court who falsely stated in his PDS for his promotion to Information Officer IV that he was an Electrical Engineering graduate, *De Guzman v. Delos Santos*, A.M. No. 2002-8-SC, December 18, 2002, 394 SCRA 210; the SC Chief Judicial Staff Officer of the SPPED, Management Information Systems Office of this Court when it was discovered that contrary to his representations in his PDS, he did not possess a degree in Electrical Engineering, *Administrative Case for Dishonesty and Falsification of Official Document Against Noel V. Luna*, A.M. No. 2003-7-SC, December 15, 2003, 418 SCRA 460; a lawyer serving as the Clerk of Court in a

that would have hurt his eligibility to the position being applied for.[17]

Though respondent's infraction does not fall squarely within the abovementioned categories, respondent still cannot claim that the lack of connection between her infractions and her duties and responsibilities as court stenographer absolves her from any liability. It must be remembered that the accomplishment of the PDS is a requirement under the Civil Service Rules and Regulations in connection with employment in the government. As such, it is well settled that the accomplishment of untruthful statements therein is intimately connected with such employment.[18] The same rationale applies to the accomplishment

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municipal trial court who was discovered to have misrepresented in her PDS that she was a college graduate, *Aglugub v. Perlez*, A.M. No. P-99-1348, October 15, 2007, 536 SCRA 20, 27; and recently, the case of a utility worker who falsely made verified statements in his PDS that he was a Career Service Sub-Professional eligible, *Re: Disapproval of the Permanent Appointment of Mr. Godofredo C. de Leon*, A.M. No. 06-12-720-RTC, October 17, 2008.

[17] In *Ratti v. Mendoza-De Castro*, A.M. No. P-04-1844, July 23, 2004, 435 SCRA 11, 15, it was found that a court interpreter deliberately concealed her conviction for grave slander, as well as the charges of bigamy and other criminal cases against her; In *Sañez v. Rabina*, A.M. No. P-03-1691, September 18, 2003, 411 SCRA 236, 238, a utility worker who stated in his PDS that he did not have any pending administrative/criminal cases when records indicated that he was the accused in criminal cases for acts of lasciviousness. Similarly, in the recent case of *Calumba v. Yap*, A.M. No. P-08-2506, August 12, 2008, p. 3, respondent, who was likewise a utility worker, deliberately failed to state in his PDS that he was convicted of two charges of theft when he was eighteen years old. We ruled that he obtained gainful employment in the Judiciary under false pretenses and misrepresentation.

[18] *Re: Disapproval of the Permanent Appointment of Mr. Godofredo C. de Leon*, *supra*, see note 16; *Disapproved Appointment of Noraina D. Limgas*, A.M. No. 04-10-619-RTC, February 10, 2005, 450 SCRA 560, 566; *Administrative Case for Dishonesty and Falsification of Official Document Against Noel V. Luna*, *supra*, see note 16, at 27; *Sañez v. Rabina*, A.M. No. P-03-1691, September 18, 2003, 411 SCRA 236, 238, *citing People v. Uy*, G.R. No. L-9460, April 23, 1957, 101 Phil. 159; *Aglublub v. Perlez*, *supra*, see note 16; *Re: Anonymous Complaint Against Mr. Rodel M. Gabriel*, *supra*, see note 16.

of the SAL and other official documents, which are likewise done under oath and required by law to be submitted regularly. Hence, in ***Orfila v. Arellano***,[19] where we held that the indication of a false birthdate in one's PDS constitutes falsification, the connection between the acts punished and the duties of the employee charged was not even raised as an issue. Similarly, in ***Quinsay v. Avellaneda***,[20] we did not hesitate to rule that the making of untruthful statements in the application for PhilHealth Form I and the submission of a spurious marriage contract likewise constituted dishonesty and falsification.

Notwithstanding that the making of untruthful statements in official documents is ultimately connected with one's employment, it bears stressing that dishonesty, to warrant the penalty of dismissal, need not be committed in the course of the performance of duty by the person charged.

In ***Remolona v. CSC***,[21] we reiterated the rationale for this rule, as first enunciated in ***Nera v. Garcia***,[22] thus:

> xxx The rationale for the rule is that if a government officer or employee is dishonest or is guilty of oppression or grave misconduct, even if said defects of character are not connected with his office, they affect his right to continue in office. The Government cannot tolerate in its service a dishonest official, even if he performs his duties correctly and well, because by reason of his government position, he is given more and ample opportunity to commit acts of dishonesty against his fellow men, even against offices and entities of the government other than the office where he is employed; and by reason of his office, he enjoys and possesses a certain influence and power which renders the victims of his grave misconduct, oppression and dishonesty less disposed and prepared to resist and to counteract his evil acts and actuations. The private life of an employee cannot be segregated from his public life. Dishonesty inevitably reflects on the fitness of the officer or employee to continue in office and the discipline and morale of the service.

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[19] A.M. No. P-06-2110, February 13, 2006, 482 SCRA 280.

[20] A.M. No. P-05-2076, September 21, 2005, 470 SCRA 432, 436.

[21] G.R. No. 137473, August 2, 2001, 362 SCRA 304, 313.

[22] G.R. No. L-13160, 106 Phil. 1031, 1036 (1960).

Hence, whether or not respondent's dishonest acts were connected to her capacity as a court stenographer is clearly irrelevant. As a court personnel, respondent is enjoined to adhere to the exacting standards of morality and decency in her professional and private conduct in order to preserve the good name and integrity of the courts of justice.[23]

As regards respondent's defense of inadvertence, we hold that such flimsy excuse does not deserve a modicum of belief. As pointed out by the OCA,[24] respondent's argument that her misrepresentation was done due to inadvertence could have been acceptable and could have bailed her out from any liability if the same happened only once or twice. Indeed we have ruled before that to make mistakes is well within the spectrum of human experience.[25] In the instant case, however, the number of misrepresentations made by respondent only points to the conclusion that she concealed the fact of her marriage with deliberate intent. Worse, she went one step further and engaged in a desperate damage control operation involving her belated submission–under suspicious circumstances–of a "corrected" PDS, which she intercalated in her 201 files.[26] The loophole in respondent's devious plan was that she did not realize that she could no longer undo her previous misrepresentations, since the original PDS which reflected her marital status as "single" was already submitted to the Office of the Administrative Services, OCA.[27] In any case, had respondent's conscience been clear, respondent could have easily coordinated with complainant to correct the mistakes she made in her entries. She did not.

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[23] *Administrative Case for Dishonesty and Falsification of Official Document Against Noel V. Luna*, *supra*, see note 16, citing *CSC v. Sta. Ana*, A.M. No. P-03-1696, April 30, 2003, 386 SCRA 1, 8.

[24] *Supra*.

[25] *Anonymous Complaint Against Gibson A. Araula*, A.M. No. 1571-CFI, February 7, 1978, 81 SCRA 483, 485.

[26] *Rollo*, pp. 29-30.

[27] *Id.*, p. 271.

Likewise, we are not persuaded by respondent's claim of good faith and honest judgment. According to respondent, she was only able to register her marriage before the Office of the Local Civil Registrar in 2001, or about six years after her marriage was solemnized in 1995. In the meantime, respondent claims that she was in limbo as to the status of her marriage, and hence, honestly believed that she could not officially declare her status to be "married."

Respondent should be reminded that good faith necessitates honesty of intention, free from any knowledge of circumstances that ought to have prompted him to undertake an inquiry.[28] In the instant case, no good faith can be attributed to respondent. In the first place, it is not disputed that respondent's documents, specifically the PDS and SAL, were accomplished in 2005, when respondent's marriage had already been registered for years. Hence, at that time, respondent's excuse of uncertainty as to her marital status no longer existed. The only remaining conclusion is that she knowingly and maliciously concealed the fact of her marriage when she indicated that she was single. Secondly, assuming that the respondent has not yet registered her marriage to this day, we do not see how she can be free of any knowledge of circumstances that ought to have prompted her to undertake an inquiry as to whether or not she should declare herself to be either "married" or "single." As an employee of the Court, respondent had been exposed for decades to a world where legalisms and legalities yield the direst of consequences. Considering that she had the invaluable resource of being surrounded by the knowledgeable men and women of the bar and the bench, we are baffled how respondent could not have possibly questioned the consequences of her actions when she was already concealing information and lying under oath in her official documents.

Moreover, we cannot sustain respondent's attempt of justifying her acts in the interest of economy and practicality. Her

[28] *Wooden v. Civil Service Commission*, G.R. No. 152884, September 30, 2005, 471 SCRA 512, 531, citing *Disapproved Appointment of Noraina D. Limgas, supra,* see note 2; *De Guzman v. Delos Santos, supra,* see note 16.

explanations that she only hid the fact of her marriage out of necessity and practical purpose, as it would have been impractical for her husband to fly over to the Philippines should the need for his signature in official documents arise, is simply unacceptable. Respondent ought to have been aware that no amount of material need, convenience, or urgency can justify the commission of illegal acts, much less, when done by an employee of the judiciary.

Finally, we cannot sustain respondent's attempt to escape liability by claiming that she did not have any intention to defraud or cheat the government nor cause injury to anyone. Well entrenched is the rule that when official documents are falsified, the intent to injure a third person need not be present because the principal thing punished is the violation of the public faith and the destruction of the truth as therein proclaimed.[29] In the case of respondent who has been employed with the judiciary for several years, this rule should all the more be stringently applied.

It cannot be gainsaid that every person involved in the dispensation of justice, from the highest official to the lowest clerk, must live up to the strictest standards of integrity, probity, uprightness, honesty and diligence in the public service.[30] We say it again: dishonesty is a malevolent act that has no place in the judiciary.[31] All told, we remain dauntless in our resolve in chastising any conduct, act or omission on the part of those involved in the administration of justice which would violate the highest standards of public accountability.

IN VIEW WHEREOF, respondent Felicidad Dadivas Palabrica, Court Stenographer III, Regional Trial Court, Branch 11, Manolo Fortich, Bukidnon, is found *GUILTY* of dishonesty

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[29] *Ratti v. Mendoza-De Castro*, *supra*, see note 17, at 15.

[30] *Administrative Case for Dishonesty and Falsification of Official Document: Benjamin R. Katly*, A.M. No. 2003-7-SC, December 15, 2003, 418 SCRA 460, 467.

[31] *Pizarro v. Villegas*, A.M. No. P-97-1243, November 20, 2000, 345 SCRA 42, 47.

and falsification of official documents. In lieu of dismissal, considering that we have already accepted her resignation, respondent is hereby *FINED* in the amount of Forty Thousand Pesos (₱40,000.00), to be deducted from whatever benefits she is still entitled to receive.

SO ORDERED.

Carpio, Corona, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

EN BANC

[A.M. No. RTJ-08-2126. January 20, 2009]
(Formerly OCA I.P.I. No. 08-2896-RTJ)

ATTY. ERNESTO A. TABUJARA III, *complainant, vs.* **JUDGE FATIMA GONZALES-ASDALA,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; THE URGENCY OF THE CASE DOES NOT JUSTIFY SACRIFICING THE LAW AND SETTLED JURISPRUDENCE FOR THE SAKE OF EXPEDIENCY.— As found by the Court of Appeals, respondent gravely abused her discretion when she acted on the *Urgent Ex-Parte Motion to Order Respondent to Comply with the Writ of Habeas Corpus with Urgent Motion For Partial Reconsideration (Of the Order dated May 31, 2006).* That Judge Bay may have left the court premises in the afternoon of May 31, 2006 did not justify her acting on even date on motion of complainant's wife, as her authority as pairing judge commenced only the following day, June 1, 2006, when Judge Bay's leave of absence started; Nor did respondent's opinion on the urgency of the case justify her sacrificing law and settled jurisprudence for the sake of expediency.

2. ID.; ID.; ISSUANCE OF CONTEMPT ORDER WITHOUT THE BENEFIT OF A HEARING CONSTITUTES GRAVE ABUSE OF DISCRETION AND GROSS IGNORANCE OF THE LAW; IMPOSABLE PENALTY.— For not affording complainant the opportunity to explain why he should not be cited in contempt, she blatantly disregarded Rule 71 of the Rules of Court. In *Lim v. Domagas* where the therein judge declared the therein complainant guilty of contempt and ordered his arrest for failure to bring three minors before the court without the benefit of a hearing, the Court faulted the therein judge not only for grave abuse of discretion but also for gross ignorance of the law. Because, again as reflected above, respondent was, in *Edaño v. Asdala*, dismissed from the service with forfeiture of all salaries, benefits and leave credits to which she may be entitled, she should, as recommended by the OCA, be fined in the amount of Forty Thousand Pesos, the highest amount of fine imposable for gross ignorance of the law or procedure, a serious charge under Rule 140 of the Rules of Court.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; INDIRECT CONTEMPT, HOW COMMITTED.— Respondent also abused her contempt powers. If at all, complainant was guilty of indirect contempt and not direct contempt. Indirect or constructive contempt is committed "outside of the sitting of the court and may include misbehavior of an officer of the court in the performance of his official duties or in his official transactions, disobedience of or resistance to a lawful writ, process, order, judgment, or command of a court, or injunction granted by a court or a judge, any abuse or any unlawful interference with the process or proceedings of a court not constituting direct contempt, or any improper conduct tending directly or indirectly to impede, obstruct or degrade the administration of justice."

D E C I S I O N

CARPIO MORALES, *J.*:

Atty. Ernesto A. Tabujara III (complainant), by Complaint-Affidavit[1] dated June 8, 2006 which was sworn to on June

[1] *Rollo*, pp. 14-28.

9, 2006 and received by the Office of the Court Administrator (OCA) on June 13, 2006, charged Judge Fatima Gonzales-Asdala (respondent), Presiding Judge of the Regional Trial Court of Quezon City, Branch 87, with gross ignorance of the law and procedure, gross misconduct constituting violation of the Code of Judicial Conduct, graft and corruption, knowingly rendering an unjust order, and culpable violation of the Constitution.

Complainant was a party to the following cases which were originally raffled to different branches but which were ordered consolidated and assigned to Branch 86 presided by Judge Teodoro Bay (Judge Bay), they having involved the same parties (complainant and his wife), related issues and reliefs prayed for: (1) Civil Case No. Q-06-57760,[2] for Violation of Republic Act No. 9262 or the "*Violence Against Women and Their Children Act*," filed by complainant's wife against him praying for, among others, the issuance of Temporary Protection Order (TPO), (2) Civil Case No. 06-57857,[3] filed by complainant against his wife for declaration of nullity of marriage, and (3) Civil Case No. Q-06-57984,[4] petition for a writ of *habeas corpus* filed by complainant's wife against him involving their son Carlos Iñigo R. Tabujara (*habeas corpus* case).

The *habeas corpus* case was raffled to Branch 102 which issued on May 23, 2006 a Writ[5] directing Deputy Sheriff Victor Amarillas to "take and have the body of …. CARLOS IÑIGO R. TABUJARA before this Court on 25 May 2006, at 10:00 A.M. and [to] summon the respondent-[herein complainant] to appear then and there to show cause why he should not be dealt with in accordance with law."[6] (Capitalization and underscoring in the original)

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[2] Annex "A", *id.* at 29-37.

[3] Annex "C", *id.* at 41-92.

[4] Annex "F", *id.* at 220-231. Docketed as Spec. Proc. Q-06-57984, in the Orders issued by the trial court.

[5] *Id.* at 233.

[6] Annex "G", *id.* at 232.

During the hearing on May 25, 2006 of the *habeas corpus* case before Branch 102, on complainant's information that there were two pending cases before Branch 86 presided by Judge Bay, Branch 102 directed the consolidation of said *habeas corpus* case with the other cases pending before Branch 86.

After hearing was conducted on the *habeas corpus* case, Branch 86 Presiding Judge Bay issued on May 31, 2006 an Order[7] reading:

> After considering the records of the three (3) cases consolidated before this Court, this Court resolves as follows:
>
> 1. the child Carlos Iñigo R. Tabujara shall continue to be under the custody of the respondent Ernesto Tabujara III until the Court shall have resolved the issue of custody of said child. This is necessary to protect the child from emotional and psychological violence due to the misunderstanding now existing between his parents.
>
> 2. the Motion to Admit Amended Petition with Prayer for Temporary Protection Order is GRANTED. The Temporary Protection Order dated April 19, 2006 is hereby extended until the prayer for Permanent Protection is resolved.
>
> 3. The respondent Ernesto Tabujara III is hereby ordered to bring the child Carlos Iñigo Tabujara to this Court during the hearing of these cases on **July 14, 2006** at 8:30 in the morning.
>
> x x x[8] (Emphasis and underscoring supplied)

On the same date (May 31, 2006) of the issuance by Judge Bay of the above-quoted Order, complainant's wife filed an *Urgent Ex-Parte Motion to Order Respondent to Comply with the Writ of Habeas Corpus with Urgent Motion For Partial Reconsideration (Of the Order dated May 31, 2006*).[9] The motion contained no notice of hearing and no copy was furnished herein complainant, albeit a copy was sent to his counsel via registered

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[7] Annex "H", *id.* at 234-236.

[8] *Id.* at 235-236.

[9] Annex "J", *id.* at 240-246.

mail. Also on May 31, 2006, respondent Presiding Judge of Branch 87, the pairing Judge of Branch 86 presided by Judge Bay who had filed a Leave of Absence effective the following day or on June 1, 2006, acted on the motion of complainant's wife and amended Judge Bay's May 31, 2006 order by advancing the production of the parties' child from July 14, 2006 to June 1, 2006.[10] The decretal portion of respondent's May 31, 2006 Order reads:

> WHEREFORE, Ernesto A. Tabujara III or any person or persons acting for and in his behalf and under his direction is hereby directed to produce the person of minor Carlos I[ñ]igo R. Tabujara before the Session Hall, Branch 87, located at 114, Hall of Justice, Quezon City on June 1, 2006 at 9:00 o'clock in the morning. Failing which, the more coercive process of a Bench Warrant will be issued against said respondent, without prejudice to a declaration of contempt which may be due under the obtaining circumstances.[11] (Underscoring supplied)

Alleging that respondent's May 31, 2006 Order was issued with undue haste and without notice to complainant, and that respondent violated the rule against interference with courts of co-equal and concurrent jurisdiction, complainant filed on June 1, 2006 a Petition for *Certiorari* with prayer for temporary restraining order and/or writ of preliminary injunction before the Court of Appeals.[12]

On June 1, 2006, complainant having failed to appear at the rescheduled date (by respondent) for him to produce the minor child, declared him

> . . . in contempt of Court for defying the order directing the production of the minor, in which case, a bench warrant is hereby ordered against respondent, who is likewise ordered imprisoned until such time that he is willing to appear and comply with the order of this Court directing the production of the minor. Until further notice.[13] (Underscoring supplied)

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[10] Annex "I", *id.* at. 237-239.

[11] *Id.* at 238-239.

[12] Docketed as CA-SP G.R. No. 94699, Annex "K", *id.* at 247-264.

[13] *Id.* at 266.

On June 2, 2006, the appellate court issued a Resolution[14] in complainant's petition for *Certiorari* granting a Temporary Restraining Order and ordering complainant's wife to submit a Comment on the petition. On even date, in view of the contempt order and bench warrant issued by respondent on June 1, 2006, complainant filed before the appellate court an urgent *ex-parte* motion to set aside respondent's June 1, 2006 Order and bench warrant.[15] The appellate court granted the motion by June 7, 2006 Resolution.[16]

Hence, arose the present complaint, complainant contending that when respondent issued her May 31, 2006 Order, Judge Bay was not yet on official leave as it was yet to start the following day, June 1, 2006; that as a judge of a co-equal and concurrent jurisdiction, respondent could not amend, revise, modify or disturb the orders of the other courts;[17] and that respondent violated Rule 15, Section 4 of the Rules of Court[18] on litigated motions which Rule calls for the setting of such motions for hearing and the service of copy thereof upon the opposing party at least three days before the scheduled hearing.

Complainant adds that respondent's May 31, 2006 Order was issued after the opposing counsel personally met and conferred with respondent in her chambers without the presence of his (complainant's) counsel; and that after issuing the Order, respondent personally summoned via telephone complainant's counsel to her chambers where she personally

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[14] *Id.* at 269-271.

[15] Annex "N", *id.* at 272-273.

[16] *Id.* at 278-280.

[17] Complaint-Affidavit, *id.* at. 22.

[18] SEC. 4. *Hearing of motion.* — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the heating on shorter notice.

furnished him a copy of the Order in the presence of opposing counsel.[19]

Then Court Administrator Christopher Lock, by 1st Indorsement dated July 3, 2006,[20] directed respondent to comment on the Complaint-Affidavit within ten days from notice.

The Office of the Court Administrator (OCA) synthesized respondent's 22-page Comment dated August 2, 2006,[21] the salient portions of which follow:

x x x x x x x x x

In acting on the subject cases as pairing judge of Branch 86, respondent judge argued that she did not violate the basic rule against interference between courts of concurrent or co-equal jurisdiction. When respondent judge ordered the production of the minor child during the hearing set on 01 June 2006, the regular presiding judge of Branch 86 was no longer in his office as he already left the building as per information of Branch Clerk of Court Buenaluz. Hence, as pairing judge, she has the authority to act on the said urgent motion and to issue the bench warrant.

x x x x x x x x x

Respondent denied her alleged close personal relationship with Atty. Carmina Abbas, counsel of record of complainant's wife. When Atty. Abbas appeared during the hearing on 01 June 2006, it was the second time that she saw her; the first time was sometime two years ago during the IBP meeting in Makati City. She claimed that she did not know either Atty. Abas or the complainant's wife. She only came to know them when the case was referred to her for action.

With respect to her alleged failure to require complainant to show cause and answer the contempt charge against him, respondent explained that the record of the habeas corpus case shows that complainant was given several opportunities to comply with the Writ

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[19] *Rollo*, p. 23.

[20] *Id.* at 283.

[21] *Id.* at 288-309. The Comment was received by the OCA on August 10, 2006 together with a letter from respondent explaining her belated compliance with the directive of OCA to file her Comment within ten days from notice.

to bring the minor child. Per record, the 1st refusal to comply was during the hearing on 25 May 2006 when complainant claimed lack of material time to fetch the child from Tagaytay highlands. Then, the 2nd and 3rd refusal[s] to comply were during the hearings on 26 May 2006 and 01 June 2006, respectively.

Respondent likewise denied personally calling complainant's counsel and informing her about the motion and the hearing on 01 June 2006. As to the reason for Atty. Ambrosio's unexpected arrival at the respondent's sala and as to how she learned about the motion is unknown to her. She claimed that the sending of notice to party litigants and/or their counsel is not her concern or duty but that of the Branch Clerk of Court.

Respondent noted that the Petition for *Certiorari* which complainant filed in the Court of Appeals impleaded her in the capacity of Presiding Judge of Branch 87. Hence, complainant misled the Court of Appeals in making it appear that she issued the questioned order in her capacity as the regular judge of Branch 87.

Respondent only came to know of the TRO when the bench warrant was already disseminated to the proper government authorities. It was thus incumbent upon the complainant to submit himself to the court and ask that the bench warrant be set aside or recalled because of the TRO.

. . . Complainant's detention at the office of the Executive Judge Natividad was of his own making.

x x x[22] (Underscoring supplied)

After noting the following record of administrative charges against respondent:[23]

Docket No.	Complainant	Charge/ Violation	Penalty	Date of Decision/ Resolution
1. RTJ-06-1974	Edano, Carmen P.	Gross Insubordination And Gross Misconduct	**Dismissal** from the Service without prejudice	26 July 2007

[22] *Id.* at 6-7.

[23] *Id.* at 8.

2.05-10-618 RTC	OCA's Report	Undue Delay in The Disposition of Cases	**Fine of ₱11,000.00** Pesos with Warning	11 July 2007
3. RTC-05-1916	Manansala, Melencio III P.	Gross Misconduct	**Fine of ₱40,000.00** Pesos with stern Warning	10 May 2005
4. RTJ-00-1546 (98-628-RTJ)	Bownman, James *et al*.,	Grave Abuse of Discretion	**Fine of ₱2,000.00** Pesos	06 March 2000
5. RTJ-99-1428	Dumlao, Florentino, Jr.,	Partiality	**Admonished**	08 February 1999

(Emphasis in the original; underscoring supplied),

the OCA came up with the following evaluation of the Complaint:

As correctly claimed by the complainant, respondent Judge had indeed acted on the three (3) consolidated cases: (1) **without the legal authority** as pairing judge of Branch 86 considering that the regular presiding judge thereat was still sitting as such when she issued the order of 31 May 2006; (2**) in violation of the basic rule on procedural due process** when she resolved *ex-parte* the motion of the complainant's wife; and . . . in citing complainant in contempt of court and issuing the bench warrant without requiring the complainant to file his comment on said *ex-parte* motion and explain the reason for his failure to appear and bring the minor child during the hearing on 01 June 2006.

x x x x x x x x x

It must be noted that the motion of complainant's wife was **an ordinary motion** which required the application of ordinary rules and was not itself the application of writ under Rule 102.

x x x x x x x x x

Clear it is from the foregoing that respondent's basis in disregarding the rule under Section 4 of Rule 15 is not valid. While respondent may be justified in immediately setting the hearing of the said urgent *ex-parte* motion, **she should not have resolved it without first requiring the complainant to file his comment**. Although the appearance of the complainant during the hearing may be waived, he has the right to be heard insofar as the said motion is concerned through the filing of his comment thereon.

Respondent Judge's **blunder** was compounded when she immediately cited complainant in contempt of court and issued the bench warrant without requiring the latter to explain the reason for his non-appearance and non-compliance with a standing order. Under Rule 71 of the Rules of Court, complainant's alleged disobedience is an indirect contempt the punishment for which requires that a respondent should be first asked to show cause why he should not be punished for contempt.

There is one more act equally serious in nature. As correctly claimed by the complainant, respondent indeed **took cognizance of the consolidated cases without proper authority**. Respondent cannot reason out that she acted in her capacity as pairing judge. It is clear from the records that her authority as pairing judge of Branch 86 started only on 01 June 2006 when Judge Bay's leave of absence commenced. Judge Bay was still sitting as the regular judge of Branch 86 as evidenced by the issuance of his order on 31 May 2006. Respondent's explanation that Judge Bay was no longer in the premises in the afternoon of 31 May 2006, so that she could act on the subject *ex-parte* motion is clearly unacceptable.

x x x x x x x x x

Under Section 8 and 11, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10, the penalty of gross ignorance of the procedure and gross misconduct is dismissal from the service with forfeiture of all salaries, benefits and leave credits to which she may be entitled and with disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporation…

x x x[24] (Italics in the original, emphasis and underscoring supplied)

As reflected above, respondent having been earlier dismissed from the service, the OCA recommended that "respondent should

[24] *Id.* at 8-11.

be fined in the sum of ₱40,000.00 pesos, the maximum penalty of fine under Section 11(3) under Rule 140, as amended."

By Resolution of June 30, 2008,[25] this Court re-docketed the complaint as a regular administrative matter.

The Court finds the evaluation of the case by the OCA well-taken.

As found by the Court of Appeals, respondent gravely abused her discretion when she acted on the *Urgent Ex-Parte Motion to Order Respondent to Comply with the Writ of Habeas Corpus with Urgent Motion For Partial Reconsideration (Of the Order dated May 31, 2006).*[26] That Judge Bay may have left the court premises in the afternoon of May 31, 2006

[25] *Id.* at 342-343.

[26] In *Reyes-Tabujara v. Court of Appeals*, G.R. No. 172813, July 20, 2006, 495 SCRA 844, the Court affirmed the Decision of the Court of Appeals which ordered the nullification and setting aside of the May 31, 2006 and June 1, 2006 Orders of respondent. The Court of Appeals' Decision reads in part:

Respondent judge's basis for her acting on the "Urgent *Ex-Parte* Motion to Order Respondent … to comply with the Writ of *Habeas Corpus*" filed by herein private respondent in the trial court is the transmittal memo dated 31 May 2006 from Atty. Amabel B. Robles-Buenaluz, Branch Clerk of Court of Branch 86, Regional Trial Court of Quezon City stating that: -

"Considering that our Presiding Judge will be on official leave effective tomorrow, may we request your good office to hear and act on the URGENT *EX-PARTE* MOTION TO ORDER RESPONDENT TO COMPLY WITH THE WRIT OF *HABEAS CORPUS* filed by the Petitioner in the case entitled IN RE: ISSUANCE OF THE WRIT OF *HABEAS CORPUS* FOR THE PERSON OF THE MINOR CARLOS INIGO R. TABUJARA, IVY JOAN REYES-TABUHARA as petitioner versus ERNESTO A. TABUJARA III and JOHN DOES as respondents…"

Said transmittal memo clearly stated that "Our presiding judge will be on official leave effective TOMORROW," which is 01 June 2006. Apparently, on 31 May 2006, the presiding judge Teodoro A. Bay was still present and not yet on leave. Hence, respondent judge had, as yet, no authority to act upon the case on that day. A Branch Clerk of Court has no authority to abdicate the authority of a presiding judge to exercise his functions in a case and decide pending incidents while said judge is still present and performing his functions in court.

did not justify her acting on even date on motion of complainant's wife, as her authority as pairing judge commenced only the following day, June 1, 2006, when Judge Bay's leave of absence started; Nor did respondent's opinion on the urgency of the case justify her sacrificing law and settled jurisprudence for the sake of expediency.[27]

Respondent also abused her contempt powers. If at all, complainant was guilty of indirect contempt and not direct contempt.[28] Indirect or constructive contempt is committed "outside of the sitting of the court and may include misbehavior of an officer of the court in the performance of his official duties or in his official transactions, disobedience of or resistance to a lawful writ, process, order, judgment, or command of a court, or injunction granted by a court or a judge, any abuse or any unlawful interference with the process or proceedings of a court not constituting direct contempt, or any improper conduct tending directly or indirectly to impede, obstruct or degrade the administration of justice."[29]

For not affording complainant the opportunity to explain why he should not be cited in contempt, she blatantly disregarded Rule 71 of the Rules of Court.[30] In *Lim v. Domagas*[31] where

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[27] *Lim v. Domagas*, A.M. No. RTJ-92-899, October 15, 1993, 227 SCRA 258, 263.

[28] Direct contempt is a contumacious act done *facie curiae* and may be punished summarily without hearing. One may be summarily adjudged in direct contempt at the very moment or at the very instance of the commission of the act of contumely. *Vide Español v. Formoso*, G.R. No. 150949, June 21, 2007, 525 SCRA 216, 225.

[29] *Vide Español v. Formoso*, G.R. No. 150949, June 21, 2007, 525 SCRA 216, 226.

[30] Sec. 3. *Indirect contempt to be punished after charge and hearing.* — After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt: (Underscoring supplied)

x x x x x x x x x

the therein judge declared the therein complainant guilty of contempt and ordered his arrest for failure to bring three minors before the court without the benefit of a hearing, the Court faulted the therein judge not only for grave abuse of discretion but also for gross ignorance of the law.

Because, again as reflected above, respondent was, in *Edaño v. Asdala*, dismissed from the service with forfeiture of all salaries, benefits and leave credits to which she may be entitled,[32] she should, as recommended by the OCA, be fined in the amount of Forty Thousand Pesos, the highest amount of fine imposable for gross ignorance of the law or procedure, a serious charge under Rule 140 of the Rules of Court.[33]

(b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court…

x x x x x x x x x

Sec. 4. *How proceedings commenced.* — Proceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.

[31] *Lim v. Domagas*, A.M. No. RTJ-92-899, October 15, 1993, 227 SCRA 258.

[32] The decretal portion of the Decision reads:

IN VIEW WHEREOF, judgment is hereby rendered:

1. Respondent Judge Fatima G. Asdala is found GUILTY of gross insubordination and gross misconduct unbefitting a member of the judiciary and is accordingly DISMISSED from the service with forfeiture of all salaries, benefits and leave credits to which she may be entitled.

2. x x x x x x x x x

By Resolution of September 11, 2007, the Court **modified** the July 26, 2007 Decision and exempted from forfeiture her accrued leave credits.

[33] *Vide Malabanan v. Metrillo*, A.M No. P-04-1875, February 6, 2008, 544 SCRA 1; *Re: Non-Disclosure before the Judicial and Bar Council of the Administrative Case Filed against Judge Jaime V. Quitain*, JBC No. 013, August 22, 2007, 530 SCRA 729, wherein the therein respondents were fined in the amount of ₱40,000 in view of their resignation. While in the instant case, dismissal of the respondent and not resignation was involved, there is no reason why the same principle should not be applied here.

WHEREFORE, the Court finds respondent *GUILTY* of gross ignorance of law and procedure. She having been earlier dismissed from the service, she is *FINED* the amount of Forty Thousand (₱40,000) Pesos to be deducted from the Eighty Thousand (₱80,000) Pesos which this Court withheld pursuant to its January 15, 2008 Resolution in *Edaño v. Asdala.*

SO ORDERED.

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

EN BANC

[G.R. No. 122846. January 20, 2009]

WHITE LIGHT CORPORATION, TITANIUM CORPORATION and STA. MESA TOURIST & DEVELOPMENT CORPORATION, *petitioners, vs.* **CITY OF MANILA, represented by MAYOR ALFREDO S. LIM,** *respondent.*

SYLLABUS

1. POLITICAL LAW; *LOCUS STANDI*; DOCTRINE; EXCEPTIONS TO THE DOCTRINE.— Standing or *locus standi* is the ability of a party to demonstrate to the court sufficient connection to and harm from the law or action challenged to support that party's participation in the case. More importantly, the doctrine of standing is built on the principle of separation of powers, sparing as it does unnecessary interference or invalidation by the judicial branch of the actions rendered by its co-equal branches of government. The requirement of standing is a core component of the judicial system derived directly from the

Constitution. The constitutional component of standing doctrine incorporates concepts which concededly are not susceptible of precise definition. In this jurisdiction, the extancy of "a direct and personal interest" presents the most obvious cause, as well as the standard test for a petitioner's standing. In a similar vein, the United States Supreme Court reviewed and elaborated on the meaning of the three constitutional standing requirements of injury, causation, and redressability in *Allen v. Wright*.

2. ID.; ID.; ID.; ID.; CONCEPT OF THIRD PARTY STANDING; APPROPRIATE TO THE CASE AT BAR.— Nonetheless, the general rules on standing admit of several exceptions such as the overbreadth doctrine, taxpayer suits, third party standing and, especially in the Philippines, the doctrine of transcendental importance. For this particular set of facts, the concept of third party standing as an exception and the overbreadth doctrine are appropriate. In *Powers v. Ohio*, the United States Supreme Court wrote that: "We have recognized the right of litigants to bring actions on behalf of third parties, provided three important criteria are satisfied: the litigant must have suffered an 'injury-in-fact,' thus giving him or her a "sufficiently concrete interest" in the outcome of the issue in dispute; the litigant must have a close relation to the third party; and there must exist some hindrance to the third party's ability to protect his or her own interests." Herein, it is clear that the business interests of the petitioners are likewise injured by the Ordinance. They rely on the patronage of their customers for their continued viability which appears to be threatened by the enforcement of the Ordinance. The relative silence in constitutional litigation of such special interest groups in our nation such as the American Civil Liberties Union in the United States may also be construed as a hindrance for customers to bring suit.

3. ID.; ID.; ID.; ID.; OVERBREADTH DOCTRINE; APPLICABILITY.— Assuming *arguendo* that petitioners do not have a relationship with their patrons for the former to assert the rights of the latter, the overbreadth doctrine comes into play. In overbreadth analysis, challengers to government action *are* in effect permitted to raise the rights of third parties. Generally applied to statutes infringing on the freedom of speech, the overbreadth doctrine applies when a statute needlessly restrains even constitutionally guaranteed rights. In this case, the petitioners claim that the Ordinance makes a sweeping intrusion into the right to liberty

of their clients. We can see that based on the allegations in the petition, the Ordinance suffers from overbreadth. We thus recognize that the petitioners have a right to assert the constitutional rights of their clients to patronize their establishments for a "wash-rate" time frame.

4. ID.; LOCAL GOVERNMENT; ORDINANCE; REQUISITES TO BE VALID.— The test of a valid ordinance is well established. A long line of decisions including *City of Manila* has held that for an ordinance to be valid, it must not only be within the corporate powers of the local government unit to enact and pass according to the procedure prescribed by law, it must also conform to the following substantive requirements: (1) must not contravene the Constitution or any statute; (2) must not be unfair or oppressive; (3) must not be partial or discriminatory; (4) must not prohibit but may regulate trade; (5) must be general and consistent with public policy; and (6) must not be unreasonable.

5. ID.; POLICE POWER; CONCEPT; SCOPE; CASE AT BAR.— Police power, while incapable of an exact definition, has been purposely veiled in general terms to underscore its comprehensiveness to meet all exigencies and provide enough room for an efficient and flexible response as the conditions warrant. Police power is based upon the concept of necessity of the State and its corresponding right to protect itself and its people. Police power has been used as justification for numerous and varied actions by the State. These range from the regulation of dance halls, movie theaters, gas stations and cockpits. The awesome scope of police power is best demonstrated by the fact that in its hundred or so years of presence in our nation's legal system, its use has rarely been denied. The apparent goal of the Ordinance is to minimize if not eliminate the use of the covered establishments for illicit sex, prostitution, drug use and alike. These goals, by themselves, are unimpeachable and certainly fall within the ambit of the police power of the State. Yet the desirability of these ends do not sanctify any and all means for their achievement. Those means must align with the Constitution, and our emerging sophisticated analysis of its guarantees to the people. The Bill of Rights stands as a rebuke to the seductive theory of Macchiavelli, and, sometimes even, the political majorities animated by his cynicism.

6. ID.; DUE PROCESS; CONCEPT.— The primary constitutional question that confronts us is one of due process, as guaranteed under Section 1, Article III of the Constitution. Due process evades a precise definition. The purpose of the guaranty is to prevent arbitrary governmental encroachment against the life, liberty and property of individuals. The due process guaranty serves as a protection against arbitrary regulation or seizure. Even corporations and partnerships are protected by the guaranty insofar as their property is concerned. The due process guaranty has traditionally been interpreted as imposing two related but distinct restrictions on government, "procedural due process" and "substantive due process." Procedural due process refers to the procedures that the government must follow before it deprives a person of life, liberty, or property. Procedural due process concerns itself with government action adhering to the established process when it makes an intrusion into the private sphere. Examples range from the form of notice given to the level of formality of a hearing. If due process were confined solely to its procedural aspects, there would arise absurd situation of arbitrary government action, provided the proper formalities are followed. Substantive due process completes the protection envisioned by the due process clause. It inquires whether the government has sufficient justification for depriving a person of life, liberty, or property. The question of substantive due process, more so than most other fields of law, has reflected dynamism in progressive legal thought tied with the expanded acceptance of fundamental freedoms. Police power, traditionally awesome as it may be, is now confronted with a more rigorous level of analysis before it can be upheld. The vitality though of constitutional due process has not been predicated on the frequency with which it has been utilized to achieve a liberal result for, after all, the libertarian ends should sometimes yield to the prerogatives of the State. Instead, the due process clause has acquired potency because of the sophisticated methodology that has emerged to determine the proper metes and bounds for its application.

7. ID.; LOCAL GOVERNMENT; ORDINANCE; CONSTITUTIONAL REQUISITES FOR THE LEGITIMACY OF THE ORDINANCE AS A POLICE POWER MEASURE; CASE AT BAR.— That the Ordinance prevents the lawful uses of a wash rate depriving patrons of a product and the petitioners of lucrative business ties in with another constitutional requisite for the legitimacy

of the Ordinance as a police power measure. It must appear that the interests of the public generally, as distinguished from those of a particular class, require an interference with private rights and the means must be **reasonably necessary** for the accomplishment of the purpose and not unduly oppressive of private rights. It must also be evident that no other alternative for the accomplishment of the purpose less intrusive of private rights can work. More importantly, a reasonable relation must exist between the purposes of the measure and the means employed for its accomplishment, for even under the guise of protecting the public interest, personal rights and those pertaining to private property will not be permitted to be arbitrarily invaded. Lacking a concurrence of these requisites, the police measure shall be struck down as an arbitrary intrusion into private rights. As held in *Morfe v. Mutuc*, the exercise of police power is subject to judicial review when life, liberty or property is affected. However, this is not in any way meant to take it away from the vastness of State police power whose exercise enjoys the presumption of validity. Similar to the Comelec resolution requiring newspapers to donate advertising space to candidates, this Ordinance is a blunt and heavy instrument. The Ordinance makes no distinction between places frequented by patrons engaged in illicit activities and patrons engaged in legitimate actions. Thus it prevents legitimate use of places where illicit activities are rare or even unheard of. A plain reading of Section 3 of the Ordinance shows it makes no classification of places of lodging, thus deems them all susceptible to illicit patronage and subject them without exception to the unjustified prohibition.

8. ID.; ID.; ID.; INDIVIDUAL RIGHTS MAY BE ADVERSELY AFFECTED ONLY TO THE EXTENT THAT MAY FAIRLY BE REQUIRED BY THE LEGITIMATE DEMANDS OF PUBLIC INTEREST OR PUBLIC WELFARE.— We reiterate that individual rights may be adversely affected only to the extent that may fairly be required by the legitimate demands of public interest or public welfare. The State is a leviathan that must be restrained from needlessly intruding into the lives of its citizens. However well--intentioned the Ordinance may be, it is in effect an arbitrary and whimsical intrusion into the rights of the establishments as well as their patrons. The Ordinance needlessly restrains the operation of the businesses of the petitioners as well as restricting the rights of their patrons

without sufficient justification. The Ordinance rashly equates wash rates and renting out a room more than twice a day with immorality without accommodating innocuous intentions.

9. ID.; ID.; ID.; THE PROMOTION OF PUBLIC WELFARE AND A SENSE OF MORALITY AMONG CITIZENS DESERVES THE FULL ENDORSEMENT OF THE JUDICIARY PROVIDED THAT SUCH MEASURE DO NOT TRAMPLE RIGHTS.— The promotion of public welfare and a sense of morality among citizens deserves the full endorsement of the judiciary provided that such measures do not trample rights this Court is sworn to protect. The notion that the promotion of public morality is a function of the State is as old as Aristotle. The advancement of moral relativism as a school of philosophy does not de-legitimize the role of morality in law, even if it may foster wider debate on which particular behavior to penalize. It is conceivable that a society with relatively little shared morality among its citizens could be functional so long as the pursuit of sharply variant moral perspectives yields an adequate accommodation of different interests.

APPEARANCES OF COUNSEL

Sobrevinas Diaz Hayudini & Bodegon for petitioners.
The City Legal Officer for respondent.

D E C I S I O N

TINGA, *J.*:

With another city ordinance of Manila also principally involving the tourist district as subject, the Court is confronted anew with the incessant clash between government power and individual liberty in tandem with the archetypal tension between law and morality.

In *City of Manila v. Laguio, Jr.*,[1] the Court affirmed the nullification of a city ordinance barring the operation of motels and inns, among other establishments, within the Ermita-Malate area. The petition at bar assails a similarly-motivated city

[1] G.R. 118127, 12 April 2005, 455 SCRA 308.

ordinance that prohibits those same establishments from offering short-time admission, as well as pro-rated or "wash up" rates for such abbreviated stays. Our earlier decision tested the city ordinance against our sacred constitutional rights to liberty, due process and equal protection of law. The same parameters apply to the present petition.

This Petition[2] under Rule 45 of the Revised Rules on Civil Procedure, which seeks the reversal of the Decision[3] in C.A.-G.R. S.P. No. 33316 of the Court of Appeals, challenges the validity of Manila City Ordinance No. 7774 entitled, "An Ordinance Prohibiting Short-Time Admission, Short-Time Admission Rates, and Wash-Up Rate Schemes in Hotels, Motels, Inns, Lodging Houses, Pension Houses, and Similar Establishments in the City of Manila" (the Ordinance).

I.

The facts are as follows:

On December 3, 1992, City Mayor Alfredo S. Lim (Mayor Lim) signed into law the Ordinance.[4] The Ordinance is reproduced in full, hereunder:

SECTION 1. Declaration of Policy. It is hereby the declared policy of the City Government to protect the best interest, health and welfare, and the morality of its constituents in general and the youth in particular.

SEC. 2. Title. This ordinance shall be known as "An Ordinance" prohibiting short time admission in hotels, motels, lodging houses, pension houses and similar establishments in the City of Manila.

SEC. 3. Pursuant to the above policy, short-time admission and rate [*sic*], wash-up rate or other similarly concocted terms, are hereby prohibited in hotels, motels, inns, lodging houses, pension houses and similar establishments in the City of Manila.

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[2] See *rollo*, pp. 4-41.

[3] *Id.* at 42-59. Penned by Associate Justice Jaime M. Lantin, concurred in by Associate Justices Ricardo P. Galvez (later, Solicitor-General) and Antonio P. Solano.

[4] *Id.* at 46.

SEC. 4. Definition of Term[s]. Short-time admission shall mean admittance and charging of room rate for less than twelve (12) hours at any given time or the renting out of rooms more than twice a day or any other term that may be concocted by owners or managers of said establishments but would mean the same or would bear the same meaning.

SEC. 5. Penalty Clause. Any person or corporation who shall violate any provision of this ordinance shall upon conviction thereof be punished by a fine of Five Thousand (₱5,000.00) Pesos or imprisonment for a period of not exceeding one (1) year or both such fine and imprisonment at the discretion of the court; Provided, That in case of [a] juridical person, the president, the manager, or the persons in charge of the operation thereof shall be liable: Provided, further, That in case of subsequent conviction for the same offense, the business license of the guilty party shall automatically be cancelled.

SEC. 6. Repealing Clause. Any or all provisions of City ordinances not consistent with or contrary to this measure or any portion hereof are hereby deemed repealed.

SEC. 7. Effectivity. This ordinance shall take effect immediately upon approval.

Enacted by the city Council of Manila at its regular session today, November 10, 1992.

Approved by His Honor, the Mayor on December 3, 1992.

On December 15, 1992, the Malate Tourist and Development Corporation (MTDC) filed a complaint for declaratory relief with prayer for a writ of preliminary injunction and/or temporary restraining order (TRO)[5] with the Regional Trial Court (RTC) of Manila, Branch 9 impleading as defendant, herein respondent City of Manila (the City) represented by Mayor Lim.[6] MTDC prayed that the Ordinance, insofar as it includes motels and inns as among its prohibited establishments, be declared invalid and unconstitutional. MTDC claimed that as owner and operator of the Victoria Court in Malate, Manila it was authorized by Presidential Decree (P.D.) No. 259 to admit customers on a

[5] *Id.* at 62-69.

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

short time basis as well as to charge customers wash up rates for stays of only three hours.

On December 21, 1992, petitioners White Light Corporation (WLC), Titanium Corporation (TC) and Sta. Mesa Tourist and Development Corporation (STDC) filed a motion to intervene and to admit attached complaint-in-intervention[7] on the ground that the Ordinance directly affects their business interests as operators of drive-in-hotels and motels in Manila.[8] The three companies are components of the Anito Group of Companies which owns and operates several hotels and motels in Metro Manila.[9]

On December 23, 1992, the RTC granted the motion to intervene.[10] The RTC also notified the Solicitor General of the proceedings pursuant to then Rule 64, Section 4 of the Rules of Court. On the same date, MTDC moved to withdraw as plaintiff.[11]

On December 28, 1992, the RTC granted MTDC's motion to withdraw.[12] The RTC issued a TRO on January 14, 1993, directing the City to cease and desist from enforcing the Ordinance.[13] The City filed an Answer dated January 22, 1993 alleging that the Ordinance is a legitimate exercise of police power.[14]

On February 8, 1993, the RTC issued a writ of preliminary injunction ordering the city to desist from the enforcement of the Ordinance.[15] A month later, on March 8, 1993, the Solicitor

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[7] *Id.* at 70-77.

[8] *Id.* at 47.

[9] *Id.*

[10] *Id.*

[11] *Id.* at 48.

[12] *Id.* at 81.

[13] *Id.* at 82-83.

[14] *Id.* at 84-99.

[15] *Id.* at 104-105.

General filed his Comment arguing that the Ordinance is constitutional.

During the pre-trial conference, the WLC, TC and STDC agreed to submit the case for decision without trial as the case involved a purely legal question.[16] On October 20, 1993, the RTC rendered a decision declaring the Ordinance null and void. The dispositive portion of the decision reads:

> WHEREFORE, in view of all the foregoing, [O]rdinance No. 7774 of the City of Manila is hereby declared null and void.
>
> Accordingly, the preliminary injunction heretofor issued is hereby made permanent.
>
> SO ORDERED.[17]

The RTC noted that the ordinance "strikes at the personal liberty of the individual guaranteed and jealously guarded by the Constitution."[18] Reference was made to the provisions of the Constitution encouraging private enterprises and the incentive to needed investment, as well as the right to operate economic enterprises. Finally, from the observation that the illicit relationships the Ordinance sought to dissuade could nonetheless be consummated by simply paying for a 12-hour stay, the RTC likened the law to the ordinance annulled in *Ynot v. Intermediate Appellate Court,*[19] where the legitimate purpose of preventing indiscriminate slaughter of carabaos was sought to be effected through an inter-province ban on the transport of carabaos and carabeef.

The City later filed a petition for review on *certiorari* with the Supreme Court.[20] The petition was docketed as G.R. No. 112471. However in a resolution dated January 26, 1994, the Court treated the petition as a petition for *certiorari* and referred the petition to the Court of Appeals.[21]

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[16] *Id.* at 49.

[17] *Id.* at 52.

[18] *Id.* at 120.

[19] No. 74457, 20 March 1987, 148 SCRA 659.

[20] *Rollo,* pp. 129-145.

[21] *Id.* at 158.

Before the Court of Appeals, the City asserted that the Ordinance is a valid exercise of police power pursuant to Section 458 (4)(iv) of the Local Government Code which confers on cities, among other local government units, the power:

> [To] regulate the establishment, operation and maintenance of cafes, restaurants, beerhouses, hotels, motels, inns, pension houses, lodging houses and other similar establishments, including tourist guides and transports.[22]

The Ordinance, it is argued, is also a valid exercise of the power of the City under Article III, Section 18(kk) of the Revised Manila Charter, thus:

> "to enact all ordinances it may deem necessary and proper for the sanitation and safety, the furtherance of the prosperity and the promotion of the morality, peace, good order, comfort, convenience and general welfare of the city and its inhabitants, and such others as be necessary to carry into effect and discharge the powers and duties conferred by this Chapter; and to fix penalties for the violation of ordinances which shall not exceed two hundred pesos fine or six months imprisonment, or both such fine and imprisonment for a single offense.[23]

Petitioners argued that the Ordinance is unconstitutional and void since it violates the right to privacy and the freedom of movement; it is an invalid exercise of police power; and it is an unreasonable and oppressive interference in their business.

The Court of Appeals reversed the decision of the RTC and affirmed the constitutionality of the Ordinance.[24] First, it held that the Ordinance did not violate the right to privacy or the freedom of movement, as it only penalizes the owners or operators of establishments that admit individuals for short time stays. Second, the virtually limitless reach of police power is only constrained by having a lawful object obtained through a lawful method. The lawful objective of the Ordinance is satisfied since

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[22] *Id.* at 53.

[23] *Id.*

[24] *Id.* at 43-59.

it aims to curb immoral activities. There is a lawful method since the establishments are still allowed to operate. Third, the adverse effect on the establishments is justified by the well-being of its constituents in general. Finally, as held in *Ermita-Malate Motel Operators Association v. City Mayor of Manila*, liberty is regulated by law.

TC, WLC and STDC come to this Court via petition for review on *certiorari*.[25] In their petition and Memorandum, petitioners in essence repeat the assertions they made before the Court of Appeals. They contend that the assailed Ordinance is an invalid exercise of police power.

II.

We must address the threshold issue of petitioners' standing. Petitioners allege that as owners of establishments offering "wash-up" rates, their business is being unlawfully interfered with by the Ordinance. However, petitioners also allege that the equal protection rights of their clients are also being interfered with. Thus, the crux of the matter is whether or not these establishments have the requisite standing to plead for protection of their patrons' equal protection rights.

Standing or *locus standi* is the ability of a party to demonstrate to the court sufficient connection to and harm from the law or action challenged to support that party's participation in the case. More importantly, the doctrine of standing is built on the principle of separation of powers,[26] sparing as it does unnecessary interference or invalidation by the judicial branch of the actions rendered by its co-equal branches of government.

The requirement of standing is a core component of the judicial system derived directly from the Constitution.[27] The constitutional component of standing doctrine incorporates concepts which

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

[26] *Allen v. Wright*, 468 U.S. 737 (1984).

[27] CONST., Art. VIII , Sec. 5, *Sanlakas v. Executive Secretary Reyes*, 466 Phil. 482 (2004).

concededly are not susceptible of precise definition.[28] In this jurisdiction, the extancy of "a direct and personal interest" presents the most obvious cause, as well as the standard test for a petitioner's standing.[29] In a similar vein, the United States Supreme Court reviewed and elaborated on the meaning of the three constitutional standing requirements of injury, causation, and redressability in *Allen v. Wright*.[30]

Nonetheless, the general rules on standing admit of several exceptions such as the overbreadth doctrine, taxpayer suits, third party standing and, especially in the Philippines, the doctrine of transcendental importance.[31]

For this particular set of facts, the concept of third party standing as an exception and the overbreadth doctrine are appropriate. In *Powers v. Ohio,*[32] the United States Supreme Court wrote that: "We have recognized the right of litigants to bring actions on behalf of third parties, provided three important criteria are satisfied: the litigant must have suffered an 'injury-in-fact,' thus giving him or her a "sufficiently concrete interest" in the outcome of the issue in dispute; the litigant must have a close relation to the third party; and there must exist some hindrance to the third party's ability to protect his or her own interests."[33] Herein, it is clear that the business interests of the petitioners are likewise injured by the Ordinance. They rely on the patronage of their customers for their continued viability which appears to be threatened by the enforcement of the Ordinance. The relative silence in constitutional litigation of such special interest groups in our nation such as the American

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[28] *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 100, 99 S.Ct. 1601, 1608, 60 L.Ed.2d 66 (1979).

[29] See *Domingo v. Carague*, G.R. No. 161065, 15 April 2005, 456 SCRA 450. See also *Macasiano v. National Housing Authority*, G.R. No. 107921, 1 July 1993, 224 SCRA 236.

[30] 468 U.S. 737 (1984).

[31] *Supra* note 29.

[32] 499 U.S. 400 (1991).

[33] *Id.* at pp. 410-411.

Civil Liberties Union in the United States may also be construed as a hindrance for customers to bring suit.[34]

American jurisprudence is replete with examples where parties-in-interest were allowed standing to advocate or invoke the fundamental due process or equal protection claims of other persons or classes of persons injured by state action. In *Griswold v. Connecticut*,[35] the United States Supreme Court held that physicians had standing to challenge a reproductive health statute that would penalize them as accessories as well as to plead the constitutional protections available to their patients. The Court held that:

> "The rights of husband and wife, pressed here, are likely to be diluted or adversely affected unless those rights are considered in a suit involving those who have this kind of confidential relation to them."[36]

An even more analogous example may be found in *Craig v. Boren*,[37] wherein the United States Supreme Court held that a licensed beverage vendor has standing to raise the equal protection claim of a male customer challenging a statutory scheme prohibiting the sale of beer to males under the age of 21 and to females under the age of 18. The United States High Court explained that the vendors had standing "by acting as advocates of the rights of third parties who seek access to their market or function."[38]

Assuming *arguendo* that petitioners do not have a relationship with their patrons for the former to assert the rights of the latter, the overbreadth doctrine comes into play. In overbreadth analysis, challengers to government action *are* in effect permitted

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[34] See Kelsey McCowan Heilman, *THE RIGHTS OF OTHERS: PROTECTION AND ADVOCACY ORGANIZATIONS ASSOCIATIONAL STANDING TO SUE*, 157 U. Pa. L. Rev. 237, for a general discussion on advocacy groups.

[35] 381 U.S. 479(1965).

[36] *Id.* at 481.

[37] 429 U.S. 190 (1976).

[38] *Id.* at 194.

to raise the rights of third parties. Generally applied to statutes infringing on the freedom of speech, the overbreadth doctrine applies when a statute needlessly restrains even constitutionally guaranteed rights.[39] In this case, the petitioners claim that the Ordinance makes a sweeping intrusion into the right to liberty of their clients. We can see that based on the allegations in the petition, the Ordinance suffers from overbreadth.

We thus recognize that the petitioners have a right to assert the constitutional rights of their clients to patronize their establishments for a "wash-rate" time frame.

III.

To students of jurisprudence, the facts of this case will recall to mind not only the recent *City of Manila* ruling, but our 1967 decision in *Ermita-Malate Hotel and Motel Operations Association, Inc., v. Hon. City Mayor of Manila*.[40] *Ermita-Malate* concerned the City ordinance requiring patrons to fill up a prescribed form stating personal information such as name, gender, nationality, age, address and occupation before they could be admitted to a motel, hotel or lodging house. This earlier ordinance was precisely enacted to minimize certain practices deemed harmful to public morals. A purpose similar to the annulled ordinance in *City of Manila* which sought a blanket ban on motels, inns and similar establishments in the Ermita-Malate area. However, the constitutionality of the ordinance in *Ermita-Malate* was sustained by the Court.

The common thread that runs through those decisions and the case at bar goes beyond the singularity of the localities covered under the respective ordinances. All three ordinances were enacted with a view of regulating public morals including particular illicit activity in transient lodging establishments. This could be described as the middle case, wherein there is no wholesale ban on motels and hotels but the services offered by

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[39] *Chavez v. Comelec,* G.R. No. 162777, 31 August 2004, 437 SCRA 415; *Adiong v. Comelec,* G.R. No. 103956, 31 March 1992, 207 SCRA 712.

[40] 127 Phil. 306 (1967).

these establishments have been severely restricted. At its core, this is another case about the extent to which the State can intrude into and regulate the lives of its citizens.

The test of a valid ordinance is well established. A long line of decisions including *City of Manila* has held that for an ordinance to be valid, it must not only be within the corporate powers of the local government unit to enact and pass according to the procedure prescribed by law, it must also conform to the following substantive requirements: (1) must not contravene the Constitution or any statute; (2) must not be unfair or oppressive; (3) must not be partial or discriminatory; (4) must not prohibit but may regulate trade; (5) must be general and consistent with public policy; and (6) must not be unreasonable.[41]

The Ordinance prohibits two specific and distinct business practices, namely wash rate admissions and renting out a room more than twice a day. The ban is evidently sought to be rooted in the police power as conferred on local government units by the Local Government Code through such implements as the general welfare clause.

A.

Police power, while incapable of an exact definition, has been purposely veiled in general terms to underscore its comprehensiveness to meet all exigencies and provide enough room for an efficient and flexible response as the conditions warrant.[42] Police power is based upon the concept of necessity of the State and its corresponding right to protect itself and its people.[43] Police power has been used as justification for numerous

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[41] *City of Manila v. Laguio, Jr., supra* note 1; *Tatel v. Municipality of Virac,* G.R. No. L-40243, 11 March 1992, 207 SCRA 157, 161; *Solicitor General v. Metropolitan Manila Authority*, G.R. No. 102782, 11 December 1991, 204 SCRA 837, 845; *Magtajas v. Pryce Properties Corp., Inc*., G.R. No. 111097, 20 July 1994, 234 SCRA 255, 268-267.

[42] *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*, 127 Phil. 306 (1967).

[43] *JMM Promotion and Management Inc. v. Court of Appeals*, 329 Phil. 87, 94 (1996) citing *Rubi v. Provincial Board of Mindoro*, 39 Phil. 660 (1919).

and varied actions by the State. These range from the regulation of dance halls,[44] movie theaters,[45] gas stations[46] and cockpits.[47] The awesome scope of police power is best demonstrated by the fact that in its hundred or so years of presence in our nation's legal system, its use has rarely been denied.

The apparent goal of the Ordinance is to minimize if not eliminate the use of the covered establishments for illicit sex, prostitution, drug use and alike. These goals, by themselves, are unimpeachable and certainly fall within the ambit of the police power of the State. Yet the desirability of these ends do not sanctify any and all means for their achievement. Those means must align with the Constitution, and our emerging sophisticated analysis of its guarantees to the people. The Bill of Rights stands as a rebuke to the seductive theory of Macchiavelli, and, sometimes even, the political majorities animated by his cynicism.

Even as we design the precedents that establish the framework for analysis of due process or equal protection questions, the courts are naturally inhibited by a due deference to the co-equal branches of government as they exercise their political functions. But when we are compelled to nullify executive or legislative actions, yet another form of caution emerges. If the Court were animated by the same passing fancies or turbulent emotions that motivate many political decisions, judicial integrity is compromised by any perception that the judiciary is merely the third political branch of government. We derive our respect and good standing in the annals of history by acting as judicious and neutral arbiters of the rule of law, and there is no surer way to that end than through the development of rigorous and sophisticated legal standards through which the courts analyze the most fundamental and far-reaching constitutional questions of the day.

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[44] *U.S. v. Rodriguez*, 38 Phil. 759.

[45] *People v. Chan*, 65 Phil. 611 (1938).

[46] *Javier v. Earnshaw*, 64 Phil. 626 (1937).

[47] *Pedro v. Provincial Board of Rizal*, 56 Phil. 123 (1931).

B.

The primary constitutional question that confronts us is one of due process, as guaranteed under Section 1, Article III of the Constitution. Due process evades a precise definition.[48] The purpose of the guaranty is to prevent arbitrary governmental encroachment against the life, liberty and property of individuals. The due process guaranty serves as a protection against arbitrary regulation or seizure. Even corporations and partnerships are protected by the guaranty insofar as their property is concerned.

The due process guaranty has traditionally been interpreted as imposing two related but distinct restrictions on government, "procedural due process" and "substantive due process." Procedural due process refers to the procedures that the government must follow before it deprives a person of life, liberty, or property.[49] Procedural due process concerns itself with government action adhering to the established process when it makes an intrusion into the private sphere. Examples range from the form of notice given to the level of formality of a hearing.

If due process were confined solely to its procedural aspects, there would arise absurd situation of arbitrary government action, provided the proper formalities are followed. Substantive due process completes the protection envisioned by the due process clause. It inquires whether the government has sufficient justification for depriving a person of life, liberty, or property.[50]

The question of substantive due process, moreso than most other fields of law, has reflected dynamism in progressive legal thought tied with the expanded acceptance of fundamental

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[48] See *U.S. v. Ling Su Fan*, 10 Phil. 104 (1908); *Insular Government v. Ling Su Fan*, 15 Phil. 58 (1910).

[49] *Lopez v. Director of Lands*, 47 Phil. 23, 32 (1924).

[50] See *City of Manila v. Hon. Laguio, Jr.*, *supra* note 1 at 330 citing CHEMERINSKY, ERWIN, *CONSTITUTIONAL LAW PRINCIPLES AND POLICIES*, 2nd Ed. 523 (2002).

freedoms. Police power, traditionally awesome as it may be, is now confronted with a more rigorous level of analysis before it can be upheld. The vitality though of constitutional due process has not been predicated on the frequency with which it has been utilized to achieve a liberal result for, after all, the libertarian ends should sometimes yield to the prerogatives of the State. Instead, the due process clause has acquired potency because of the sophisticated methodology that has emerged to determine the proper metes and bounds for its application.

C.

The general test of the validity of an ordinance on substantive due process grounds is best tested when assessed with the evolved footnote 4 test laid down by the U.S. Supreme Court in *U.S. v. Carolene Products*.[51] Footnote 4 of the *Carolene Products* case acknowledged that the judiciary would defer to the legislature unless there is a discrimination against a "discrete and insular" minority or infringement of a "fundamental right."[52] Consequently, two standards of judicial review were established: strict scrutiny for laws dealing with freedom of the mind or restricting the political process, and the rational basis standard of review for economic legislation.

A third standard, denominated as heightened or immediate scrutiny, was later adopted by the U.S. Supreme Court for evaluating classifications based on gender[53] and legitimacy.[54] Immediate scrutiny was adopted by the U.S. Supreme Court in *Craig*,[55] after the Court declined to do so in *Reed v. Reed*.[56] While the test may have first been articulated in equal protection analysis, it has in the United States since been applied in all substantive due process cases as well.

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[51] 304 U.S. 144 (1938).

[52] *Id*. at 152.

[53] *Craig v. Boren*, 429 U.S. 190 (1976).

[54] *Clark v. Jeter*, 486 U.S. 456 (1988).

[55] 429 U.S. 190 (1976).

[56] 404 U.S. 71 (1971).

We ourselves have often applied the rational basis test mainly in analysis of equal protection challenges.[57] Using the rational basis examination, laws or ordinances are upheld if they rationally further a legitimate governmental interest.[58] Under intermediate review, governmental interest is extensively examined and the availability of less restrictive measures is considered.[59] Applying strict scrutiny, the focus is on the presence of compelling, rather than substantial, governmental interest and on the absence of less restrictive means for achieving that interest.

In terms of judicial review of statutes or ordinances, strict scrutiny refers to the standard for determining the quality and the amount of governmental interest brought to justify the regulation of fundamental freedoms.[60] Strict scrutiny is used today to test the validity of laws dealing with the regulation of speech, gender, or race as well as other fundamental rights as expansion from its earlier applications to equal protection.[61] The United States Supreme Court has expanded the scope of strict scrutiny to protect fundamental rights such as suffrage,[62] judicial access[63] and interstate travel.[64]

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[57] *Central Bank Employee's Association v. Bangko Sentral ng Pilipinas*, 487 Phil. 531 (2004); *Association of Small Landowners in the Philippines v. Secretary of Agrarian Reform*, G.R. Nos. 78742, 79310, 79744, and 79777, July 14, 1989, 175 SCRA 343; In *Ermita-Malate*, *supra* note 1 at 324, the Court in fact noted: "if the liberty involved were freedom of the mind or the person, the standard for the validity of government acts is much more rigorous and exacting, but where the liberty curtailed affects what are at the most rights of property, the permissible scope of regulatory measures is wider."

[58] *Central Bank Employee's Association v. Bangko Sentral ng Pilipinas*, *supra* note 57.

[59] *Id.*

[60] Mendoza, *J.*, Concurring Opinion in *Estrada v. Sandiganbayan*, G.R. No. 148560, 19 November 2001, 369 SCRA 394.

[61] *Id.*

[62] *Bush v. Gore*, 531 U.S. 98 (2000).

[63] *Boddie v. Connecticut*, 401 U.S. 371 (1971).

[64] *Shapiro v. Thompson*, 394 U.S. 618 (1969). It has been opined by Chemerinsky that the use of the equal protection clause was to avoid the

If we were to take the myopic view that an Ordinance should be analyzed strictly as to its effect only on the petitioners at bar, then it would seem that the only restraint imposed by the law which we are capacitated to act upon is the injury to property sustained by the petitioners, an injury that would warrant the application of the most deferential standard – the rational basis test. Yet as earlier stated, we recognize the capacity of the petitioners to invoke as well the constitutional rights of their patrons – those persons who would be deprived of availing short time access or wash-up rates to the lodging establishments in question.

Viewed cynically, one might say that the infringed rights of these customers were are trivial since they seem shorn of political consequence. Concededly, these are not the sort of cherished rights that, when proscribed, would impel the people to tear up their *cedulas*. Still, the Bill of Rights does not shelter *gravitas* alone. Indeed, it is those "trivial" yet fundamental freedoms – which the people reflexively exercise any day without the impairing awareness of their constitutional consequence – that accurately reflect the degree of liberty enjoyed by the people. Liberty, as integrally incorporated as a fundamental right in the Constitution, is not a Ten Commandments-style enumeration of what may or what may not be done; but rather an atmosphere of freedom where the people do not feel labored under a Big Brother presence as they interact with each other, their society and nature, in a manner innately understood by them as inherent, without doing harm or injury to others.

D.

The rights at stake herein fall within the same fundamental rights to liberty which we upheld in *City of Manila v. Hon. Laguio, Jr.* We expounded on that most primordial of rights, thus:

Liberty as guaranteed by the Constitution was defined by Justice Malcolm to include "the right to exist and the right to be free from

use of substantive due process since the latter fell into disfavor in the United States. See ERWIN CHEMERINSKY, *CONSTITUTIONAL LAW, PRINCIPLES AND POLICIES* (2nd ed. 2002).

arbitrary restraint or servitude. The term cannot be dwarfed into mere freedom from physical restraint of the person of the citizen, but is deemed to embrace the right of man to enjoy the facilities with which he has been endowed by his Creator, subject only to such restraint as are necessary for the common welfare."[65] In accordance with this case, the rights of the citizen to be free to use his faculties in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; and to pursue any avocation are all deemed embraced in the concept of liberty.[66]

The U.S. Supreme Court in the case of *Roth v. Board of Regents*, sought to clarify the meaning of "liberty." It said:

> While the Court has not attempted to define with exactness the liberty . . . guaranteed [by the Fifth and Fourteenth Amendments], the term denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized . . . as essential to the orderly pursuit of happiness by free men. In a Constitution for a free people, there can be no doubt that the meaning of "liberty" must be broad indeed.[67] [Citations omitted]

It cannot be denied that the primary *animus* behind the ordinance is the curtailment of sexual behavior. The City asserts before this Court that the subject establishments "have gained notoriety as venue of 'prostitution, adultery and fornications' in Manila since they 'provide the necessary atmosphere for clandestine entry, presence and exit and thus became the 'ideal haven for prostitutes and thrill-seekers.'"[68] Whether or not this depiction of a *mise-en-scene* of vice is accurate, it cannot be denied that legitimate sexual behavior among willing married or consenting single adults which is

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65 *Morfe v. Mutuc*, 130 Phil. 415 (1968).

66 *Id.* at 440.

67 *City of Manila v. Laguio, Jr.*, *supra* note 1 at 336-337.

68 *Rollo*, p. 258.

constitutionally protected[69] will be curtailed as well, as it was in the *City of Manila* case. Our holding therein retains significance for our purposes:

> The concept of liberty compels respect for the individual whose claim to privacy and interference demands respect. As the case of *Morfe v. Mutuc*, borrowing the words of Laski, so very aptly stated:
>
> > Man is one among many, obstinately refusing reduction to unity. His separateness, his isolation, are indefeasible; indeed, they are so fundamental that they are the basis on which his civic obligations are built. He cannot abandon the consequences of his isolation, which are, broadly speaking, that his experience is private, and the will built out of that experience personal to himself. If he surrenders his will to others, he surrenders himself. If his will is set by the will of others, he ceases to be a master of himself. I cannot believe that a man no longer a master of himself is in any real sense free.
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> Indeed, the right to privacy as a constitutional right was recognized in *Morfe*, the invasion of which should be justified by a compelling state interest. *Morfe* accorded recognition to the right to privacy independently of its identification with liberty; in itself it is fully deserving of constitutional protection. Governmental powers should stop short of certain intrusions into the personal life of the citizen.[70]

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[69] "Motel patrons who are single and unmarried may invoke this right to autonomy to consummate their bonds in intimate sexual conduct within the motel's premises — be it stressed that their consensual sexual behavior does not contravene any fundamental state policy as contained in the Constitution. (See *Concerned Employee v. Glenda Espiritu Mayor*, A.M. No. P-02-1564, 23 November 2004) Adults have a right to choose to forge such relationships with others in the confines of their own private lives and still retain their dignity as free persons. The liberty protected by the Constitution allows persons the right to make this choice. Their right to liberty under the due process clause gives them the full right to engage in their conduct without intervention of the government, as long as they do not run afoul of the law. Liberty should be the rule and restraint the exception.

Liberty in the constitutional sense not only means freedom from unlawful government restraint; it must include privacy as well, if it is to be a repository of freedom. The right to be let alone is the beginning of all freedom — it is the most comprehensive of rights and the right most valued by civilized men." *City of Manila v. Hon. Laguio, Jr. supra* note 1 at 337-338.

[70] *City of Manila v. Laguio, Jr., supra* note 1 at 338-339.

We cannot discount other legitimate activities which the Ordinance would proscribe or impair. There are very legitimate uses for a wash rate or renting the room out for more than twice a day. Entire families are known to choose pass the time in a motel or hotel whilst the power is momentarily out in their homes. In transit passengers who wish to wash up and rest between trips have a legitimate purpose for abbreviated stays in motels or hotels. Indeed any person or groups of persons in need of comfortable private spaces for a span of a few hours with purposes other than having sex or using illegal drugs can legitimately look to staying in a motel or hotel as a convenient alternative.

E.

That the Ordinance prevents the lawful uses of a wash rate depriving patrons of a product and the petitioners of lucrative business ties in with another constitutional requisite for the legitimacy of the Ordinance as a police power measure. It must appear that the interests of the public generally, as distinguished from those of a particular class, require an interference with private rights and the means must be **reasonably necessary** for the accomplishment of the purpose and not unduly oppressive of private rights.[71] It must also be evident that no other alternative for the accomplishment of the purpose less intrusive of private rights can work. More importantly, a reasonable relation must exist between the purposes of the measure and the means employed for its accomplishment, for even under the guise of protecting the public interest, personal rights and those pertaining to private property will not be permitted to be arbitrarily invaded.[72]

Lacking a concurrence of these requisites, the police measure shall be struck down as an arbitrary intrusion into private rights. As held in *Morfe v. Mutuc*, the exercise of police power is subject to judicial review when life, liberty or property is

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[71] *Metro Manila Development Authority v. Viron Transportation Co.*, G.R. Nos. 170656 and 170657, 15 August 2007, 530 SCRA 341.

[72] *U.S. v. Toribio*, 15 Phil. 85 (1910).

affected.[73] However, this is not in any way meant to take it away from the vastness of State police power whose exercise enjoys the presumption of validity.[74]

Similar to the COMELEC resolution requiring newspapers to donate advertising space to candidates, this Ordinance is a blunt and heavy instrument.[75] The Ordinance makes no distinction between places frequented by patrons engaged in illicit activities and patrons engaged in legitimate actions. Thus it prevents legitimate use of places where illicit activities are rare or even unheard of. A plain reading of Section 3 of the Ordinance shows it makes no classification of places of lodging, thus deems them all susceptible to illicit patronage and subject them without exception to the unjustified prohibition.

The Court has professed its deep sentiment and tenderness of the Ermita-Malate area, its longtime home,[76] and it is skeptical of those who wish to depict our capital city – the Pearl of the Orient – as a modern-day Sodom or Gomorrah for the Third World set. Those still steeped in Nick Joaquin-dreams of the grandeur of Old Manila will have to accept that Manila like all evolving big cities, will have its problems. Urban decay is a fact of mega cities such as Manila, and vice is a common problem confronted by the modern metropolis wherever in the world. The solution to such perceived decay is not to prevent legitimate businesses from offering a legitimate product. Rather, cities revive themselves by offering incentives for new businesses to sprout up thus attracting the dynamism of individuals that would bring a new grandeur to Manila.

The behavior which the Ordinance seeks to curtail is in fact already prohibited and could in fact be diminished simply by applying existing laws. Less intrusive measures such as curbing

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[73] 130 Phil. 415 (1968).

[74] *Carlos Superdrug v. DSWD*, G.R. No. 166494, June 29, 2007, *Alalayan v. National Power Corporation*, 24 Phil. 172 (1968); *U.S. v. Salaveria*, 39 Phil. 102 (1918).

[75] *Philippine Press Institute v. COMELEC*, 314 Phil. 131 (1995).

[76] *Supra* note 1.

the proliferation of prostitutes and drug dealers through active police work would be more effective in easing the situation. So would the strict enforcement of existing laws and regulations penalizing prostitution and drug use. These measures would have minimal intrusion on the businesses of the petitioners and other legitimate merchants. Further, it is apparent that the Ordinance can easily be circumvented by merely paying the whole day rate without any hindrance to those engaged in illicit activities. Moreover, drug dealers and prostitutes can in fact collect "wash rates" from their clientele by charging their customers a portion of the rent for motel rooms and even apartments.

IV.

We reiterate that individual rights may be adversely affected only to the extent that may fairly be required by the legitimate demands of public interest or public welfare. The State is a leviathan that must be restrained from needlessly intruding into the lives of its citizens. However well--intentioned the Ordinance may be, it is in effect an arbitrary and whimsical intrusion into the rights of the establishments as well as their patrons. The Ordinance needlessly restrains the operation of the businesses of the petitioners as well as restricting the rights of their patrons without sufficient justification. The Ordinance rashly equates wash rates and renting out a room more than twice a day with immorality without accommodating innocuous intentions.

The promotion of public welfare and a sense of morality among citizens deserves the full endorsement of the judiciary provided that such measures do not trample rights this Court is sworn to protect.[77] The notion that the promotion of public morality is a function of the State is as old as Aristotle.[78] The

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[77] *City of Manila v. Hon. Laguio, Jr.*, *supra* note 1; *De La Cruz, et al. v. Hon. Paras, et al.*, 208 Phil. 490 (1983); *Ermita-Malate Hotel and Motel Operations Association, Inc. v. City Mayor of Manila*, *supra* note 42.

[78] "The end of the state is not mere life; it is, rather, a good quality of life." Therefore any state "which is truly so called, and is not merely one in name, must devote itself to the end of encouraging goodness. Otherwise, a political association sinks into a mere alliance…" The law "should be a

advancement of moral relativism as a school of philosophy does not de-legitimize the role of morality in law, even if it may foster wider debate on which particular behavior to penalize. It is conceivable that a society with relatively little shared morality among its citizens could be functional so long as the pursuit of sharply variant moral perspectives yields an adequate accommodation of different interests.[79]

To be candid about it, the oft-quoted American maxim that "you cannot legislate morality" is ultimately illegitimate as a matter of law, since as explained by Calabresi, that phrase is more accurately interpreted as meaning that efforts to legislate morality will fail if they are widely at variance with public attitudes about right and wrong.[80] Our penal laws, for one, are founded

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rule of life such as will make the members of a [state] good and just." Otherwise it "becomes a mere covenant – or (in the phrase of the Sophist Lycophron) 'a guarantor of men's rights against one another.'" *Politics* II.9.6-8.1280 31-1280bii; cited in *Hamburger, M., MORALS AND LAW*: *THE GROWTH OF ARISTOTLE'S LEGAL THEORY* (1951 *ed.*), p. 178.

[79] *Greenwalt, K., CONFLICTS OF LAW AND MORALITY* (1989 ed.), at 38.

[80] *Steven G., RENDER UNTO CAESAR THAT WHICH IS CAESARS, AND UNTO GOD THAT WHICH IS GOD'S*, 31 Harv. J.L. & Pub. Pol'y 495. He cites the example of the failed Twentieth (?) Amendment to the U.S. Constitution, which prohibited the sale and consumption of liquor, where it was clear that the State cannot justly and successfully regulate consumption of alcohol, when huge portions of the population engage in its consumption.

See also *Posner, Richard H., THE PROBLEMATICS OF MORAL AND LEGAL THEORY*, The Belknap Press of Harvard University Press (2002). He writes:

> . . . Holmes warned long ago of the pitfalls of misunderstanding law by taking its moral vocabulary too seriously. A big part of legal education consists of showing students how to skirt those pitfalls. The law uses moral terms in part because of its origin, in part to be impressive, in part to speak a language that the laity, to whom the commands of the law are addressed, is more likely to understand – and in part, because there is a considerable overlap between law and morality. The overlap, however, is too limited to justify trying to align these two systems of social control (the sort of project that Islamic nations such as Iran, Pakistan, and Afghanistan have been

on age-old moral traditions, and as long as there are widely accepted distinctions between right and wrong, they will remain so oriented.

Yet the continuing progression of the human story has seen not only the acceptance of the right-wrong distinction, but also the advent of fundamental liberties as the key to the enjoyment of life to the fullest. Our democracy is distinguished from non-free societies not with any more extensive elaboration on our part of what is moral and immoral, but from our recognition that the individual liberty to make the choices in our lives is innate, and protected by the State. Independent and fair-minded judges themselves are under a moral duty to uphold the Constitution as the embodiment of the rule of law, by reason of their expression of consent to do so when they take the oath of office, and because they are entrusted by the people to uphold the law.[81]

Even as the implementation of moral norms remains an indispensable complement to governance, that prerogative is hardly absolute, especially in the face of the norms of due process of liberty. And while the tension may often be left to the courts to relieve, it is possible for the government to avoid the constitutional conflict by employing more judicious, less drastic means to promote morality.

WHEREFORE, the Petition is *GRANTED*. The Decision of the Court of Appeals is *REVERSED*, and the Decision of the Regional Trial Court of Manila, Branch 9, is *REINSTATED*. Ordinance No. 7774 is hereby declared *UNCONSTITUTIONAL*. No pronouncement as to costs.

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engaged in of late). It is not a scandal when the law to pronounce it out of phase with current moral feeling. If often is, and for good practical reasons (in particular, the law is a flywheel, limiting the effects of wide swings in public opinion). When people make that criticism—as many do of the laws, still found on the statute books of many states, punishing homosexual relations—what they mean is that the law neither is supported by public opinion nor serves any temporal purpose, even that of stability, that it is merely a vestige, an empty symbol.

[81] See *Burton, S., JUDGING IN GOOD FAITH*, (1992 *ed.*), at 218.

SO ORDERED.

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

Carpio and *Peralta, JJ.,* on official leave.

Brion, J., on sick leave.

THIRD DIVISION

[G.R. No. 127965. January 20, 2009]

FRANCISCO SALAZAR, *petitioner, vs.* **REYNALDO DE LEON represented by his Attorney-in-Fact, FELICIANO JABONILLA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JURISDICTION; IN DETERMINING JURISDICTION, THE STATUS OR RELATIONSHIP OF THE PARTIES SHOULD BE DETERMINED NOT ONLY THE NATURE OF THE ISSUES.— The jurisdiction of a tribunal, including a quasi-judicial agency, over the subject matter of a complaint or petition is determined by the allegations therein. However, in determining jurisdiction, it is not only the nature of the issues or questions that is the subject of the controversy that should be determined, but also the status or relationship of the parties. Thus, if the issues between the parties are intertwined with the resolution of an issue within the exclusive jurisdiction of the DARAB, such dispute must be addressed and resolved by the DARAB.

2. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (R.A. No. 6657); DEPARTMENT OF AGRARIAN REFORM (DAR); JURISDICTION THEREOF.— Section 50 of Republic Act No. 6657, otherwise

known as the Comprehensive Agrarian Reform Law, grants to the DAR quasi-judicial powers: xxx. In *Vda. de Tangub v. Court of Appeals*, the Court held that the jurisdiction of the DAR concerns the (1) determination and adjudication of all matters involving implementation of agrarian reform; (2) resolution of agrarian conflicts and land-tenure related problems; and (3) approval or disapproval of the conversion, restructuring or readjustment of agricultural lands into residential, commercial, industrial, or other non-agricultural use. The DAR, in turn, exercises this jurisdiction through its adjudicating arm, the Department of Agrarian Reform and Adjudication Board (DARAB).

3. ID.; ID.; DEPARTMENT OF AGRARIAN REFORM AND ADJUDICATION BOARD (DARAB); JURISDICTION THEREOF.— The Court affirmed in *Monsanto v. Zerna* that the DARAB exercises primary jurisdiction, both original and appellate, to determine and adjudicate all agrarian disputes, controversies, matters or incidents involving the implementation of agrarian laws and their implementing rules and regulations. In *Nuesa v. Court of Appeals*, the Court reiterated that: [T]he DAR is vested with the primary jurisdiction to determine and adjudicate agrarian reform matters and shall have the exclusive jurisdiction over all matters involving the implementation of the agrarian reform program. The DARAB has primary, original and appellate jurisdiction to determine and adjudicate all agrarian disputes, cases, controversies, and matters or incidents involving the implementation of the Comprehensive Agrarian Reform Program under R.A. 6657, E.O. Nos. 229, 228 and 129-A, R.A. 3844 as amended by R.A. 6389, P.D. No. 27 and other agrarian laws and their implementing rules and regulations.

4. ID.; ID.; ID.; ID.; "AGRARIAN DISPUTE," DEFINED.— "Agrarian dispute" is defined in Section 3 of Republic Act No. 6657 as any controversy relating to tenurial arrangements — whether leasehold, tenancy, stewardship or otherwise — over lands devoted to agriculture; including disputes concerning farmworkers' associations or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangements. It includes any controversy relating to compensation of lands acquired under Republic Act No. 6657 and other terms and conditions of transfer of ownership from landowner to farmworkers, tenants

and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee. It refers to any controversy relating to, *inter alia*, tenancy over lands devoted to agriculture.

5. ID.; ID.; TENANCY RELATIONSHIP; "TENANTS," DEFINED.— Tenants are defined as persons who – in themselves and with the aid available from within their immediate farm households – cultivate the land belonging to or possessed by another, with the latter's consent, for purposes of production, sharing the produce with the landholder under the share tenancy system, or paying to the landholder a price certain or ascertainable in produce or money or both under the leasehold tenancy system.

6. ID.; ID.; ID.; CONCRETE EVIDENCE TO PROVE THE ELEMENT OF SHARING, COMPENSATION IN THE FORM OF LEASE RENTALS OR A SHARE IN THE PRODUCE OF THE LANDHOLDING INVOLVED IS REQUIRED TO ESTABLISH EXISTENCE THEREOF.— The Court has previously held that substantial evidence, defined as such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion, is required to establish a tenancy relationship. To support a finding that a tenancy relationship is present, the Court has repeatedly required the presentation of concrete evidence to prove the element of sharing, compensation in the form of lease rentals or a share in the produce of the landholding involved. Going over the Decision dated 17 November 1995 of the DARAB and the documentary evidence considered therein, which were likewise presented by the petitioner before this Court, the Court can only conclude that there is substantial evidence to establish the existence of a tenancy relationship between petitioner and respondent. The receipts presented by petitioner covering his rental payments to respondent for the subject property, unrebutted by the latter, constitute concrete evidence of tenurial relations between them.

7. REMEDIAL LAW; JUDGMENTS; *RES JUDICATA*; DOCTRINE APPLIES ALSO TO DECISIONS OF BODIES UPON WHOM JUDICIAL POWERS HAVE BEEN CONFERRED.— Significantly, respondent did not appeal the Decision dated 17 November 1995 of the DARAB in DARAB Case # II-380-ISA'94; consequently, the same has attained finality and constitutes *res judicata* on the issue of petitioner's status as a tenant of

respondent. *Res judicata* is a concept applied in the review of lower court decisions in accordance with the hierarchy of courts. But jurisprudence has also recognized the rule of administrative *res judicata*: "The rule which forbids the reopening of a matter once judicially determined by competent authority applies as well to the judicial and quasi-judicial facts of public, executive or administrative officers and boards acting within their jurisdiction as to the judgments of courts having general judicial powers . . . It has been declared that whenever final adjudication of persons invested with power to decide on the property and rights of the citizen is examinable by the Supreme Court, upon a writ of error or a *certiorari*, such final adjudication may be pleaded as *res judicata*." To be sure, early jurisprudence was already mindful that the doctrine of *res judicata* cannot be said to apply exclusively to decisions rendered by what are usually understood as courts without unreasonably circumscribing the scope thereof; and that the more equitable attitude is to allow extension of the defense to decisions of bodies upon whom judicial powers have been conferred.

8. ID.; APPEALS; FINDINGS OF FACT OF ADMINISTRATIVE AGENCY ARE BINDING AND CONCLUSIVE.— Needless to stress, findings of fact of an administrative agency are binding and conclusive upon this court, for as long as substantial evidence supports said factual findings.

9. ID.; COURTS; DOCTRINE OF PRIMARY JURISDICTION; PRECLUDES THE REGULAR COURTS FROM RESOLVING A CONTROVERSY OVER WHICH JURISDICTION HAS BEEN LODGED WITH AN ADMINISTRATIVE BODY OF SPECIAL COMPETENCE.— In addition, although the Court does not essentially view the Agricultural Leasehold Contract executed between petitioner and respondent during the pendency of the present Petition as a settlement of the controversy between the parties, it actually recognizes the same to be a written confirmation of the tenancy relationship that has existed between the parties from the beginning. In *David v. Rivera*, this Court held that: [I]t is safe to conclude that the existence of prior agricultural tenancy relationship, if true, will divest the MCTC of its jurisdiction the previous juridical tie compels the characterization of the controversy as an "agrarian dispute." x x x. Therefore, the Court could only rule that the dispute herein between respondent as landowner and petitioner

as tenant is agrarian in nature falling within the jurisdictional domain of the DARAB. This is in line with the doctrine of primary jurisdiction which precludes the regular courts from resolving a controversy over which jurisdiction has been lodged with an administrative body of special competence.

APPEARANCES OF COUNSEL

Cezar C. Purugganan for petitioner.
Mariano A. Avecilla for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated 8 August 1996 of the Court of Appeals in CA-G.R. CV No. 46108 which denied petitioner Francisco Salazar's appeal and affirmed the Decision[2] dated 8 October 1993 of the Regional Trial Court (RTC) of Roxas, Isabela, Branch 23, in Civil Case No. 419. The RTC ordered petitioner to vacate and surrender to respondent Reynaldo de Leon the disputed parcel of land. The instant Petition is also assailing the Resolution[3] dated 8 January 1997 of the appellate court which denied petitioner's Motion for Reconsideration.

On 26 March 1993, Civil Case No. 419 was instituted by respondent, through his attorney-in-fact Feliciano Jabonilla, by the filing of a Complaint[4] for recovery of possession of real property and damages. Respondent alleged that he is the registered owner of a parcel of land (subject property) situated at the *Barrio* of Muñoz, Municipality of Roxas, Province of

[1] Penned by Associate Justice Antonio M. Martinez with Associate Justices Ricardo P. Galvez and Hilarion L. Aquino, concurring; *rollo*, pp. 33-35.

[2] Penned by Judge Teodulo E. Mirasol; CA *rollo*, pp. 23-24.

[3] *Rollo*, p. 37.

[4] *Id.* at 50.

Isabela, covered by Transfer Certificate of Title (TCT) No. T-85610 of the Registry of Deeds of Isabela, and more particularly described as follows:

A PARCEL OF LAND (Lot 251-B-1 of the subdv. Plan LRC Psd-195529, being a portion of Lot 251-B LBC Psd-176315, LRC Cad. Record No. Hom. Patent), containing an area of 2.0000 Hectares, more or less; Bounded on the NE., points 6-1 by Lot 244, Gamu Pls-15; on the SE., points 1-3 by Lot 251-A LRC Psd-176315; on the SW., points 3-4 by Road; and on the NW., points 4-6 by Lot 251-B-2 of the subdv. Plan; covered by Tax Dec. No. 92-26-3073-A of the Tax Rolls of the municipality of Roxas, Isabela, and is assessed at ₱11,050.00.

The subject property is an unirrigated rice land, capable of only one rice cropping in a calendar year.[5] Petitioner is not a tenant of respondent, but since the two are close relatives by consanguinity, respondent allowed him to cultivate the subject property without paying any rental, with the understanding that when respondent needs the property, petitioner will peacefully vacate and surrender the same to him. Subsequently, respondent demanded that he already vacate and surrender possession of the subject property to him because he wanted to personally cultivate the same. Petitioner, however, refused, claiming that he could acquire the subject property from him through the Department of Agrarian Reform (DAR) under the Operation Land Transfer Program of the Government.

Respondent, thus, prayed in his Complaint for the following:

WHEREFORE, it is prayed of this Honorable Court, that after due notice and hearing, judgment be rendered in favor of [herein respondent] and against the [herein petitioner], to wit:

1. Ordering the [petitioner] to peacefully vacate and peacefully surrender and restore possession of the land described in paragraph 2 hereof to the [respondent];

2. Ordering [petitioner] to pay to [respondent] the sum of ₱10,000.00 as damage, representing attorney's fee, plus the total sum of appearances of counsel at ₱500.00 per hearing;

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

3. Ordering [petitioner] to pay to [respondent] 120 cavans of palay per calendar year with the average weight of 50 kilos per cavan, or its money equivalent, commencing from the filing of the case, until [respondent] is restored in possession of the land in suit;

4. Ordering [petitioner] to pay ₱2,000.00 as damage, representing expenses incurred by [respondent] in the filing of the case in court against the [petitioner], and another sum of ₱10,000.00 litigation expenses incurred by [respondent];

5. Ordering [petitioner] to pay the costs of this suit; and

GRANTING to [respondent] such further relief deemed just and equitable in the premises.[6]

Upon motion of respondent,[7] the RTC issued an Order dated 20 May 1993 declaring petitioner in default for his failure to file an answer and/or any responsive pleading to respondent's Complaint despite service of summons.[8]

Respondent was then allowed by the RTC to present evidence *ex parte*.[9] Respondent testified on his own behalf.

On 8 October 1993, the RTC rendered its Decision wherein it declared that:

The court having been convinced that the [herein respondent] as absolute owner is entitled to the possession of the land in question, the [herein petitioner] should now be enjoined to vacate the said land and surrender the peaceful possession thereof to the [respondent]. Ownership implies the right to enjoy the thing owned and this right carries with it the right to recover the same (Article 428, New Civil Code).[10]

The *fallo* of the RTC Decision reads:

WHEREFORE, in view of the foregoing findings, judgment is hereby rendered in favor of the [herein respondent] and against the [herein petitioner] and hereby orders him:

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[6] *Id.*

[7] Records, p. 10.

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

[9] Records, p. 12.

[10] CA *rollo*, p. 24.

1. To vacate and surrender the peaceful possession of that parcel of land mentioned in paragraph 2 of the [respondent's] complaint embraced in and covered by TCT No. T-85610 of Isabela, standing in the name of the [respondent];

2. To pay the [respondent] the sum of ₱20,000.00 representing the unrealized fruits of the land from the filing of the case up to the present;

3. To pay the sum of ₱5,000.00 as reasonable attorney's fee's; and

4. To pay the costs.[11]

Petitioner filed a Motion for New Trial and Lift Order of Default,[12] wherein he claimed that being unlettered, he completely relied on his counsel to take charge of the case and he was unaware that his counsel failed to file an Answer to respondent's Complaint. Petitioner also insisted that the dispute between him and respondent involved a tenancy relationship over which the trial court had no jurisdiction.

Petitioner's Motion for New Trial and Lift Order of Default was denied by the RTC for lack of merit in its Order dated 31 January 1994.[13]

Petitioner filed an appeal with the Court of Appeals, docketed as CA-G.R. CV No. 46108, essentially invoking the existence of a landlord-tenant relationship between respondent and him, thus, arguing that it was erroneous for the RTC to have assumed jurisdiction over the Complaint in Civil Case No. 419.

In the meantime, petitioner initiated before the Department of Agrarian Reform Adjudication Board (DARAB)-Isabela DARAB Case # II-380-ISA'94 against respondent. During the pendency of CA-G.R. CV No. 46108 before the Court of Appeals, a Decision[14] dated 17 November 1995 was rendered

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[11] *Id.* at 24.

[12] *Id.* at 25.

[13] *Id.* at 29.

[14] *Id.* at 37.

in DARAB Case # II-380-ISA'94 by the DARAB-Isabela finding that petitioner was a *bona-fide* tenant of respondent who should be maintained in the peaceful possession and cultivation of the subject property. Petitioner submitted a copy of the DARAB Decision to the Court of Appeals.[15]

The Court of Appeals, however, was not to be swayed. In a decision dated 8 August 1996, it rejected petitioner's arguments and denied his appeal based on the following reasoning:

[T]he settled rule is that the jurisdiction of the court over the subject matter is determined by the allegations of the complaint. Thus, "if the complaint shows jurisdictional facts necessary to sustain the action and the remedy sought is merely to obtain possession, the court will have jurisdiction, regardless of any claim of ownership set forth by either the plaintiff or the defendant." (*Ganadin v. Ramos*, 99 SCRA 613).

The same case also holds that:

> "x x x The jurisdiction of the court cannot be made to depend upon the defenses set up in the answer or upon the motion to dismiss, for otherwise the question of jurisdiction would depend almost entirely upon the defendant." (Ganadin, *supra*, citing Moran, *on the Rules of Court*, 1970 *ed*.)

In the case at bar, allegations in the complaint make out a case cognizable by the court *a quo*, to wit: (1) the [herein respondent] is the registered owner of a parcel of land, which was: (2) tilled by the [herein petitioner] by [respondent's] mere tolerance; and (3) [petitioner] refused to surrender possession of the land despite demand, the dispossession lasting for more than a year (pp. 1-2, Complaint).[16]

Hence, the Court of Appeals decreed:

WHEREFORE, the appealed decision is hereby AFFIRMED. Costs against [herein petitioner].[17]

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[15] *Id.* at 36.

[16] *Rollo*, pp. 34-35.

[17] *Id.*

Petitioner's Motion for Reconsideration[18] was denied by the Court of Appeals in its Resolution dated 8 January 1997,[19] prompting him to file the Petition at bar.

Petitioner made the following assignment of errors in his Petition:

I. THE APPELLATE COURT ERRED IN SUSTAINING THE TRIAL COURT WHICH ERRONEOUSLY TOOK COGNIZANCE OF CIVIL CASE NO. 419 AND FORTHWITH RENDERED A JUDGMENT BY DEFAULT THEREON DESPITE A CLEAR SHOWING IN THE ALLEGATIONS OF THE COMPLAINT THAT IT HAD NO JURISDICTION AS THE SUBJECT MATTER IS AGRARIAN IN NATURE.

II. THE APPELLATE COURT ERRED IN NOT DISMISSING CIVIL CASE NO. 419-ON APPEAL *VIS-À-VIS* A PRIOR DECISION OF THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB) FINDING THE EXISTENCE OF A TENANCY RELATIONSHIP BETWEEN PETITIONER AND PRIVATE RESPONDENT.

III. THE APPELLATE COURT ERRED IN SUSTAINING THE TRIAL COURT WHICH FORTHWITH RENDERED A JUDGMENT BY DEFAULT AND IGNORING PETITIONER'S MOTION FOR NEW TRIAL WHICH WOULD HAVE SHOWN AND PROVED BEYOND PERADVENTURE (sic) THE EXISTENCE OF A *BONA FIDE* TENANCY RELATIONSHIP.

IV. THE APPELLATE COURT ERRED IN NOT GRANTING THE RELIEFS PRAYED FOR BY PETITIONER.[20]

Respondent filed his Comment[21] on the present Petition, whereby he asked that this Court dismiss the present Petition for lack of merit. Petitioner next submitted a Reply.[22] As a matter of course, the Court required the parties to submit their respective Memoranda.

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[18] CA *rollo*, p. 49.

[19] *Id.* at 69.

[20] *Rollo*, pp. 9-10.

[21] *Id.* at 63.

[22] *Id.* at 82.

On 1 April 2003,[23] counsel for respondent submitted a Manifestation that respondent and petitioner had already extrajudicially settled the case between them without the assistance of their respective counsels. Consequently, respondent's counsel prayed that the Court already dispense with requiring the submission of respondent's memorandum.

The Court then directed petitioner to comment on the aforementioned Manifestation[24] of respondent's counsel. In his Compliance and Manifestation,[25] counsel for petitioner confirmed the settlement between his client and respondent. Petitioner's counsel likewise prayed for the dismissal of the instant Petition.

Before acting on the prayers of both counsels to dismiss the Petition, the Court first ordered them to submit a written copy of the supposed settlement between their clients.[26] The counsels, however, failed to comply with said directive. Instead, they filed separate motions to withdraw as the counsels for petitioner and respondent, given that their respective clients had already settled the case and were both already residing in the United States and could no longer be located.[27]

In a Resolution dated 22 January 2007,[28] the Court denied the counsels' separate motions to withdraw and directed them to exert more effort in locating their clients.

On 2 April 2007, the counsels, on behalf of their clients, submitted for the approval of this Court, an Agricultural Leasehold Contract[29] entered into between petitioner as agricultural lessee, and respondent[30] as agricultural lessor, establishing between

[23] *Id.* at 163.

[24] *Id.* at 169.

[25] *Id.* at 177.

[26] *Id.* at 191.

[27] *Id.* at 199, 201.

[28] *Id.* at 208.

[29] Dated 1 December 1999; *id.* at 212.

[30] Petitioner as agricultural lessee in the agricultural leasehold contract was represented by one Elmer Salazar. (*Rollo*, p. 212.)

them an agricultural relation over the subject property and providing explicitly that petitioner was the duly authorized agricultural lessee who shall pay rentals to respondent.

On 3 December 2008, the Court issued another Resolution denying for lack of merit the counsels' prayer for the dismissal of the Petition at bar in view of the parties' settlement, dispensing with respondent's Memorandum, and considering the case submitted for decision.

The Court now proceeds to resolve the Petition and settle the issues raised therein.

Petitioner insists on the existence of a tenancy relationship between him and respondent, and assails the assumption of jurisdiction and promulgation of the decisions of both the RTC and Court of Appeals on their dispute. Petitioner maintains that considering the tenancy relationship between him and respondent, the jurisdiction over any controversy arising therefrom falls on the DARAB.

The central issue in this case, therefore, is whether there is an agrarian dispute between petitioner and respondent.

The Court rules that there is.

The jurisdiction of a tribunal, including a quasi-judicial agency, over the subject matter of a complaint or petition is determined by the allegations therein. However, in determining jurisdiction, it is not only the nature of the issues or questions that is the subject of the controversy that should be determined, but also the status or relationship of the parties.[31] Thus, if the issues between the parties are intertwined with the resolution of an issue within the exclusive jurisdiction of the DARAB, such dispute must be addressed and resolved by the DARAB.[32]

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[31] *Heirs of Julian de la Cruz and Lenora Talaro v. Heirs of Alberto Cruz*, G.R. No. 162890, 22 November 2005, 475 SCRA 743, 755-756, citing *Vesagas v. Court of Appeals*, 422 Phil. 860, 869 (2001).

[32] *Heirs of Julian de la Cruz and Lenora Talaro v. Heirs of Alberto Cruz, id.*, citing *Monsanto v. Zerna*, 423 Phil. 150, 160 (2001).

Section 50 of Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law, grants to the DAR quasi-judicial powers:

> SEC. 50. *Quasi-Judicial Powers of the DAR*. — The DAR is hereby vested with primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR).

In *Vda. de Tangub v. Court of Appeals*,[33] the Court held that the jurisdiction of the DAR concerns the (1) determination and adjudication of all matters involving implementation of agrarian reform; (2) resolution of agrarian conflicts and land-tenure related problems; and (3) approval or disapproval of the conversion, restructuring or readjustment of agricultural lands into residential, commercial, industrial, or other non-agricultural use. The DAR, in turn, exercises this jurisdiction through its adjudicating arm, the Department of Agrarian Reform and Adjudication Board (DARAB).[34]

Section 1, Rule II of the DARAB Rules of Procedure of 1994 recognizes the primary and exclusive jurisdiction of the DARAB in certain matters, particularly:

> Sec. 1. *Primary and Exclusive Original and Appellate Jurisdiction*. — The Board shall have primary exclusive jurisdiction, both original and appellate, to determine and adjudicate all agrarian disputes involving the implementation of the Comprehensive Agrarian Reform Program (CARP) under Republic Act No. 6657, Executive Order Nos. 228, and 129-A, Republic Act No. 3844 as amended by Republic Act No. 6389, Presidential Decree No. 27 and other agrarian laws and their implementing rules and regulations. Specifically, such jurisdiction shall include but not be limited to cases involving the following:

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[33] UDK No. 9864, 3 December 1990, 191 SCRA 885.

[34] *Martillano v. Court of Appeals*, G.R. No. 148277, 29 June 2004, 433 SCRA 195, 202.

> a) The rights and obligations of persons, whether natural or juridical, engaged in the management, cultivation and use of all agricultural lands covered by the CARP and other agrarian laws x x x.

The Court affirmed in *Monsanto v. Zerna*[35] that the DARAB exercises primary jurisdiction, both original and appellate, to determine and adjudicate all agrarian disputes, controversies, matters or incidents involving the implementation of agrarian laws and their implementing rules and regulations.

In *Nuesa v. Court of Appeals*,[36] the Court reiterated that:

> [T]he DAR is vested with the primary jurisdiction to determine and adjudicate agrarian reform matters and shall have the exclusive jurisdiction over all matters involving the implementation of the agrarian reform program. The DARAB has primary, original and appellate jurisdiction to determine and adjudicate all agrarian disputes, cases, controversies, and matters or incidents involving the implementation of the Comprehensive Agrarian Reform Program under R.A. 6657, E.O. Nos. 229, 228 and 129-A, R.A. 3844 as amended by R.A. 6389, P.D. No. 27 and other agrarian laws and their implementing rules and regulations.

"Agrarian dispute" is defined in Section 3 of Republic Act No. 6657 as any controversy relating to tenurial arrangements - whether leasehold, tenancy, stewardship or otherwise - over lands devoted to agriculture; including disputes concerning farmworkers' associations or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangements. It includes any controversy relating to compensation of lands acquired under Republic Act No. 6657 and other terms and conditions of transfer of ownership from landowner to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee. It refers to any controversy

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[35] *Supra* note 32.

[36] 428 Phil. 413, 423 (2002).

relating to, *inter alia*, tenancy over lands devoted to agriculture.[37]

The instant case undeniably involves a controversy involving an adverse relationship between a landlord and his tenant.

The reason for petitioner's refusal to surrender possession of the subject property to the respondent is that petitioner is allegedly his tenant, and has a right that is protected under the agrarian reform laws, a claim which respondent denies. There is, thus, a dispute as to the nature of the relationship between respondent and petitioner.

The judgment of the DARAB in DARAB Case # II-380-ISA'94, wherein it already settled that petitioner is a tenant of respondent, is vital herein.

Tenants are defined as persons who – in themselves and with the aid available from within their immediate farm households – cultivate the land belonging to or possessed by another, with the latter's consent, for purposes of production, sharing the produce with the landholder under the share tenancy system, or paying to the landholder a price certain or ascertainable in produce or money or both under the leasehold tenancy system.[38]

In declaring that petitioner is indeed the tenant of respondent, the DARAB considered the following pieces of evidence:[39]

EXHIBIT "A" – receipt of payment of rental, dated November 5, 1990;

EXHIBIT "A-1" – receipt of payment of rental, dated April 4, 1991;

EXHIBIT "A-2" – receipt of payment of rental, dated January 13, 1992;

EXHIBIT "A-3" – receipt of payment of rental, dated April 16, 1992;

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[37] *Heirs of Rafael Magpily v. De Jesus*, G.R. No. 167748, 8 November 2005, 474 SCRA 366, 373-374; *Islanders CARP Farmers Beneficiaries Multi-Purpose Cooperative, Inc. v. Lapanday Agricultural and Dev't. Corp.*, G.R. No. 159089, 3 May 2006, 489 SCRA 80, 88.

[38] *Heirs of Rafael Magpily v. De Jesus, id.*

[39] CA *rollo*, p. 38.

EXHIBIT "A-4" – receipt of payment of rental, dated December 23, 1992;

EXHIBIT "A-5" – receipt of payment of rental, dated March 8, 1993;

EXHIBIT "B" – ARBA CERTIFICATION dated October 26, 1993, to the effect that [herein petitioner] is the tenant-tiller of the subject property;

EXHIBIT "C" – Barangay Certification dated October 26, 1993, to the effect that [petitioner] is the rightful tenant of the land in suit from 1962 to the present;

EXHIBIT "D" – MARO Certification, dated October 26, 1993, to the effect that [petitioner] was, per records kept, the tenant-tiller of the property in suit;

EXHIBIT "E" – Transfer Certificate of Title No. T-85610 as proof ownership of the land by [herein respondent] Reynaldo de Leon.

These led the DARAB to rule that:

A cursory examination and appreciation of all the documentary exhibits submitted by the [herein petitioner] would readily show one and common established fact that [petitioner] is the *bona-fide* tenant of the land subject matter of controversy. As tenant the mantle of protection of Agrarian Reform Laws must shield and protect the [petitioner] from undue molestation thereof. In a nutshell he must be secured of his right as tenant, and cannot be ejected therefrom, unless for causes provided by law.

[Herein respondent, *et al.*], who failed to tender their answer, despite service of summons and copy of the complaint, and worst, likewise failed to submit documentary exhibits, despite order to do so, shall be considered to have admitted the accusation against them. For settled is the rule in evidence "that an innocent person when charged is as bold as a lion, whereas a guilty person flees even if no one pursueth."

VERILY, in the light of all the foregoing, judgment is hereby issued in favor of the [petitioner] and against the [respondent, *et al.*];

1) FINDING, [petitioner] the *bona-fide* tenant of the [respondent, *et al.*] on the land subject matter of controversy described in paragraph 2 of the complaint;

2) DIRECTING, [respondent, *et al.*], their agents and cohorts to respect and maintain the peaceful possession and cultivation of the plaintiff on the land in suit;

3) ORDERING, [respondent, *et al.*] jointly and severally to pay ₱10,000.00, representing attorney's fee and exemplary damages.

No pronouncement as to cost.[40]

The Court has previously held that substantial evidence, defined as such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion, is required to establish a tenancy relationship. To support a finding that a tenancy relationship is present, the Court has repeatedly required the presentation of concrete evidence to prove the element of sharing, compensation in the form of lease rentals or a share in the produce of the landholding involved.[41] Going over the Decision dated 17 November 1995 of the DARAB and the documentary evidence considered therein, which were likewise presented by the petitioner before this Court, the Court can only conclude that there is substantial evidence to establish the existence of a tenancy relationship between petitioner and respondent. The receipts presented by petitioner covering his rental payments to respondent for the subject property, unrebutted by the latter, constitute concrete evidence of tenurial relations between them.

Significantly, respondent did not appeal the Decision dated 17 November 1995 of the DARAB in DARAB Case # II-380-ISA'94; consequently, the same has attained finality[42] and constitutes *res judicata*[43] on the issue of petitioner's status as a tenant of respondent.

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

[41] *Fuentes v. Caguimbal*, G.R. No. 150305, 22 November 2007, 538 SCRA 12, 23.

[42] *Delgado v. Court of Appeals*, G.R. No. 137881, 19 August 2005, 467 SCRA 418, 424-425.

[43] *Peña v. Government Service Insurance System (GSIS)*, G.R. No. 159520, 19 September 2006, 502 SCRA 383, 399-400.

Res judicata is a concept applied in the review of lower court decisions in accordance with the hierarchy of courts. But jurisprudence has also recognized the rule of administrative *res judicata*: "The rule which forbids the reopening of a matter once judicially determined by competent authority applies as well to the judicial and quasi-judicial facts of public, executive or administrative officers and boards acting within their jurisdiction as to the judgments of courts having general judicial powers. . . It has been declared that whenever final adjudication of persons invested with power to decide on the property and rights of the citizen is examinable by the Supreme Court, upon a writ of error or a *certiorari*, such final adjudication may be pleaded as *res judicata*." To be sure, early jurisprudence was already mindful that the doctrine of *res judicata* cannot be said to apply exclusively to decisions rendered by what are usually understood as courts without unreasonably circumscribing the scope thereof; and that the more equitable attitude is to allow extension of the defense to decisions of bodies upon whom judicial powers have been conferred.[44]

Needless to stress, findings of fact of an administrative agency are binding and conclusive upon this court, for as long as substantial evidence supports said factual findings.[45]

In addition, although the Court does not essentially view the Agricultural Leasehold Contract executed between petitioner and respondent during the pendency of the present Petition as a settlement of the controversy between the parties, it actually recognizes the same to be a written confirmation of the tenancy relationship that has existed between the parties from the beginning.

In *David v. Rivera*,[46] this Court held that:

[I]t is safe to conclude that the existence of prior agricultural tenancy relationship, if true, will divest the MCTC of its jurisdiction the

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[44] *National Housing Authority v. Almeida*, G.R. No. 162784, 22 June 2007, 525 SCRA 383, 394.

[45] *Perez v. Cruz*, 452 Phil. 597, 607 (2003).

[46] 464 Phil. 1006, 1016 (2004).

previous juridical tie compels the characterization of the controversy as an "agrarian dispute." x x x.

Therefore, the Court could only rule that the dispute herein between respondent as landowner and petitioner as tenant is agrarian in nature falling within the jurisdictional domain of the DARAB. This is in line with the doctrine of primary jurisdiction which precludes the regular courts from resolving a controversy over which jurisdiction has been lodged with an administrative body of special competence.[47]

WHEREFORE, premises considered, the Petition is *GRANTED*. The assailed Decision dated 8 August 1996 and Resolution dated 8 January 1997 of the Court of Appeals in CA-G.R. CV No. 46108 affirming the Decision dated 8 October 1993 of the RTC, Branch 23, Roxas, Isabela, in Civil Case No. 419 are *REVERSED* and *SET ASIDE*. The Complaint in Civil Case No. 419 is *DISMISSED* for lack of jurisdiction of the RTC over the same. No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Nachura, and *Leonardo-de Castro,*[*] *JJ.,* concur.

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[47] *Bautista v. Mag-Isa Vda. de Villena*, G.R. No. 152564, 13 September 2004, 438 SCRA 259, 262.

[*] Per Special Order No. 546 Associate Justice Teresita J. Leonardo-De Castro was designated to sit as additional member in view of the retirement of Associate Justice Ruben T. Reyes dated 5 January 2009.

FIRST DIVISION

[G.R. No. 149660. January 20, 2009]

MARANAW HOTELS AND RESORT CORP., *petitioner, vs.* **COURT OF APPEALS, SHERYL OABEL and MANILA RESOURCE DEVELOPMENT CORP.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; CERTIFICATE OF NON-FORUM SHOPPING; A MANDATORY REQUIREMENT; FILING OF MOTION FOR RECONSIDERATION WITH AN APPENDED CERTIFICATE OF NON-FORUM SHOPPING NOT SUFFICIENT TO CURE THE DEFECT.— Well-settled is the rule that the certificate of non-forum shopping is a mandatory requirement. Substantial compliance applies only with respect to the contents of the certificate but not as to its presence in the pleading wherein it is required. Petitioner's contention that the filing of a motion for reconsideration with an appended certificate of non forum-shopping suffices to cure the defect in the pleading is absolutely specious. It negates the very purpose for which the certification against forum shopping is required: to inform the Court of the pendency of any other case which may present similar issues and involve similar parties as the one before it. The requirement applies to both natural and juridical persons.

2. ID.; ID.; ID.; LAWYER ACTING FOR THE CORPORATION MUST BE SPECIFICALLY AUTHORIZED TO SIGN PLEADINGS FOR THE CORPORATION, TO MAKE HIS ACTIONS BINDING ON THE CORPORATION; RULES OF PROCEDURE ARE NOT TO BE TRIFLED WITH LIGHTLY.— Petitioner relies upon this Court's ruling in ***Digital Microwave Corp. v. Court of Appeals*** to show that its Personnel Director has been duly authorized to sign pleadings for and in behalf of the petitioner. Petitioner, however, has taken the ruling in **Digital Microwave** out of context. The portion of the ruling in **Digital Microwave** upon which petitioner relies was in response to the issue of impossibility of compliance by juridical persons with the

requirements of Circular 28-91. The Court's identification of duly authorized officers or directors as the proper signatories of a certificate of non forum-shopping was in response to that issue. The ruling does not, however, *ipso facto* clothe a corporate officer or director with authority to execute a certificate of non-forum shopping by virtue of the former's position alone. Any doubt on the matter has been resolved by the Court's ruling in ***BPI Leasing Corp. v. Court of Appeals*** where this Court emphasized that the lawyer acting for the corporation must be **specifically authorized** to sign pleadings for the corporation. Specific authorization, the Court held, could only come in the form of a **board resolution** issued by the Board of Directors that specifically authorizes the counsel to institute the petition and execute the certification, to make his actions binding on his principal, *i.e.*, the corporation. This Court has not wavered in stressing the need for strict adherence to procedural requirements. The rules of procedure exist to ensure the orderly administration of justice. They are not to be trifled with lightly.

3. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; LABOR-ONLY CONTRACTOR; RESPONDENT CORPORATION IS A LABOR-ONLY CONTRACTOR. — Notably, private respondent's purported employment with MANRED commenced only in 1996, way after she was hired by the petitioner as extra beverage attendant on April 24, 1995. There is thus much credence in the private respondent's claim that the service agreement executed between the petitioner and MANRED is a mere ploy to circumvent the law on employment, in particular that which pertains on regularization. In this regard, it has not escaped the notice of the Court that the operations of the hotel itself do not cease with the end of each event or function and that there is an ever present need for individuals to perform certain tasks necessary in the petitioner's business. Thus, although the tasks themselves may vary, the need for sufficient manpower to carry them out does not. In any event, as borne out by the findings of the NLRC, the petitioner determines the nature of the tasks to be performed by the private respondent, in the process exercising control. This being so, the Court finds no difficulty in sustaining the finding of the NLRC that MANRED is a labor-only contractor. Concordantly, the real employer of private respondent Oabel is the petitioner.

4. ID.; LABOR RELATIONS; EMPLOYMENT; WHEN DEEMED REGULAR. — It appears further that private respondent has already rendered more than one year of service to the petitioner, for the period 1995-1998, for which she must already be considered a regular employee, pursuant to Article 280 of the Labor Code: **Art. 280. Regular and casual employment.** The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season. **An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.**

APPEARANCES OF COUNSEL

Cabochan Reyes & Capones Law Offices for petitioner.
Gilera & Ticman Law for S.S. Oabel-Prado.

D E C I S I O N

PUNO, *C.J.*:

Before the Court is a petition for review on *certiorari* assailing a resolution issued by the Court of Appeals. The resolution denied the petition for review filed by petitioner Maranaw Hotels and Resort Corp.

The present proceedings emanate from a complaint for regularization, subsequently converted into one for illegal dismissal, filed before Labor Arbiter Madjayran H. Ajan by private respondent Sheryl Oabel.

It appears that private respondent Oabel was initially hired by petitioner as an extra beverage attendant on April 24, 1995. This lasted until February 7, 1997.[1] Respondent worked in Century Park Hotel, an establishment owned by the petitioner.

On September 16, 1996,[2] petitioner contracted with Manila Resource Development Corporation.[3] Subsequently, private respondent Oabel was transferred to MANRED, with the latter deporting itself as her employer.[4] MANRED has intervened at all stages of these proceedings and has consistently claimed to be the employer of private respondent Oabel. For the duration of her employment, private respondent Oabel performed the following functions:

Secretary, Public Relations Department:	February 10, 1997 – March 6, 1997
Gift Shop Attendant:	April 7, 1997 – April 21, 1997
Waitress:	April 22, 1997 – May 20, 1997
Shop Attendant:	May 21, 1997 – July 30, 1998[5]

On July 20, 1998, private respondent filed before the Labor Arbiter a petition for regularization of employment against the petitioner. On August 1, 1998, however, private respondent Oabel was dismissed from employment.[6] Respondent converted her petition for regularization into a complaint for illegal dismissal.

Labor Arbiter Madjayran H. Ajan rendered a decision on July 13, 1999, dismissing the complaint against the petitioner. The decision held:

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[1] *Rollo*, p. 137.

[2] *Id.*, at p. 62.

[3] Hereafter MANRED.

[4] *Rollo*, p. 67.

[5] *Id.*, at p. 61.

[6] *Id.*, at p. 62.

While complainant alleged that she has been working with the respondent hotel in different department (sic) of the latter on (sic) various capacities (although not all departments are part and parcel of the hotels), complainant never disputed the fact that her work with the same were on a per function basis or on a "need basis" – co-terminus with the function she was hired for….Considering that complainant job (sic) with the respondent hotel was on a per function basis or on a "need basis", complainant could not even be considered as casual employee or provisional employee. Respondent hotel consider (sic) complainant, at most, a project employee which does not ripened (sic) into regular employee (sic).[7]

Private respondent appealed before the National Labor Relations Commission (NLRC). The NLRC reversed the ruling of the Labor Arbiter and held that: (1) MANRED is a labor-only contractor, and (2) private respondent was illegally dismissed.

Of the first holding, the NLRC observed that under the very terms of the service contract, MANRED shall provide the petitioner not specific jobs or services but personnel and that MANRED had insufficient capitalization and was not sufficiently equipped to provide specific jobs.[8] The NLRC likewise observed that the activities performed by the private respondent were directly related to and usually necessary or desirable in the business of the petitioner.[9]

With respect to the termination of private respondent's employment, the NLRC held that it was not effected for a valid or just cause and was therefore illegal. The dispositive portion of the ruling reads thus:

WHEREFORE, the decision appealed from is hereby REVERSED. xxx Respondents Century Park Hotel and Manila Resource Development Corporation are hereby declared jointly and severally liable for the following awards in favor of complainant: 1) her full backwages and benefits from August 1, 1998 up to the date of her

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[7] *Id.*, at pp. 147-148.

[8] NLRC *Rollo*, pp. 535-536.

[9] *Id.*, at pp. 536-537.

actual reinstatement; 2) her salary differentials, share in the service charges, service incentive leave pay and 13th month pay from July 20, 1995 to July 31, 1998.

SO ORDERED.[10]

Petitioner subsequently appealed before the Court of Appeals. In a resolution, the appellate court dismissed the petition on account of the failure of the petitioner to append the board resolution authorizing the counsel for petitioner to file the petition before the Court of Appeals. The Court of Appeals held:

> After a careful perusal of the records of the case, We resolve to DISMISS the present petition on the ground of non-compliance with the rule on certification against forum shopping taking into account that the aforesaid certification was subscribed and verified by the Personnel Director of petitioner corporation without attaching thereto his authority to do so for and in behalf of petitioner corporation per board resolution or special power of attorney executed by the latter.[11]

Petitioner duly filed its motion for reconsideration which was denied by the Court of Appeals in a resolution dated August 30, 2001.[12]

In the present petition for review, the petitioner invokes substantial justice as justification for a reversal of the resolution of the Court of Appeals.[13] Petitioner likewise contends that the filing of a motion for reconsideration with the certificate of non-forum shopping attached constitutes substantial compliance with the requirement.[14]

There is no merit to the petition.

Well-settled is the rule that the certificate of non-forum shopping is a mandatory requirement. Substantial compliance

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[10] *Id.,* at p. 538.

[11] *Id.*, at p. 27.

[12] CA *Rollo,* p. 107.

[13] *Rollo,* p. 18.

[14] *Id.*

applies only with respect to the contents of the certificate but not as to its presence in the pleading wherein it is required.

Petitioner's contention that the filing of a motion for reconsideration with an appended certificate of non forum-shopping suffices to cure the defect in the pleading is absolutely specious. It negates the very purpose for which the certification against forum shopping is required: to inform the Court of the pendency of any other case which may present similar issues and involve similar parties as the one before it. The requirement applies to both natural and juridical persons.

Petitioner relies upon this Court's ruling in ***Digital Microwave Corp. v. Court of Appeals***[15] to show that its Personnel Director has been duly authorized to sign pleadings for and in behalf of the petitioner. Petitioner, however, has taken the ruling in **Digital Microwave** out of context. The portion of the ruling in **Digital Microwave** upon which petitioner relies was in response to the issue of impossibility of compliance by juridical persons with the requirements of Circular 28-91.[16] The Court's identification of duly authorized officers or directors as the proper signatories of a certificate of non forum-shopping was in response to that issue. The ruling does not, however, *ipso facto* clothe a corporate officer or director with authority to execute a certificate of non-forum shopping by virtue of the former's position alone.

Any doubt on the matter has been resolved by the Court's ruling in ***BPI Leasing Corp. v. Court of Appeals***[17] where this Court emphasized that the lawyer acting for the corporation must be **specifically authorized** to sign pleadings for the corporation.[18] Specific authorization, the Court held, could only come in the form of a **board resolution** issued by the Board of Directors that specifically authorizes the counsel to institute

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[15] G.R. No. 128550, March 16, 2000, 328 SCRA 286.

[16] *Id.*, at p. 290.

[17] G.R. No. 127624, November 18, 2003, 416 SCRA 4.

[18] *Id.*, at p. 10.

the petition and execute the certification, to make his actions binding on his principal, *i.e.*, the corporation.[19]

This Court has not wavered in stressing the need for strict adherence to procedural requirements. The rules of procedure exist to ensure the orderly administration of justice. They are not to be trifled with lightly.

For this reason alone, the petition must already be dismissed. However, even if this grave procedural infirmity is set aside, the petition must still fail. In the interest of averting further litigation arising from the present controversy, and in light of the respective positions asserted by the parties in the pleadings and other memoranda filed before this Court, the Court now proceeds to resolve the case on the merits.

Petitioner posits that it has entered into a service agreement with intervenor MANRED. The latter, in turn, maintains that private respondent Oabel is its employee and subsequently holds itself out as the employer and offers the reinstatement of private respondent.

Notably, private respondent's purported employment with MANRED commenced only in 1996, way after she was hired by the petitioner as extra beverage attendant on April 24, 1995. There is thus much credence in the private respondent's claim that the service agreement executed between the petitioner and MANRED is a mere ploy to circumvent the law on employment, in particular that which pertains on regularization.

In this regard, it has not escaped the notice of the Court that the operations of the hotel itself do not cease with the end of each event or function and that there is an ever present need for individuals to perform certain tasks necessary in the petitioner's business. Thus, although the tasks themselves may vary, the need for sufficient manpower to carry them out does not. In any event, as borne out by the findings of the NLRC, the petitioner determines the nature of the tasks to be performed by the private respondent, in the process exercising control.

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[19] *Id.*, at p. 11.

This being so, the Court finds no difficulty in sustaining the finding of the NLRC that MANRED is a labor-only contractor.[20] Concordantly, the real employer of private respondent Oabel is the petitioner.

It appears further that private respondent has already rendered more than one year of service to the petitioner, for the period 1995-1998, for which she must already be considered a regular employee, pursuant to Article 280 of the Labor Code:

> **Art. 280. Regular and casual employment.** The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.
>
> **An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.** (Emphasis supplied)

IN VIEW WHEREOF, the present petition is *DENIED*. The resolution of the Court of Appeals dated June 15, 2001 is affirmed.

Costs against petitioner.

SO ORDERED.

Carpio, Corona, Azcuna, and *Leonardo-de Castro, JJ.*, concur.

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[20] *Supra*, note 8.

THIRD DIVISION

[G.R. No. 150592. January 20, 2009]

PHILIPPINE AIRLINES, INC., *petitioner, vs.* **COURT OF APPEALS and SABINE KOSCHINGER,**[*] *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; A RESOLUTION WHICH IS NOT A FINAL DISPOSITION OF THE CASE IS NOT APPEALABLE.— Respondent, in her Comment, argues that a Petition for *Certiorari* under Rule 65 is not the proper remedy because petitioner had already filed an appeal before the CA. Further, even assuming that the petition was proper, the same should not be granted because the CA did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed Resolution. Respondent's arguments are incorrect. While it is true that petitioner's appeal before the CA questions the RTC's July 15, 1998 Decision, the present Petition for *Certiorari* only challenges the CA's September 4, 2001 Resolution. Said Resolution is not a final disposition of the case and, therefore, not appealable. Petitioner, therefore, had no "plain, speedy and adequate remedy in the ordinary course of law." Petitioner filed the present petition to stop the CA from hearing the appeal in violation of the SEC's stay order.

2. COMMERCIAL LAW; CORPORATIONS; INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION; TERM "CLAIMS," DEFINED.— The CA was partially correct in stating that the issue to be resolved before it was whether or not PAL violated the provisions of the Patent Law. However, it failed to consider the fact that the same also carried a prayer for damages. It also incorrectly ruled that the same is not a *claim* such that the proceedings shall be suspended in accordance with the SEC's directive. Under the *Interim Rules of Procedure on Corporate Rehabilitation*, a *claim* shall include all claims or demands of whatever nature or character against a debtor or its property, whether for money or otherwise. The definition

[*] Spelled as "Koshinger" in some parts of the records.

is all-encompassing as it refers to *all* actions whether for money or otherwise. There are no distinctions or exemptions.

3. ID.; ID.; ID.; ALL ACTIONS FOR CLAIMS AGAINST A CORPORATION PENDING BEFORE ANY COURT, TRIBUNAL OR BOARD SHALL *IPSO JURE* BE SUSPENDED IN WHATEVER STAGE SUCH ACTIONS MAY BE FOUND UPON APPOINTMENT OF A MANAGEMENT COMMITTEE OR A REHABILITATION RECEIVER.— In subsequent cases, the Court pronounced that "[it] is 'not prepared to depart from the well-established doctrines' essentially maintaining that *all* actions for claims against a corporation pending before any court, tribunal or board shall *ipso jure* be suspended in whatever stage such actions may be found upon the appointment by the SEC of a management committee or a rehabilitation receiver." Further, this was taken to embrace all phases of the suit, be it before the trial court or any tribunal or before this Court such that "no other action may be taken in, including the rendition of judgment during the state of suspension — what are automatically stayed or suspended are the proceedings of an action or suit and not just the payment of claims during the execution stage after the case had become final and executory."

4. ID.; ID.; ID.; ID.; RATIONALE.— The reason for the suspension of claims while the corporation undergoes rehabilitation proceedings has been explained by the Court, thus: In light of these powers, the reason for suspending actions for claims against the corporation should not be difficult to discover. It is not really to enable the management committee or the rehabilitation receiver to substitute the defendant in any pending action against it before any court, tribunal, board or body. *Obviously, the real justification is to enable the management committee or rehabilitation receiver to effectively exercise its/his powers free from any judicial or extra-judicial interference that might unduly hinder or prevent the "rescue" of the debtor company. To allow such other action to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation instead of being directed toward its restructuring and rehabilitation.* This underlying reason applies with equal force to the appeal before the CA. The continuation of the appeal proceedings would have unduly hindered the management committee's task of rehabilitating the ailing

corporation, giving rise precisely to the situation that the stay order sought to avoid.

5. ID.; ID.; ID.; A STAY ORDER DEFERS ALL ACTIONS OR CLAIMS AGAINST THE CORPORATION SEEKING REHABILITATION FROM THE DATE OF ITS ISSUANCE UNTIL THE DISMISSAL OF THE PETITION OR TERMINATION OF THE REHABILITATION PROCEEDINGS.— Under the *Interim Rules of Procedure on Corporate Rehabilitation*, a stay order defers all actions or claims against the corporation seeking rehabilitation from the date of its issuance until the dismissal of the petition or termination of the rehabilitation proceedings. Accordingly, the CA committed grave abuse of discretion in denying petitioner's Motion to Suspend Proceedings and ordering respondent to file her appellee's brief. Upon petitioner's motion informing it of the SEC's stay order, the CA should have immediately suspended the appeal therein.

6. ID.; ID.; ID.; ID.; PROCEEDINGS BEFORE THE REGIONAL TRIAL COURT NOT TERMINATED BY THE FILING OF THE APPEAL TO THE COURT OF APPEALS.— It was likewise error for the CA to have ruled that the proceedings before the RTC could not be stopped because they had been terminated. This Court has repeatedly held that execution is the final stage of litigation, the fruit and end of the suit. Thus, the proceedings before the RTC were not terminated by the filing of the appeal to the CA. The same could not be executed – hence, not yet terminated – until the appeal is decided with finality. Consequently, the proceedings before the RTC could be suspended in accordance with the SEC's stay order.

APPEARANCES OF COUNSEL

Philippine Airlines, Inc. Legal Affairs Department for petitioner.

Quiason Makalintal Barot Torres Ibarra for private respondent.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition for *Certiorari*[1] under Rule 65 of the Revised Rules on Civil Procedure assailing the

[1] *Rollo,* pp. 3-17.

Resolution[2] of the Court of Appeals (CA) dated September 4, 2001 in CA-G.R. CV No. 65778.

Respondent Sabine Koschinger (Koschinger) filed a complaint[3] for design infringement and damages against petitioner Philippine Airlines, Inc. (PAL) before the Regional Trial Court (RTC) of Makati City. Koschinger claimed PAL used table linens and placemats bearing designs substantially identical to her patented designs in its commercial flights without her consent or authority.

The trial court rendered its Decision[4] on July 15, 1998 in favor of Koschinger. PAL appealed the same to the CA.

Meanwhile, on June 23, 1998, the Securities and Exchange Commission (SEC) gave due course to PAL's petition for the appointment of a rehabilitation receiver due to its being a distressed company, pursuant to Presidential Decree No. 902-A. On July 1, 1998, the SEC directed that "[i]n light of the Order of the Commission appointing an Interim Receiver all claims for payment against PAL are deemed suspended."[5]

On August 3, 1998, PAL filed before the RTC a Motion for Suspension of Proceedings.[6] However, when the RTC failed to act upon the motion, PAL filed before the CA a Reiteration of Motion to Suspend Proceedings[7] on May 29, 2000.

On September 4, 2001, the CA issued its assailed Resolution, which reads in part:

[R]ecords show that as early as July 15, 1998, Regional Trial Court, Branch 137, Makati City, rendered its decision in said Civil Case

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[2] Penned by Associate Justice Eugenio S. Labitoria, with Associate Justices Eloy R. Bello, Jr. and Perlita J. Tria Tirona, concurring, *id.* at 18-19.

[3] Civil Case No. 92-186, *Sabine Koschinger v. Philippine Airlines, Inc.*, *rollo,* pp. 20-28.

[4] Penned by Judge Santiago Javier Ranada (now a retired Associate Justice of the Court of Appeals), *rollo,* pp. 66-70.

[5] *Id.* at 91.

[6] *Id.* at 54-56.

[7] CA *rollo,* pp. 26-29.

No. 92-186, which is the subject of the instant appeal before this Court, and is now on the completion stage. As a matter of fact, appellant itself has filed its brief. This Court is awaiting for (sic) the appellee's brief. Hence, proceedings below could no longer be stopped because it had terminated.

If it is the proceedings before this Court that appellant wanted to be suspended, the same could not be given due course, as the issue in the instant appeal is:

"WHETHER OR NOT APPELLANT VIOLATED THE PROVISIONS OF THE PATENT LAW."

x x x x x x x x x

The appeal before this Court is not as yet a claim against PAL, it shall determine the issue whether or not there was violation of the Patent Law and the determination of the possible awards, thus, the motion is *DENIED*.

Appellee is given a new period of thirty (30) days from receipt hereof within which to file her brief, otherwise, this case shall be submitted for decision without appellee's brief.

SO ORDERED.[8]

Aggrieved, PAL filed the instant Petition to nullify and set aside the said Resolution. PAL alleges that the CA acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the disputed resolution, holding that the "proceedings below could no longer be stopped because it had been terminated" and ordering Koschinger to file her appellee's brief.

The Petition is impressed with merit.

Initially, we resolve the procedural issues raised by respondent.

Respondent, in her Comment, argues that a Petition for *Certiorari* under Rule 65 is not the proper remedy because petitioner had already filed an appeal before the CA. Further, even assuming that the petition was proper, the same should not be granted because the CA did not commit grave abuse of

[8] *Rollo,* pp. 18-19.

discretion amounting to lack or excess of jurisdiction in issuing the assailed Resolution.

Respondent's arguments are incorrect. While it is true that petitioner's appeal before the CA questions the RTC's July 15, 1998 Decision, the present Petition for *Certiorari* only challenges the CA's September 4, 2001 Resolution. Said Resolution is not a final disposition of the case and, therefore, not appealable. Petitioner, therefore, had no "plain, speedy and adequate remedy in the ordinary course of law."[9] Petitioner filed the present petition to stop the CA from hearing the appeal in violation of the SEC's stay order.

Furthermore, we find that the CA indeed committed grave abuse of discretion for the reasons cited below.

Of paramount importance to the resolution of this case is the effect of the order for suspension of payments on the proceedings before the trial court and on PAL's appeal before the CA.

The CA ruled that, first, the proceedings before the trial court could no longer be suspended because these had been terminated and, second, that the appeal before it could not likewise be suspended because the issue before it was not yet a *claim*.

The CA was partially correct in stating that the issue to be resolved before it was whether or not PAL violated the provisions of the Patent Law.[10] However, it failed to consider the fact that the same also carried a prayer for damages. It also incorrectly ruled that the same is not a *claim* such that the proceedings shall be suspended in accordance with the SEC's directive.

Under the *Interim Rules of Procedure on Corporate Rehabilitation*,[11] a *claim* shall include all claims or demands

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[9] Rule 65, Sec. 1.

[10] *Rollo*, p. 18.

[11] A.M. No. 00-8-10-SC, December 15, 2000.

of whatever nature or character against a debtor or its property, whether for money or otherwise.[12]

The definition is all-encompassing as it refers to *all* actions whether for money or otherwise. There are no distinctions or exemptions.[13]

Prior to the promulgation of the *Interim Rules of Procedure on Corporate Rehabilitation*, this Court construed *claim* as referring only to debts or demands pecuniary in nature:

> [T]he word "*claim*" as used in Sec. 6(c) of P.D. 902-A refers to debts or demands of a pecuniary nature. It means "the assertion of a right to have money paid. It is used in special proceedings like those before administrative court, on insolvency."
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> The word "*claim*" is also defined as:
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> > Right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, unsecured.
> >
> > In conflicts of law, a receiver may be appointed in any state which has jurisdiction over the defendant who owes a claim.
>
> As used in statutes requiring the presentation of claims against a decedent's estate, "claim" is generally construed to mean debts or demands of a pecuniary nature which could have been enforced against the deceased in his lifetime and could have been reduced to simple money judgments; and among these are those founded upon contract.[14]

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[12] *Id.*, Rule 2, Sec. 1.

[13] *Spouses Sobrejuanite v. ASB Development Corporation*, G.R. No. 165675, September 30, 2005, 471 SCRA 763, 772; see also *Philippine Airlines, Inc. v. Zamora*, G.R. No. 166996, February 6, 2007, 514 SCRA 584.

[14] *Id.* at 771-772, citing *Finasia Investments and Finance Corporation v. Court of Appeals*, G.R. No. 107002, October 7, 1994, 237 SCRA 446, 450; see also *Arranza v. B.F. Homes, Inc.*, 389 Phil. 318 (2000).

In subsequent cases, the Court pronounced that "[it] is 'not prepared to depart from the well-established doctrines' essentially maintaining that *all* actions for claims against a corporation pending before any court, tribunal or board shall *ipso jure* be suspended in whatever stage such actions may be found upon the appointment by the SEC of a management committee or a rehabilitation receiver."[15]

Further, this was taken to embrace all phases of the suit, be it before the trial court or any tribunal or before this Court[16] such that "no other action may be taken in, including the rendition of judgment during the state of suspension – what are automatically stayed or suspended are the proceedings of an action or suit and not just the payment of claims during the execution stage after the case had become final and executory."[17]

Moreover, a perusal of the Complaint filed before the RTC reveals that the same was for "Design Infringement and Damages with a Prayer for a Temporary Restraining Order and Writ of Preliminary Injunction"[18] and prayed for actual damages amounting to ₱2 million, exemplary damages amounting to ₱250,000.00 and attorney's fees amounting to ₱250,000.00. Thus, whether under the *Interim Rules of Procedure on Corporate Rehabilitation* or under the Court's rulings prior to the promulgation of the Rules, the subject of the case would fall under the term *claim*, considering that it involves monetary consideration.

The reason for the suspension of claims while the corporation undergoes rehabilitation proceedings has been explained by the Court, thus:

In light of these powers, the reason for suspending actions for claims against the corporation should not be difficult to discover.

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[15] *Philippine Airlines, Inc. v. Zamora, supra* note 13, at 604-605, citing *Philippine Airlines, Inc. v. Court of Appeals*, Second Division Resolution, G.R. No. 123238, July 11, 2005. (Emphasis theirs.)

[16] *Id.* at 605.

[17] *Id.*

[18] Records, p. 1.

It is not really to enable the management committee or the rehabilitation receiver to substitute the defendant in any pending action against it before any court, tribunal, board or body. *Obviously, the real justification is to enable the management committee or rehabilitation receiver to effectively exercise its/his powers free from any judicial or extra-judicial interference that might unduly hinder or prevent the "rescue" of the debtor company. To allow such other action to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation instead of being directed toward its restructuring and rehabilitation.*[19]

This underlying reason applies with equal force to the appeal before the CA. The continuation of the appeal proceedings would have unduly hindered the management committee's task of rehabilitating the ailing corporation, giving rise precisely to the situation that the stay order sought to avoid.

It was likewise error for the CA to have ruled that the proceedings before the RTC could not be stopped because they had been terminated.

This Court has repeatedly held that execution is the final stage of litigation,[20] the fruit and end of the suit.[21] Thus, the proceedings before the RTC were not terminated by the filing of the appeal to the CA. The same could not be executed – hence, not yet terminated – until the appeal is decided with finality. Consequently, the proceedings before the RTC could be suspended in accordance with the SEC's stay order.

Under the *Interim Rules of Procedure on Corporate Rehabilitation*, a stay order defers all actions or claims against the corporation seeking rehabilitation from the date of its issuance

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[19] *Philippine Airlines, Inc. v. Philippine Airlines Employees Association*, G.R. No. 142399, June 19, 2007, 525 SCRA 28, 38, citing *BF Homes, Incorporated v. Court of Appeals*, 190 SCRA 262, 269 (1990).

[20] *Mt. Carmel College v. Resuela*, G.R. No. 173076, October 10, 2007, 535 SCRA 518, 542.

[21] *Florentino v. Rivera*, G.R. No. 167968, January 23, 2006, 479 SCRA 522, 532; *Ramnani, v. Court of Appeals*, 413 Phil. 194, 199 (2001); *Republic v. National Labor Relations Commission*, 331 Phil. 608, 610 (1996).

until the dismissal of the petition or termination of the rehabilitation proceedings.[22]

Accordingly, the CA committed grave abuse of discretion in denying petitioner's Motion to Suspend Proceedings and ordering respondent to file her appellee's brief. Upon petitioner's motion informing it of the SEC's stay order, the CA should have immediately suspended the appeal therein.

Be that as it may, this Court notes that petitioner filed a Manifestation[23] on October 17, 2007 informing this Court that the SEC has approved petitioner's exit from corporate rehabilitation through an Order[24] dated September 28, 2007. Thus, there is now no bar to the continuation of the appeal proceedings before the CA.

WHEREFORE, the foregoing premises considered, the petition is *GRANTED*. The Court of Appeals is *ORDERED* to forthwith resolve CA-G.R. CV No. 65778 with dispatch.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Chico-Nazario, and *Leonardo-de Castro,*[**] *JJ.,* concur.

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[22] *Banco de Oro v. JAPRL Development Corporation*, G.R. No. 179901, April 14, 2008, citing *Philippine Airlines v. Kurangking*, 438 Phil. 375, 381 (2002).

[23] *Rollo,* pp. 148-149.

[24] *Id.* at 150-155.

[**] Additional member in lieu of Associate Justice Diosdado M. Peralta per Special Order No. 560 dated January 19, 2009.

EN BANC

[G.R. No. 164856. January 20, 2009]

JUANITO A. GARCIA and ALBERTO J. DUMAGO, *petitioners, vs.* **PHILIPPINE AIRLINES, INC.,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; REINSTATEMENT; ORDER OF REINSTATEMENT IS IMMEDIATELY EXECUTORY; EMPLOYER MUST PAY THE WAGES OF THE DISMISSED EMPLOYEES DURING THE PERIOD OF APPEAL WHERE IT FAILED TO EXERCISE THE ALTERNATIVE OPTIONS OF ACTUAL REINSTATEMENT AND PAYROLL REINSTATEMENT.— The Court reaffirms the prevailing principle that even if the order of reinstatement of the Labor Arbiter is reversed on appeal, it is obligatory on the part of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court. It settles the view that the Labor Arbiter's order of reinstatement is immediately executory and the employer has to either re-admit them to work under the same terms and conditions prevailing prior to their dismissal, or to reinstate them in the payroll, and that failing to exercise the options in the alternative, employer must pay the employee's salaries.

2. ID.; ID.; ID.; ID.; ID.; THE EMPLOYER'S ATTEMPT TO EVADE OR DELAY THE EXECUTION OF THE ORDER OF REINSTATEMENT SHALL NOT BE COUNTENANCED.— The spirit of the rule on reinstatement pending appeal animates the proceedings once the Labor Arbiter issues the decision containing an order of reinstatement. The immediacy of its execution need no further elaboration. Reinstatement pending appeal necessitates its immediate execution during the pendency of the appeal, if the law is to serve its noble purpose. At the same time, any attempt on the part of the employer to evade or delay its execution, as observed in *Panuncillo* and as what actually transpired in *Kimberly, Composite, Air Philippines,* and *Roquero,* should not be countenanced.

3. ID.; ID.; ID.; ID.; ID.; AN EMPLOYEE MAY BE BARRED FROM COLLECTING THE ACCRUED WAGES AFTER THE REVERSAL OF THE LABOR ARBITER'S ORDER OF REINSTATEMENT; TWO-FOLD TEST.— After the labor arbiter's decision is reversed by a higher tribunal, the employee may be barred from collecting the accrued wages, if it is shown that the delay in enforcing the reinstatement pending appeal was without fault on the part of the employer. The test is two-fold: (1) there must be actual delay or the fact that the order of reinstatement pending appeal was not executed prior to its reversal; and (2) the delay must not be due to the employer's unjustified act or omission. If the delay is due to the employer's unjustified refusal, the employer may still be required to pay the salaries notwithstanding the reversal of the Labor Arbiter's decision.

4. ID.; ID.; ID.; ID.; ID.; ISSUANCE OF WRIT OF EXECUTION IS *MOTU PROPRIO* ON THE PART OF THE LABOR ARBITER.— The new NLRC Rules of Procedure, which took effect on January 7, 2006, now require the employer to submit a report of compliance within 10 calendar days from receipt of the Labor Arbiter's decision, disobedience to which clearly denotes a refusal to reinstate. The employee need not file a motion for the issuance of the writ of execution since the Labor Arbiter shall thereafter *motu proprio* issue the writ. **With the new rules in place, there is hardly any difficulty in determining the employer's intransigence in immediately complying with the order.**

5. ID.; ID.; ID.; ID.; THE OBLIGATION OF THE EMPLOYER-CORPORATION TO PAY THE SALARIES OF THE DISMISSED EMPLOYEES DURING PENDENCY OF APPEAL, UPON NON-EXERCISE OF THE ALTERNATIVE OPTIONS OF ACTUAL REINSTATEMENT AND PAYROLL REINSTATEMENT, WILL NOT ATTACH WHERE THERE IS A JUDICIAL ORDER OF CORPORATE REHABILITATION.— It is apparent that there was inaction on the part of respondent to reinstate them, but whether such omission was justified depends on the onset of the exigency of corporate rehabilitation. It is settled that upon appointment by the SEC of a rehabilitation receiver, all actions for claims before any court, tribunal or board against the corporation shall *ipso jure* be suspended. As stated early on, during the pendency of

petitioners' complaint before the Labor Arbiter, the SEC placed respondent under an Interim Rehabilitation Receiver. After the Labor Arbiter rendered his decision, the SEC replaced the Interim Rehabilitation Receiver with a Permanent Rehabilitation Receiver. Case law recognizes that unless there is a restraining order, the implementation of the order of reinstatement is ministerial and mandatory. This injunction or suspension of claims by legislative fiat partakes of the nature of a restraining order that constitutes a legal justification for respondent's non-compliance with the reinstatement order. Respondent's failure to exercise the alternative options of actual reinstatement and payroll reinstatement was thus justified. Such being the case, respondent's obligation to pay the salaries pending appeal, as the normal effect of the non-exercise of the options, did not attach.

QUISUMBING, *J., separate opinion:*

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; REINSTATEMENT PENDING APPEAL; RATIONALE BEHIND THE RULE; PRINCIPLE OF UNJUST ENRICHMENT, NOT APPLICABLE; REASONS.— The rationale for execution pending appeal has been explained by this Court in *Aris (Phil.), Inc. v. NLRC,* thus: In authorizing execution pending appeal of the reinstatement aspect of a decision of the Labor Arbiter reinstating a dismissed or separated employee, the law itself has laid down a compassionate policy which, once more, vivifies and enhances the provisions of the 1987 Constitution on labor and the working-man. x x x If in ordinary civil actions execution of judgment pending appeal is authorized for reasons the determination of which is merely left to the discretion of the judge, We find no plausible reason to withhold it in cases of decisions reinstating dismissed or separated employees. In such cases, the poor employees had been deprived of their only source of livelihood, their only means of support for their family — their very lifeblood. To Us, this special circumstance is far better than any other which a judge, in his sound discretion, may determine. In short, with respect to decisions reinstating employees, the law itself has determined a sufficiently overwhelming reason for its execution pending appeal. Clearly, the principle of unjust enrichment does not apply. *First,* the provision on reinstatement pending appeal is in accord with

the social justice philosophy of our Constitution. It is meant to afford full protection to labor as it aims to stop (*albeit* temporarily, since the appeal may be decided in favor of the employer) a continuing threat or danger to the survival or even the life of the dismissed employee and his family. *Second*, the provision on reinstatement pending appeal partakes of a special law that must govern the instant case. The provision of the Civil Code on unjust enrichment, being of general application, must give way.

2. ID.; ID.; ID.; REINSTATEMENT ORDER IS SELF-EXECUTORY.— In *Pioneer Texturizing Corp. v. NLRC*, this Court clarified that an award or order for reinstatement is self-executory, to wit: A closer examination, however, shows that the necessity for a writ of execution under Article 224 applies only to final and executory decisions which are not within the coverage of Article 223. ... x x x … It can not relate to an award or order of reinstatement still to be appealed or pending appeal which Article 223 contemplates. The provision of Article 223 is clear that an award for reinstatement *shall be immediately executory even pending appeal* and *the posting of a bond by the employer shall not stay the execution for reinstatement*. The legislative intent is quite obvious, *i.e.*, to make an award of reinstatement immediately enforceable, even pending appeal. To require the application for and issuance of a writ of execution as prerequisites for the execution of a reinstatement award would certainly betray and run counter to the very object and intent of Article 223, *i.e.*, the immediate execution of a reinstatement order. … Since the reinstatement order is self-executory, it is inaccurate to say that its non-implementation was due to petitioners' fault who failed to enforce their rights at the proper and opportune time. To reiterate, the reinstatement order does not require a writ of execution, much less a motion for its issuance. To require petitioners to move for the enforcement of the reinstatement order and blame them for its belated enforcement, as Justice Velasco does, would render nugatory the self-executory nature of the award.

3. ID.; ID.; RELIEFS AVAILABLE TO ILLEGALLY DISMISSED EMPLOYEES IN CASE THE EMPLOYER DISOBEYED THE REINSTATEMENT ORDER.— Justice Velasco also posits that Article 223 of the Labor Code does not automatically make the employer liable for accrued salaries during the reinstatement

pending appeal where no reinstatement took place. He stresses that the only relief given under the NLRC Rules of Procedure is the remedy of compulsion *via* a citation for contempt, thus: RULE V. SEC. 14. Contents of Decisions. — … xxx. RULE IX. SEC. 6. EXECUTION OF REINSTATEMENT PENDING APPEAL. — xxx. Contrary to the position of Justice Velasco, there are actually two reliefs given in the foregoing provisions: (1) the payment of accrued salaries, and (2) a citation for contempt. If the Labor Arbiter's decision includes a reinstatement order, the decision should state that the reinstatement aspect is immediately executory and direct the employer to submit a compliance report within ten calendar days from receipt of the said decision. Should the employer disobey the directive of the Labor Arbiter or refuse to reinstate the dismissed employee, the Labor Arbiter shall immediately issue a writ of execution, even pending appeal, directing the employer to immediately reinstate the dismissed employee either physically or in the payroll, and to pay the accrued salaries as a consequence of such reinstatement. If the employer still disobeys the writ of execution, then he may be cited for contempt.

4. COMMERCIAL LAW; THE INSOLVENCY LAW; CORPORATE REHABILITATION; REHABILITATION MERELY SUSPENDS ALL ACTIONS AGAINST THE DISTRESSED CORPORATION BUT IT DOES NOT RELIEVE THE SAME OF ITS OBLIGATIONS.— In *Rubberworld (Phils.), Inc. v. NLRC*, we recognized that the automatic stay of all pending actions for claims is intended to enable the management committee or the rehabilitation receiver to effectively exercise its/his powers free from any judicial or extra judicial interference that might unduly hinder or prevent the 'rescue' of the distressed corporation. To allow such other actions to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation instead of being directed toward its restructuring and rehabilitation. Indeed, rehabilitation merely provides for the automatic stay of all pending actions or the suspension of payments of the distressed corporation to prevent the dissipation of its assets; it does not relieve the corporation of its obligations. Upon its successful rehabilitation, it must settle in full all claims previously suspended. Applying the foregoing rule, we cannot adhere to

the posture taken by the majority. Just because PAL was under rehabilitation did not necessarily mean that immediately executory orders such as reinstatement pending appeal will be put to naught. That would in effect nullify the relief given to the employee when all the law seeks to do is suspend it.

5. ID.; ID.; ID.; ID.; CORPORATE REHABILITATION WILL NOT DEFEAT THE EMPLOYEES' RIGHT TO REINSTATEMENT PENDING APPEAL.— Furthermore, we do not agree that reinstatement pending appeal is inapplicable in the instant case since, as the majority puts it, PAL is similarly in a state of being resuscitated in order to survive. PAL even argues that retrenchment and cash flow constraints rendered it impossible to comply with the reinstatement order. In *Flight Attendants and Stewards Association of the Philippines (FASAP) v. Philippine Airlines, Inc., et al.,* we noted that PAL failed to substantiate its claim of actual and imminent substantial losses which would justify the retrenchment of more than 1,400 of its cabin crew personnel. Although the Philippine economy was gravely affected by the Asian financial crisis, however, it cannot be assumed that it has likewise brought PAL to the brink of bankruptcy. In effect, we held that the mere fact that PAL underwent corporate rehabilitation does not automatically mean that it suffered specific and substantial losses that would necessitate retrenchment. In fact, PAL was on the road to recovery as early as February 1999 and was declaring profits in millions in the succeeding years. Given the circumstances in this case, delay on the employee's part was not an issue. But we cannot agree that the petitioners could be barred from collecting accrued wages, merely on the ground of their delay in enforcing reinstatement pending appeal. For it was the statutory duty of the respondent as employer to comply with a self-executory order in favor of the employees, herein petitioners. Thus, while its rehabilitation may have prevented PAL from exercising its option either to re-admit petitioners to work or to reinstate them in the payroll, it did not defeat petitioners' right to reinstatement pending appeal which vested upon rendition of the Labor Arbiter's decision; more so when no actual and imminent substantial losses were proven by PAL. To reiterate, there is no longer any legal impediment to hold PAL liable for petitioners' salaries which automatically accrued from notice of the Labor Arbiter's order of reinstatement until its ultimate reversal by the NLRC.

VELASCO, JR. ***J., separate opinion:***

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; ARTICLE 223, PARAGRAPH 3 THEREOF; REINSTATEMENT PENDING APPEAL; NOT A SUBSTANTIVE BUT A PROCEDURAL PROVISION; ISSUANCE OF WRIT OF EXECUTION IS STILL REQUIRED; PROCEDURAL LAW DISTINGUISHED FROM SUBSTANTIVE LAW.— In addition to the ground enunciated by the majority view that there was no unjustified act or omission on the part of PAL to reinstate the employees due to corporate rehabilitation, I submit that, in the light of the facts of the case where the employee failed to obtain a writ of execution and their reinstatement was not implemented prior to the reversal of the arbiter's decision granting reinstatement, they are not entitled to payment of backwages. A plain reading of Paragraph 3 of Article 223 of the Labor Code easily reveals that it is procedural in nature. Procedural laws are "adjective laws which prescribe rules and forms of procedure of enforcing right or obtaining redress for their invasion." This is differentiated from substantive law which "creates, defines, or regulates rights concerning life, liberty or property or the powers of agencies or instrumentalities for the administration of public affairs." Art. 223 of the Labor Code is not a substantive, but basically a procedural provision conferring at most on the prevailing employee at the labor arbiter's level **the right to execution of the reinstatement order pending appeal.** It does away with the application or motion for the issuance of a writ of execution to prevent delay in the reinstatement of the employee. While the filing of the motion and the need to justify execution pending appeal are dispensed with, still, there appears to be a need for the issuance of a writ of execution contrary to the pronouncement in the *ponencia* citing *Pioneer Texturizing Corp. v. NLRC (Pioneer)*.

2. ID.; ID.; ID.; ID.; EMPLOYEE LOSES THE RIGHT TO REINSTATEMENT WHEN THE SAME FAILED TO HAVE THE WRIT IMPLEMENTED AND THE DECISION OF THE LABOR ARBITER IS EVENTUALLY OVERTURNED BY A HIGHER BODY.— Rule XI, Section 6 of the 2005 NLRC Revised Rules of Procedure provides: Section 6. *Execution of Reinstatement Pending Appeal*.— xxx In this respect, while it is mandatory for the arbiter to issue the writ, still, in view of the numerous cases handled by the arbiter, there is a necessity for the

employee to work for the release of said writ and have it implemented. If the employee fails to have the writ implemented and the decision of the labor arbiter is eventually overturned by the NLRC or a higher body, then the employee loses the right to reinstatement.

3. ID.; ID.; ID.; ID.; EMPLOYER IS LIABLE TO PAY THE SALARIES OF THE ILLEGALLY DISMISSED EMPLOYEE WHEN IT UNJUSTIFIABLY REFUSES TO REINSTATE THE SAME DESPITE THE SERVICE UPON HIM OF THE WRIT OF EXECUTION.— The only instance when an employer becomes liable to pay the salaries of a dismissed employee is when the employer, despite the service on him of the writ of execution, unjustifiably refuses to reinstate the employee, thus: xxx the unjustified refusal of the employer to reinstate an illegally dismissed employee entitles the employee to payment of his salaries, effective from the date the employer failed to reinstate despite an executory writ of execution served upon him. Such ruling is in accord with the mandate of the new law awarding full backwages until actual reinstatement (Article 279 of the Labor Code as amended.).

4. ID.; ID.; ID.; ID.; EMPLOYEE IS NOT ENTITLED TO PAYMENT OF WAGES FOR THE APPEAL PERIOD WHERE THE REINSTATEMENT ORDER REMAINS UNIMPLEMENTED DUE TO INACTION THEREOF.— Art. 223 does not, as couched, accord the dismissed employee the substantive right to wages under any and all circumstances during such pendency of the appeal regardless of the outcome of the appeal before the NLRC. As explained, if reinstatement remains unimplemented due to inaction of the employee, then he is not entitled to payment of wages for the appeal period. If it were otherwise, there is, in a limited sense, no reason for the employer to challenge the pay aspect of the labor arbiter's decision on appeal as the employee would be adjudged entitled to backwages before the NLRC at any event. Worse, it will in effect nullify the first paragraph of Art. 223 which grants the employer the right to appeal the labor arbiter's decision to the NLRC within 10 calendar days from receipt of the decision. It will even emasculate the judicial power of review of the CA and this Court. The reason is simple—the employee will be paid his salaries anyway even the appeal of the employer is found meritorious and the dismissal of the employee is upheld. It puts to naught the right of appeal

of the employer even if the employee waives or, by sheer indifference, neglects to pursue reinstatement pending appeal. Moreover, the employee need not strive to secure reinstatement in the interim as payment of his wages from rendition of the labor arbiter's decision to the time the NLRC issues its own is most assured. The employee may opt not to avail of the reinstatement and instead obtain work somewhere else since payment of his salaries is guaranteed regardless of the outcome of the appeal, a classic case of having one's cake and eating it too. Simply put, the situation is oppressive, most unfair, and unjust to the employer.

5. ID.; ID.; ID.; ID.; NATURE; RATIONALE.— Undoubtedly, the reinstatement of the employee under Art. 223 contemplates an execution pending appeal. *Aris (Phil.), Inc. v. NLRC (Aris)* clarified the nature of the provisional relief of reinstatement pending the final resolution of the appeal of the losing party in the following wise: **Execution pending appeal is interlinked with the right to appeal** xxx. The latter may be availed of by the losing party or a party who is not satisfied with a judgment, while the former may be applied for by the prevailing party during the pendency of the appeal. The right to appeal, however, is xxx a statutory privilege of statutory origin and, therefore, available only if granted or provided by statute. The law may then validly provide limitations or qualifications thereto or relief to the prevailing party in the event an appeal is interposed by the losing party. **Execution pending appeal is one such relief long recognized in this jurisdiction. The Revised Rules of Court allows execution pending appeal and the grant thereof is left to the discretion of the court upon good reasons to be stated in a special order.** Thus, reinstatement pending appeal in illegal dismissal cases is a species of execution pending appeal sanctioned by the Rules of Court, which applies suppletorily to the rules of procedure in labor cases under Sec. 3, Rule I of the 2005 NLRC Revised Rules of Procedure. While Sec. 2, Rule 39 of the Rules of Court allows such preliminary relief upon due motion and for good reasons, Art. 233 requires the immediate execution pending appeal of the reinstatement aspect of the arbiter's decision and is self-executory. The reinstated employee need not file a motion nor adduce good reasons for the grant of a reinstatement order pending appeal. Such good reasons required in Rule 39 of the Rules of Court are, as articulated in *Aris*, already captured in the *raison d 'etre* behind

Art. 223, *viz*: If in ordinary civil actions execution of judgment pending appeal is authorized for reasons the determination of which is merely left to the discretion of the judge, We find no plausible reason to withhold it in cases of decisions reinstating dismissed or separated employees. In such cases, the poor employees had been deprived of their only source of livelihood, their only means of support for their family—their very lifeblood. To Us, this special circumstance is far better than any other which a judge, in his sound discretion, may determine. In short, with respect to decisions reinstating employees, the law itself had determined a sufficiently overwhelming reason for its execution pending appeal.

6. ID.; ID.; ID.; ID.; RIGHT TO REINSTATEMENT PENDING APPEAL IS MERELY A PROCEDURAL RIGHT; AN EMPLOYEE REINSTATED IS OBLIGED TO MAKE RESTITUTION OF THE SALARIES PAID TO HIM ONCE THE DISMISSAL IS UPHELD.— It is established in this jurisdiction that in **discretionary execution envisaged under said Rule 39, the prevailing party is obliged to make restitution or reparation, as justice and equity may warrant, in case the executed judgment is reversed on appeal.** If the party granted execution pending appeal is required to make restitution or reparation in ordinary civil cases, then an employee reinstated under payroll reinstatement is likewise obliged to make restitution of the salaries paid to him once the dismissal is upheld. Such being the case, the right to reinstatement pending appeal is not a substantive but merely a procedural right.

7. ID.; ID.; ID.; ID.; RELIEFS GRANTED TO DISMISSED EMPLOYEES ARE EXTINGUISHED AFTER THE APPEAL WAS FINALLY DECIDED UPHOLDING THE VALIDITY OF THE DISMISSAL; REASON; CASE AT BAR.— The complaint of the petitioners alleges "illegal dismissal" as their cause of action. Such is a pleading allowed the dismissed employee under Sec. 1, Rule III of the 2005 NLRC Revised Rules of Procedure which defines complaint as a "pleading alleging the cause or causes of action of the complainant or petitioner." There is no definition of cause of action in the NLRC Rules of Procedure. Since The Rules of Court applies in a suppletory character and effect to the 2005 NLRC Revised Rules of Procedure, then the definition of cause of action in Sec. 2, Rule 2 of the 1997 Rules of Civil Procedure is adopted—that it is "the act or omission

by which a party violates a right of another." In an illegal dismissal case, the cause of action of the dismissed employee is the employer's unlawful act in dismissing him from the service, thus violating the right of the employee to employment. Hence, the employee must prove his cause of action before he is entitled to relief. When the labor arbiter declares the illegality of the dismissal and orders his immediate reinstatement pending appeal, the cause of action of the employee is sustained subject to the appeal before the NLRC. While the appeal is pending, the employee is entitled to a provisional relief—execution pending appeal of the reinstatement aspect of the decision of the arbiter. Thus, he has the right to the immediate execution of the order of reinstatement based on the arbiter's decision. This is predicated on Art. 223 which declares that reinstatement pending appeal is immediately executory, and supported by *Pioneer*, which allowed the employee's reinstatement even without a motion being filed or the need to justify said relief pending appeal. In short, there is a legal basis for the reinstatement pending appeal—the arbiter's decision. If the reinstatement is not implemented prior to the reversal decision of the NLRC, and the NLRC decision becomes final, like in the case at bar, certainly the employee is no longer entitled to reinstatement since there is no more legal basis for such relief. The finding that the dismissal is valid and legal removes the legal anchorage for reinstatement. The right of employment of the dismissed worker is, therefore, lost and forfeited. Necessarily, the employee is not even entitled to payment of salaries he could have earned had he been reinstated pending appeal for the simple reason that there is also no legal basis for such payment. In the case at bar, **when the NLRC rendered its reversal decision and held the petitioner's dismissal from PAL valid, it had in effect removed the legal basis for petitioners' reinstatement. Accordingly, as there is no more basis for reinstatement, the payment of unearned wages during the appeal, therefore, has no legal basis either.** The labor arbiter, to stress, issued his decision on January 11, 1999, while the NLRC decision became final on **July 13, 2000.** In the interim, petitioners never lifted a finger to have the execution pending appeal implemented. They secured the writ of execution only on **October 5, 2000,** long after the finality of the NLRC's decision. By that time, the execution of the reinstatement pending appeal had no more legal basis and was lost and forfeited. We

cannot fault the employer for the failed reinstatement when the employees themselves failed to enforce their rights at the proper and opportune moment. In the end, they were not able to substantiate and prove their cause of action. All reliefs that could have been granted to them were extinguished by the final NLRC decision that their dismissal is valid and legal.

8. ID.; ID.; ID.; ID.; PAYMENT OF BACKWAGES FOR THE PERIOD RECKONED FROM THE DATE OF DECISION AWARDING REINSTATEMENT UP TO THE REVERSAL THEREOF IS WITHOUT LEGAL BASIS.— Art. 223 of the Labor Code does not automatically render the employer liable for backwages for the period reckoned from the date of the labor arbiter's decision up to the date of the decision of a higher body reversing the arbiter's decision if there the employee failed to enforce the labor arbiter's order of reinstatement. Art. 223, 3rd paragraph is SILENT as to the consequences of the non-implementation of reinstatement pending appeal through the inaction of the employee, in the event the reinstatement is subsequently set aside. What should be applied is the literal meaning or plain-meaning rule under the maxim—speech is the index of intention (*index animi sumo*). If the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. What is not clearly provided and specified in the law cannot be extended to those matters outside its scope. Since the payment of backwages for the period reckoned from the date of decision awarding reinstatement up to the reversal thereof was not explicitly provided in the 3rd paragraph of Art. 223, then such award is unauthorized and without legal basis.

9. ID.; ID.; ID.; ID.; REMEDY OF COMPULSION VIA A CITATION FOR CONTEMPT IS THE ONLY RELIEF GRANTED TO THE DISMISSED EMPLOYEE IN CASE THE EMPLOYER DISOBEYS THE WRIT OF EXECUTION.— The labor arbiter is duty-bound to order reinstatement by issuing a writ of execution if his decision directs that reinstatement is immediately executory. While it was explained in *Pioneer* that there is no need for the issuance of a writ of execution regarding reinstatement pending appeal, the Department of Labor and Employment saw the need for the issuance of a writ of execution to implement an order or decision. The suggested procedure in *Pioneer* is ineffective and the losing party does not generally

comply with the order or decision possibly due to ignorance of the NLRC Rules of Procedure and jurisprudence. More importantly, a writ of execution or garnishment is always the generally accepted procedure in implementing final orders and decisions. The 2005 NLRC Revised Rules of Procedure, particularly Sec. 14, Rule V, has always prescribed the necessity for a writ of execution xxx The complementing Sec. 6, Rule XI provides: Section 6. *Execution of Reinstatement Pending Appeal*. xxx. Even the previous Sec. 3, Rule VIII of the NLRC Rules of Procedure, as amended by Resolution No. 01-02, saw the need for such writ: xxx. SEC. 3. **Issuance of Partial Writ Pending Appeal.**— xxx. It is abundantly clear from the above-quoted rules that an employer has to be compelled to reinstate the employee by means of a writ, and one who disobeys the writ of execution may be cited for contempt. The employer, as may be noted, can be coerced to actually reinstate the employees concerned to their former positions or agree to a payroll readmission. Nowhere in the rules does it say that the employer shall contextually be liable for the payment of backwages in the event reibstatement is not effected. The only relief given under the rules is the remedy of compulsion via a citation for contempt.

10. ID.; ID.; ID.; ID.; RULING IN PIONEER CASE (G.R. NO. 118651, OCTOBER 16, 1997) INAPPLICABLE TO CASE AT BAR.— *Pioneer* did not rule that in the event of unjustifiable refusal to reinstate the employee, then the employer is liable for the wages which could have been earned during the appeal period. Neither did it rule that in case the employer refuses to reinstate the employee, then a writ of execution is no longer necessary. As a matter of fact, *Pioneer* cannot be considered a precedent to the case at bar considering that the Court subsequently affirmed the finding of illegal dismissal upon which the reinstatement on appeal was based. In the present case, the finding of illegal dismissal by the labor arbiter was overturned by the NLRC and the ruling that there was a valid dismissal eventually became final without the employees being reinstated during the appeal period, thus, the non-entitlement to the unearned wages.

11. ID.; ID.; ID.; ID.; WRIT OF EXECUTION IS REQUIRED TO IMPLEMENT THE REINSTATEMENT ORDER; DISMISSED EMPLOYEES ARE NOT ENTITLED TO THE PAYMENT OF

WAGES DURING THE APPEAL PERIOD WHERE THE SAME PROCURED THE WRIT OF EXECUTION ONLY AFTER THE APPEAL WAS FINALLY DECIDED REVERSING THE ORDER OF REINSTATEMENT.— Justice Brion, in his Concurring and Dissenting Opinion, opined that "the labor arbiter issues a writ of execution only when the employer disobeys the above directive or refuses to reinstate the dismissed employee" which is not the procedure prescribed in Rule XI, Sec. 6. This section requires the labor arbiter to immediately issue a writ of execution upon promulgation of the arbiter's decision. It is imprecise to say that a writ of execution is no longer necessary to effectuate a reinstatement pending appeal, as laid down in *Pioneer*. A writ of execution is needed after all. What is avoided by Art. 223 is the filing of a motion for reinstatement pending appeal and the presentation of evidence to justify reinstatement. Thus, reinstatement is self-executory only in that sense. In the case at bar, PAL did not reinstate the petitioners due to corporate rehabilitation, doubtless a justifiable cause. Thus, it was incumbent for the employees to procure a writ of execution to compel reinstatement. If PAL disobeyed, then they could have asked the labor arbiter to cite the airline in contempt. They did not. They only got the writ after the NLRC decision annulling the arbiter's decision has become final. In this situation, they are not clearly entitled to the wages that could have been due to them during the appeal period.

12. ID.; ID.; ID.; ID.; RULING IN AIR PHILIPPINES CASE (G.R. NO. 148247, AUGUST 7, 2006) INAPPLICABLE TO CASE AT BAR.— *Air Philippines Corp. v. Zamora* (*Air Philippines*) likewise is not a precedent to the case at bar since it involved a reinstatement of a dismissed employee where the appeal of the higher court has not yet been finally resolved. Naturally, the employee in *Air Philippines* was still entitled to reinstatement because the **legal basis** therefore—the decision of the labor arbiter—was the prevailing ruling at the time although challenged on appeal. In the case at bench, the appeal has already been finally decided by the higher tribunal—the NLRC. There is thus, to reiterate, no more legal basis for the reinstatement of the dismissed employees since it has been finally decreed that the dismissal is valid.

13. ID.; ID.; ID.; ID.; EMPLOYER IS NOT LIABLE FOR THE PAYMENT OF SALARIES DURING THE APPEAL PERIOD

WHERE THE DENIAL OF REINSTATEMENT IS JUSTIFIED.— If there is a justification for the refusal to reinstate, then the employer is not liable for the payment of salaries during the appeal period. In *PT&T v. NLRC* and *Equitable Banking Corporation v. NLRC*, it was held that where the dismissed employee's reinstatement would lead to a strained employer-employee relationship or to an atmosphere of antipathy and antagonism, the exception to the twin remedies of reinstatement and payment of backwages can be invoked, and reinstatement, which might become anathema to industrial peace, could be held back pending appeal. In the case at bar, considering that the dismissed employees committed a crime involving a breach of the Dangerous Drugs Act—sniffing *shabu*, which addiction might contaminate the other employees in the workplace thereby prejudicing the quality of work in a public service and utility company like PAL, then the denial of reinstatement is justified.

14. ID.; ID.; ID.; ID.; AWARD TO THE DISMISSED EMPLOYEES OF THE SALARIES WHICH THEY COULD HAVE EARNED DURING THE PENDENCY OF THE APPEAL, AFTER THE DISMISSAL WAS DECLARED WITH FINALITY AS VALID, IS A VIOLATION OF THE DOCTRINE OF UNJUST ENRICHMENT.— If petitioners will be adjudged to receive the salaries they could have earned during the pendency of the appeal after the case has been resolved with finality that their dismissal is valid, then petitioners will unduly enrich themselves at the expense of PAL without any legal basis. Such award would violate the doctrine of unjust enrichment that "a person shall not be allowed to profit or enrich himself inequitably at another's expense." *Nemo cum alterius detrimento locupletari potest.* No one shall enrich himself at the expense of another.

15. REMEDIAL LAW; JUDGMENT; *STARE DECISIS*; DOCTRINE; RULING IN THE CASES OF ROQUERO, KIMBERLY, AND ICTSI, INAPPLICABLE TO CASE AT BAR.— The cases of *Roquero, Intercontinental Container Terminal Services, Inc. (ICTSI),* and *Kimberly* are not precedents to the case at bar. In *Roquero*, the employees filed a motion for a writ of execution of the NLRC'S order of reinstatement which was granted by the labor arbiter during the pendency of the appeal. In the case at bar, the writ was issued after the appeal was finally decided finding the dismissal valid. xxx. Thus, the *Roquero* case is different in that the decision ordering reinstatement has not

yet been reversed by the higher court when reinstatement was sought. Here, it was demanded after a final ruling of the legality of the dismissal. In *ICTSI*, the employee filed a motion for writ of execution with the NLRC pending his appeal for reinstatement. In the instant case, petitioners obtained a writ of execution after the NLRC had disposed of the appeal by reversing the arbiter's decision reinstating them. In *Kimberly*, the labor arbiter issued a writ of execution for the reinstatement of the employees pending appeal. Subsequently, he directed the company to pay the employees' back salaries, and the company's bank deposits were garnished. In the case at bar, the labor arbiter issued the writ of execution after the appeal has been resolved and the labor arbiter's decision was reversed by the NLRC. Thus, the cases of *Roquero, ICTSI,* and *Kimberly* cannot support the proposition that respondent PAL is still required to pay the wages of petitioners when they only claimed reinstatement after the issuance of a final ruling that their dismissal is valid. The doctrine of *stare decisis et non quieta movere* means "to adhere to precedents and not to unsettle things which are established." Under said doctrine, when the Court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases, where facts are substantially the same regardless of whether the parties and property are the same. Since the facts in the instant petition are not substantially the same as in *Roquero* and other cases cited in the Concurring and Dissenting Opinion of Justice Brion, then I submit that the principles of law enunciated in *Roquero* and other cases cannot be applied to the case at bar.

BRION, *J., separate concurring and dissenting opinion:*

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; ARTICLE 223 THEREOF; ALTERNATIVES AVAILABLE TO EMPLOYER IN EFFECTING REINSTATEMENT PENDING APPEAL.— The law provides the employer two alternatives in effecting reinstatement pending appeal. The first is **actual reinstatement**, *i.e.*, the worker returns to work and earns his pay while waiting for the result of the employer's appeal. The second is **payroll reinstatement** where, in lieu of actual reinstatement, the employer complies with the obligation to reinstate by merely keeping the worker *in the payroll but out of the workplace* - a privilege that Article 223 of the Labor Code itself grants. Either case

poses no patent legal complication and has been amply covered by our rulings in their implementation. In the first case, no refund or reimbursement of salaries paid is necessary, as the worker earned his or her salaries through actual services rendered. In the second case, the worker would have worked, but the employer waived his right to exact service for the salaries he had paid. Thus, even if a reversal subsequently occurs, the employer is estopped from claiming any reimbursement or refund of salaries paid since they were paid for services deemed rendered.

2. ID.; ID.; ID.; CONSTRUED.— The mandatory execution pending appeal contemplated is both novel and unique as the executions we have known before R.A. No. 6715 were executions of *final and executory* judgments and *discretionary* executions pending appeal. In the latter case, the Rules of Court only allow executions pending appeal upon a finding of good justificatory reasons. In a way Article 223 is still consistent with this concept under the view that Congress thereby effectively "pre-determined" the good reason to justify execution pending appeal: the proceeds shall be the employee's source of livelihood and means of support while the employer's appeal is pending. The word "immediately" has been understood to mean without delay or lapse or interval of time. Based on this definition, the Court has ruled that Article 223 does not need an application for and the issuance of a writ of execution as prerequisite for the execution of a reinstatement award. In other words, the reinstatement order is self-executory. This is the basis for the current NLRC Rules of Procedure that leaves the enforcement of the reinstatement order to the employer who is given the duty to submit a compliance report within 10 days from receipt of the decision. The labor arbiter issues a writ of execution only when the employer disobeys the above directive or refuses to reinstate the dismissed employee. Since Article 223 is self-executory, the dismissed worker in effect becomes a passive beneficiary of the labor arbiter's order. He does not need to actively move to secure his reinstatement; thus, his failure to move for the implementation of the labor arbiter's order in no way prejudices his right to an immediate reinstatement and to its proceeds. If at all, only his refusal to be reinstated or a waiver of this right on his part can disentitle him to what the law grants. The cases of *Roquero v. Philippine Airlines, International Container Terminal Services, Inc. (ICTSI) v.*

NLRC, and *Kimberly Clark (Phil.), Inc. v. Facundo* are authorities for the position that notwithstanding the reversal by the NLRC of the labor arbiter's order of reinstatement, the dismissed employee is still entitled to the wages accruing during the pendency of the appeal.

3. ID.; ID.; ID.; ID.; SECTION 5 OF RULE 39 OF THE RULES OF COURT IS NOT APPLICABLE TO MANDATORY EXECUTIONS PENDING APPEAL UNDER ARTICLE 223 OF THE LABOR CODE.— Aside from the paucity of authorities supporting the *Genuino* view, I do not find Justice Velasco's arguments sufficiently persuasive to justify a deviation from the Court's persuasive interpretation of Article 223 in *Roquero*, *ICTSI*, and *Kimberly Clark*. In the *first* place, Section 5 of Rule 39 refers specifically to *discretionary* executions pending appeal as provided under Section 2 of that Rule. It finds no application to the *mandatory* executions pending appeal provided under Article 223, as the special reasons behind the immediate execution under Article 223 - discussed above - are outside the contemplation of Section 5, Rule 39. To be exact, Section 5, Rule 39 does not take into account the special labor relations setting that justifies Article 223, and disregards too the constitutional mandate that compels Congress to provide remedies - substantive and procedural - to situations where labor may be at a disadvantage.

4. ID.; ID.; ID.; GRANTS A SUBSTANTIVE RIGHT TO DISMISSED EMPLOYEES WHOSE CASES ARE BROUGHT ON APPEAL TO THE NLRC; RATIONALE.— [A]rticle 223, viewed from the prism of its intent, is not a mere procedural rule governing appeals from decisions of labor arbiters. Understood fully and properly, it embodies and grants a *substantive right* to dismissed employees whose cases are brought to the NLRC on appeal. Source of livelihood and support - a worker's basic means for survival - cannot be matters of procedure that can be undone and taken back when conditions change. A State intervention to address the specific and identified need to level the playing field *in the course of an employer's appeal* to the NLRC (*i.e.*, from a finding that a worker has been illegally dismissed) cannot likewise simply be a matter of procedure; *it is a State declaration that, **after a first-level finding of an illegal dismissal, t**he worker must be protected by immediately affording him or her the right to the work and the wages previously denied by the employer*.

In this sense, Article 223 cannot but embody a substantive grant that passes the test of legality even from the point of view of constitutional law. It does not violate due process as it is a reasonable measure supported by a prior finding of illegality made after the employer had been duly heard. It is also not a confiscatory grant as the law requires the worker to render services to earn his salary, subject only to the payroll reinstatement that is recognized for the benefit of the employer.

5. ID.; ID.; ID.; ID.; REHABILITATION DOES NOT TOTALLY EXCUSE THE CORPORATION FROM IMPLEMENTING THE REINSTATEMENT ORDER.— In the context of this case, Article 223 embodies a substantive grant that must be given to the dismissed employees, **irrespective of the presence of fault or lack of it** on the part of the employer. For this reason (separately from the reason more fully discussed below), I do not agree with the *ponencia's* position that PAL's corporate rehabilitation excused it from complying with Article 223. The corporate rehabilitation *merely suspended* the implementation of Article 223, but did not totally excuse PAL from the obligation to reinstate, or in lieu thereof, to pay the wages due during the appeal period. **Thus, the reinstatement should be implemented upon the lifting of the suspension or stay order.** The intervening reversal by the NLRC of the labor arbiter's reinstatement decision cannot and should not affect that part of the grant that had already been vested prior to the reversal. With the suspension lifted, PAL should therefore be held liable for the wages due during the appeal period all the way up to the time of reversal.

6. ID.; ID.; ID.; ANY DOUBT IN THE INTERPRETATION OR IMPLEMENTATION OF THE LABOR CODE SHOULD BE RESOLVED IN FAVOR OF LABOR.— [C]ontrary to Justice Velasco's opinion, the silence of Article 223 on the worker's entitlement to wages pending appeal cannot lead to the conclusion that no such entitlement exists. To so conclude is to close our eyes to the clear intent of the amended Article 223. Assuming *arguendo* that no such intent is patent, the silence of Article 223 cannot also lead to the conclusion that the worker - who has been declared illegally dismissed - is not entitled to the wages he or she should have earned had not the illegal dismissal taken place. The only logical conclusion that can be made, and one that can hardly be disputed, is that the silence

of Article 223 leads to a situation of doubt. Any doubt, however, in the interpretation or implementation of the Labor Code should be resolved in favour of labor pursuant to the Labor Code's own Article 4.

7. ID.; ID.; ID.; PAYMENT TO THE DISMISSED EMPLOYEES OF THE SALARIES THAT ACCRUED DURING THE PENDENCY OF EMPLOYER'S APPEAL DOES NOT CONSTITUTE UNJUST ENRICHMENT EVEN IF THE ORDER OF REINSTATEMENT IS SUBSEQUENTLY REVERSED BY THE NLRC.—Established jurisprudence teaches us that there can be no unjust enrichment pursuant to Article 22 of the Civil Code if there is a legal basis for the situation complained of as unjust. In the present case, what is complained of as unjust is the payment to the petitioners of the salaries they would have earned during the pendency of the employer's appeal had the employer reinstated them. Justice Velasco labels the situation as unjust because the NLRC subsequently reversed the labor arbiter's decision and declared the dismissal legal. This situation, however, is precisely what Article 223 of the Labor Code addresses; the State saw it fit to provide the dismissed worker a substantive right during the pendency of the employer's appeal to level the playing field in an employee dismissal situation. Thus, there is legal basis for the situation complained of as unjust so that Article 22 of the Civil Code cannot apply.

8. ID.; ID.; ID.; FAILURE TO EFFECT REINSTATEMENT NOT DUE TO THE DISMISSED EMPLOYEES' FAULT IN CASE AT BAR.— [I]t is interesting to note that PAL's claim of lack of fault cannot be justified, as the failure to implement the petitiners' reinstatement pending appeal is directly traceable to it, not to the petitioners. To go back to the developments in this case, the labor arbiter's decision contained a direct order for immediate reinstatement, and PAL openly and unjustifiably disregarded this order. PAL did not have to wait for a writ of execution because the order to immediately reinstate was in the decision itself. The petitioners, for their part, seasonably demanded through their letter of June 14, 1999 that they be reinstated; they subsequently filed a motion for the issuance of a writ of execution. All these efforts failed to draw any response, either from PAL or from the labor arbiter. If PAL responded at all, it was only after it won at the NLRC level. It was also at this time that it cited *for the first time* the SEC order for suspension

of proceedings. The labor arbiter, on the other hand, likewise responded through the issuance of a writ of execution only after the NLRC had ruled. Under these facts, the failure to effect reinstatement cannot be imputed to the petitioners, and they should not be made to suffer for a fault not attributable to them. Thus, the *ponencia's* own standards belie the correctness of its conclusion to deny the petition.

9. COMMERCIAL LAW; CORPORATIONS; REHABILITATION PROCEEDINGS; FAILURE OF THE CORPORATION TO SEASONABLY ASSERT ITS RIGHT TO THE SUSPENSION OF PROCEEDINGS RAISED THE PRESUMPTION THAT IT HAD ABANDONED OR DECLINED TO ASSERT THIS RIGHT.— As the corporation accorded with the suspension of claims and actions for or against it in the course of corporate rehabilitation, PAL had the burden to actively assert the suspension that law allows. This is particularly true under the then prevailing SEC rules which were not clear and categorical about the *in rem* nature of the corporate rehabilitation proceedings. By failing to ask for the suspension of the labor proceedings, PAL clearly slept on its right. At the very least, PAL's failure to seasonably assert its right to the suspension of proceedings raised the presumption that it had abandoned or declined to assert this right.

10. CIVIL LAW; ESTOPPEL; DOCTRINE APPLICABLE TO CASE AT BAR.— PAL did not merely sleep on its rights; worse than this omission, PAL even actively represented that no suspension was called for when it appealed to the NLRC the decision of the labor arbiter. Thus, while PAL could have put its appeal on hold without affecting its right to appeal, it showed both the petitioners and the labor tribunals that its preference was to pursue the case. This active and express representation by PAL bring into play the concept of estoppel under Article 1431 of the Civil Code which provides: Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon. On the authority of this provision, respondent PAL - who by its actions showed that it wanted to pursue its appeal - should not now be heard to say that the reinstatement that should accompany the appeal has now been rendered impossible because of the on-going corporate rehabilitation.

To state it another way, PAL was the corporate rehabilitation petitioner in whose behalf the suspension of claims and actions was granted by law, and who knew that a suspension was in place; yet PAL itself disregarded the supposed suspension by appealing to the NLRC. **From the point of view of fairness, it is the height of inequity to recognize the efficacy of PAL's appeal and the NLRC's consequent reversal of the labor arbiter's decision, while not recognizing the reinstatement pending appeal that should have been in place while PAL's appeal was pending.** If indeed the suspension should have automatically set in, then such suspension should apply to all proceedings from and after the SEC's suspension order, *i.e.*, from the labor arbiter's to the NLRC's proceedings.

APPEARANCES OF COUNSEL

R. Go, Jr. Law Office for petitioners.
Bienvenido T. Jamoralin, Jr. for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Petitioners Juanito A. Garcia and Alberto J. Dumago assail the December 5, 2003 Decision and April 16, 2004 Resolution of the Court of Appeals[1] in CA-G.R. SP No. 69540 which granted the petition for *certiorari* of respondent, Philippine Airlines, Inc. (PAL), and denied petitioners' Motion for Reconsideration, respectively. The dispositive portion of the assailed Decision reads:

WHEREFORE, premises considered and in view of the foregoing, the instant petition is hereby GIVEN DUE COURSE. The assailed November 26, 2001 Resolution as well as the January 28, 2002 Resolution of public respondent National Labor Relations Commission [NLRC] is hereby ANNULLED and SET ASIDE for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. Consequently, the Writ of Execution and the Notice of

[1] Justices Marina L. Buzon, Sergio L. Pestaño (*ponente*) and Jose C. Mendoza comprised the [Former] Fourteenth Division of the appellate court.

Garnishment issued by the Labor Arbiter are hereby likewise ANNULLED and SET ASIDE.

SO ORDERED.[2]

The case stemmed from the administrative charge filed by PAL against its employees-herein petitioners[3] after they were allegedly caught in the act of sniffing *shabu* when a team of company security personnel and law enforcers raided the PAL Technical Center's Toolroom Section on July 24, 1995.

After due notice, PAL dismissed petitioners on October 9, 1995 for transgressing the PAL Code of Discipline,[4] prompting them to file a complaint for illegal dismissal and damages which was, by Decision of January 11, 1999,[5] resolved by the Labor

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[2] *Rollo*, pp. 47-48.

[3] Juanito A. Garcia and Alberto J. Dumago were employed as aircraft inspector and aircraft furnisher master, respectively.

[4] Particularly, Chapter II, Section 6, Articles 46 (Violation of Law/ Government Regulations) and 48 (Prohibited Drugs).

[5] Records, Vol. 1, p. 167. The dispositive portion of the Decision penned by Labor Arbiter Ramon Valentin Reyes reads:

> WHEREFORE, conformably with the foregoing, judgment is hereby rendered finding the respondents guilty of illegal suspension and illegal dismissal and ordering them to reinstate complainants to their former position without loss of seniority rights and other privileges. Respondents are hereby further ordered to pay jointly and severally unto the complainants the following:
>
> Alberto J. Dumago - ₱409,500.00 backwages as of 1/10/99
> 34,125.00 for 13th month pay
> Juanito A. Garcia - ₱1,290,744.00 backwages as of 1/10/99
> 107,562.00 for 13th month pay
>
> [t]he amounts of ₱100,000.00 and ₱50,000.00 to each complainant as and by way of moral and exemplary damages; and [t]he sum equivalent to ten percent (10%) of the total award as and for attorney's fees.
>
> Respondents are directed to **immediately comply with the reinstatement aspect of this Decision**. However, in the event that reinstatement is no longer feasible, respondent is hereby ordered, in lieu thereof, to pay unto the complainants their separation pay computed at one month for [e]very year of service.
>
> SO ORDERED. (Emphasis and underscoring supplied)

Arbiter in their favor, thus ordering PAL to, *inter alia*, immediately comply with the reinstatement aspect of the decision.

Prior to the promulgation of the Labor Arbiter's decision, the Securities and Exchange Commission (SEC) placed PAL (hereafter referred to as respondent), which was suffering from severe financial losses, under an Interim Rehabilitation Receiver, who was subsequently replaced by a Permanent Rehabilitation Receiver on June 7, 1999.

From the Labor Arbiter's decision, respondent appealed to the NLRC which, by Resolution of January 31, 2000, reversed said decision and dismissed petitioners' complaint for lack of merit.[6]

Petitioners' Motion for Reconsideration was denied by Resolution of April 28, 2000 and Entry of Judgment was issued on July 13, 2000.[7]

Subsequently or on October 5, 2000, the Labor Arbiter issued a Writ of Execution (Writ) respecting the reinstatement aspect of his January 11, 1999 Decision, and on October 25, 2000, he issued a Notice of Garnishment (Notice). Respondent thereupon moved to quash the Writ and to lift the Notice while petitioners moved to release the garnished amount.

In a related move, respondent filed an Urgent Petition for Injunction with the NLRC which, by Resolutions of November 26, 2001 and January 28, 2002, affirmed the validity of the Writ and the Notice issued by the Labor Arbiter *but* suspended

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[6] Records, Vol. 1. pp. 174-186.

[7] *Id*, at 209. A second look at the antecedents of the main case reveals that petitioners went on *certiorari* to the Court of Appeals to challenge the finding of the validity of their dismissal. By Resolutions of August 10, 2000 and November 5, 2003, the appellate court dismissed the petition docketed as CA-G.R. SP No. 59826 and denied reconsideration thereof on technical grounds. By Decision of June 8, 2005, the Court reversed the two resolutions and remanded the case to the appellate court for further proceedings. *vide rollo*, pp. 218-219; *Garcia v. Philippine Airlines, Inc.*, G.R. No. 160798, June 8, 2005, 459 SCRA 768. The appellate court, by Decision of March 28, 2008 and Resolution of July 11, 2008, dismissed the petition.

and referred the action to the Rehabilitation Receiver for appropriate action.

Respondent elevated the matter to the appellate court which issued the herein challenged Decision and Resolution nullifying the NLRC Resolutions on two grounds, essentially espousing that: **(1)** a subsequent finding of a valid dismissal removes the basis for implementing the reinstatement aspect of a labor arbiter's decision (the first ground), and **(2)** the impossibility to comply with the reinstatement order due to corporate rehabilitation provides a reasonable justification for the failure to exercise the options under Article 223 of the Labor Code (the second ground).

By Decision of August 29, 2007, this Court PARTIALLY GRANTED the present petition and effectively reinstated the NLRC Resolutions insofar as it suspended the proceedings, *viz*:

> Since petitioners' claim against PAL is a money claim for their wages during the pendency of PAL's appeal to the NLRC, the same should have been suspended pending the rehabilitation proceedings. The Labor Arbiter, the NLRC, as well as the Court of Appeals should have abstained from resolving petitioners' case for illegal dismissal and should instead have directed them to lodge their claim before PAL's receiver.
>
> However, to still require petitioners at this time to re-file their labor claim against PAL under peculiar circumstances of the case– that their dismissal was eventually held valid with only the matter of reinstatement pending appeal being the issue– this Court deems it legally expedient to suspend the proceedings in this case.
>
> WHEREFORE, the instant petition is PARTIALLY GRANTED in that the instant proceedings herein are SUSPENDED *until further notice from this Court*. Accordingly, respondent Philippine Airlines, Inc. is hereby DIRECTED to quarterly update the Court as to the status of its ongoing rehabilitation. No costs.
>
> SO ORDERED.[8] (Italics in the original; underscoring supplied)

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[8] *Garcia v. Philippine Airlines, Inc.*, G.R. No. 164856, August 29, 2007, 531 SCRA 574, 582-583. Penned by Justice Leonardo A. Quisumbing.

By Manifestation and Compliance of October 30, 2007, respondent informed the Court that the SEC, by Order of September 28, 2007, granted its request to exit from rehabilitation proceedings.[9]

In view of the termination of the rehabilitation proceedings, the Court now proceeds to resolve the remaining issue for consideration, which is **whether petitioners may collect their wages during the period between the Labor Arbiter's order of reinstatement pending appeal and the NLRC decision overturning that of the Labor Arbiter, now that respondent has exited from rehabilitation proceedings.**

Amplification of the First Ground

The appellate court counted on as its first ground the view that a subsequent finding of a valid dismissal removes the basis for implementing the reinstatement aspect of a labor arbiter's decision.

On this score, the Court's attention is drawn to seemingly divergent decisions concerning reinstatement pending appeal or, particularly, the **option of payroll reinstatement**. On the one hand is the jurisprudential trend as expounded in a line of cases including *Air Philippines Corp. v. Zamora*,[10] while on the other is the recent case of *Genuino v. National Labor Relations Commission*.[11] At the core of the seeming divergence is the application of paragraph 3 of Article 223 of the Labor Code which reads:

> In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the **reinstatement aspect** is concerned, shall **immediately be executory, pending appeal**. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein. (Emphasis and underscoring supplied)

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[9] *Rollo*, pp. 250-257.

[10] G.R. No. 148247, August 7, 2006, 498 SCRA 59.

[11] G.R. Nos. 142732-33, December 4, 2007, 539 SCRA 342.

The view as maintained in a number of cases is that:

> x x x [**E**]**ven if the order of reinstatement of the Labor Arbiter is reversed on appeal, it is obligatory on the part of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court**. On the other hand, if the employee has been reinstated during the appeal period and such reinstatement order is reversed with finality, the employee is *not* required to reimburse whatever salary he received for he is entitled to such, more so if he actually rendered services during the period.[12] (Emphasis in the original; italics and underscoring supplied)

In other words, a dismissed employee whose case was favorably decided by the Labor Arbiter is entitled to receive wages pending appeal upon reinstatement, which is immediately executory. Unless there is a restraining order, it is ministerial upon the Labor Arbiter to implement the order of reinstatement and it is mandatory on the employer to comply therewith.[13]

The opposite view is articulated in *Genuino* which states:

> If the decision of the labor arbiter is later reversed on appeal upon the finding that the ground for dismissal is valid, then **the employer has the right to require the dismissed employee *on payroll reinstatement* to refund the salaries s/he received** while the case was pending appeal, or it can be deducted from the accrued benefits that the dismissed employee was entitled to receive from his/her employer under existing laws, collective bargaining agreement provisions, and company practices. However, if the employee was reinstated to work during the pendency of the appeal, then the employee is entitled to the compensation received for actual services rendered without need of refund.
>
> Considering that Genuino was not reinstated to work or placed on payroll reinstatement, and her dismissal is based on a just cause, then she is not entitled to be paid the salaries stated in item no. 3 of the *fallo* of the September 3, 1994 NLRC Decision.[14] (Emphasis, italics and underscoring supplied)

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[12] *Supra* note 10 at 72-73.

[13] *Roquero v. Philippine Airlines*, 449 Phil. 437, 446 (2003).

[14] *Supra* note 11 at 363-364. The Court therein sustained the NLRC's reversal of the Labor Arbiter's decision but cancelled the NLRC's award of salaries accruing from the Labor Arbiter's order of reinstatement pending appeal.

It has thus been advanced that there is no point in releasing the wages to petitioners since their dismissal was found to be valid, and to do so would constitute unjust enrichment.

Prior to *Genuino*, there had been no known similar case containing a dispositive portion where the employee was required to refund the salaries received on payroll reinstatement. In fact, in a catena of cases,[15] the Court did not order the refund of salaries garnished or received by payroll-reinstated employees despite a subsequent reversal of the reinstatement order.

The dearth of authority supporting *Genuino* is not difficult to fathom for it would otherwise render inutile the rationale of reinstatement pending appeal.

x x x [T]he law itself has laid down a compassionate policy which, once more, vivifies and enhances the provisions of the 1987 Constitution on labor and the working man.

x x x x x x x x x

These duties and responsibilities of the State are imposed not so much to express sympathy for the workingman as to forcefully and meaningfully underscore labor as a primary social and economic force, which the Constitution also expressly affirms with equal intensity. Labor is an indispensable partner for the nation's progress and stability.

x x x x x x x x x

x x x In short, with respect to decisions reinstating employees, the law itself has determined a sufficiently overwhelming reason for its execution pending appeal.

x x x x x x x x x

x x x Then, by and pursuant to the same power (police power), the State may authorize an immediate implementation, pending appeal, of a decision reinstating a dismissed or separated employee since that saving act is designed to stop, although temporarily since the

[15] *Composite Enterprises, Inc. v. Caparoso*, G.R. No. 159919, August 8, 2007, 529 SCRA 470; *Kimberly Clark (Phils.), Inc. v. Facundo*, G.R. No. 144885, July 26, 2006 (Unsigned Resolution); *Sanchez v. NLRC*, G.R. No. 124348, February 7, 2001 Unsigned Resolution; *International Container Terminal Services, Inc. v. NLRC*, 360 Phil. 527 (1998).

appeal may be decided in favor of the appellant, a continuing threat or danger to the survival or even the life of the dismissed or separated employee and his family.[16]

The social justice principles of labor law outweigh or render inapplicable the civil law doctrine of unjust enrichment espoused by Justice Presbitero Velasco, Jr. in his Separate Opinion. The constitutional and statutory precepts portray the otherwise "unjust" situation as a condition affording full protection to labor.

Even outside the theoretical trappings of the discussion and into the mundane realities of human experience, the "refund doctrine" easily demonstrates how a favorable decision by the Labor Arbiter could harm, more than help, a dismissed employee. The employee, to make both ends meet, would necessarily have to use up the salaries received during the pendency of the appeal, only to end up having to refund the sum in case of a final unfavorable decision. It is mirage of a stop-gap leading the employee to a risky cliff of insolvency.

Advisably, the sum is better left unspent. It becomes more logical and practical for the employee to refuse payroll reinstatement and simply find work elsewhere in the interim, if any is available. Notably, the option of payroll reinstatement belongs to the employer, even if the employee is able and raring to return to work. Prior to *Genuino*, it is unthinkable for one to refuse payroll reinstatement. In the face of the grim possibilities, the rise of concerned employees declining payroll reinstatement is on the horizon.

Further, the *Genuino* ruling not only disregards the social justice principles behind the rule, but also institutes a scheme unduly favorable to management. Under such scheme, the salaries dispensed *pendente lite* merely serve as a bond posted in installment by the employer. For in the event of a reversal of the Labor Arbiter's decision ordering reinstatement, the employer gets back the same amount without having to spend ordinarily

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[16] *Roquero v. Philippine Airlines*, *supra* at 445 citing *Aris (Phil.) Inc. v. NLRC*, 200 SCRA 246 (1991).

for bond premiums. This circumvents, if not directly contradicts, the proscription that the "posting of a bond [even a cash bond] by the employer shall not stay the execution for reinstatement."[17]

In playing down the stray posture in *Genuino* requiring the dismissed employee on payroll reinstatement to refund the salaries in case a final decision upholds the validity of the dismissal, the Court realigns the proper course of the prevailing doctrine on reinstatement pending appeal *vis-à-vis* the effect of a reversal on appeal.

Respondent insists that with the reversal of the Labor Arbiter's Decision, there is no more basis to enforce the reinstatement aspect of the said decision. In his Separate Opinion, Justice Presbitero Velasco, Jr. supports this argument and finds the prevailing doctrine in *Air Philippines* and allied cases inapplicable because, unlike the present case, the writ of execution therein was secured prior to the reversal of the Labor Arbiter's decision.

The proposition is tenuous. *First*, the matter is treated as a mere race against time. The discussion stopped there without considering the cause of the delay. *Second*, it requires the issuance of a writ of execution despite the immediately executory nature of the reinstatement aspect of the decision. In *Pioneer Texturing Corp. v. NLRC*,[18] which was cited in *Panuncillo v. CAP Philippines, Inc.*,[19] the Court observed:

> x x x The provision of Article 223 is clear that an award [by the Labor Arbiter] for reinstatement *shall be immediately executory even pending appeal and the posting of a bond by the employer shall not stay the execution for reinstatement*. The legislative intent is quite obvious, *i.e.*, to make an award of reinstatement immediately enforceable, even pending appeal. **To require the application for and issuance of a writ of execution** as prerequisites for the execution of a reinstatement award **would certainly betray and run counter to the very object and intent of Article 223**, *i.e.*, the immediate execution

[17] LABOR CODE, Article 223, par. 3.

[18] 345 Phil. 1057 (1997) which established the doctrine that an order or award for reinstatement is self-executory, meaning that it does not require a writ of execution, much less a motion for its issuance.

[19] G.R. No. 161305, February 9, 2007, 515 SCRA 323.

of a reinstatement order. The reason is simple. An application for a writ of execution and its issuance could be delayed for numerous reasons. A mere continuance or postponement of a scheduled hearing, for instance, or an inaction on the part of the Labor Arbiter or the NLRC could easily delay the issuance of the writ thereby setting at naught the strict mandate and noble purpose envisioned by Article 223. In other words, if the requirements of Article 224 [including the issuance of a writ of execution] were to govern, as we so declared in *Maranaw*, then the executory nature of a reinstatement order or award contemplated by Article 223 will be unduly circumscribed and rendered ineffectual. In enacting the law, the legislature is presumed to have ordained a valid and sensible law, one which operates no further than may be necessary to achieve its specific purpose. Statutes, as a rule, are to be construed in the light of the purpose to be achieved and the evil sought to be remedied. x x x In introducing a new rule on the reinstatement aspect of a labor decision under Republic Act No. 6715, Congress should not be considered to be indulging in mere semantic exercise. x x x[20] (Italics in the original; emphasis and underscoring supplied)

The Court reaffirms the prevailing principle that even if the order of reinstatement of the Labor Arbiter is reversed on appeal, it is obligatory on the part of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court.[21] It settles the view that the Labor Arbiter's order of reinstatement is immediately executory and the employer has to either re-admit them to work under the same terms and conditions prevailing prior to their dismissal, or to reinstate them in the payroll, and that failing to exercise the options in the alternative, employer must pay the employee's salaries.[22]

Amplification of the Second Ground

The remaining issue, nonetheless, is resolved in the negative on the strength of the second ground relied upon by the appellate court in the assailed issuances. The Court sustains the appellate

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[20] *Supra* note 18 at 1075-1076.

[21] *Supra* note 12.

[22] *Kimberly Clark (Phils.), Inc. v. Facundo, supra*.

court's finding that the peculiar predicament of a corporate rehabilitation rendered it impossible for respondent to exercise its option under the circumstances.

The spirit of the rule on reinstatement pending appeal animates the proceedings once the Labor Arbiter issues the decision containing an order of reinstatement. The immediacy of its execution needs no further elaboration. Reinstatement pending appeal necessitates its immediate execution during the pendency of the appeal, if the law is to serve its noble purpose. At the same time, any attempt on the part of the employer to evade or delay its execution, as observed in *Panuncillo* and as what actually transpired in *Kimberly*,[23] *Composite*,[24] *Air Philippines*,[25] and *Roquero*,[26] should not be countenanced.

After the labor arbiter's decision is reversed by a higher tribunal, the employee may be barred from collecting the accrued wages, if it is shown that the delay in enforcing the reinstatement pending appeal was without fault on the part of the employer.

The test is two-fold: (1) there must be actual delay or the fact that the order of reinstatement pending appeal was not executed prior to its reversal; and (2) the delay must not be due to the employer's unjustified act or omission. If the delay is due to the employer's unjustified refusal, the employer may still be required to pay the salaries notwithstanding the reversal of the Labor Arbiter's decision.

In *Genuino*, there was no showing that the employer refused to reinstate the employee, who was the Treasury Sales Division

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[23] *Supra*, where the 3 months salary was delayed because the employer filed another baseless motion to quash writ of execution.

[24] *Supra*, where the employer did not release the salaries despite agreeing on payroll reinstatement, awaiting the resolution of its unmeritorious Motion to be Allowed to pay Separation Pay in lieu of Reinstatement.

[25] *Supra*, where the employer did not at all comply with the standing writ of execution.

[26] *Supra*, where the employer refused to comply with the writ of execution, arguing that it filed a petition for review before the Court.

Head, during the short span of four months or from the promulgation on May 2, 1994 of the Labor Arbiter's Decision up to the promulgation on September 3, 1994 of the NLRC Decision. Notably, the former NLRC Rules of Procedure did not lay down a mechanism to promptly effectuate the self-executory order of reinstatement, making it difficult to establish that the employer actually refused to comply.

In a situation like that in *International Container Terminal Services, Inc. v. NLRC*[27] where it was alleged that the employer was willing to comply with the order and that the employee opted not to pursue the execution of the order, the Court upheld the self-executory nature of the reinstatement order and ruled that the salary automatically accrued from notice of the Labor Arbiter's order of reinstatement until its ultimate reversal by the NLRC. It was later discovered that the employee indeed moved for the issuance of a writ but was not acted upon by the Labor Arbiter. In that scenario where the delay was caused by the Labor Arbiter, it was ruled that the inaction of the Labor Arbiter who failed to act upon the employee's motion for the issuance of a writ of execution may no longer adversely affect the cause of the dismissed employee in view of the self-executory nature of the order of reinstatement.[28]

The new NLRC Rules of Procedure, which took effect on January 7, 2006, now require the employer to submit a report of compliance within 10 calendar days from receipt of the Labor Arbiter's decision,[29] disobedience to which clearly denotes a refusal to reinstate. The employee need not file a motion for the issuance of the writ of execution since the Labor Arbiter shall thereafter *motu proprio* issue the writ. **With the new rules in place, there is hardly any difficulty in determining the employer's intransigence in immediately complying with the order**.

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[27] *Supra*.

[28] *International Container Terminal Services, Inc. v. NLRC, supra*.

[29] REVISED RULES OF PROCEDURE OF THE NLRC (2005), Rule V, Sec. 14 and Rule XI, Sec. 6.

In the case at bar, petitioners exerted efforts[30] to execute the Labor Arbiter's order of reinstatement until they were able to secure a writ of execution, albeit issued on October 5, 2000 *after* the reversal by the NLRC of the Labor Arbiter's decision. Technically, there was still actual delay which brings to the question of whether the delay was due to respondent's unjustified act or omission.

It is apparent that there was inaction on the part of respondent to reinstate them, but whether such omission was justified depends on the onset of the exigency of corporate rehabilitation.

It is settled that upon appointment by the SEC of a rehabilitation receiver, all actions for claims before any court, tribunal or board against the corporation shall *ipso jure* be suspended.[31] As stated early on, during the pendency of petitioners' complaint before the Labor Arbiter, the SEC placed respondent under an Interim Rehabilitation Receiver. After the Labor Arbiter rendered his decision, the SEC replaced the Interim Rehabilitation Receiver with a Permanent Rehabilitation Receiver.

Case law recognizes that unless there is a restraining order, the implementation of the order of reinstatement is ministerial and mandatory.[32] This injunction or suspension of claims by legislative fiat[33] partakes of the nature of a restraining order that constitutes a legal justification for respondent's non-compliance with the reinstatement order. Respondent's failure to exercise the alternative options of actual reinstatement and payroll reinstatement was thus justified. Such being the case, respondent's obligation to pay the salaries pending appeal, as the normal effect of the non-exercise of the options, did not attach.

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[30] Petitioners state that respondent ignored their letter of June 14, 1999, prompting them to file a "Motion for Issuance of Writ of Execution [of the Labor Arbiter's January 11, 1999] and to Cite the Respondents in Contempt" of November 11, 1999, *rollo*, pp. 78-85, 169.

[31] *Garcia v. Philippine Airlines, Inc.*, *supra* note 8.

[32] *Roquero v. Philippine Airlines*, *supra* note 13.

[33] PRES. DECREE No. 902-A, Sec. 6 (c), as amended.

While reinstatement pending appeal aims to avert the continuing threat or danger to the survival or even the life of the dismissed employee and his family, it does not contemplate the period when the employer-corporation itself is similarly in a *judicially monitored* state of being resuscitated in order to survive.

The parallelism between a judicial order of corporation rehabilitation as a justification for the non-exercise of its options, on the one hand, and a claim of actual and imminent substantial losses as ground for retrenchment, on the other hand, stops at the red line on the financial statements. Beyond the analogous condition of financial gloom, as discussed by Justice Leonardo Quisumbing in his Separate Opinion, are more salient distinctions. Unlike the ground of substantial losses contemplated in a retrenchment case, the state of corporate rehabilitation was judicially pre-determined by a competent court and not formulated for the first time in this case by respondent.

More importantly, there are legal effects arising from a judicial order placing a corporation under rehabilitation. Respondent was, during the period material to the case, effectively deprived of the alternative choices under Article 223 of the Labor Code, not only by virtue of the statutory injunction but also in view of the interim relinquishment of management control to give way to the full exercise of the powers of the rehabilitation receiver. Had there been no need to rehabilitate, respondent may have opted for actual physical reinstatement pending appeal to optimize the utilization of resources. Then again, though the management may think this wise, the rehabilitation receiver may decide otherwise, not to mention the subsistence of the injunction on claims.

In sum, the obligation to pay the employee's salaries upon the employer's failure to exercise the alternative options under Article 223 of the Labor Code is not a hard and fast rule, considering the inherent constraints of corporate rehabilitation.

WHEREFORE, the petition is *PARTIALLY DENIED*. Insofar as the Court of Appeals Decision of December 5, 2003 and Resolution of April 16, 2004 annulling the NLRC Resolutions

affirming the validity of the Writ of Execution and the Notice of Garnishment are concerned, the Court finds no reversible error.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Carpio, Austria-Martinez, Corona, Azcuna, Tinga, Nachura, and *Leonardo-de Castro, JJ.,* concur.

Quisumbing, J., with Separate Opinion.

Velasco, Jr., J., concur in the result. With separate opinion.

Chico-Nazario, J., join the concurring and dissenting opinion of *J.* Brion.

Brion, J., with concurring and dissenting opinion.

SEPARATE OPINION

QUISUMBING, *J.*:

From this Court's Decision[1] dated August 29, 2007, which ordered the suspension of the proceedings in this case, respondent Philippine Airlines, Inc. (PAL) filed a Manifestation and Compliance[2] on November 13, 2007 containing an Order[3] dated September 28, 2007, from the Securities and Exchange Commission (SEC) granting its request to exit from the rehabilitation proceedings.

In a letter dated September 14, 2007, the members of the Permanent Rehabilitation Receiver (PRR) recommended PAL's exit from rehabilitation "because the same is feasible based on the corporation's improved financial condition, capability to service debts or obligations, rosy projected cash flows, sustainable profitability and adherence to its Amended and Restated

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[1] *Garcia v. Philippine Airlines, Inc.*, G.R. No. 164856, August 29, 2007, 531 SCRA 574.

[2] *Rollo,* pp. 250-251.

[3] *Id.* at 252-257.

Rehabilitation Plan."[4] This assessment was bolstered by the Office of the General Accountant of the SEC in its Memorandum dated September 26, 2007, which concluded that PAL's projected income and projected cash flow for the next three years, cost of debt and equity capital, and latest interim (unaudited) financial statements, satisfactorily addressed concerns on its financial condition and sustainability of profit.[5]

Based on these recommendations, the SEC found the termination of the rehabilitation proceedings, on the ground of successful rehabilitation, in order, thus:

> WHEREFORE, in the light of the foregoing, and considering PAL's **firm commitment** to settle its outstanding obligations as well as the fact that its operations and its financial condition have been **normalized** and **stabilized** in conformity with the Amended and Restated Rehabilitation Plan, exemplifying a successful corporate rehabilitation, the PAL's request to exit from rehabilitation is hereby **GRANTED.**
>
> The **PRR** is likewise directed to furnish all creditors and parties concerned with copies of this Order at the expense of the Petitioner and submit proof of service thereof to the Commission, within fifteen (15) days from date of receipt of this Order.
>
> SO ORDERED.[6]

In view of the foregoing development, the instant case may now be resolved. But first, a brief summation of the antecedent proceedings.

Petitioners Alberto J. Dumago and Juanito A. Garcia were Aircraft Furnishers Master "C"and Aircraft Inspector, respectively, assigned in the PAL Technical Center. On October 9, 1995, they were dismissed for violation of Chapter II, Section 6, Article 46 (Violation of Law/Government Regulations) and Chapter II, Section 6, Article 48 (Prohibited Drugs) of the PAL Code of Discipline.[7] Both simultaneously filed a case for illegal dismissal and damages.

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[4] *Id.* at 254.

[5] *Id.* at 254-256.

[6] *Id.* at 257.

[7] Records, Vol. I, pp. 32-33.

On January 11, 1999, the Labor Arbiter rendered a Decision[8] in petitioners' favor:

> WHEREFORE, conformably with the foregoing, judgment is hereby rendered finding the respondents guilty of illegal suspension and illegal dismissal and ordering them to reinstate complainants to their former position without loss of seniority rights and other privileges. Respondents are hereby further ordered to pay jointly and severally unto the complainants the following:
>
> Alberto J. Dumago – ₱409,500.00 backwages as of 1/10/99
> 34,125.00 for 13th month pay
>
> Juanito A. Garcia – ₱1,290,744.00 backwages as of 1/10/99
> 107,562.00 for 13th month pay
>
> The amounts of ₱100,000.00 and ₱50,000.00 to each complainant as and by way of moral and exemplary damages; and
>
> The sum equivalent to ten percent (10%) of the total award as and for attorneys fees.
>
> Respondents are directed to immediately comply with the reinstatement aspect of this Decision. However, in the event that reinstatement is no longer feasible, respondent[s] are hereby ordered, in lieu thereof, to pay unto the complainants their separation pay computed at one month for [e]very year of service.
>
> SO ORDERED.[9]

On appeal, the National Labor Relations Commission (NLRC) reversed the Labor Arbiter's decision and dismissed the case for lack of merit.[10] Reconsideration having been denied, an Entry of Judgment[11] was issued on July 13, 2000.

On October 5, 2000, the Labor Arbiter issued a Writ of Execution[12] commanding the sheriff to proceed:

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[8] *Id.* at 160-167.

[9] *Id.* at 167.

[10] *Id.* at 174-186.

[11] *Id.* at 209-210.

[12] CA *rollo*, pp. 57-61.

x x x x x x x x x

1. To the Office of respondent PAL Building I, Legaspi St., Legaspi Village, Makati City or to any of its Offices in the Philippines and cause reinstatement of complainants to their former position and to cause the collection of the amount of [₱]549,309.60 from respondent PAL representing the backwages of said complainants on the reinstatement aspect;

2. In case you cannot collect from respondent PAL for any reason, you shall levy on the office equipment and other movables and garnish its deposits with any bank in the Philippines, subject to the limitation that equivalent amount of such levied movables and/or the amount garnished in your own judgment, shall be equivalent to [₱]549,309.60. If still insufficient, levy against immovable properties of PAL not otherwise exempt from execution. x x x

x x x x x x x x x[13]

Although PAL filed an Urgent Motion to Quash Writ of Execution, the Labor Arbiter issued a Notice of Garnishment[14] addressed to the President/Manager of the Allied Bank Head Office in Makati City for the amount of ₱549,309.60.

PAL moved to lift the Notice of Garnishment while petitioners moved for the release of the garnished amount. PAL opposed petitioners' motion. It also filed an Urgent Petition for Injunction which the NLRC resolved as follows:

WHEREFORE, premises considered, the Petition is partially GRANTED. Accordingly, the Writ of Execution dated October 5, 2000 and related [N]otice of Garnishment [dated October 25, 2000] are DECLARED valid. However, the instant action is SUSPENDED and REFERRED to the Receiver of Petitioner PAL for appropriate action.

SO ORDERED.[15]

PAL appealed to the Court of Appeals on the grounds that: (1) by declaring the writ of execution and the notice of

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

[14] *Id.* at 71.

[15] *Id.* at 21.

garnishment valid, the NLRC gave petitioners undue advantage and preference over PAL's other creditors and hampered the task of the PRR; and (2) there was no longer any legal or factual basis to reinstate petitioners as a result of the reversal by the NLRC of the Labor Arbiter's decision.

On December 5, 2003,[16] the appellate court ruled that the Labor Arbiter issued the writ of execution and the notice of garnishment without jurisdiction. Hence, the NLRC erred in upholding its validity. Since PAL was under receivership, it could not have possibly reinstated petitioners due to retrenchment and cash-flow constraints. The appellate court declared that a stay of execution may be warranted by the fact that PAL was under rehabilitation receivership. The dispositive portion of the decision dated December 5, 2003, reads:

> WHEREFORE, premises considered and in view of the foregoing, the instant petition is hereby **GIVEN DUE COURSE**. The assailed November 26, 2001 Resolution, as well as the January 28, 2002 Resolution of public respondent National Labor Relations Commission is hereby **ANNULLED** and **SET ASIDE** for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. Consequently, the Writ of Execution and the Notice of Garnishment issued by the Labor Arbiter are hereby likewise **ANNULLED** and **SET ASIDE**.
>
> SO ORDERED.[17]

Petitioners moved for reconsideration which the appellate court denied on April 16, 2004,[18] thus:

> Considering the Motion for Reconsideration filed by private respondents dated [January] 6, 2004 of this Court's Decision promulgated on December 5, 2003, as well as the Comment filed by petitioner dated February 20, 2003, the Court, finding no sufficient and compelling reason which will merit a reconsideration of the Decision rendered in this case as the issues raised therein had already

[16] *Rollo*, pp. 38-48. Penned by Associate Justice Sergio L. Pestaño, with Associate Justices Marina L. Buzon and Jose C. Mendoza concurring.

[17] *Id.* at 47-48.

[18] *Id.* at 49.

been carefully considered and passed upon in the Decision sought to be reconsidered, hereby resolves to DENY the instant motion for reconsideration for lack of merit.

SO ORDERED.[19]

Hence, the instant petition raising a single issue as follows:

WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE PETITIONERS ARE ENTITLED TO THEIR ACCRUED WAGES DURING THE PENDENCY OF PAL'S APPEAL.[20]

Simply put, the issue is: Are petitioners entitled to their wages during the pendency of PAL's appeal to the NLRC?

Petitioners argue that pursuant to this Court's ruling in *International Container Terminal Services, Inc. v. NLRC*,[21] the reinstatement aspect of the Labor Arbiter's decision, albeit under appeal, is immediately enforceable as a consequence of which, the employer is duty-bound to choose forthwith whether to re-admit the employee or to reinstate him in the payroll. Failing to exercise the options in the alternative, the employer must pay the salary of the employee which automatically accrued from notice of the Labor Arbiter's order of reinstatement until its ultimate reversal by the NLRC.[22] Petitioners add that PAL should not be excused from complying with the order of reinstatement on the ground that it was under receivership. At the time PAL received a copy of the Labor Arbiter's decision, PAL was not yet under receivership.

Respondent counters that PAL was already under an Interim Rehabilitation Receiver at the time it received a copy of the Labor Arbiter's decision. It also contends that it cannot be compelled to reinstate petitioners pending appeal to the NLRC since retrenchment and cash flow constraints rendered it impossible to exercise its option under Article 223 of the Labor Code.

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[19] *Id.*

[20] *Id.* at 219.

[21] G.R. No. 115452, December 21, 1998, 300 SCRA 335.

[22] *Id.* at 343.

At the crux of the controversy is the application of Article 223 of the Labor Code which provides that:

> ART. 223. Appeal.— …
>
> x x x x x x x x x
>
> In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation, or at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.
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> x x x x x x x x x

To be sure, the Court has divergent views on the immediately executory nature of reinstatement pending appeal particularly where the reinstatement order is reversed on appeal. On one hand, the Court has ruled that even if the Labor Arbiter's reinstatement order is reversed on appeal, it is the employer's obligation to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the NLRC. However, if the employee has been reinstated during the period of appeal and such reinstatement order is reversed with finality, the employee is not required to reimburse whatever salary he received for he is entitled to such, more so if he actually rendered services during the period.[23]

On the other hand, the Court has held that if the decision of the Labor Arbiter is later reversed on appeal upon the finding that the ground for dismissal is valid, then the employer has the right to require the dismissed employee on payroll reinstatement to refund the salaries s/he received while the case was pending appeal, or it can be deducted from the accrued benefits that

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[23] *Kimberly Clark (Phils.), Inc. v. Ernesto Facundo, et al.*, G.R. No. 144885, July 12, 2006, p. 8 (Unsigned Resolution); *Roquero v. Philippine Airlines, Inc.*, G.R. No. 152329, April 22, 2003, 401 SCRA 424, 430-431; See *International Container Terminal Services, Inc. v. NLRC*, G.R. No. 115452, December 21, 1998, 300 SCRA 335, 343.

the dismissed employee was entitled to receive from his/her employer under existing laws, collective bargaining agreement provisions, and company practices. However, if the employee was reinstated to work during the pendency of the appeal, then the employee is entitled to the compensation received for actual services rendered without need of refund.[24]

In his dissenting opinion, Justice Presbitero J. Velasco, Jr. adopts the second interpretation and explains that since no actual or payroll reinstatement pending appeal transpired, petitioners are no longer entitled to their salaries for the period in question with the reversal of the Labor Arbiter's reinstatement order. There is no more legal basis for the payment of their salaries since their right to reinstatement pending appeal has been lost and extinguished. To release their salaries for the period in question would constitute unjust enrichment.

The rationale for execution pending appeal has been explained by this Court in *Aris (Phil.) Inc. v. NLRC*,[25] thus:

> In authorizing execution pending appeal of the reinstatement aspect of a decision of the Labor Arbiter reinstating a dismissed or separated employee, the law itself has laid down a compassionate policy which, once more, vivifies and enhances the provisions of the 1987 Constitution on labor and the working-man.[26]
>
> x x x x x x x x x
>
> If in ordinary civil actions execution of judgment pending appeal is authorized for reasons the determination of which is merely left to the discretion of the judge, We find no plausible reason to withhold it in cases of decisions reinstating dismissed or separated employees. In such cases, the poor employees had been deprived of their only

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[24] *Genuino v. National Labor Relations Commission*, G.R. Nos. 142732-33 & 142753-54, December 4, 2007, 539 SCRA 342, 363-364.

[25] G.R. No. 90501, August 5, 1991, 200 SCRA 246; See *Composite Enterprises, Inc. v. Caparoso*, G.R. No. 159919, August 8, 2007, 529 SCRA 470, 482; *Air Philippines Corporation v. Zamora*, G.R. No. 148247, August 7, 2006, 498 SCRA 59, 73; *Roquero v. Philippine Airlines, Inc.*, *supra* note 23 at 429-430.

[26] *Aris (Phil.) Inc. v. NLRC*, *id.* at 253.

source of livelihood, their only means of support for their family — their very lifeblood. To Us, this special circumstance is far better than any other which a judge, in his sound discretion, may determine. In short, with respect to decisions reinstating employees, the law itself has determined a sufficiently overwhelming reason for its execution pending appeal.[27]

Clearly, the principle of unjust enrichment does not apply. *First*, the provision on reinstatement pending appeal is in accord with the social justice philosophy of our Constitution. It is meant to afford full protection to labor as it aims to stop (*albeit* temporarily, since the appeal may be decided in favor of the employer) a continuing threat or danger to the survival or even the life of the dismissed employee and his family.[28] *Second*, the provision on reinstatement pending appeal partakes of a special law that must govern the instant case. The provision of the Civil Code on unjust enrichment, being of general application, must give way.

In any case, Justice Velasco points out that the writ of execution in the instant case was issued after the promulgation of the NLRC resolution. As petitioners failed to act on their rights and seek enforcement of the reinstatement pending appeal, PAL is not liable to pay their accrued salaries for the period in question.

In *Pioneer Texturizing Corp. v. NLRC*,[29] this Court clarified that an award or order for reinstatement is self-executory, to wit:

> A closer examination, however, shows that the necessity for a writ of execution under Article 224 applies only to final and executory decisions which are not within the coverage of Article 223. ...
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> x x x x x x x x x
>
> … It can not relate to an award or order of reinstatement still to be appealed or pending appeal which Article 223 contemplates. The

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[27] *Id.* at 255.

[28] *Id.*

[29] G.R. No. 118651, October 16, 1997, 280 SCRA 806; See *International Container Terminal Services, Inc. v. NLRC*, *supra* note 21 at 341.

provision of Article 223 is clear that an award for reinstatement *shall be immediately executory even pending appeal* and *the posting of a bond by the employer shall not stay the execution for reinstatement*. The legislative intent is quite obvious, *i.e.*, to make an award of reinstatement immediately enforceable, even pending appeal. To require the application for and issuance of a writ of execution as prerequisites for the execution of a reinstatement award would certainly betray and run counter to the very object and intent of Article 223, *i.e.*, the immediate execution of a reinstatement order. …[30] (Italics in the original.)

Since the reinstatement order is self-executory, it is inaccurate to say that its non-implementation was due to petitioners' fault who failed to enforce their rights at the proper and opportune time. To reiterate, the reinstatement order does not require a writ of execution, much less a motion for its issuance. To require petitioners to move for the enforcement of the reinstatement order and blame them for its belated enforcement, as Justice Velasco does, would render nugatory the self-executory nature of the award.

Justice Velasco also posits that Article 223 of the Labor Code does not automatically make the employer liable for accrued salaries during the reinstatement pending appeal where no reinstatement took place. He stresses that the only relief given under the NLRC Rules of Procedure is the remedy of compulsion *via* a citation for contempt, thus:

RULE V. SEC. 14. Contents of Decisions. — …

In case the decision of the Labor Arbiter includes an order of reinstatement, it shall likewise contain: a) a statement that the reinstatement aspect is immediately executory; and b) a directive for the employer to submit a report of compliance within ten (10) calendar days from receipt of the said decision.

RULE IX. SEC. 6. EXECUTION OF REINSTATEMENT PENDING APPEAL. — **In case the decision includes an order of reinstatement, and the employer disobeys the directive** under the second paragraph of Section 14 of Rule V **or refuses to reinstate the dismissed employee, the Labor Arbiter shall immediately issue a writ of execution, even**

[30] *Pioneer Texturizing Corp. v. NLRC, id.* at 824-825.

pending appeal, directing the employer to immediately reinstate the dismissed employee either physically or in the payroll, and to pay the accrued salaries as a consequence of such reinstatement at the rate specified in the decision.

The Sheriff shall serve the writ of execution upon the employer or any other person required by law to obey the same. **If he disobeys the writ, such employer or person may be cited for contempt** in accordance with Rule IX. (Emphasis and underscoring supplied.)

Contrary to the position of Justice Velasco, there are actually two reliefs given in the foregoing provisions: (1) the payment of accrued salaries, and (2) a citation for contempt.

If the Labor Arbiter's decision includes a reinstatement order, the decision should state that the reinstatement aspect is immediately executory and direct the employer to submit a compliance report within ten calendar days from receipt of the said decision. Should the employer disobey the directive of the Labor Arbiter or refuse to reinstate the dismissed employee, the Labor Arbiter shall immediately issue a writ of execution, even pending appeal, directing the employer to immediately reinstate the dismissed employee either physically or in the payroll, and to pay the accrued salaries as a consequence of such reinstatement. If the employer still disobeys the writ of execution, then he may be cited for contempt.

Finally, the majority put forth the view that after the Labor Arbiter's reinstatement order is reversed by the NLRC, the employee may be barred from collecting his accrued salaries if it is shown that the non-implementation of the reinstatement order was not due to the fault of the employer. In the instant case, the corporate rehabilitation of PAL had the effect of suspending all actions or claims against it. It partakes of the nature of a restraining order that constitutes a legal justification for PAL's non-compliance with the reinstatement order. The writer adds that reinstatement pending appeal does not contemplate the period when the employer is similarly in a state of being resuscitated in order to survive.

In *Rubberworld (Phils.), Inc. v. NLRC*,[31] we recognized that the automatic stay of all pending actions for claims is intended to enable the management committee or the rehabilitation receiver to effectively exercise its/his powers free from any judicial or extra judicial interference that might unduly hinder or prevent the 'rescue' of the distressed corporation. To allow such other actions to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation instead of being directed toward its restructuring and rehabilitation.

Indeed, rehabilitation merely provides for the automatic stay of all pending actions or the suspension of payments of the distressed corporation to prevent the dissipation of its assets; it does not relieve the corporation of its obligations. Upon its successful rehabilitation, it must settle in full all claims previously suspended.

Applying the foregoing rule, we cannot adhere to the posture taken by the majority. Just because PAL was under rehabilitation did not necessarily mean that immediately executory orders such as reinstatement pending appeal will be put to naught. That would in effect nullify the relief given to the employee when all the law seeks to do is suspend it.

Furthermore, we do not agree that reinstatement pending appeal is inapplicable in the instant case since, as the majority puts it, PAL is similarly in a state of being resuscitated in order to survive. PAL even argues that retrenchment and cash flow constraints rendered it impossible to comply with the reinstatement order. In *Flight Attendants and Stewards Association of the Philippines (FASAP) v. Philippine Airlines, Inc., et al.*,[32] we noted that PAL failed to substantiate its claim of actual and imminent substantial losses which would justify the retrenchment of more than 1,400 of its cabin crew personnel. Although the Philippine economy was gravely affected by the

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[31] G.R. No. 128003, July 26, 2000, 336 SCRA 433, 437.

[32] G.R. No. 178083, July 22, 2008.

Asian financial crisis, however, it cannot be assumed that it has likewise brought PAL to the brink of bankruptcy.[33] In effect, we held that the mere fact that PAL underwent corporate rehabilitation does not automatically mean that it suffered specific and substantial losses that would necessitate retrenchment. In fact, PAL was on the road to recovery as early as February 1999 and was declaring profits in millions in the succeeding years.[34]

Given the circumstances in this case, delay on the employee's part was not an issue. But we cannot agree that the petitioners could be barred from collecting accrued wages, merely on the ground of their delay in enforcing reinstatement pending appeal. For it was the statutory duty of the respondent as employer to comply with a self-executory order in favor of the employees, herein petitioners.

Thus, while its rehabilitation may have prevented PAL from exercising its option either to re-admit petitioners to work or to reinstate them in the payroll, it did not defeat petitioners' right to reinstatement pending appeal which vested upon rendition of the Labor Arbiter's decision; more so when no actual and imminent substantial losses were proven by PAL.

To reiterate, there is no longer any legal impediment to hold PAL liable for petitioners' salaries which automatically accrued from notice of the Labor Arbiter's order of reinstatement until its ultimate reversal by the NLRC.[35]

WHEREFORE, I would vote to **GRANT** the petition.

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[33] *Id.* at 17.

[34] *Id.* at 21.

[35] *Kimberly Clark (Phils.), Inc. v. Ernesto Facundo, et al.*, *supra* note 23 at 9; *International Container Terminal Services, Inc. v. NLRC*, *supra* note 21 at 343; See *Composite Enterprises, Inc. v. Caparoso*, *supra* note 25 at 483.

SEPARATE OPINION

VELASCO, JR., *J.*:

The *ponencia* affirms the December 5, 2003 Decision and the April 16, 2004 Resolution of the Court of Appeals (CA) in CA-G.R. SP No. 69540, annulling the National Labor Relations Commission (NLRC) resolutions that affirmed the validity of the Writ of Execution and Notice of Garnishment in question. I concur with the *ponencia* but for a different reason.

A summary of the facts as contained in the *ponencia* is as follows:

Petitioners Juanito A. Garcia and Alberto J. Dumago were dismissed by Philippine Airlines, Inc. (PAL) in 1995 for violation of company and government regulations regarding illegal drugs. Both Garcia and Dumago filed a case for illegal dismissal and damages. Subsequently, on January 11, 1999, the labor arbiter decided the case in their favor and ordered PAL to immediately reinstate both employees and to pay them backwages, among other items. On appeal, the NLRC reversed the labor arbiter's decision and dismissed the complaint for lack of merit. After the motion for reconsideration was denied, an Entry of Judgment was issued on July 13, 2000.

Thereafter, on October 5, 2000, the labor arbiter issued a Writ of Execution which commanded the sheriff to "*cause [the] reinstatement of complainants to their former positions and to cause the collection of the amount of [₱]549,309.60 from respondent PAL representing the backwages of said complainants on the reinstatement aspect.*" On October 25, 2000, the labor arbiter issued a notice of garnishment.

The only issue in this case is whether Garcia and Dumago are entitled to their wages for the period between the labor arbiter's order of reinstatement and the NLRC's decision overturning the labor arbiter's decision.

The issue should be resolved in the negative.

In addition to the ground enunciated by the majority view that there was no unjustified act or omission on the part of PAL to reinstate the employees due to corporate rehabilitation, I submit that, in the light of the facts of the case where the employees failed to obtain a writ of execution and their reinstatement was not implemented prior to the reversal of the arbiter's decision granting reinstatement, they are not entitled to payment of backwages.

Consider the following reasons:

(1) Paragraph 3 of Article 223 of the Labor Code provides:

> x x x In any event, the **decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal.** The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided therein. (Emphasis supplied)

A plain reading of the provision easily reveals that it is procedural in nature. Procedural laws are "adjective laws which prescribe rules and forms of procedure of enforcing right or obtaining redress for their invasion."[1] This is differentiated from substantive law which "creates, defines, or regulates rights concerning life, liberty or property or the powers of agencies or instrumentalities for the administration of public affairs."[2] Art. 223 of the Labor Code is not a substantive, but basically a procedural provision conferring at most on the prevailing employee at the labor arbiter's level **the right to execution of the reinstatement order pending appeal.** It does away with the application or motion for the issuance of a writ of execution to prevent delay in the reinstatement of the employee. While the filing of the motion and the need to justify execution pending appeal are dispensed with, still, there appears to be a

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[1] R.E. Agpalo, *STATUTORY CONSTRUCTION* 295 (3rd ed., 1995); cited in Agpalo, *LEGAL WORKS AND PHRASES* 581 (1997).

[2] *Tirona v. Alejo*, G.R. No. 129313, October 10, 2001, 367 SCRA 17, 32.

need for the issuance of a writ of execution contrary to the pronouncement in the *ponencia* citing *Pioneer Texturizing Corp. v. NLRC (Pioneer)*.[3] Rule XI, Section 6 of the 2005 NLRC Revised Rules of Procedure provides:

> Section 6. *Execution of Reinstatement Pending Appeal*. — In case the decision includes an order of reinstatement, and the employer disobeys the directive under the second paragraph of Section 14 of Rule V or refuses to reinstate the dismissed employee, the **Labor Arbiter shall immediately issue writ of execution**, even pending appeal, directing the employer to immediately reinstate the dismissed employee either physically or in the payroll, and to pay the accrued salaries as a consequence of such reinstatement at the rate specified in the decision.
>
> **The Sheriff shall serve the writ of execution upon the employer or any other person required by law to obey the same.** If he disobeys the writ, such employer or person may be cited for contempt in accordance with Rule IX.

In this respect, while it is mandatory for the arbiter to issue the writ, still, in view of the numerous cases handled by the arbiter, there is a necessity for the employee to work for the release of said writ and have it implemented. If the employee fails to have the writ implemented and the decision of the labor arbiter is eventually overturned by the NLRC or a higher body, then the employee loses the right to reinstatement.

The only instance when an employer becomes liable to pay the salaries of a dismissed employee is when the employer, despite the service on him of the writ of execution, unjustifiably refuses to reinstate the employee, thus:

> x x x the unjustified refusal of the employer to reinstate an illegally dismissed employee entitles the employee to payment of his salaries, effective from the date the employer failed to reinstate despite an executory writ of execution served upon him. Such ruling is in accord with the mandate of the new law awarding full backwages until actual reinstatement (Article 279 of the Labor Code as amended.).[4]

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[3] G.R. No. 118651, October 16, 1997, 280 SCRA 806.

[4] *Medina v. Consolidated Broadcasting System (CBS)-DZWX*, G.R. Nos. 99054-56, May 28, 1993, 222 SCRA 707, 711.

Art. 223 does not, as couched, accord the dismissed employee the substantive right to wages under any and all circumstances during such pendency of the appeal regardless of the outcome of the appeal before the NLRC. As explained, if reinstatement remains unimplemented due to inaction of the employee, then he is not entitled to payment of wages for the appeal period. If it were otherwise, there is, in a limited sense, no reason for the employer to challenge the pay aspect of the labor arbiter's decision on appeal as the employee would be adjudged entitled to backwages before the NLRC at any event. Worse, it will in effect nullify the first paragraph of Art. 223 which grants the employer the right to appeal the labor arbiter's decision to the NLRC within 10 calendar days from receipt of the decision. It will even emasculate the judicial power of review of the CA and this Court. The reason is simple — the employee will be paid his salaries anyway even if the appeal of the employer is found meritorious and the dismissal of the employee is upheld. It puts to naught the right of appeal of the employer even if the employee waives or, by sheer indifference, neglects to pursue reinstatement pending appeal.

Moreover, the employee need not strive to secure reinstatement in the interim as payment of his wages from rendition of the labor arbiter's decision to the time the NLRC issues its own is most assured. The employee may opt not to avail of the reinstatement and instead obtain work somewhere else since payment of his salaries is guaranteed regardless of the outcome of the appeal, a classic case of having one's cake and eating it too. Simply put, the situation is oppressive, most unfair, and unjust to the employer.

(2) Undoubtedly, the reinstatement of the employee under Art. 223 contemplates an execution pending appeal. *Aris (Phil.), Inc. v. NLRC (Aris)* clarified the nature of the provisional relief of reinstatement pending the final resolution of the appeal of the losing party in the following wise:

Execution pending appeal is interlinked with the right to appeal x x x . The latter may be availed of by the losing party or a party who is not satisfied with a judgment, while the former may be applied

for by the prevailing party during the pendency of the appeal. The right to appeal, however, is x x x a statutory privilege of statutory origin and, therefore, available only if granted or provided by statute. The law may then validly provide limitations or qualifications thereto or relief to the prevailing party in the event an appeal is interposed by the losing party. **Execution pending appeal is one such relief long recognized in this jurisdiction. The Revised Rules of Court allows execution pending appeal and the grant thereof is left to the discretion of the court upon good reasons to be stated in a special order.**"[5] (Emphasis supplied.)

Thus, reinstatement pending appeal in illegal dismissal cases is a species of execution pending appeal sanctioned by the Rules of Court, which applies suppletorily to the rules of procedure in labor cases under Sec. 3, Rule I of the 2005 NLRC Revised Rules of Procedure. While Sec. 2, Rule 39 of the Rules of Court allows such preliminary relief upon due motion and for good reasons, Art. 233 requires the immediate execution pending appeal of the reinstatement aspect of the arbiter's decision and is self-executory. The reinstated employee need not file a motion nor adduce good reasons for the grant of a reinstatement order pending appeal. Such good reasons required in Rule 39 of the Rules of Court are, as articulated in Aris, already captured in the *raison de 'etre* behind Art. 223, *viz.*:

> If in ordinary civil actions execution of judgment pending appeal is authorized for reasons the determination of which is merely left to the discretion of the judge, We find no plausible reason to withhold it in cases of decisions reinstating dismissed or separated employees. In such cases, the poor employees had been deprived of their only source of livelihood, their only means of support for their family — their very lifeblood. To Us, this special circumstance is far better than any other which a judge, in his sound discretion, may determine. In short, with respect to decisions reinstating employees, the law itself has determined a sufficiently overwhelming reason for its execution pending appeal.[6]

It is established in this jurisdiction that in **discretionary execution envisaged under said Rule 39, the prevailing**

[5] G.R. No. 90501, August 5, 1991, 200 SCRA 246, 253.

[6] *Id.* at 255.

party is obliged to make restitution or reparation, as justice and equity may warrant, in case the executed judgment is reversed on appeal.[7] If the party granted execution pending appeal is required to make restitution or reparation in ordinary civil cases, then an employee reinstated under payroll reinstatement is likewise obliged to make restitution of the salaries paid to him once the dismissal is upheld.[8] Such being the case, the right to reinstatement pending appeal is not a substantive but merely a procedural right.

(3) The complaint of the petitioners alleges "illegal dismissal" as their cause of action. Such is a pleading allowed the dismissed employee under Sec. 1, Rule III of the 2005 NLRC Revised Rules of Procedure which defines complaint as a "pleading alleging the cause or causes of action of the complainant or petitioner." There is no definition of cause of action in the NLRC Rules of Procedure. Since the Rules of Court applies in a suppletory character and effect to the 2005 NLRC Revised Rules of Procedure,[9] then the definition of cause of action in Sec. 2, Rule 2 of the 1997 Rules of Civil Procedure is adopted — that it is "the act or omission by which a party violates a right of another." In an illegal dismissal case, the cause of action of the dismissed employee is the employer's unlawful act in dismissing him from the service, thus violating the right of the employee to employment. Hence, the employee must prove his cause of action before he is entitled to relief. When the labor arbiter declares the illegality of the dismissal and orders his immediate reinstatement pending appeal, the cause of action of the employee is sustained subject to the appeal before the NLRC. While the appeal is pending, the employee is entitled to a provisional relief — execution pending appeal of the reinstatement aspect of the decision of the arbiter. Thus, he

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[7] RULES OF COURT, Rule 39, Sec. 5. See *Legaspi v. Ong*, G.R. No. 141311, May 26, 2005, 459 SCRA 122; *Pilipinas Bank v. Court of Appeals*, G.R. No. 97873, August 12, 1993, 225 SCRA 268.

[8] *Genuino v. NLRC*, G.R. Nos. 142732-33 & 142753-54, December 4, 2007, 539 SCRA 342.

[9] Rule I, Sec. 3.

has the right to the immediate execution of the order of reinstatement based on the arbiter's decision. This is predicated on Art. 223 which declares that reinstatement pending appeal is immediately executory, and supported by *Pioneer*,[10] which allowed the employee's reinstatement even without a motion being filed or the need to justify said relief pending appeal. In short, there is a legal basis for the reinstatement pending appeal — the arbiter's decision. If the reinstatement is not implemented prior to the reversal decision of the NLRC, and the NLRC decision becomes final, like in the case at bar, certainly the employee is no longer entitled to reinstatement since there is no more legal basis for such relief. The finding that the dismissal is valid and legal removes the legal anchorage for reinstatement. The right of employment of the dismissed worker is, therefore, lost and forfeited. Necessarily, the employee is not even entitled to payment of salaries he could have earned had he been reinstated pending appeal for the simple reason that there is also no legal basis for such payment.

In the case at bar, **when the NLRC rendered its reversal decision and held the petitioner's dismissal from PAL valid, it had in effect removed the legal basis for petitioners' reinstatement. Accordingly, as there is no more basis for reinstatement, the payment of unearned wages during the appeal, therefore, has no legal basis either.** The labor arbiter, to stress, issued his decision on January 11, 1999, while the NLRC decision became final on **July 13, 2000**. In the interim, petitioners never lifted a finger to have the execution pending appeal implemented. They secured the writ of execution only on **October 5, 2000**, long after the finality of the NLRC's decision. By that time, the execution of the reinstatement pending appeal had no more legal basis and was lost and forfeited. We cannot fault the employer for the failed reinstatement when the employees themselves failed to enforce their rights at the proper and opportune moment. In the end, they were not able to substantiate and prove their cause of action. All reliefs that could have been granted to

[10] *Supra* note 3.

them were extinguished by the final NLRC decision that their dismissal is valid and legal.

(4) Art. 223 of the Labor Code does not automatically render the employer liable for backwages for the period reckoned from the date of the labor arbiter's decision up to the date of the decision of a higher body reversing the arbiter's decision if there the employee failed to enforce the labor arbiter's order of reinstatement. Art. 223, 3rd paragraph is SILENT as to the consequences of the non-implementation of reinstatement pending appeal through the inaction of the employee, in the event the reinstatement is subsequently set aside. What should be applied is the literal meaning or plain-meaning rule under the maxim — speech is the index of intention (*index animi sumo*). If the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[11] What is not clearly provided and specified in the law cannot be extended to those matters outside its scope.[12] Since the payment of backwages for the period reckoned from the date of decision awarding reinstatement up to the reversal thereof was not explicitly provided in the 3rd paragraph of Art. 223, then such award is unauthorized and without legal basis.

(5) The labor arbiter is duty-bound to order reinstatement by issuing a writ of execution if his decision directs that reinstatement is immediately executory. While it was explained in *Pioneer* that there is no need for the issuance of a writ of execution regarding reinstatement pending appeal, the Department of Labor and Employment saw the need for the issuance of a writ of execution to implement an order or decision. The suggested procedure in *Pioneer* is ineffective and the losing party does not generally comply with the order or decision possibly due to ignorance of the NLRC Rules of Procedure and jurisprudence. More importantly, a writ of execution or garnishment is always

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[11] *Bustamante v. NLRC*, G.R. No. 111651, November 28, 1996, 265 SCRA 61, 71; citing R.E. Agpalo, *STATUTORY CONSTRUCTION* 94 (1990).

[12] *Baranda v. Gustilo*, G.R. No. 81163, September 26, 1988, 165 SCRA 757, 770; citing R.E. Agpalo, *STATUTORY CONSTRUCTION* 125 (2003).

the generally accepted procedure in implementing final orders and decisions. The 2005 NLRC Revised Rules of Procedure, particularly Sec. 14, Rule V, has always prescribed the necessity for a writ of execution, thus:

SEC. 14. CONTENTS OF DECISIONS. — The decisions and orders of the Labor Arbiter shall be clear and concise and shall include a brief statement of the: a) facts of the case; b) issues involved; c) applicable laws or rules; d) conclusions and the reason therefor; and e) specific remedy or relief granted. In cases involving monetary awards, the decisions or orders of the Labor Arbiter shall contain the amount awarded.

In case the decision of the Labor Arbiter includes an order of reinstatement, it shall likewise contain: a) a statement that the reinstatement aspect is immediately executory; and b) a directive for the employer to submit a report of compliance within ten (10) calendar days from receipt of the said decision.

The complementing Sec. 6, Rule XI provides:

Section 6. *Execution of Reinstatement Pending Appeal*. — In case the decision includes an order of reinstatement, and the employer disobeys the directive under the second paragraph of Section 14 of Rule V or refuses to reinstate the dismissed employee, **the Labor Arbiter shall immediately issue a writ of execution**, even pending appeal, dissecting the employer to immediately reinstate the dismissed employee either physically or in the payroll, and to pay the accrued salaries as a consequence of such reinstatement at the rate specified in the decision.

The sheriff shall serve the writ of execution upon the employer or any other person required by law to obey the same. If he disobeys the writ, such employer or person may be cited for contempt in accordance with Rule IX. (Emphasis ours.)

Even the previous Sec. 3, Rule VIII of the NLRC Rules of Procedure, as amended by Resolution No. 01-02, Series of 2002, saw the need for such writ:

SEC. 3. **Issuance of Partial Writ Pending Appeal.** — In case the decision includes an order of reinstatement, **the Labor Arbiter shall immediately issue a partial writ of execution even pending appeal** directing the employer to immediately reinstate the dismissed

employee either physically or through payroll and to pay the corresponding salaries as a consequence of the reinstatement. (Emphasis ours.)

It is abundantly clear from the above-quoted rules that an employer has to be compelled to reinstate the employee by means of a writ, and one who disobeys the writ of execution may be cited for contempt. The employer, as may be noted, can be coerced to actually reinstate the employees concerned to their former positions or agree to a payroll re-admission. Nowhere in the rules does it say that the employer shall contextually be liable for the payment of backwages in the event reinstatement is not effected. The only relief given under the rules is the remedy of compulsion via a citation for contempt.

(6) *Pioneer* did not rule that in the event of unjustifiable refusal to reinstate the employee, then the employer is liable for the wages which could have been earned during the appeal period. Neither did it rule that in case the employer refuses to reinstate the employee, then a writ of execution is no longer necessary. As a matter of fact, *Pioneer* cannot be considered a precedent to the case at bar considering that the Court subsequently affirmed the finding of illegal dismissal upon which the reinstatement on appeal was based. In the present case, the finding of illegal dismissal by the labor arbiter was overturned by the NLRC and the ruling that there was a valid dismissal eventually became final without the employees being reinstated during the appeal period, thus, the non-entitlement to the unearned wages.

Justice Brion, in his Concurring and Dissenting Opinion, opined that "the labor arbiter issues a writ of execution only when the employer disobeys the above directive or refuses to reinstate the dismissed employee" which is not the procedure prescribed in Rule XI, Sec. 6. This section requires the labor arbiter to immediately issue a writ of execution upon promulgation of the arbiter's decision. It is imprecise to say that a writ of execution is no longer necessary to effectuate a reinstatement pending appeal, as laid down in *Pioneer*. A writ of execution is needed after all. What is avoided by Art. 223 is the filing of a motion

for reinstatement pending appeal and the presentation of evidence to justify reinstatement. Thus, reinstatement is self-executory only in that sense.

In the case at bar, PAL did not reinstate the petitioners due to corporate rehabilitation, doubtless a justifiable cause. Thus, it was incumbent for the employees to procure a writ of execution to compel reinstatement. If PAL disobeyed, then they could have asked the labor arbiter to cite the airline in contempt. They did not. They only got the writ after the NLRC decision annulling the arbiter's decision has become final. In this situation, they are not clearly entitled to the wages that could have been due to them during the appeal period.

(7) *Air Philippines Corp. v. Zamora (Air Philippines)*[13] likewise is not a precedent to the case at bar since it involved a reinstatement of a dismissed employee where the appeal of the higher court has not yet been finally resolved. Naturally, the employee in *Air Philippines* was still entitled to reinstatement because **the legal basis** therefor — the decision of the labor arbiter — was the prevailing ruling at that time although challenged on appeal. In the case at bench, the appeal has already been finally decided by the higher tribunal — the NLRC. There is, thus, to reiterate, no more legal basis for the reinstatement of the dismissed employees since it has been finally decreed that the dismissal is valid.

(8) If there is a justification for the refusal to reinstate, then the employer is not liable for the payment of salaries during the appeal period.[14] In *PT&T v. NLRC*[15] and *Equitable Banking Corporation v. NLRC*,[16] it was held that where the dismissed employee's reinstatement would lead to a strained employer-employee relationship or to an atmosphere of antipathy and antagonism, the exception to the twin remedies of reinstatement

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[13] G.R. No. 148247, August 7, 2006, 498 SCRA 59.

[14] *Philippine Rabbit Bus Lines, Inc. v. NLRC*, G.R. No. 122078, April 21, 1999, 306 SCRA 151, 155; citing Medina, *supra* note 4.

[15] G.R. No. 109281, December 7, 1995, 251 SCRA 21.

[16] G.R. No. 102467, June 13, 1997, 273 SCRA 352.

and payment of backwages can be invoked, and reinstatement, which might become anathema to industrial peace, could be held back pending appeal.[17] In the case at bar, considering that the dismissed employees committed a crime involving a breach of the Dangerous Drugs Act — sniffing *shabu*, which addiction might contaminate the other employees in the workplace thereby prejudicing the quality of work in a public service and utility company like PAL, then the denial of reinstatement is justified.

(9) The cases of *Roquero, Intercontinental Container Terminal Services, Inc. (ICTSI),* and *Kimberly* are not precedents to the case at bar.

In *Roquero*, the employees filed a motion for a writ of execution of the NLRC's order of reinstatement which was granted by the labor arbiter during the pendency of the appeal. In the case at bar, the writ was issued after the appeal was finally decided finding the dismissal valid.

In *Roquero*, the Court ruled that:

> Hence, even if the order of reinstatement of the Labor Arbiter is **reversed on appeal, it is obligatory on the part** of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal **until reversal by the higher court**. On the other hand, if the employee has been reinstated during the appeal period and such reinstatement order is reversed with finality, the employee is not required to reimburse whatever salary he received for he is entitled to such, more so if he actually rendered services during the period.

Thus, the *Roquero* case is different in that the decision ordering reinstatement has not yet been reversed by the higher court when reinstatement was sought. Here, it was demanded after a final ruling of the legality of the dismissal.

In *ICTSI*, the employee filed a motion for writ of execution with the NLRC pending his appeal for reinstatement. In the instant case, petitioners obtained a writ of execution after the

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[17] *Id.*; PT&T, *supra* note 15.

NLRC had disposed of the appeal by reversing the arbiter's decision reinstating them.

In *Kimberly*, the labor arbiter issued a writ of execution for the reinstatement of the employees pending appeal. Subsequently, he directed the company to pay the employees' back salaries, and the company's bank deposits were garnished. In the case at bar, the labor arbiter issued the writ of execution after the appeal has been resolved and the labor arbiter's decision was reversed by the NLRC.

Thus, the cases of *Roquero*, *ICTSI*, and *Kimberly* cannot support the proposition that respondent PAL is still required to pay the wages of petitioners when they only claimed reinstatement after the issuance of a final ruling that their dismissal is valid.

The doctrine of *stare decisis et non quieta movere* means "to adhere to precedents and not to unsettle things which are established." Under said doctrine, when the Court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases, where facts are substantially the same regardless of whether the parties and property are the same.[18] Since the facts in the instant petition are not substantially the same as in *Roquero* and other cases cited in the Concurring and Dissenting Opinion of Justice Brion, then I submit that the principles of law enunciated in *Roquero* and other cases cannot be applied to the case at bar.

(10) If petitioners will be adjudged to receive the salaries they could have earned during the pendency of the appeal after the case has been resolved with finality that their dismissal is valid, then petitioners will unduly enrich themselves at the expense of PAL without any legal basis. Such award would violate the doctrine of unjust enrichment that "a person shall not be allowed to profit or enrich himself inequitably at another's

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[18] *Confederation of Sugar Producers Association, Inc. v. DAR*, G.R. No. 169514, March 30, 2007, 519 SCRA 582, 618.

expense."[19] *Nemo cum alterius detrimento locupletari potest*. No one shall enrich himself at the expense of another.[20]

To sum up:

After the decision of the arbiter ordering reinstatement pending appeal is issued, the labor arbiter is tasked to immediately issue a writ of execution for the implementation of the reinstatement pursuant to Sec. 6, Rule XI of the 2005 NLRC Revised Rules of Procedure. Despite the duty of the labor arbiter to issue such writ, the employee must exert effort and follow up to see to it that the said writ is actually issued by the labor arbiter. After issuance of the partial writ, the Sheriff shall serve the writ upon the employer. The employee must follow up with the sheriff the actual and immediate service of the writ upon the employer. If the employer disobeys the writ, the employer may be cited for contempt. The employee must file a motion for contempt with the labor arbiter.

If the employee obtains the writ of execution prior to reversal of the labor arbiter's decision, but the employer refuses without just cause to obey the reinstating writ, the latter is liable for the wages of the employee even if the decision of the labor arbiter is eventually reversed.[21]

If the refusal of the employer to reinstate the employee pending appeal is justified, then reinstatement pending appeal cannot be compelled nor is the employer liable for backwages.

If the actually-reinstated employee worked in his former position pending appeal up to the date of reversal of the decision of the labor arbiter, then he is not obliged to reimburse the wages he earned, anchored on the principle that employees are entitled to fair wages for their day's work.

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[19] *Soriano v. Court of Appeals*, G.R. No. 78975, September 7, 1989, 177 SCRA 330.

[20] *Santos v. Court of Appeals*, G.R. No. 100963, April 6, 1993, 221 SCRA 42.

[21] *Medina*, *supra* note 4.

If the reinstating decision is reversed on appeal, then the employee placed on payroll reinstatement is required to reimburse the employer the wages he received during the payroll reinstatement since he is not legally entitled thereto after all as the order of reinstatement has no more legal basis as a result of the finding of a valid dismissal. Without reimbursement, the employee would unduly be enriched at the expense of the employer, contrary to the provision of Art. 22 of the Civil Code which states that every person who, through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.

If, as in this case, the employees fail to effectuate the release of the writ of execution and seek the enforcement of the reinstatement order during the pendency of the appeal and such order is subsequently reversed on appeal, the employer shall not be liable for the backwages corresponding to the period of the failed reinstatement.

I, therefore, vote to **DISMISS** the petition and concur in the result.

SEPARATE CONCURRING AND DISSENTING OPINION

BRION, *J.*:

The present case involves two issues touching on different areas of law. The first issue relates to labor law — the effect on a reinstatement pending appeal of the reversal by the National Labor Relations Commission (*NLRC*) of the labor arbiter's reinstatement decision. The second is a corporate rehabilitation issue.

I concur with the *ponencia* on the first issue, but dissent from the conclusion on the corporate rehabilitation issue. Thus, I vote to **GRANT** the petition and order the respondent Philippine

Airlines, Inc. (*PAL*) to pay the petitioners the salaries due them prior to the NLRC's reversal of the labor arbiter's decision.

The Reinstatement Pending Appeal Issue

The labor law provision at the center of the present dispute is Article 223 of the Labor Code which provides:

x x x x x x x x x

In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.

x x x x x x x x x

Under the terms of this provision, the *existence* of the right to reinstatement itself, either actually or by payroll, presents no controversial point. Its implementation, however, may result in complications arising from the nature of the granted right, as the pendency of an appeal necessarily recognizes that the reinstatement which the labor arbiter ordered may still be reversed by the NLRC. Thus, the question arises: what happens to the reinstatement made when a reversal intervenes? More specifically, what happens to the salaries already paid pending appeal to the worker whose dismissal the NLRC declares to be legal?

The law provides the employer two alternatives in effecting reinstatement pending appeal. The first is **actual reinstatement**, *i.e.*, the worker returns to work and earns his pay while waiting for the result of the employer's appeal. The second is **payroll reinstatement** where, in lieu of actual reinstatement, the employer complies with the obligation to reinstate by merely keeping the worker *in the payroll but out of the workplace* — a privilege that Article 223 of the Labor Code itself grants.

Either case poses no patent legal complication and has been amply covered by our rulings in their implementation.[1] In the first case, no refund or reimbursement of salaries paid is necessary, as the worker earned his or her salaries through actual services rendered. In the second case, the worker would have worked, but the employer waived his right to exact services for the salaries he had paid. Thus, even if a reversal subsequently occurs, the employer is estopped from claiming any reimbursement or refund of salaries paid since they were paid for services deemed rendered.

The present case escapes the clear and easy application of Article 223 because neither actual nor payroll reinstatement took place during the period of appeal; instead, the labor arbiter issued a writ of execution for the salaries corresponding to the period of appeal after the NLRC had issued its order of reversal. **Thus, the question that arises and the one directly posed by this case is: is the right to a reinstatement pending appeal enforceable even after the reversal of the order that gave rise to the right?**

The Reinstatement Provision Examined

The immediately executory character of a labor arbiter's reinstatement order is not an original provision of the Labor Code as framed in 1974. It only came in 1989 by way of an amendment to the Labor Code under R.A. No. 6715. The obvious intent of the Legislature — as this Court ascertained *in Aris (Phil.), Inc. v. NLRC*[2] — is to lay down a compassionate policy towards the workingman in recognition of his role in the social and economic life of the nation.

In more practical terms, the provision came because of the need to level the playing field between labor and management; a worker deprived of his or her means of livelihood during the

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[1] *Triad Security and Allied Service, Inc., et al. v. Ortega, Jr., et al.*, G.R. No. 160871, February 6, 2006, 481 SCRA 591; *Medina, et al. v. Consolidated Broadcasting System, et al.*, G.R. No. 99054, May 28, 1993, 222 SCRA 707.

[2] G.R. No. 90501, August 5, 1991, 200 SCRA 246.

pendency of the employer's appeal in a dismissal case is at an extreme disadvantage because of lack of funds for his or her basic survival needs. This realization, coupled with the undisputed delay that attends litigation, is enough to discourage workers from seeking redress or from pursuing cases already filed, to their gross disadvantage. This situation can be an oft-repeating reality unless the State intervenes.

R.A. No. 6715 is such intervention made pursuant to the constitutional mandate for the protection of labor. We recognized this State obligation in *Fuentes v. NLRC*[3] when we ruled:

> The State is bound under the Constitution to afford full protection to labor and when conflicting interests of labor and capital are to be weighed on the scales of social justice, the heavier influence of the latter should be counterbalanced with the sympathy and compassion the law accords the less privileged workingman.

The mandatory execution pending appeal contemplated is both novel and unique as the executions we have known before R.A. No. 6715 were executions of *final and executory judgments*[4] and *discretionary* executions pending appeal.[5] In the latter case, the Rules of Court only allow executions pending appeal upon a finding of good justificatory reasons. In a way, Article 223 is still consistent with this concept under the view that Congress thereby effectively "pre-determined" the good reason to justify execution pending appeal: the proceeds shall be the employee's source of livelihood and means of support while the employer's appeal is pending.

The word "immediately" has been understood to mean without delay or lapse or interval of time.[6] Based on this definition, the Court has ruled that Article 223 does not need an application for and the issuance of a writ of execution as prerequisite for

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[3] G.R. No. 110017, January 2, 1997, 266 SCRA 24.

[4] RULES OF COURT, Rule 39, Section 1.

[5] *Id.*, Section 2 (a).

[6] Black's Law Dictionary, 5th ed., p. 675.

the execution of a reinstatement award.[7] In other words, the reinstatement order is self-executory.[8] This is the basis for the current NLRC Rules of Procedure that leaves the enforcement of the reinstatement order to the employer who is given the duty to submit a compliance report within 10 days from receipt of the decision.[9] The labor arbiter issues a writ of execution only when the employer disobeys the above directive or refuses to reinstate the dismissed employee.[10]

Since Article 223 is self-executory, the dismissed worker in effect becomes a passive beneficiary of the labor arbiter's order. He does not need to actively move to secure his reinstatement; thus, his failure to move for the implementation of the labor arbiter's order in no way prejudices his right to an immediate reinstatement and to its proceeds. If at all, only his refusal to be reinstated or a waiver of this right on his part can disentitle him to what the law grants.

The cases of *Roquero v. Philippine Airlines*,[11] *International Container Terminal Services, Inc. (ICTSI) v. NLRC*,[12] and *Kimberly Clark (Phils.), Inc. v. Facundo*[13] are authorities for the position that notwithstanding the reversal by the NLRC of the labor arbiter's order of reinstatement, the dismissed employee is still entitled to the wages accruing during the pendency of the appeal.

Justice Velasco in his Separate Opinion posits that there is no more legal ground to grant the dismissed employees the wages that accrued during the pendency of the appeal once

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[7] *Panuncillo v. CAP Philippines, Inc.*, G.R. No. 161305, February 9, 2007, 515 SCRA 323.

[8] *Pioneer Texturizing Corp. v. National Labor Relations Commission*, G.R. No. 118651, October 16, 1997, 280 SCRA 807.

[9] Rule V, Section 14.

[10] Rule IX, Section 6.

[11] G.R. No. 152329, April 22, 2003, 401 SCRA 424.

[12] G.R. No. 115452, December 21, 1998, 300 SCRA 335.

[13] G.R. No. 144885, July 26, 2006.

the order of reinstatement is reversed. As basis, he relies on: the case of *Genuino v. NLRC*,[14] the rule on reimbursement under Section 5, Rule 39 of the Rules of Court; and the principle of unjust enrichment under the Civil Code.

The *Genuino* case declared that if the decision of the labor arbiter is later reversed on appeal upon finding that the ground for dismissal is valid, then the employer has the right to require the dismissed employee on payroll reinstatement to refund the salaries he received while the case was pending appeal. This reimbursement doctrine, according to Justice Velasco, finds further support in Section 5 of Rule 39 of the Rules of Court where the prevailing party is obliged to make restitution or reparation in case the executed judgment is reversed on appeal. Since reinstatement pending appeal in illegal dismissal cases is by nature an execution pending appeal, he reasons out that the Rules of Court should be applied suppletorily. From this take off point, Justice Velasco opines that the employee, who is not reinstated while the appeal is pending, is overtaken by events when the reinstatement order is reversed on appeal and cannot now be reinstated. At this point, he is also not entitled to the salaries he would have earned had he been reinstated pending appeal. A contrary view would allegedly violate the civil law principle of unjust enrichment.

Aside from the paucity of authorities supporting the *Genuino* view, I do not find Justice Velasco's arguments sufficiently persuasive to justify a deviation from the Court's persuasive interpretation of Article 223 in *Roquero*, *ICTSI*, and *Kimberly Clark*.

In the *first* place, Section 5 of Rule 39 refers specifically to *discretionary* executions pending appeal as provided under Section 2 of that Rule. It finds no application to the *mandatory* executions pending appeal provided under Article 223, as the special reasons behind the immediate execution under Article 223 — discussed above — are outside the contemplation of Section 5, Rule 39. To be exact, Section 5, Rule 39 does not

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[14] G.R. Nos. 142732-33 & 142753-54, December 4, 2007, 539 SCRA 342.

take into account the special labor relations setting that justifies Article 223, and disregards too the constitutional mandate that compels Congress to provide remedies — substantive and procedural — to situations where labor may be at a disadvantage.

Second, Article 223, viewed from the prism of its intent, is not a mere procedural rule governing appeals from decisions of labor arbiters. Understood fully and properly, it embodies and grants a *substantive right* to dismissed employees whose cases are brought to the NLRC on appeal. Source of livelihood and support — a worker's basic means for survival — cannot be matters of procedure that can be undone and taken back when conditions change. A State intervention to address the specific and identified need to level the playing field *in the course of an employer's appeal* to the NLRC (*i.e.*, from a finding that a worker has been illegally dismissed) cannot likewise simply be a matter of procedure; *it is a State declaration that, **after a first-level finding of an illegal dismissal**, the worker must be protected by immediately affording him or her the right to the work and the wages previously denied by the employer.* In this sense, Article 223 cannot but embody a substantive grant that passes the test of legality even from the point of view of constitutional law. It does not violate due process as it is a reasonable measure supported by a prior finding of illegality made after the employer had been duly heard. It is also not a confiscatory grant as the law requires the worker to render services to earn his salary, subject only to the payroll reinstatement that is recognized for the benefit of the employer.

In the context of this case, Article 223 embodies a substantive grant that must be given to the dismissed employees, **irrespective of the presence of fault or lack of it** on the part of the employer. For this reason (separately from the reason more fully discussed below), I do not agree with the *ponencia*'s position that PAL's corporate rehabilitation excused it from complying with Article 223. The corporate rehabilitation *merely suspended* the implementation of Article 223, but did not totally excuse PAL from the obligation to reinstate, or in lieu thereof, to pay the wages due during the appeal period. **Thus, the reinstatement should be implemented upon the lifting of the suspension**

or stay order. The intervening reversal by the NLRC of the labor arbiter's reinstatement decision cannot and should not affect that part of the grant that had already been vested prior to the reversal. With the suspension lifted, PAL should therefore be held liable for the wages due during the appeal period all the way up to the time of reversal.

Third, contrary to Justice Velasco's opinion, the silence of Article 223 on the worker's entitlement to wages pending appeal cannot lead to the conclusion that no such entitlement exists. To so conclude is to close our eyes to the clear intent of the amended Article 223. Assuming *arguendo* that no such intent is patent, the silence of Article 223 cannot also lead to the conclusion that the worker — who has been declared illegally dismissed — is not entitled to the wages he or she should have earned had not the illegal dismissal taken place. The only logical conclusion that can be made, and one that can hardly be disputed, is that the silence of Article 223 leads to a situation of doubt. Any doubt, however, in the interpretation or implementation of the Labor Code should be resolved in favour of labor pursuant to the Labor Code's own Article 4.

Justice Velasco's last argument — unjust enrichment under Article 22 of the Civil Code — must similarly fall when read together with Article 223 of the Labor Code.

Established jurisprudence teaches us that there can be no unjust enrichment pursuant to Article 22 of the Civil Code if there is a legal basis for the situation complained of as unjust.[15] In the present case, what is complained of as unjust is the payment to the petitioners of the salaries they would have earned during the pendency of the employer's appeal had the employer reinstated them. Justice Velasco labels the situation as unjust because the NLRC subsequently reversed the labor arbiter's decision and declared the dismissal legal. This situation, however, is precisely what Article 223 of the Labor Code addresses; the State saw it fit to provide the dismissed worker a substantive

[15] *Baje, et al. v. Court of Appeals*, G.R. No. L-18783, May 25, 1964, 11 SCRA 34; *Commissioner of Internal Revenue v. Fireman's Fund Insurance Co., et al.*, G.R. No. L-30644, March 9, 1987, 148 SCRA 315.

right during the pendency of the employer's appeal to level the playing field in an employee dismissal situation. Thus, there is legal basis for the situation complained of as unjust so that Article 22 of the Civil Code cannot apply.

The Corporate Rehabilitation Issue

The *ponencia*'s conclusion on this issue is embodied in the statement: "*The Court sustains the appellate court's finding that the peculiar predicament of a corporate rehabilitation rendered it impossible for the respondent to exercise its option under the circumstances.*" In other words, the *ponencia* believes that the onset of the corporate rehabilitation automatically and *absolutely* barred the respondent from reinstating the petitioners; reinstatement was a legal impossibility so that the respondent should be exempt from the application of Article 223 of the Labor Code.

As a *general proposition*, the *ponencia*'s conclusion is correct because the law[16] indeed speaks of the suspension of all claims or actions against a corporation once a rehabilitation receiver or management committee has been appointed.[17] Care, however, should be taken in considering when and how the suspension of claims or actions against a distressed corporation is triggered. For one, the law on corporate rehabilitation is an evolving law that has seen a lot of changes in the course of its development. Care must be observed to ensure that the appropriate law and rules at the material time of the case are applied. The

[16] P.D. No. 902-A, originally issued on March 11, 1976, which covered petitions for suspension of payments and the appointment of management committees or rehabilitation receivers.

[17] P.D. 902-A, as amended by P.D. Nos. 1653, s. 1979; 1758, s. 1981; and 1799, s. 1981, provides: "x x x *Provided, further, That the Commission may appoint a rehabilitation receiver of corporations, partnerships or other associations supervised or regulated by other government agencies, such as banks and insurance companies, upon request of the government agency concerned: Provided, finally,* ***That upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to this Decree, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly.***" [Emphasis supplied.]

suspension — imposed for the benefit of the distressed corporation — is also not a remedy impervious to and isolated from its surrounding circumstances. The suspension can be affected by how the petitioning corporation avails of the benefit, and by how its actions affect third parties. These observations are mentioned because they are critical in reading the effects of the suspension that PAL belatedly claimed in the present case.

Jurisdiction over corporate rehabilitation has not been static. Starting with the Securities and Exchange Commission (*SEC*) under PD No. 902-A, jurisdiction shifted to the Regional Trial Courts (*RTC*) effective July 19, 2000 pursuant to Section 5.1 of RA No. 8799 (the Securities Regulation Code); this Court did not issue the Interim Rules of Procedure on Corporate Rehabilitation until December 15, 2000.[18] Prior to this shift, both the law and the SEC Rules[19] did not clearly state that corporate rehabilitation proceedings are *in rem*, while this characteristic is clearly spelled out under the Court's Interim Rules of Procedure on Corporate Rehabilitation.[20] These seemingly minor evolutionary developments assume a great significance in the present case because all the material developments under discussion transpired under the SEC rules, not under the Court's Interim Rules of Procedure on Corporate Rehabilitation.[21] To illustrate this point, the records show that the petitioners filed their complaint for illegal dismissal only on October 30, 1997. PAL filed its petition for approval of corporate rehabilitation plan on June 19, 1998, and the SEC issued its Order[22] appointing an interim rehabilitation receiver on June 23, 1998. It was not till a week later or on July 1, 1998 that the SEC issued a Stay Order of all claims against PAL.

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[18] A.M. No. 00-8-10-SC.

[19] SEC Revised Rules of Procedures dated August 1, 1989 and July 15, 1999. [The SEC rules applicable during the pendency of petitioners' appeal.]

[20] Rule 3, Section 1.

[21] *Supra* note 18.

[22] *Rollo*, p. 196; a permanent rehabilitation receiver was not appointed until June 7, 1999.

An intriguing aspect of this Stay Order is that it does not appear to have been invoked by PAL to secure the suspension of the petitioners' claim against it. Thus, the claim for illegal dismissal before the labor arbiter proceeded until his decision on January 11, 1999 reinstating the petitioners. The dispositive portion of this decision states:

> WHEREFORE, conformably with the foregoing, judgment is hereby rendered finding the respondents guilty of illegal suspension and illegal dismissal and ordering them to reinstate complainants to their former position without loss of seniority rights and other privileges. Respondents are hereby further ordered to pay jointly and severally unto the complainants the following:
>
> Alberto J. Dumago – ₱409,500.00 backwages as of 1/10/99
> 34,125.00 for 13th month pay
> Juanito A. Garcia – ₱1,290,744.00 backwages as of 1/10/99
> 107,562.00 for 13th month pay
>
> The amounts of ₱100,000.00 and ₱50,000.00 to each complainant as and by way of moral and exemplary damages; and
>
> The sum equivalent to 10% of the total award as and for attorneys fees.
>
> **Respondents are directed to immediately comply with the reinstatement aspect of this Decision.** However, in the event that reinstatement is no longer feasible, respondent are [is] hereby ordered, in lieu thereof, to pay unto the complainants their separation pay computed at one month for every year of service.
>
> SO ORDERED.[23] [Emphasis supplied.]

This portion is quoted because of its terms; it did not only declare the petitioners to have been illegally dismissed, *but also directly ordered PAL to immediately reinstate them to their positions*. Thus, as early as January 1999, PAL was on notice that the petitioners should be reinstated.

PAL interestingly saw no need to notify the NLRC on appeal of the ongoing corporate rehabilitation and its suspensive effects. Thus, PAL appealed to the NLRC on February 26, 1999 *purely*

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[23] *Rollo*, p. 59.

on the merits of its case against the petitioners. Not a word was said about the suspension of the proceedings pursuant to the SEC Order of July 1, 1998.

In the interim, the counsel for the petitioners wrote PAL (on June 14, 1999) to claim the reinstatement that the labor arbiter ordered to be immediately made. To quote from this letter:

> Considering that PAL, Inc. failed to reinstate our clients immediately upon its receipt of the Decision on February 24, 1999, our clients are entitled to the payment of their salaries computed from that date and which, as of June 24, 1999 amounts to ₱42,000.00 for complainant Alberto J. Dumago, and ₱132,384.00 for complainant Juanito Garcia.[24]

On November 11, 1999, the petitioners continued their quest for immediate reinstatement by filing a "Motion for Issuance of Writ of Execution and to Cite the Respondents in Contempt." It does not appear from the records before us that PAL ever opposed this motion. Within three months from the filing of this motion, the NLRC rendered its decision reversing the labor arbiter in a decision dated January 31, 2000.

Again, not one word appeared in the NLRC decision showing that the NLRC took official notice of the SEC's order of suspension dated July 11, 1999. The same is true with the NLRC's Resolution dated April 28, 2000 denying the petitioners' motion for reconsideration.

On October 5, 2000, the labor arbiter issued a writ of execution to enforce the reinstatement pending appeal aspect of his decision, and on October 20, 2000 issued a notice of garnishment.[25] It was only at that point that PAL, citing P.D. No. 902-A and *Rubberworld (Phils.), Inc. v. NLRC*, [26] invoked the appointment of a receiver as basis to resist the writ of execution.

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[24] *Id.*, pp. 78-80.

[25] By this time, jurisdiction over corporate rehabilitation proceedings has been transferred to RTCs per Section 5.1 of RA No. 8799.

[26] G.R. No. 126773, April 14, 1999, 305 SCRA 721.

Rubberworld, while seemingly a similar case, presents a situation far different from the circumstances of the present case. Although it was a labor case that was suspended due to the pendency of corporate rehabilitation proceedings, PAL failed to note that the employer in *Rubberworld* filed a motion for the suspension of the labor proceedings pursuant to the SEC's stay order.[27] This, the respondent PAL failed to seasonably do, resulting in the legal consequences discussed below.

As the corporation accorded with the suspension of claims and actions for or against it in the course of corporate rehabilitation, PAL had the burden to actively assert the suspension that the law allows. This is particularly true under the then prevailing SEC rules which were not clear and categorical about the *in rem* nature of the corporate rehabilitation proceedings.

By failing to ask for the suspension of the labor proceedings, PAL clearly slept on its right. At the very least, PAL's failure to seasonably assert its right to the suspension of proceedings raised the presumption that it had abandoned or declined to assert this right.[28]

PAL did not merely sleep on its rights; worse than this omission, PAL even actively represented that no suspension was called for when it appealed to the NLRC the decision of the labor arbiter. Thus, while PAL could have put its appeal on hold without affecting its right to appeal, it showed both the petitioners and the labor tribunals that its preference was to pursue the case. This active and express representation by PAL brings into play the concept of estoppel under Article 1431 of the Civil Code which provides:

> Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.

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[27] *Id.*, p. 725.

[28] *Lopez v. David, Jr.*, G.R. No. 152145, March 30, 2004, 305 SCRA 721; *Pilipinas Shell v. John Bordman, Ltd.*, G.R. No. 159831, October 14, 2005, 473 SCRA 151, *Tim Tay v. Court of Appeals*, G.R. No. 126891, August 5, 1998, 293 SCRA 634.

On the authority of this provision, respondent PAL — who by its actions showed that it wanted to pursue its appeal — should not now be heard to say that the reinstatement that should accompany the appeal has now been rendered impossible because of the on-going corporate rehabilitation. To state it another way, PAL was the corporate rehabilitation petitioner in whose behalf the suspension of claims and actions was granted by law, and who knew that a suspension was in place; yet PAL itself disregarded the supposed suspension by appealing to the NLRC. **From the point of view of fairness, it is the height of inequity to recognize the efficacy of PAL's appeal and the NLRC's consequent reversal of the labor arbiter's decision, while not recognizing the reinstatement pending appeal that should have been in place while PAL's appeal was pending**. If indeed the suspension should have automatically set in, then such suspension should apply to all proceedings from and after the SEC's suspension order, *i.e.*, from the labor arbiter's to the NLRC's proceedings. Unfortunately, this levelling of the playing field is far from what would happen if the *ponencia* prevails.

Even by the terms of the *ponencia* itself which provides:

> After the labor arbiter's decision is reversed by a higher tribunal, the employee may be barred from collecting the accrued wages, if it is shown that the delay in enforcing the reinstatement pending appeal was without fault on the part of the employer.
>
> The test is two-fold: (1) there must be actual delay or the fact that the order of reinstatement pending appeal was not executed prior to its reversal and (2) the delay must not be due to the employer's unjustified act or omission. If the delay is due to the employer's unjustified refusal, the employer may still be required to pay the salaries notwithstanding the reversal of the Labor Arbiter's decision.

it is interesting to note that PAL's claim of lack of fault cannot be justified, as the failure to implement the petitioners' reinstatement pending appeal is directly traceable to it, not to the petitioners. To go back to the developments in this case, the labor arbiter's decision contained a direct order for immediate reinstatement, and PAL openly and unjustifiably disregarded

this order. PAL did not have to wait for a writ of execution because the order to immediately reinstate was in the decision itself. The petitioners, for their part, seasonably demanded through their letter of June 14, 1999 that they be reinstated; they subsequently filed a motion for the issuance of a writ of execution. All these efforts failed to draw any response, either from PAL or from the labor arbiter. If PAL responded at all, it was only after it won at the NLRC level. It was also at this time that it cited for *the first time* the SEC order for suspension of proceedings. The labor arbiter, on the other hand, likewise responded through the issuance of a writ of execution only after the NLRC had ruled. Under these facts, the failure to effect reinstatement cannot be imputed to the petitioners, and they should not be made to suffer for a fault not attributable to them. Thus, the *ponencia*'s own standards belie the correctness of its conclusion to deny the petition.

For all these reasons, dictated both by the law and by fairness, I vote to **GRANT** the petition.

SECOND DIVISION

[G.R. No. 165571. January 20, 2009]

PHILIPPINE NATIONAL BANK and EQUITABLE PCI BANK, *petitioners, vs.* **HONORABLE COURT OF APPEALS, SECURITIES AND EXCHANGE COMMISSION *EN BANC,* ASB HOLDINGS, INC., ASB REALTY CORPORATION, ASB DEVELOPMENT CORPORATION (formerly TIFFANY TOWER REALTY CORPORATION), ASB LAND INC., ASB FINANCE, INC., MAKATI HOPE CHRISTIAN SCHOOL, INC., BEL-AIR HOLDINGS CORPORATION, WINCHESTER TRADING, INC., VYL DEVELOPMENT CORPORATION, GERICK HOLDINGS**

CORPORATION, and NEIGHBORHOOD HOLDINGS, INC., *respondents.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; RULES OF PROCEDURE ON CORPORATE RECOVERY; KINDS OF INSOLVENCY.— A reading of Sec. 4-1 shows that there are two kinds of insolvency contemplated in it: (1) actual insolvency, *i.e.*, the corporation's assets are not enough to cover its liabilities; and (2) technical insolvency defined under Sec. 3-12, *i.e.*, the corporation has enough assets but it foresees its inability to pay its obligations for more than one year. In the case at bar, the ASB Group filed with the SEC a petition for rehabilitation with prayer for suspension of actions and proceedings pending rehabilitation. Contrary to petitioners' arguments, the mere fact that the ASB Group averred that it has sufficient assets to cover its obligations does not make it "solvent" enough to prevent it from filing a petition for rehabilitation. A corporation may have considerable assets but if it foresees the impossibility of meeting its obligations for more than one year, it is considered as technically insolvent. Thus, at the first instance, a corporation may file a petition for rehabilitation—a remedy provided under Sec. 4-1. When Sec. 4-1 mentioned technical insolvency under Sec. 3-12, it was referring to the definition of technical insolvency in the said section; it was not requiring a previous filing of a petition for suspension of payments which petitioners would have us believe.

2. ID.; ID.; ID.; A CORPORATION IS CONSIDERED TECHNICALLY INSOLVENT WHEN ITS INABILITY TO PAY ITS OBLIGATIONS EXTENDS BEYOND ONE YEAR FROM THE FILING OF THE PETITION FOR REHABILITATION.— Petitioners harp on the SEC's failure to examine whether the ASB Group is technically insolvent. They contend that the SEC should wait for a year after the filing of the petition for suspension of payments when technical insolvency may or may not arise. This is erroneous. The period mentioned under Sec. 3-12, "longer than one year from the filing of the petition," does not refer to a year-long waiting period when the SEC can finally say that the ailing corporation is technically insolvent to qualify

for rehabilitation. The period referred to the corporation's inability to pay its obligations; when such inability extends beyond one year, the corporation is considered technically insolvent. Said inability may be established from the start by way of a petition for rehabilitation, or it may be proved during the proceedings for suspension of payments, if the latter was the first remedy chosen by the ailing corporation. If the corporation opts for a direct petition for rehabilitation on the ground of technical insolvency, it should show in its petition and later prove during the proceedings that it will not be able to meet its obligations for longer than one year from the filing of the petition.

3. ID.; ID.; ID.; PETITION FOR REHABILITATION DUE TO TECHNICAL INSOLVENCY; THE STATUS OF THE REPAYMENT SCHEDULE NEED NOT BE ATTACHED WITH THE PETITION.— As regards the status of the Repayment Schedule required to be attached to the petition for rehabilitation (Sec. 4-2[g]), this requirement is conditioned on whether one was approved by the SEC in the first place. If there is none, as in the case of a petition for rehabilitation due to technical insolvency directly filed under Rule IV, Sec. 4-1, then there is no status report to submit with the petition.

4. ID.; ID.; ID.; TECHNICAL INSOLVENCY; APPOINTMENT OF AN INTERIM RECEIVER IS AUTOMATIC ONCE THE PETITION FOR REHABILITATION IS FILED.— Petitioners impute error on the part of the SEC in appointing an interim receiver since, allegedly, the requirements for it have not been met. Petitioners, however, assume that private respondents were not entitled to file a petition for rehabilitation. As previously discussed, private respondents may file a petition for rehabilitation for being technically insolvent. Once the petition is filed, the appointment of an interim receiver becomes automatic.

5. ID.; ID.; ID.; FILING OF A MOTION TO OVERRIDE THE CREDITORS' OBJECTIONS IS ESSENTIAL TO ENABLE THE SECURITIES AND EXCHANGE COMMISSION TO DECIDE ON THE PROPOSED REHABILITATION PLAN.— The CA held that the filing of a motion is not a precondition for the SEC to resolve the objections filed by the creditors, as evident in the word "may." We disagree. The requirement of

a motion by the petitioning corporation is essential in enabling the SEC to decide on the proposed rehabilitation plan. The words "upon motion" were deliberately added to emphasize this requirement. In the case at bar, while private respondents failed to file a motion to override the creditors' objections, nevertheless, they were able to file a reply to the opposition of the consortium of creditor banks. Presumably, this reply addressed the objections of the consortium. Considering that procedural rules should be liberally interpreted, we find said pleading as tantamount to filing a motion required by Sec. 4-20.

6. ID.; ID.; ID.; THE APPROVAL OF THE REHABILITATION PLAN AND THE APPOINTMENT OF A REHABILITATION RECEIVER DO NOT SET ASIDE THE LOAN AGREEMENTS BETWEEN THE PARTIES BUT MERELY SUSPEND THE PROVISIONS THEREOF.— Petitioners contend that the SEC's approval of the Rehabilitation Plan impairs the MTI by forcing them to release the real properties secured in their favor to become part of the asset pool. They argue that the SEC's approval of the Rehabilitation Plan is a state action that impairs the remedies available to petitioners under the MTI, which essentially abrogates the contract itself. xxx. On this issue, we adopt the ruling of the First Division in *Metropolitan Bank & Trust Company*, to wit: We are not convinced that the approval of the Rehabilitation Plan impairs petitioner bank's lien over the mortgaged properties. Section 6 [c] of P.D. No. 902-A provides that "upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to this Decree, **all actions for claims** against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be **suspended**." By that statutory provision, it is clear that the approval of the Rehabilitation Plan and the appointment of a rehabilitation receiver merely **suspend** the **actions for claims** against respondent corporations. Petitioner bank's preferred status over the unsecured creditors relative to the mortgage liens is retained, but the **enforcement of such preference** is **suspended.** The loan agreements between the parties have not been set aside and petitioner bank may still enforce its preference when the assets of ASB Group of Companies will be liquidated. Considering that the provisions of the loan agreements are merely suspended, there is no impairment of contracts, specifically its lien in the mortgaged properties. xxx.

7. ID.; ID.; ID.; REHABILITATION PROCEEDINGS; PURPOSE.— The purpose of rehabilitation proceedings is to enable the company to gain new lease on life and thereby allows creditors to be paid their claims from its earnings. Rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the financially distressed corporation to its former position of successful operation and solvency. This is in consonance with the State's objective to promote a wider and more meaningful equitable distribution of wealth to protect investments and the general public. It is precisely based on these principles that the SEC decided the petition for rehabilitation.

8. POLITICAL LAW; DUE PROCESS; SATISFIED WHEN THE PARTIES ARE AFFORDED FAIR AND REASONABLE OPPORTUNITY TO EXPLAIN THEIR SIDE OF THE CONTROVERSY OR AN OPPORTUNITY TO MOVE FOR A RECONSIDERATION OF THE ACTION OR RULING COMPLAINED OF.— Petitioners contend that private respondents were not entitled to the suspension order and its extension if opposed by a majority class of creditors. The consortium, which has a total exposure of PhP 1.8 billion, was allegedly deprived of substantive due process when the SEC issued and extended the suspension order despite the objection of the creditor banks. The right to due process was again allegedly violated when the Hearing Panel set the Rehabilitation Plan for hearing without ruling on the issues raised in petitioners' Comment/Opposition. Furthermore, according to private respondents, ASBDC, the borrower in the MTI, is not insolvent; thus, its inclusion in the petition for rehabilitation was not proper. As regards the SEC *en banc*, private respondents claimed that the three-year delay in acting on the petition for review filed by the consortium amounted to a denial of due process and caused undue damage to the creditors. Petitioners' arguments have no merit. The appellate court correctly ruled that petitioners were given the opportunity to be heard. They filed their Comment/Opposition and a petition for review before the SEC *en banc*. Due process is satisfied when the parties are afforded fair and reasonable opportunity to explain their side of the controversy or an opportunity to move for a reconsideration of the action or ruling complained of. Also, the SEC *en banc* is not required to come up with its

own findings since findings of the Hearing Officer shall remain undisturbed unless the SEC *en banc* finds manifest errors. Sec. 16-7 of the Rules also states that proceedings before the SEC *en banc* shall be summary in nature.

9. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCY; THE COURTS SHALL NOT INTERFERE WITH THE POWER OF THE SECURITIES AND EXCHANGE COMMISSION TO ISSUE INJUNCTIVE RELIEF, ABSENT UNREASONABLE OR UNLAWFUL EXERCISE OF THE POWER.— We agree with the findings of the appellate court: xxx. In view of the urgency of the situation and the serious prejudice that will result to other investors and creditors and to the public in general, the SEC opted to proceed decisively and promptly in approving the petition for rehabilitation filed by private respondents in order to continue the rehabilitation process and keep the companies financial afloat, a measure ultimately aimed at protecting the interest of the larger number of unsecured creditors. Under such factual scenario, delay is farthest from the minds of all those concerned particularly the Hearing Panel and the unsecured creditors. The longer the approval of the rehabilitation plan is delayed, the greater the peril becomes that the assets of the corporations will be dissipated and their business operations jeopardized. The view has been expressed that the power of the SEC to issue injunctive relief in these cases should be upheld by the courts as otherwise "a distressed company would be exposed to grave danger that may precipitate its untimely demise, the very evil sought by a suspension of payments." In the exercise of judicial review, the function of the court is to determine whether the administrative agency has not been arbitrary or whimsical in the exercise of its power given the facts and the law. Absent such unreasonable or unlawful exercise of power, courts should not interfere. In this case, such arbitrariness is absent.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for petitioners.
The Solicitor General for public respondent.
Javier Jose Mendoza & Associates for private respondents.

D E C I S I O N

VELASCO, JR., *J.*:

This is a petition for review under Rule 45 which seeks the reversal of the July 16, 2004 Decision[1] and October 1, 2004 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 82800. The CA upheld the November 11, 2003 *en banc* resolution[3] of the Securities and Exchange Commission (SEC) and the orders dated October 10, 2000[4] and April 26, 2001[5] by the SEC Hearing Panel in SEC Case No. 05-00-6609, thus effectively affirming the Rehabilitation Plan submitted by private respondents herein and the appointment of a rehabilitation receiver.

The Facts

Petitioners Philippine National Bank (PNB) and Equitable PCI Bank are members of the consortium of creditor banks constituted pursuant to the Mortgage Trust Indenture (MTI)[6] dated May 29, 1989, as amended, by and between Rizal Commercial Banking Corporation-Trust and Investments Division, acting as trustee for the consortium, and ASB Development Corporation (ASBDC, formerly Tiffany Tower Realty Corporation). Other members of the consortium include Metropolitan Bank and Trust Company (Metrobank), Prudential Bank, Union Bank of the Philippines, and United Coconut Planters Bank. Private respondents ASB Holdings, Inc., ASBDC, ASB Land, Inc., ASB Finance, Inc., Makati Hope Christian School, Inc., Bel-Air Holdings Corporation, Winchester Trading, Inc.,

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[1] *Rollo*, pp. 282-304. Penned by Associate Justice Martin S. Villarama, Jr. and concurred in by Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao.

[2] *Id.* at 306.

[3] *Id.* at 201-204.

[4] *Id.* at 166-179.

[5] *Id.* at 185-188.

[6] *Id.* at 87-125.

VYL Holdings Corporation, and Neighborhood Holdings, Inc. (ASB Group) are corporations engaged in real estate development. The ASB Group is owned by Luke C. Roxas.[7] Under the MTI, petitioners granted a loan of PhP 1,081,000,000 to ASBDC secured by a mortgage of five parcels of land with improvements.[8]

On May 2, 2000, private respondents filed with the SEC a verified petition for rehabilitation with prayer for suspension of actions and proceedings pending rehabilitation pursuant to Presidential Decree No. (PD) 902-A, as amended. The case was docketed as SEC Case No. 05-00-6609. Private respondents stated that they possess sufficient properties to cover their obligations but foresee inability to pay them within a period of one year. They cited the sudden non-renewal and/or massive withdrawal by creditors of their loans to ASB Holdings, the glut in the real estate market, severe drop in the sale of real properties, peso devaluation, and decreased investor confidence in the economy which resulted in the non-completion of and failure to sell their projects and default in the servicing of their credits as they fell due. The ASB Group had assets worth PhP 19,410,000,000 and liabilities worth PhP 12,700,000,000. Faced with at least 712 creditors, 317 contractors/suppliers, and 492 condominium unit buyers, and the prospect of having secured and non-secured creditors press for payments and threaten to initiate foreclosure proceedings, the ASB Group pleaded for suspension of payments while working for rehabilitation with the help of the SEC.[9]

Private respondents mentioned that in March 2000 and immediately after ASB Holdings incurred financial problems, they agreed to constitute a Creditor's Committee composed of representatives of individual creditors, and to appoint a Comptroller. Private respondents stated that the Comptroller, upon instruction from the Creditor's Committee, withheld approval of payments of obligations in the ordinary course of business

[7] *Id.* at 283.

[8] *Id.* at 670.

[9] *Id.* at 283.

such as those due to contractors, unless Roxas agrees to the payment of interest and other arrangements. Private respondents believed that said conditions would eventually harm the general body of their creditors. Private respondents prayed for the suspension of payments to creditors while working out the final terms of a rehabilitation plan with all the parties concerned. Private respondents' petition to the SEC was accompanied by documentary requirements in accordance with Section 4-2 in relation to Sec. 3-2 of the Rules of Procedure on Corporate Recovery.[10]

Finding the petition sufficient in form and substance, the SEC Hearing Panel[11] issued on May 4, 2000 an order suspending for 60 days all actions for claims against the ASB Group, enjoining the latter from disposing its properties in any manner except in the ordinary course of business and from paying outstanding liabilities, and appointing Atty. Monico V. Jacob as interim receiver of the ASB Group. Atty. Jacob was later replaced by Atty. Fortunato Cruz as interim receiver.[12]

The consortium of creditor banks, which included petitioners, filed their Comments/Opposition praying for the dismissal of the petition based on the following grounds:

(a) Petitioners failed to state a valid cause of action;

(b) Petitioners failed to comply with the requirements of the Rules of Procedure on Corporate Recovery;

(c) The Rehabilitation Plan has no basis and offers no solution to address the financial difficulties of petitioners;

(d) There is no need for a Receiver as petitioners claim that they are solvent;

(e) The filing of the Petition does not warrant the issuance of a suspension order;

(f) The Petition should cover only one (1) corporation and should not include the affiliates and subsidiaries;

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[10] *Id.* at 284.

[11] The Hearing Panel was composed of Eugenio E. Reyes (Chairperson), Rosalina M. Tividad-Tesorio, and Irene V.C. Isidoro-Torres (members).

[12] *Rollo*, pp. 283-284.

(g) Petitioners are under the regulatory supervision of various governmental agencies and their respective consents to the filing of the instant Petition have not been obtained;

(h) The circumstances surrounding the filing of the Petition are replete with evidence of fraud and bad faith; and

(i) Petitioners do not appear to have sufficient properties to cover their liabilities.[13]

On August 18, 2000, the ASB Group submitted a rehabilitation plan to enable it to meet all of its obligations. The consortium of creditor banks moved for its disapproval on the ground that it is not viable; the proposals are unrealistic; and it collides with the freedom of contract and the constitutional right against non-impairment of contracts, particularly the release of portions of mortgaged properties and waiver of interest, penalties, and other charges. The banks further asserted that the Rehabilitation Plan does not explain the basis of the selling values and the net realizable values of the properties; it irregularly nets out inter-corporation transactions and offsets the receivables amounting to PhP 5.23 billion from Roxas; and it shows that the ASB Group is insolvent and should be subjected to liquidation proceedings. The banks opposed the extension of the suspension order sought by the ASB Group. The consortium also prayed for the early resolution of their opposition to the petition.

On October 10, 2000, the Hearing Panel denied the opposition of the banks and held that the ASB Group complied with the requirements of Sec. 4-1 of the Rules of Procedure on Corporate Recovery, which allows debtors who are technically insolvent to file a petition for rehabilitation. Since the ASB Group foresees its inability to meet its obligations within one year, it was considered technically insolvent and, thus, qualified for rehabilitation under Sec. 4-1. The Panel further held that under Sec. 4-4, suspension of payments is necessarily an effect of the filing of the petition. The appointment of an Interim Receiver as well as the issuance of a 60-day suspension order is mandatory under Sec. 4-4, Rule IV. The ASB corporations are not precluded from jointly filing the petition for rehabilitation since these are

[13] *Id.* at 285.

beneficially owned by Roxas, their businesses and finances are intertwined such that they made advances to each other and secured their obligations with each other's properties. Joint filing of petition is allowed under Secs. 6 and 7, Rule 3 of the 1997 Rules of Civil Procedure and under case law. As regards the regulatory jurisdiction of the Housing and Land Use Regulatory Board and the Department of Education, Culture and Sports (now the Department of Education) over the business of selling real estate and academic activities of the school, the Hearing Panel held that said jurisdiction does not extend to the petitioning corporations as juridical entities by themselves. With regard to ASB Holdings, the consent of the Central Bank is not required since said corporation is not engaged in quasi-banking operations. Also, the Hearing Panel held that the Creditors Committee was created to address the concerns of the investors of ASB Holdings and did not include the creditor banks. The Hearing Panel found the filing of the petition for suspension of payments and rehabilitation as a sign of good faith on the part of private respondents to settle their obligations.

Upon motion by the ASB Group, the suspension period was extended through an order dated October 27, 2000. The creditor banks appealed the October 10 and 27, 2000 orders by filing before the SEC *en banc* a Petition for Review on *Certiorari* with application for a temporary restraining order.[14]

On April 26, 2001, the Hearing Panel approved the Rehabilitation Plan based on the following rationale:

> After due deliberation, the Hearing Panel finds that the objections raised by the oppositors are unreasonable and rules to approve the rehabilitation plan.
>
> With regard to the contention of the secured creditors that the Plan infringes upon preference over secured property, the Panel finds this objection unreasonable. According to the Supreme Court in the *RCBC vs. IAC*, G.R. No. 74851 December 9, 1999, and we quote:
>
> > The majority ruling in our 1992 decision that preferred creditors of distressed corporations shall, in a way, stand on equal footing

[14] *Id.* at 286-287.

> with all other creditors, must be read and understood in the light of the foregoing rulings. All claims of both a secured or unsecured creditor, without distinction on this score, are suspended once a management committee is appointed. Secured creditors, in the meantime, shall not be allowed to assert such preference before the Securities and Exchange Commission. x x x

With our approval of the Plan and the appointment of a rehabilitation receiver, the secured creditors may not assert their preferred status while the case is pending before the Commission. It is only when the assets of the corporation, partnership, or association are finally liquidated, that the secured and preferred creditors under the applicable provisions of the Civil Code will apply.

As to the creditors' contention that the plan did not explain or provide for the basis of the selling values and the net realizable values of the property, we find the same untenable. A reading of the plan as well as the explanation made by the Petitioners, show that the computation was shown as to the manner upon which the petitioners derived the Net Realizable Values. Moreover the Petitioners explained that these values are not much higher than the Cuervo appraisals in 1997 and 2000.

The Interim Receiver appointed by the Commission recommended the approval of the Plan. According to him, the fixed assets of Petitioners are mortgaged to banks and that the bank loans are mostly over collateralized. If the Plan is not approved, the secured creditors will foreclose on the mortgages and will acquire these properties at a value much less than the fair market value. When the Petitioners lose these fixed property, it will not be able to pay their obligation to the 172 individual unsecured creditors with an exposure of ₱3,951,216,266 and the 317 contractors with an exposure of ₱58,116,903, and will not be able to deliver sold units to 725 buyers. Therefore, the disapproval of the Plan will greatly prejudice all the other creditors who will be left unpaid.

The Panel agrees with the position taken by the Interim Receiver that we should look into the far-reaching effect of the Plan. The Panel should balance the interests between the secured creditors and the unsecured who may not have any recourse if the Plan is not approved. In this manner we agree with the argument of the individual creditors that we should consider the public interest aspect of this rehabilitation proceeding wherein there are about 725 individually affected creditors with a total stakes of ₱4 Billion, more

than the stake of the bank creditors. The approval of the Plan will not deprive the secured creditors of their right to the mortgaged assets. If there is a subsequent failure of rehabilitation, the availment of their suspended rights over the mortgaged assets will be restored. On the other hand, as earlier stated, the unjustified disapproval of the Plan will greatly prejudice the unsecured creditors who will be left unable to recover their investments or collect their claims.

The Panel however finds that adjustments and set off with regard to the advances made by Mr. Luke Roxas should not be allowed. This however, does not in anyway affect the viability of the Plan.

Meanwhile, the resolution on the Motion for Exclusion of the ASB-Malayan Towers from the assets claimed by petitioners is hereby deferred.

PREMISES CONSIDERED, the objections to the rehabilitation plan raised by the creditors are hereby considered unreasonable.

Accordingly, the Rehabilitation Plan submitted by petitioners is hereby APPROVED, except those pertaining to Mr. Roxas' advances, and the ASB-Malayan Towers. Finally, Interim Receiver Mr. Fortunato Cruz is appointed as Rehabilitation Receiver.

SO ORDERED.[15]

The creditors filed a Supplemental Petition for Review on *Certiorari* with the SEC *en banc* to question the foregoing order. On November 11, 2003, the SEC *en banc* dismissed the petition and its supplement, thus affirming the October 10, 2000 and April 26, 2001 orders of the Hearing Panel. The SEC *en banc* held:

We rule against petitioner.

First, the Commission *En Banc*, in three separate cases, had affirmed the approval by the Hearing Panel of the Rehabilitation Plan of private respondents. We declared that the Hearing Panel acted within its legal authority in resolving the petition for rehabilitation of private respondents. Neither it overstepped its lawful authority nor acted whimsically in approving the subject Rehabilitation Plan. Hence, it could not be faulted of grave abuse of discretion. We could

[15] *Supra* note 5, at 187-188.

not arrive at different conclusion in the instant case other than uphold the approval of private respondents' Rehabilitation Plan.

Second, it is noteworthy to mention that as of 31 December 2002, fifty-four percent (54%) of the total obligations of private respondents with creditor banks have been settled. That constitutes majority of the total obligations owned by private respondents to secured creditors.

WHEREFORE, premises considered, the instant petition is DISMISSED. Accordingly, the assailed Orders are AFFIRMED.

SO ORDERED.[16]

The Ruling of the CA

Petitioners went to the CA via a petition for *certiorari* under Rule 65, alleging grave abuse of discretion on the part of the SEC in dismissing the creditors' petition for review on the ground that 54% of the total obligations of the ASB Group with creditor banks have been settled. The SEC also allegedly did not make its own independent findings much less come up with substantial evidence to support its resolution, thus violating petitioners' right to due process and ignoring the constitutional rights of the banks against non-impairment of contracts. Petitioners also questioned the remedy availed of by the ASB Group since a solvent corporation cannot file a petition for rehabilitation nor be placed under receivership. They maintained that the SEC should not have approved the Rehabilitation Plan over the objection of the consortium of creditor banks.

The CA held that the Rules of Procedure on Corporate Recovery allows financially distressed corporations to file for either suspension of payments (Rule III, Sec. 3-1) or rehabilitation (Rule IV, Sec. 4-1). The Rules, the CA said, does not preclude a solvent corporation, like the ASB Group, to file a petition for rehabilitation instead of just a petition for suspension of payments because such temporary inability to pay obligations may extend beyond one year or the corporation may become insolvent in the interim. It stated that the determination of the sufficiency of the petition and the question of propriety of the petition filed by the ASB Group are matters within the technical competence

[16] *Supra* note 3, at 203-204.

and administrative discretion of the SEC. Also, according to the CA, there was no grave abuse of discretion on the part of the Hearing Panel in appointing an interim receiver because such is prescribed by the Rules. As regards the Rehabilitation Plan, the CA agreed with the Hearing Panel's finding that the plan's disapproval will greatly prejudice all the other creditors who will be left unpaid. Moreover, the CA explained that the approval of the Rehabilitation Plan does not violate the right against impairment of contracts since the legal consequence of rehabilitation proceedings is merely a temporary suspension of such payments of obligations falling due and not cancellation or repudiation of those contractual obligations. The CA further held that petitioners were afforded the opportunity to be heard through the comments and oppositions they filed. Lastly, the appellate court ruled that the SEC e*n banc* may rely on the factual findings of the Hearing Officer; thus, it need not make its own independent findings unless clear error has been committed.

The dispositive portion of the July 16, 2004 Decision of the CA reads:

> WHEREFORE, premises considered, the present petition is hereby DENIED DUE COURSE and accordingly DISMISSED for lack of merit. The challenged *En Banc* Resolution dated November 11, 2000 of the Securities and Exchange Commission, affirming the Orders dated October 10, 2000 and April 26, 2001 of the SEC Hearing Panel in SEC Case No. 05-00-609, is hereby AFFIRMED.[17]

Petitioners' motion for reconsideration was denied through the October 1, 2004 CA Resolution. Hence, we have this petition.

The Issues

Petitioners assign the following errors[18] on the appellate court:

I

Respondent court committed serious error in ruling that the Rules does not preclude a solvent corporation or debtor to file a petition

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[17] *Supra* note 1, at 303.

[18] *Rollo*, pp. 27-28.

for rehabilitation instead of just a petition for suspension of payments.

II

Respondent court committed serious error in ruling that all the grounds for the opposition raised by the consortium of creditor banks have been duly heard and resolved by the Hearing Panel in its October 10, 2000 order and that there is no grave abuse of discretion on the part of the Hearing Panel when it appointed an interim receiver pursuant to Section 4-4.

III

Respondent court committed serious error in holding that the filing of a motion to override the objections against the Rehabilitation Plan by any class of creditor is not an absolute requirement nor is it a precondition for the Commission to resolve the objections so filed by the creditors.

IV

Respondent court committed serious error in ruling that the legal consequence of rehabilitation proceedings is merely a temporary suspension of such payments of obligations falling due by the distressed corporation and not cancellation or repudiation of those contractual obligations.

V

Respondent court committed serious error in ruling that the Commission correctly ruled on the issue of the alleged impairment of contracts arising from the suspension order and approval of the Rehabilitation Plan.

VI

Respondent court committed serious error in finding that petitioners as creditors and mortgagees cannot, by contractual commitments imposed on their borrowers-mortgagors, defeat the purpose of the legislation by rendering nugatory the supervisory and regulatory power of the SEC over private corporations, partnerships and associations under existing laws.

VII

Respondent court committed serious error in ruling that the SEC in this case not only applied liberally the provisions of the rules of

procedure on corporate recovery, afforded sufficient opportunity to be heard on all the creditors, both secured and unsecured individual creditors, but also carefully weighed their competing and conflicting interests with the end in view of maintaining the financial viability of the petitioning corporations and preserving its assets for the protection of all creditors.

VIII

Respondent court committed serious error in ruling that the decision and resolution in question should be affirmed and that there is no delay, arbitrariness, serious disregard of the law and rules, and whimsical or oppressive exercise of judgment on the part of the SEC *en banc* and the Hearing Panel.

IX

It is error for respondent appellate court not to grant petitioners' prayer to dismiss the petition for rehabilitation on the ground that the consent of the administrative agencies concerned was not obtained before the filing of said petition.

On April 25, 2007, PNB sold the account of ASBDC to Golden Dragon Star Equities, Inc. and its assignee, Opal Portfolio Investments, Inc. (Opal). PNB then requested this Court to be substituted by Opal. Meanwhile, respondents ASB Holdings, ASB Realty Corporation, ASB Development Corporation, and ASB Land have changed their corporate names to St. Francis Square Holdings, Inc., St. Francis Square Realty Corporation, St. Francis Square Development Corporation, and St. Francis Square Land, Inc., respectively.

On February 27, 2007, the First Division of this Court promulgated its Decision in *Metropolitan Bank & Trust Company v. ASB Holdings, Inc.* under G.R. No. 166197.[19] This case dealt with the petition filed by Metrobank, a member of the consortium of creditor banks.

The Court's Ruling

We affirm the ruling of the appellate court.

[19] 517 SCRA 1.

Petition for Suspension of Payments *vis-à-vis* Petition for Rehabilitation

Anent the issue regarding the appropriate remedy available to private respondents, petitioners argue that a petition for rehabilitation and suspension of payments cannot be filed without previously filing a petition for suspension of payments since these refer to different reliefs under the Rules which provides:

RULE III, Section 3-1. Suspension of Payments.—Any debtor which possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due may petition the Commission that it be declared in a state of suspension of payments.

RULE IV, Section 4-1. Who may petition.—A debtor which is insolvent because its assets are not sufficient to cover its liabilities, or which is technically insolvent under Section 3-12 of these Rules, but which may still be rescued or revived through the institution of some changes in its management, organization, policies, strategies, operations, or finances, may petition the Commission to be placed under rehabilitation.

Petitioners argue that Sec. 3-1 refers to debtors with sufficient property to cover its debts; thus, it refers to solvent debtors. Sec. 4-1, on the other hand, refers to debtors with insufficient assets to cover its liabilities, that is, debtors who are insolvent or technically insolvent. The former falls under the rules on suspension of payments while the latter falls under the rules on rehabilitation. Petitioners then conclude that a solvent corporation, such as private respondents, cannot file a petition for rehabilitation. Also, the ASB Group cannot be considered technically insolvent under Secs. 3-12 and 3-13 which state:

Section 3-12. Technical insolvency of petitioner.—If it is established that the inability of the petitioner to pay, although temporary, will last for a period longer than one (1) year from the filing of the petition, the petitioner shall be considered technically insolvent and the petition shall be dismissed accordingly.

Section 3-13. Supervening insolvency or violation of Suspension Order.—If at anytime during the pendency of the proceedings, the

petitioner has become or is shown to be insolvent, whether actual or technical, or that it has violated any of the conditions of the suspension order or has failed to make payments on its obligations in accordance with the approved Repayment Schedule, the Commission shall terminate the proceedings and dismiss the petition. Instead of terminating the proceedings, however, the Commission may, upon motion, treat the petition as one for rehabilitation of the debtor. Thereupon, the pertinent provisions of the succeeding Rule shall govern the proceedings.

Petitioners point out that the foregoing rules prescribe a determination by the SEC that the ailing corporation's inability to pay will last more than one year from the filing of the petition for suspension of payments. Petitioners conclude that technical insolvency **only arises one year after** the petition for suspension of payments had been filed; therefore, the SEC committed a serious error when it entertained the ASB Group's petition for rehabilitation without a previous finding of technical insolvency.

To further support their theory, petitioners quoted Sec. 4-2(g) as follows:

Section 4-2. Contents of the petition.—The petition filed by the debtor must be verified and must set forth with sufficient particularity all the following material facts:

x x x x x x x x x

(g) the status of any Repayment Schedule if one has been approved by the Commission under the preceding Rule.

According to petitioners, the mere mention of a Repayment Schedule under Rule IV on Rehabilitation only proves that technical insolvency can only arise from or initiated by the filing of a petition for suspension of payments under Rule III.

Such interpretation of the Rules deserves no merit.

Petitioners raise issues which mainly relate to technical insolvency; hence, we will limit our interpretation of the rules based on the aforequoted sections. Based on the foregoing, we can deduce the following:

(1) A corporation which has sufficient assets to cover its liabilities but foresees its inability to pay its obligations as they fall due may file a petition for suspension of payments under Rule III of the Rules (Sec. 3-1);

(2) If the SEC finds that the corporation's inability to pay will last more than one year from the filing of the petition for suspension of payments, that is, the corporation becomes technically insolvent, the petition shall be dismissed (Sec. 3-12);

(3) If the corporation is shown or actually becomes technically insolvent anytime during the pendency of the proceedings (supervening technical insolvency), the SEC may either terminate the proceedings or it may, upon motion, treat the petition as one for rehabilitation (Sec. 3-13); and

(4) If from the start, a corporation which has enough assets foresees its inability to meet its obligations for more than one year, *i.e.*, existing technical insolvency, it may file a petition for rehabilitation under Rule IV, Sec. 4-1.

A reading of Sec. 4-1 shows that there are two kinds of insolvency contemplated in it: (1) actual insolvency, *i.e.*, the corporation's assets are not enough to cover its liabilities; and (2) technical insolvency defined under Sec. 3-12, *i.e.*, the corporation has enough assets but it foresees its inability to pay its obligations for more than one year.

In the case at bar, the ASB Group filed with the SEC a petition for rehabilitation with prayer for suspension of actions and proceedings pending rehabilitation. Contrary to petitioners' arguments, the mere fact that the ASB Group averred that it has sufficient assets to cover its obligations does not make it "solvent" enough to prevent it from filing a petition for rehabilitation. A corporation may have considerable assets but if it foresees the impossibility of meeting its obligations for more than one year, it is considered as technically insolvent. Thus, at the first instance, a corporation may file a petition for rehabilitation—a remedy provided under Sec. 4-1.

When Sec. 4-1 mentioned technical insolvency under Sec. 3-12, it was referring to the definition of technical insolvency in the said section; it was not requiring a previous filing of a petition for suspension of payments which petitioners would have us believe.

Petitioners harp on the SEC's failure to examine whether the ASB Group is technically insolvent. They contend that the SEC should wait for a year after the filing of the petition for suspension of payments when technical insolvency may or may not arise. This is erroneous. The period mentioned under Sec. 3-12, "longer than one year from the filing of the petition," does not refer to a year-long waiting period when the SEC can finally say that the ailing corporation is technically insolvent to qualify for rehabilitation. The period referred to the corporation's inability to pay its obligations; when such inability extends beyond one year, the corporation is considered technically insolvent. Said inability may be established from the start by way of a petition for rehabilitation, or it may be proved during the proceedings for suspension of payments, if the latter was the first remedy chosen by the ailing corporation. If the corporation opts for a direct petition for rehabilitation on the ground of technical insolvency, it should show in its petition and later prove during the proceedings that it will not be able to meet its obligations for longer than one year from the filing of the petition.

As regards the status of the Repayment Schedule required to be attached to the petition for rehabilitation (Sec. 4-2[g]), this requirement is conditioned on whether one was approved by the SEC in the first place. If there is none, as in the case of a petition for rehabilitation due to technical insolvency directly filed under Rule IV, Sec. 4-1, then there is no status report to submit with the petition.

Appointment of an Interim Receiver

Petitioners impute error on the part of the SEC in appointing an interim receiver since, allegedly, the requirements for it have not been met. Petitioners, however, assume that private respondents were not entitled to file a petition for rehabilitation.

As previously discussed, private respondents may file a petition for rehabilitation for being technically insolvent. Once the petition is filed, the appointment of an interim receiver becomes automatic. As pertinently provided under the Rules:

> Section 4-4. *Effect of filing of the petition.*—Immediately upon the filing of the petition, the Commission shall issue an Order (a) appointing an Interim Receiver and fixing his bond; (b) suspending all actions and proceedings for claims against the debtor; (c) prohibiting the debtor from selling, encumbering, transferring or disposing in any manner any of its properties except in the normal course of business in which the debtor is engaged; (d) prohibiting the debtor from making any payment of its liabilities outstanding as of the date of filing of the petition; (e) directing the payment in full of all administrative expenses incurred after the filing of the petition; (f) fixing the initial hearing on the petition not later than forty-five (45) days from the filing thereof; (g) directing the debtor to publish the Order once a week for two consecutive weeks in a newspaper of general circulation in the Philippines; and (h) directing the debtor to serve on each of the parties on the list of creditors the following documents at least ten days before the date of the said hearing:
>
> 1. A copy of the Order;
> 2. A copy of the petition;
> 3. A copy of the Schedule of Debts and Liabilities; and
> 4. A notification that copies of the other documents filed with the Commission may be obtained therefrom or from the Interim Receiver.

Petitioners assert that there two kinds of receivers that can be appointed: a rehabilitation receiver or an interim receiver. A rehabilitation receiver under PD 902-A, Sec. 6 may only be appointed when there is a showing that (1) the receiver is necessary in order to preserve the rights of the parties-litigants; and/or (2) in order to protect the interest of the investing public and creditors. In contrast, the appointment of an interim receiver is automatic from the time the petition for rehabilitation is filed; there are no other standards that need to be met. According to *Rizal Commercial Banking Corporation v. Intermediate Appellate Court*, a petition for rehabilitation does not necessarily

result in the appointment of a rehabilitation receiver.[20] Prior to the appointment of a rehabilitation receiver or management committee, as the case may be, the right of secured creditors to foreclose mortgages cannot be denied. Also, since PD 902-A does not provide for the appointment of an interim receiver, then the Rules of Procedure on Corporate Recovery, an administrative issuance, went beyond the law it seeks to implement.

As found by the appellate court, the appointment of an interim receiver should be understood as a necessary and urgent step to protect the interests of both creditors and stockholders of the petitioning corporations, particularly the assets and business operations during the pendency of the proceedings, and to ensure the viability and success of the rehabilitation plan as eventually implemented.[21]

Motion to Override the Creditors' Objections

Petitioners insist that the Rehabilitation Plan should not have been approved by the SEC over the objection by the secured creditors without the filing of a motion to override the objections filed by private respondents. This is in accordance with Sec. 4-20 which provide:

> Section 4-20. *Approval of the Rehabilitation Plan*.—No Rehabilitation Plan shall be approved by the Commission if opposed by a majority of any class of creditors. The Commission may, upon motion, however, override said disapproval if such is manifestly unreasonable. The Rehabilitation Plan shall be deemed *ipso facto* disapproved and the petition dismissed if the Commission fails to grant the motion to override within thirty (30) days from the time it is submitted for resolution.

The CA held that the filing of a motion is not a precondition for the SEC to resolve the objections filed by the creditors, as evident in the word "may." We disagree. The requirement of a motion by the petitioning corporation is essential in enabling

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[20] G.R. No. 74851, December 9, 1999, 320 SCRA 279, 289.

[21] *Supra* note 1, at 295.

the SEC to decide on the proposed rehabilitation plan. The words "upon motion" were deliberately added to emphasize this requirement. In the case at bar, while private respondents failed to file a motion to override the creditors' objections, nevertheless, they were able to file a reply to the opposition of the consortium of creditor banks. Presumably, this reply addressed the objections of the consortium. Considering that procedural rules should be liberally interpreted, we find said pleading as tantamount to filing a motion required by Sec. 4-20.

Right Against Non-Impairment of Contracts

Petitioners contend that the SEC's approval of the Rehabilitation Plan impairs the MTI by forcing them to release the real properties secured in their favor to become part of the asset pool. They argue that the SEC's approval of the Rehabilitation Plan is a state action that impairs the remedies available to petitioners under the MTI, which essentially abrogates the contract itself.

In the *Metropolitan Bank & Trust Company* Decision in G.R. No. 166197,[22] Metrobank likewise questioned the approval of the Rehabilitation Plan by the SEC and the CA, particularly the provisions relating to the payment by *dacion en pago* and waiver of interests and penalties. Metrobank asserted that the Rehabilitation Plan compelled it to release part of the collateral and accept the mortgaged properties as payment by *dacion en pago* based on the ASB Group's transfer values, violating the constitutional right to non-impairment of contracts.

On this issue, we adopt the ruling of the First Division in *Metropolitan Bank & Trust Company*, to wit:

> We are not convinced that the approval of the Rehabilitation Plan impairs petitioner bank's lien over the mortgaged properties. Section 6 [c] of P.D. No. 902-A provides that "upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to this Decree, **all actions for claims** against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be **suspended**."

[22] *Supra* note 19.

By that statutory provision, it is clear that the approval of the Rehabilitation Plan and the appointment of a rehabilitation receiver merely **suspend** the **actions for claims** against respondent corporations. Petitioner bank's preferred status over the unsecured creditors relative to the mortgage liens is retained, but the **enforcement of such preference** is **suspended**. The loan agreements between the parties have not been set aside and petitioner bank may still enforce its preference when the assets of ASB Group of Companies will be liquidated. Considering that the provisions of the loan agreements are merely suspended, there is no impairment of contracts, specifically its lien in the mortgaged properties.

As we stressed in *Rizal Commercial Banking Corporation v. Intermediate Appellate Court*, such suspension "**shall not prejudice or render ineffective the status of a secured creditor as compared to a totally unsecured creditor**," for what P.D. No. 902-A merely provides is that all actions for claims against the distressed corporation, partnership or association shall be suspended. This arrangement provided by law is intended to give the receiver a chance to rehabilitate the corporation if there should still be a possibility for doing so, without being unnecessarily disturbed by the creditors' actions against the distressed corporation. However, in the event that rehabilitation is no longer feasible and the claims against the distressed corporation would eventually have to be settled, the secured creditors, like petitioner bank, shall enjoy preference over the unsecured creditors.[23]

Contrary to petitioners' belief, they are not forced to accept the terms of the Rehabilitation Plan. As held in *Metropolitan Bank & Trust Company*, they are merely proposals for the creditors to accept.

Due Process and the Regulatory Power of the SEC

Petitioners contend that private respondents were not entitled to the suspension order and its extension if opposed by a majority class of creditors. The consortium, which has a total exposure of PhP 1.8 billion, was allegedly deprived of substantive due process when the SEC issued and extended the suspension order despite the objection of the creditor banks. The right to due process was again allegedly violated when the Hearing

[23] *Supra* note 19, at 11-12.

Panel set the Rehabilitation Plan for hearing without ruling on the issues raised in petitioners' Comment/Opposition. Furthermore, according to private respondents, ASBDC, the borrower in the MTI, is not insolvent; thus, its inclusion in the petition for rehabilitation was not proper. As regards the SEC *en banc*, private respondents claimed that the three-year delay in acting on the petition for review filed by the consortium amounted to a denial of due process and caused undue damage to the creditors.

Petitioners' arguments have no merit. The appellate court correctly ruled that petitioners were given the opportunity to be heard. They filed their Comment/Opposition and a petition for review before the SEC *en banc*. Due process is satisfied when the parties are afforded fair and reasonable opportunity to explain their side of the controversy or an opportunity to move for a reconsideration of the action or ruling complained of.[24] Also, the SEC *en banc* is not required to come up with its own findings since findings of the Hearing Officer shall remain undisturbed unless the SEC *en banc* finds manifest errors. Sec. 16-7 of the Rules also states that proceedings before the SEC *en banc* shall be summary in nature.

The purpose of rehabilitation proceedings is to enable the company to gain new lease on life and thereby allows creditors to be paid their claims from its earnings. Rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the financially distressed corporation to its former position of successful operation and solvency. This is in consonance with the State's objective to promote a wider and more meaningful equitable distribution of wealth to protect investments and the general public.[25] It is precisely based on these principles that the SEC decided the

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[24] *Roxas v. Vasquez*, G.R. No. 114944, June 19, 2001, 358 SCRA 636, 645.

[25] *Metropolitan Bank & Trust Company*, *supra* note 19, at 15; citing *Rubberworld (Phils.), Inc. v. National Labor Relations Commission*, G.R. No. 126773, April 14, 1999, 305 SCRA 721; *Ruby Industrial Corporation v. Court of Appeals*, G.R. Nos. 124185-87, January 20, 1998, 284 SCRA 445; and PD 902-A, as amended, first "Whereas" clause.

petition for rehabilitation. We agree with the findings of the appellate court:

> x x x In holding that the oppositions of the creditor banks are unreasonable, the SEC took into consideration the fact that compared to the creditor banks who have existing mortgages with private respondents, the 725 individually affected *unsecured creditors* with a much higher stake in their combined claims of ~~*P4 Billion*~~, the SEC found it prejudicial to disapprove the Rehabilitation Plan and thereby allow the creditor banks to foreclose the mortgages and sell the fixed assets at prices lower than the market value, a prospect that will deprive the unsecured creditors of any hope of being paid while the corporations will eventually become insolvent unable to pay its obligations to the greater number of unsecured creditors.
>
> In view of the urgency of the situation and the serious prejudice that will result to other investors and creditors and to the public in general, the SEC opted to proceed decisively and promptly in approving the petition for rehabilitation filed by private respondents in order to continue the rehabilitation process and keep the companies financial afloat, a measure ultimately aimed at protecting the interest of the larger number of unsecured creditors. Under such factual scenario, delay is farthest from the minds of all those concerned particularly the Hearing Panel and the unsecured creditors. The longer the approval of the rehabilitation plan is delayed, the greater the peril becomes that the assets of the corporations will be dissipated and their business operations jeopardized. The view has been expressed that the power of the SEC to issue injunctive relief in these cases should be upheld by the courts as otherwise "a distressed company would be exposed to grave danger that may precipitate its untimely demise, the very evil sought by a suspension of payments."[26]

In the exercise of judicial review, the function of the court is to determine whether the administrative agency has not been arbitrary or whimsical in the exercise of its power given the facts and the law. Absent such unreasonable or unlawful exercise of power, courts should not interfere. In this case, such arbitrariness is absent.

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[26] *Supra* note 1, at 302.

WHEREFORE, this petition is *DENIED*. The July 16, 2004 Decision and October 1, 2004 Resolution of the CA in CA-G.R. SP No. 82800 are *AFFIRMED*. Costs against petitioners.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 167884. January 20, 2009]

ENRICO S. EULOGIO, *petitioner, vs.* **SPOUSES CLEMENTE APELES**[1] **and LUZ APELES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WHEN THE FACTUAL FINDINGS OF THE TRIAL COURT ARE NOT ANCHORED ON THE CREDIBILITY OF THE WITNESSES BUT ON THE ASSESSMENT OF THE DOCUMENTS THAT ARE AVAILABLE TO APPELLATE MAGISTRATES AND SUBJECT TO THEIR SCRUTINY, RELIANCE ON THE TRIAL COURT FINDS NO APPLICATION.— Enrico's insistence on the infallibility of the findings of the RTC seriously impairs the discretion of the appellate tribunal to make independent determination of the merits of the case appealed before it. Certainly, the Court of Appeals cannot swallow hook, line, and sinker the factual conclusions of the trial court without crippling the very office of review. Although we have indeed held that the factual findings of the trial courts are to be accorded great weight and respect, they are not absolutely conclusive upon

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[1] Died during the pendency of this case before this Court. He is now represented by his surviving spouse and co-appellee, Luz Apeles.

the appellate court. The reliance of appellate tribunals on the factual findings of the trial court is based on the postulate that the latter had firsthand opportunity to hear the witnesses and to observe their conduct and demeanor during the proceedings. However, when such findings are not anchored on their credibility and their testimonies, but on the assessment of documents that are available to appellate magistrates and subject to their scrutiny, reliance on the trial court finds no application.

2. ID.; APPEALS; PETITION FOR REVIEW TO THE COURT OF APPEALS; PARTIES MAY RAISE BOTH QUESTIONS OF FACT AND/OR LAW; COURT OF APPEALS REQUIRED TO REVIEW TRIAL COURT'S FACTUAL FINDINGS.— Moreover, appeal by writ of error to the Court of Appeals under Rule 41 of the Revised Rules of Court, the parties may raise both questions of fact and/or of law. In fact, it is imperative for the Court of Appeals to review the findings of fact made by the trial court. The Court of Appeals even has the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction.

3. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; CONTRADICTORY STATEMENTS ON IMPORTANT DETAILS ERODE THE INTEGRITY OF THE WITNESS' TESTIMONY.— We agree with the Court of Appeals that in ruling out forgery, the RTC heavily relied on the testimony proffered by Enrico during the trial, ignoring blatant contradictions that destroy his credibility and the veracity of his claims. On direct examination, Enrico testified that Luz signed the Contract of Lease with Option to Purchase on 26 January 1987 in his presence, but he recanted his testimony on the matter after the spouses Apeles established by clear and convincing evidence that Luz was not in the Philippines on that date. In rebuttal, Enrico made a complete turnabout and claimed that Luz signed the Contract in question on 30 May 1987 after her arrival in the country. The inconsistencies in Enrico's version of events have seriously impaired the probative value of his testimony and cast serious doubt on his credibility. His contradictory statements on important details simply eroded the integrity of his testimony.

4. ID.; ID.; BURDEN OF PROOF AND PRESUMPTIONS; DISPUTABLE PRESUMPTIONS; A NOTARIZED DOCUMENT HAS IN ITS FAVOR THE PRESUMPTION OF REGULARITY ABSENT CLEAR AND CONVINCING EVIDENCE TO THE CONTRARY.— While it is true that a notarized document carries the evidentiary weight conferred upon it with respect to its due execution, and has in its favor the presumption of regularity, this presumption, however, is not absolute. It may be rebutted by clear and convincing evidence to the contrary. Enrico himself admitted that Luz took the document and had it notarized without his presence. Such fact alone overcomes the presumption of regularity since a notary public is enjoined not to notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before the said notary public to attest to the contents and truth of what are stated therein.

5. ID.; ID.; ID.; IN CIVIL CASES, THE PARTY HAVING THE BURDEN OF PROOF MUST ESTABLISH HIS CASE BY A PREPONDERANCE OF EVIDENCE; "PREPONDERANCE OF EVIDENCE," EXPLAINED.— Although there is no direct evidence to prove forgery, preponderance of evidence inarguably favors the spouses Apeles. In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto. In the case at bar, the spouses Apeles were able to overcome the burden of proof and prove by preponderant evidence in disputing the authenticity and due execution of the Contract of Lease with Option to Purchase. In contrast, Enrico seemed to rely only on his own self-serving declarations, without asserting any proof of corroborating testimony or circumstantial evidence to buttress his claim.

6. CIVIL LAW; OBLIGATIONS AND CONTRACTS; OPTION CONTRACT; "OPTION," EXPLAINED.— An option is a contract by which the owner of the property agrees with another person that the latter shall have the right to buy the former's

property at a fixed price within a certain time. It is a condition offered or contract by which the owner stipulates with another that the latter shall have the right to buy the property at a fixed price within a certain time, or under, or in compliance with certain terms and conditions; or which gives to the owner of the property the right to sell or demand a sale. An option is not of itself a purchase, but merely secures the privilege to buy. It is not a sale of property but a sale of the right to purchase. It is simply a contract by which the owner of the property agrees with another person that he shall have the right to buy his property at a fixed price within a certain time. He does not sell his land; he does not then agree to sell it; but he does sell something, *i.e.,* the right or privilege to buy at the election or option of the other party. Its distinguishing characteristic is that it imposes no binding obligation on the person holding the option, aside from the consideration for the offer. It is also sometimes called an "unaccepted offer" and is sanctioned by Article 1479 of the Civil Code xxx.

7. ID.; ID.; ID.; MUST BE SUPPORTED BY A SEPARATE AND DISTINCT CONSIDERATION TO BE VALID AND ENFORCEABLE AGAINST THE PROMISSOR.— The second paragraph of Article 1479 provides for the definition and consequent rights and obligations under an option contract. For an option contract to be valid and enforceable against the promissor, there must be a separate and distinct consideration that supports it. In the landmark case of *Southwestern Sugar and Molasses Company v. Atlantic Gulf and Pacific Co.,* we declared that for an option contract to bind the promissor, it must be supported by consideration: There is no question that under Article 1479 of the new Civil Code "an option to sell," or "a promise to buy or to sell," as used in said article, to be valid must be "supported by a consideration distinct from the price." This is clearly inferred from the context of said article that a unilateral promise to buy or to sell, even if accepted, is only binding if supported by a consideration. **In other words, "an accepted unilateral promise" can only have a binding effect if supported by a consideration, which means that the option can still be withdrawn, even if accepted, if the same is not supported by any consideration. Here it is not disputed that the option is without consideration. It can therefore be withdrawn notwithstanding the acceptance made of it by appellee.**

The doctrine requiring the payment of consideration in an option contract enunciated in *Southwestern Sugar* is resonated in subsequent cases and remains controlling to this day. Without consideration that is separate and distinct from the purchase price, an option contract cannot be enforced; that holds true even if the unilateral promise is already accepted by the optionee.

8. ID.; ID.; ID.; ID.; THE CONSIDERATION NEED NOT BE MONETARY BUT MUST BE SOMETHING OF VALUE; CASE AT BAR.— The consideration is "the why of the contracts, the essential reason which moves the contracting parties to enter into the contract." This definition illustrates that the consideration contemplated to support an option contract need not be monetary. Actual cash need not be exchanged for the option. However, by the very nature of an option contract, as defined in Article 1479, the same is an onerous contract for which the consideration must be something of value, although its kind may vary. We have painstakingly examined the Contract of Lease with Option to Purchase, as well as the pleadings submitted by the parties, and their testimonies in open court, for any direct evidence or evidence *aliunde* to prove the existence of consideration for the option contract, but we have found none. The only consideration agreed upon by the parties in the said Contract is the supposed purchase price for the subject property in the amount not exceeding ₱1.5 Million, which could not be deemed to be the same consideration for the option contract since the law and jurisprudence explicitly dictate that for the option contract to be valid, it **must be supported by a consideration separate and distinct from the price.**

9. ID.; ID.; ID.; ID.; WHEN A CONSIDERATION FOR AN OPTION CONTRACT IS NOT MONETARY, THE SAME MUST BE CLEARLY SPECIFIED AS SUCH IN THE OPTION CONTRACT OR CLAUSE.— In *Bible Baptist Church v. Court of Appeals,* we stressed that an option contract needs to be supported by a separate consideration. The consideration need not be monetary but could consist of other things or undertakings. However, if the consideration is not monetary, these must be things or undertakings of value, in view of the onerous nature of the option contract. Furthermore, when a consideration for an option contract is not monetary, said consideration must

be clearly specified as such in the option contract or clause. In the present case, it is indubitable that no consideration was given by Enrico to the spouses Apeles for the option contract. The absence of monetary or any material consideration keeps this Court from enforcing the rights of the parties under said option contract.

APPEARANCES OF COUNSEL

Danilo P. Cariaga for petitioner.
Moises S. Tolentino, Jr. for L. Apeles.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Petitioner Enrico S. Eulogio (Enrico) filed this instant Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court assailing the Decision[2] dated 20 December 2004 of the Court of Appeals in CA-G.R. CV No. 76933 which reversed the Decision[3] dated 8 October 2002 of the Regional Trial Court (RTC) of Quezon City, Branch 215, in Civil Case No. Q-99-36834. The RTC directed respondents, spouses Clemente and Luz Apeles (spouses Apeles) to execute a Deed of Sale over a piece of real property in favor of Enrico after the latter's payment of full consideration therefor.

The factual and procedural antecedents of the present case are as follows:

The real property in question consists of a house and lot situated at No. 87 Timog Avenue, Quezon City (subject property). The lot has an area of 360.60 square meters, covered by Transfer Certificate of Title No. 253990 issued by the Registry of Deeds of Quezon City in the names of the spouses Apeles.[4]

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[2] Penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Ruben T. Reyes and Perlita J. Tria-Tirona, concurring; *rollo,* pp. 43-63.

[3] Penned by Judge Ma. Luisa Quijano-Padilla; *rollo*, pp. 33-41.

[4] *Rollo,* p. 34.

In 1979, the spouses Apeles leased the subject property to Arturo Eulogio (Arturo), Enrico's father. Upon Arturo's death, his son Enrico succeeded as lessor of the subject property. Enrico used the subject property as his residence and place of business. Enrico was engaged in the business of buying and selling imported cars.[5]

On 6 January 1987, the spouses Apeles and Enrico allegedly entered into a Contract of Lease[6] with Option to Purchase involving the subject property. According to the said lease contract, Luz Apeles was authorized to enter into the same as the attorney-in-fact of her husband, Clemente, pursuant to a Special Power of Attorney executed by the latter in favor of the former on 24 January 1979. The contract purportedly afforded Enrico, before the expiration of the three-year lease period, the option to purchase the subject property for a price not exceeding ₱1.5 Million. The pertinent provisions of the Contract of Lease are reproduced below:

3. That this Contract shall be effective commencing from January 26, 1987 and shall remain valid and binding for THREE (3) YEARS from the said date. The LESSOR hereby gives the LESSEE under this Contract of Lease the right and option to buy the subject house and lot within the said 3-year lease period.

4. That the purchase price or total consideration of the house and lot subject of this Contract of Lease shall, should the LESSEE exercise his option to buy it on or before the expiration of the 3-year lease period, be fixed or agreed upon by the LESSOR and the LESSEE, Provided, that the said purchase price, as it is hereby agreed, shall not be more than ONE MILLION FIVE HUNDRED THOUSAND PESOS (₱1,500,000.00) and, provided further, that the monthly rentals paid by the LESSEE to the LESSOR during the 3-year lease period shall form part of or be deducted from the purchase price or total consideration as may hereafter be mutually fixed or agreed upon by the LESSOR and the LESSEE.

5. That if the LESSEE shall give oral or written notice to the LESSOR on or before the expiry date of the 3-year lease period

[5] It was not shown when Arturo Eulogio died, and when his son Eulogio assumed leasing the subject property.

[6] *Rollo,* pp. 31-32.

stipulated herein of his desire to exercise his option to buy or purchase the house and lot herein leased, the LESSOR upon receipt of the purchase price/total consideration as fixed or agreed upon less the total amount of monthly rentals paid the LESSEE during the 3-year lease period shall execute the appropriate Deed to SELL, TRANSFER and CONVEY the house and lot subject of this Contract in favor of the LESSEE, his heirs, successors and assigns, together with all the fixtures and accessories therein, free from all liens and encumbrances.

Before the expiration of the three-year lease period provided in the lease contract, Enrico exercised his option to purchase the subject property by communicating verbally and in writing to Luz his willingness to pay the agreed purchase price, but the spouses Apeles supposedly ignored Enrico's manifestation. This prompted Enrico to seek recourse from the *barangay* for the enforcement of his right to purchase the subject property, but despite several notices, the spouses Apeles failed to appear before the *barangay* for settlement proceedings. Hence, the *barangay* issued to Enrico a Certificate to File Action.[7]

In a letter dated 26 January 1997 to Enrico, the spouses Apeles demanded that he pay his rental arrears from January 1991 to December 1996 and he vacate the subject property since it would be needed by the spouses Apeles themselves.

Without heeding the demand of the spouses Apeles, Enrico instituted on 23 February 1999 a Complaint for Specific Performance with Damages against the spouses Apeles before the RTC, docketed as Civil Case No. Q-99-36834. Enrico's cause of action is founded on paragraph 5 of the Contract of Lease with Option to Purchase vesting him with the right to acquire ownership of the subject property after paying the agreed amount of consideration.

Following the pre-trial conference, trial on the merits ensued before the RTC.

Enrico himself testified as the sole witness for his side. He narrated that he and Luz entered into the Contract of Lease

[7] *Id.* at 34-35.

with Option to Purchase on 26 January 1987, with Luz signing the said Contract at Enrico's office in Timog Avenue, Quezon City. The Contract was notarized on the same day as evidenced by the Certification on the Notary Public's Report issued by the Clerk of Court of the RTC of Manila.[8]

On the other hand, the spouses Apeles denied that Luz signed the Contract of Lease with Option to Purchase, and posited that Luz's signature thereon was a forgery. To buttress their contention, the spouses Apeles offered as evidence Luz's Philippine Passport which showed that on 26 January 1987, the date when Luz allegedly signed the said Contract, she was in the United States of America. The spouses Apeles likewise presented several official documents bearing her genuine signatures to reveal their remarkable discrepancy from the signature appearing in the disputed lease contract. The spouses Apeles maintained that they did not intend to sell the subject property.[9]

After the spouses Apeles established by documentary evidence that Luz was not in the country at the time the Contract of Lease with Option to Purchase was executed, Enrico, in rebuttal, retracted his prior declaration that the said Contract was signed by Luz on 26 January 1996. Instead, Enrico averred that Luz signed the Contract after she arrived in the Philippines on 30 May 1987. Enrico further related that after Luz signed the lease contract, she took it with her for notarization, and by the time the document was returned to him, it was already notarized.[10]

On 8 October 2002, the RTC rendered a Decision in Civil Case No. Q-99-36834 in favor of Enrico. Since none of the parties presented a handwriting expert, the RTC relied on its own examination of the specimen signatures submitted to resolve the issue of forgery. The RTC found striking similarity between Luz's genuine signatures in the documents presented by the spouses Apeles themselves and her purportedly forged signature

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[8] *Id.* at 34-36.

[9] *Id.* at 36-38.

[10] *Id.* at 37.

in the Contract of Lease with Option to Purchase. Absent any finding of forgery, the RTC bound the parties to the clear and unequivocal stipulations they made in the lease contract. Accordingly, the RTC ordered the spouses Apeles to execute a Deed of Sale in favor of Enrico upon the latter's payment of the agreed amount of consideration. The *fallo* of the RTC Decision reads:

> WHEREFORE, this Court finds [Enrico's] complaint to be substantiated by preponderance of evidence and accordingly orders –
>
> (1) [The spouses Apeles] to comply with the provisions of the Contract of Lease with Option to Purchase; and upon payment of total consideration as stipulated in the said CONTRACT for [the spouses Apeles] to execute a Deed of Absolute Sale in favor of [Enrico], over the parcel of land and the improvements existing thereon located at No. 87 Timog Avenue, Quezon City.
>
> (2) [The spouses Apeles] to pay [Enrico] moral and exemplary damages in the respective amounts of ₱100,000.00 and ₱50,000.00.
>
> (3) [The spouses Apeles] to pay attorney's fees of ₱50,000.00 and costs of the suit.[11]

The spouses Apeles challenged the adverse RTC Decision before the Court of Appeals and urged the appellate court to nullify the assailed Contract of Lease with Option to Purchase since Luz's signature thereon was clearly a forgery. The spouses Apeles argued that it was physically impossible for Luz to sign the said Contract on 26 January 1987 since she was not in the Philippines on that date and returned five months thereafter. The spouses Apeles called attention to Enrico's inconsistent declarations as to material details involving the execution of the lease contract, thereby casting doubt on Enrico's credibility, as well as on the presumed regularity of the contract as a notarized document.

On 20 December 2004, the Court of Appeals rendered a Decision in CA-G.R. CV No. 76933 granting the appeal of the spouses Apeles and overturning the judgment of the RTC. In arriving at its assailed decision, the appellate court noted that

[11] *Id.* at 41.

the Notary Public did not observe utmost care in certifying the due execution of the Contract of Lease with Option to Purchase. The Court of Appeals chose not to accord the disputed Contract full faith and credence. The Court of Appeals held, thus:

> WHEREFORE, the foregoing premises considered, the appealed decision dated October 8, 2002 of the Regional Trial Court of Quezon City, Branch 215 in Civil Case No. Q-99-36834 for specific performance with damages is hereby REVERSED and a new is one entered dismissing [Enrico's] complaint.[12]

Enrico's Motion for Reconsideration was denied by the Court of Appeals in a Resolution[13] dated 25 April 2005.

Enrico is presently before this Court seeking the reversal of the unfavorable judgment of the Court of Appeals, assigning the following errors thereto:

I.

THE COURT OF APPEALS COMMITTED (sic) REVERSIBLE ERROR WHEN IT BRUSHED ASIDE THE RULING OF THE COURT *A QUO* UPHOLDING THE VALIDITY OF THE CONTRACT OF LEASE WITH OPTION TO PURCHASE AND IN LIEU THEREOF RULED THAT THE SAID CONTRACT OF LEASE WAS A FORGERY AND THUS, NULL AND VOID.

II.

THE COURT OF APPEALS COMMITTED (sic) REVERSIBLE ERROR WHEN CONTRARY TO THE FINDINGS OF THE COURT A QUO IT RULED THAT THE DEFENSE OF FORGERY WAS SUBSTANTIALLY AND CONVINCINGLY PROVEN BY COMPETENT EVIDENCE.

Simply, Enrico faults the Court of Appeals for disturbing the factual findings of the RTC in disregard of the legal aphorism that the factual findings of the trial court should be accorded great weight and respect on appeal.

We do not agree.

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[12] *Id.* at 62-63.

[13] *Id.* at 65.

Enrico's insistence on the infallibility of the findings of the RTC seriously impairs the discretion of the appellate tribunal to make independent determination of the merits of the case appealed before it. Certainly, the Court of Appeals cannot swallow hook, line, and sinker the factual conclusions of the trial court without crippling the very office of review. Although we have indeed held that the factual findings of the trial courts are to be accorded great weight and respect, they are not absolutely conclusive upon the appellate court.[14]

The reliance of appellate tribunals on the factual findings of the trial court is based on the postulate that the latter had firsthand opportunity to hear the witnesses and to observe their conduct and demeanor during the proceedings. However, when such findings are not anchored on their credibility and their testimonies, but on the assessment of documents that are available to appellate magistrates and subject to their scrutiny, reliance on the trial court finds no application.[15]

Moreover, appeal by writ of error to the Court of Appeals under Rule 41 of the Revised Rules of Court, the parties may raise both questions of fact and/or of law. In fact, it is imperative for the Court of Appeals to review the findings of fact made

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[14] Generally, factual findings of the trial court, affirmed by the Court of Appeals, are final and conclusive and may not be reviewed on appeal. The established exceptions are: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the findings are grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the Court of Appeals is based on misapprehension of facts; (5) when the findings of fact are conflicting; (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; (7) when the findings of fact are conclusions without citation of specific evidence on which they are based; (8) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (9) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record. (*Pilipinas Bank v. Glee Chemical Laboratories, Inc.*, G.R. No. 148320, 15 June 2006, 490 SCRA 663, 669-670.)

[15] *Jimenez v. Commission on Ecumenical Mission United Presbyterian Church, USA*, 432 Phil. 895, 906 (2002).

by the trial court. The Court of Appeals even has the power to try cases and conduct hearings, receive evidence and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction.[16]

Enrico assiduously prays before this Court to sustain the validity of the Contract of Lease with Option to Purchase. Enrico asserts that the said Contract was voluntarily entered into and signed by Luz who had it notarized herself. The spouses Apeles should be obliged to respect the terms of the agreement, and not be allowed to renege on their commitment thereunder and frustrate the sanctity of contracts.

Again, we are not persuaded. We agree with the Court of Appeals that in ruling out forgery, the RTC heavily relied on the testimony proffered by Enrico during the trial, ignoring blatant contradictions that destroy his credibility and the veracity of his claims. On direct examination, Enrico testified that Luz signed the Contract of Lease with Option to Purchase on 26 January 1987 in his presence,[17] but he recanted his testimony on the matter after the spouses Apeles established by clear and convincing evidence that Luz was not in the Philippines on that date.[18] In rebuttal, Enrico made a complete turnabout and claimed that Luz signed the Contract in question on 30 May 1987 after her arrival in the country.[19] The inconsistencies in Enrico's version of events have seriously impaired the probative value of his testimony and cast serious doubt on his credibility. His contradictory statements on important details simply eroded the integrity of his testimony.

While it is true that a notarized document carries the evidentiary weight conferred upon it with respect to its due execution, and has in its favor the presumption of regularity, this presumption, however, is not absolute. It may be rebutted by clear and

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[16] *Pelayo v. Aarema Shipping and Trading Co., Inc.*, G.R. No. 155741, 31 March 2006, 486 SCRA 368, 373.

[17] TSN, 20 March 2000, p. 11.

[18] TSN, 6 February 2002,

[19] *Id.*

convincing evidence to the contrary.[20] Enrico himself admitted that Luz took the document and had it notarized without his presence. Such fact alone overcomes the presumption of regularity since a notary public is enjoined not to notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before the said notary public to attest to the contents and truth of what are stated therein.

Although there is no direct evidence to prove forgery, preponderance of evidence inarguably favors the spouses Apeles. In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto.[21] In the case at bar, the spouses Apeles were able to overcome the burden of proof and prove by preponderant evidence in disputing the authenticity and due execution of the Contract of Lease with Option to Purchase. In contrast, Enrico seemed to rely only on his own self-serving declarations, without asserting any proof of corroborating testimony or circumstantial evidence to buttress his claim.

Even assuming for the sake of argument that we agree with Enrico that Luz voluntarily entered into the Contract of Lease with Option to Purchase and personally affixed her signature to the said document, the provision on the option to purchase the subject property incorporated in said Contract still remains unenforceable.

There is no dispute that what Enrico sought to enforce in Civil Case No. Q-99-36834 was his purported right to acquire

[20] *De Jesus v. Court of Appeals*, G.R. No. 127857, 20 June 2006, 491 SCRA 325, 334.

[21] *Go v. Court of Appeals*, 403 Phil. 883, 890-891 (2001).

ownership of the subject property in the exercise of his option to purchase the same under the Contract of Lease with Option to Purchase. He ultimately wants to compel the spouses Apeles to already execute the Deed of Sale over the subject property in his favor.

An option is a contract by which the owner of the property agrees with another person that the latter shall have the right to buy the former's property at a fixed price within a certain time. It is a condition offered or contract by which the owner stipulates with another that the latter shall have the right to buy the property at a fixed price within a certain time, or under, or in compliance with certain terms and conditions; or which gives to the owner of the property the right to sell or demand a sale.[22] An option is not of itself a purchase, but merely secures the privilege to buy. It is not a sale of property but a sale of the right to purchase. It is simply a contract by which the owner of the property agrees with another person that he shall have the right to buy his property at a fixed price within a certain time. He does not sell his land; he does not then agree to sell it; but he does sell something, *i.e.*, the right or privilege to buy at the election or option of the other party. Its distinguishing characteristic is that it imposes no binding obligation on the person holding the option, aside from the consideration for the offer.[23]

It is also sometimes called an "unaccepted offer" and is sanctioned by Article 1479 of the Civil Code:

> Art. 1479. A promise to buy and sell a determinate thing for a price certain is reciprocally demandable.
>
> An accepted unilateral promise to buy or to sell a determinate thing for a price certain is binding upon the promissor if the promise is supported by a consideration distinct from the price.

The second paragraph of Article 1479 provides for the definition and consequent rights and obligations under an option contract. For an option contract to be valid and enforceable against the

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[22] *Tayag v. Lacson*, G.R. No. 134971, 25 March 2004, 426 SCRA 282, 304.

[23] *Limson v. Court of Appeals*, 409 Phil. 221, 231 (2001).

promissor, there must be a separate and distinct consideration that supports it.[24]

In the landmark case of *Southwestern Sugar and Molasses Company v. Atlantic Gulf and Pacific Co.*,[25] we declared that for an option contract to bind the promissor, it must be supported by consideration:

> There is no question that under Article 1479 of the new Civil Code "an option to sell," or "a promise to buy or to sell," as used in said article, to be valid must be "supported by a consideration distinct from the price." This is clearly inferred from the context of said article that a unilateral promise to buy or to sell, even if accepted, is only binding if supported by a consideration. **In other words, "an accepted unilateral promise" can only have a binding effect if supported by a consideration, which means that the option can still be withdrawn, even if accepted, if the same is not supported by any consideration. Here it is not disputed that the option is without consideration. It can therefore be withdrawn notwithstanding the acceptance made of it by appellee.** (Emphasis supplied.)

The doctrine requiring the payment of consideration in an option contract enunciated in *Southwestern Sugar* is resonated in subsequent cases and remains controlling to this day. Without consideration that is separate and distinct from the purchase price, an option contract cannot be enforced; that holds true even if the unilateral promise is already accepted by the optionee.

The consideration is "the why of the contracts, the essential reason which moves the contracting parties to enter into the contract." This definition illustrates that the consideration contemplated to support an option contract need not be monetary. Actual cash need not be exchanged for the option. However, by the very nature of an option contract, as defined in Article 1479, the same is an onerous contract for which the consideration must be something of value, although its kind may vary.[26]

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[24] *Bible Baptist Church v. Court of Appeals*, G.R. No. 126454, 26 November 2004, 444 SCRA 399, 405.

[25] 97 Phil. 241, 251-252 (1955).

[26] *Villamor v. Court of Appeals*, G.R. No. 97332, 10 October 1991, 202 SCRA 607, 615.

We have painstakingly examined the Contract of Lease with Option to Purchase, as well as the pleadings submitted by the parties, and their testimonies in open court, for any direct evidence or evidence *aliunde* to prove the existence of consideration for the option contract, but we have found none. The only consideration agreed upon by the parties in the said Contract is the supposed purchase price for the subject property in the amount not exceeding ₱1.5 Million, which could not be deemed to be the same consideration for the option contract since the law and jurisprudence explicitly dictate that for the option contract to be valid, it **must be supported by a consideration separate and distinct from the price**.

In *Bible Baptist Church v. Court of Appeals*,[27] we stressed that an option contract needs to be supported by a separate consideration. The consideration need not be monetary but could consist of other things or undertakings. However, if the consideration is not monetary, these must be things or undertakings of value, in view of the onerous nature of the option contract. Furthermore, when a consideration for an option contract is not monetary, said consideration must be clearly specified as such in the option contract or clause.

In the present case, it is indubitable that no consideration was given by Enrico to the spouses Apeles for the option contract. The absence of monetary or any material consideration keeps this Court from enforcing the rights of the parties under said option contract.

WHEREFORE, in view of the foregoing, the instant Petition is *DENIED*. The Decision dated 20 December 2004 and Resolution dated 25 April 2005 of the Court of Appeals in CA-G.R. CV No. 76933 are hereby *AFFIRMED*. No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Azcuna,[*] and *Nachura, JJ.,* concur.

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[27] *Supra* note 24.

[*] Associate Justice Adolfo S. Azcuna was designated to sit as additional member replacing Associate Justice Ruben T. Reyes per Raffle dated 16 January 2008.

FIRST DIVISION

[G.R. No. 168139. January 20, 2009]

FERDINAND S. AGUSTIN, *petitioner, vs.* **SPS. MARIANO and PRESENTACION DELOS SANTOS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; DOCTRINE.— *Res judicata* is defined as "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." According to the doctrine of *res judicata*, an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit. To state simply, a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in the former suit.

2. ID.; ID.; ID.; BAR BY PRIOR JUDGMENT DISTINGUISHED FROM CONCLUSIVENESS OF JUDGMENT.— The principle of *res judicata* is applicable by way of: 1) "bar by prior judgment" and 2) "conclusiveness of judgment." We have had occasion to explain the difference between these two aspects of *res judicata* as follows: There is "bar by prior judgment" when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. In this instance, the judgment in the first case constitutes an absolute bar to the second action. Otherwise put, the judgment or decree of the court of competent jurisdiction on the merits concludes the litigation between the parties, as well as their privies, and constitutes a bar to a new action or suit involving the same cause of action before the same or other tribunal. But where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive

only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is the concept of *res judicata* known as "conclusiveness of judgment." Stated differently, any right, fact or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same.

3. ID.; ID.; ID.; BAR BY PRIOR JUDGMENT; REQUISITES.— *Res judicata* applies in the concept of "bar by prior judgment" if the following requisites concur: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) the decision 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 the second action, identity of parties, of subject matter and of causes of action.

4. ID.; ID.; ID.; ID.; ID.; IDENTITY OF SUBJECT MATTER; NOT PRESENT IN CASE AT BAR; SUBJECT MATTER OF AN ACTION, EXPLAINED.— As to the subject matter, we find that there is no identity. The subject matter of an action is "the matter or thing with respect to which the controversy has arisen, concerning which the wrong has been done, and this ordinarily is the property, or the contract and its subject matter, or the thing in dispute." In an unlawful detainer case, the subject matter is the contract of lease between the parties while the breach thereof constitutes the suit's cause of action. In the present case, the lease contract subject of the controversy is verbal and on a monthly basis. In these instances, it is well settled that the lease is one with a definite period which expires after the last day of any given thirty-day period. Following this reasoning, it becomes apparent that what exists between the parties is not just one continuous contract of lease, but a succession of lease contracts, each spanning a period of one month. Hence, to be accurate, each action for ejectment—each referring to a unique thirty-day period of occupation of respondents' property by the petitioner—deals with a separate and distinct lease contract corresponding to a separate and distinct juridical relation between the parties. Considering,

therefore, that the subject matter of Civil Case No. 167142-CV is a different contract of lease from the subject matter of the instant case, it is obvious that there is no identity of subject matter between the first ejectment suit and the ejectment suit subject of the present action.

5. ID.; ID.; ID.; ID.; IDENTITY OF CAUSES OF ACTION; NOT PRESENT IN CASE AT BAR; CAUSE OF ACTION, DEFINED.— Since there is no identity of subject matter between the two cases, it is but logical to conclude that there is likewise no identity of causes of action. A cause of action is the act or omission by which a party violates the legal right of the other. Here, petitioner argues that there is but one single cause of action in both ejectment suits as "the alleged acts of dispossession or unlawful withholding of possessions were the same delict or wrong that were alleged and prayed for by the respondents in both complaints for ejectment." Petitioner is mistaken. In the first action for ejectment, respondents' cause of action consists of petitioner's continued possession of the premises in violation of respondents' legal rights under the provisions of the amended Rent Control Act, which rights were deemed included into the lease contract existing at the time of the filing of the case in May 2000. On the other hand, the cause of action in the second suit only materialized when petitioner refused to vacate the premises despite receipt of the notice of termination of lease sent by respondents on October 10, 2002 and the expiration of the 30-day grace period given him. From that moment on, petitioner's possession of the leased premises became unlawful and a new cause of action accrued. Hence, the cause of action in the present case for ejectment only arose subsequent to the dismissal of the first ejectment suit dated January 9, 2002. Therefore, while the causes of action in the first and second ejectment suits are similar in that both consist of unlawful possession by petitioner, they are not identical. Each act of refusal to vacate by petitioner—one in May 2000 and another in October 2002—breached separate and distinct lease contracts which consequently gave birth to separate and distinct causes of action. Petitioner's contention that there is but one single cause of action in the two ejectment suits must perforce fail.

6. ID.; ID.; ID.; ID.; ID.; ID.; TEST TO DETERMINE PRESENCE THEREOF.— We have previously employed various tests in

determining whether or not there is identity of causes of action as to warrant the application of the principle of *res judicata*. One test of identity is the "absence of inconsistency test" where it is determined whether the judgment sought will be inconsistent with the prior judgment. If no inconsistency is shown, the prior judgment shall not constitute a bar to subsequent actions. In one case, we held that the failure of the petitioner to secure an injunction to prevent the respondents from entering the land and gathering nuts is not inconsistent with the petitioner's being adjudged the owner of the land. In another case, we found that affirmative relief in a subsequent action for specific performance and recovery of ownership and possession with damages against the petitioner would be inconsistent with a prior judgment holding the same petitioner the owner of the lot under litigation. Applying the same test to the case before us, we are convinced that a finding in the instant case that the lease contract has already expired would not be inconsistent with the finding of lack of cause of action in the first ejectment case. Petitioner asserts that the expiration of the lease contract is one of the requisites of ejectment on the ground of "need of premises," and that necessarily, the issue of expiration of the lease contract had already been disposed of in the first ejectment case. Accordingly, petitioner contends that a decision in favor of respondents in the instant case would in effect be inconsistent with the decision rendered in the first ejectment case. Petitioner's contention is bereft of merit. We reiterate that the subject matter of the first ejectment suit, on the one hand, and the subject matter of the second ejectment suit, on the other, are two separate and distinct contracts of lease. Given these facts, the issue of expiration of lease contract involved in the first case is different and far removed from the issue of expiration of the lease contract subject of the instant case. Logically, any ruling on the expiration of lease contract in the earlier ejectment case will never be conclusive on this subsequent case.

7. ID.; ID.; ID.; CONCLUSIVENESS OF JUDGMENT; DOCTRINE.— Conceding, for the sake of argument, petitioner's premise that the first and second ejectment cases involve the same lease contract, petitioner's argument still does not hold water, but even serves to boost respondents' case. It is to be noted that by singling out the issue of the expiration of the lease contract, petitioner invoked the

application of *res judicata* in the concept of "conclusiveness of judgment." Well settled is the rule that where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. In the first case for ejectment, it bears stressing that the dismissal of the complaint only declared that the respondents failed to comply with the requirements when the ground for ejectment is personal need of premises. Notably, no express pronouncement can be found in the decision of the MeTC of Manila, Branch 22 as to whether or not the lease contract subsisting between the parties had already expired. The decision therefore only directly attests to respondents' lack of cause of action when the ground for ejectment is personal need of premises, and not to the particular issue of expiration of the contract of lease subsisting between the parties. Hence, we cannot sustain petitioner's reliance on the doctrine of conclusiveness of judgment as regards the expiration of the purportedly subsisting lease contract.

8. ID.; ID.; ID.; IDENTITY OF CAUSES OF ACTION; SAME EVIDENCE TEST.— The more common approach in ascertaining identity of causes of action is the "same evidence test," whereby the following question serves as a sufficient criterion: "would the same evidence support and establish both the present and former causes of action?" If the answer is in the affirmative, then the prior judgment is a bar to the subsequent action; conversely, it is not. In our view, a simple application of this test to the facts of the instant case readily reveals that the evidence necessary to obtain affirmative relief in the present action for ejectment based on expiration of lease contract is not the same as that in the first ejectment case based on "need of premises." At this juncture, we again stress that there is no identity of subject matter between the previous and present ejectment suits. This finding necessarily translates to the utter difference in the pieces of evidence necessary to prove the causes of action in the two actions.

9. ID.; ID.; ID.; A JUDGMENT IN A PREVIOUS CASE OF EJECTMENT COULD NOT SERVE AS A BAR TO A SUBSEQUENT ONE IF THE LATTER IS PREDICATED ON A NEW FACTUAL AND JURIDICAL SITUATION.— Aside from the "absence of inconsistency test" and "same

evidence test," we have also ruled that a previous judgment operates as a bar to a subsequent one when it had "touched on [a] matter already decided," or if the parties are in effect "litigating for the same thing." Under these tests, however, petitioner's reliance on the applicability of the principle of *res judicata* is still for naught, given that the two cases for ejectment do not share the same subject matter. We have consistently held that a judgment in a previous case of ejectment could not serve as a bar to a subsequent one if the latter is predicated on a new factual and juridical situation. As a consequence, even in cases where the dismissal of a suit brought for the ejectment of the lessee for nonpayment of rentals for a given period becomes final and executory, the lessor is still not precluded from making a new demand upon the tenant to vacate should the latter again fail to pay the rents due or should another ground for ejectment arise, in which case such subsequent demand and refusal of the tenant to vacate shall constitute a new cause of action.

10. ID.; ID.; ID.; APPLICATION OF THE PRINCIPLE OF *RES JUDICATA* IN CASE AT BAR, NOT PROPER.— We are not unaware of authorities that tend to widen rather than to restrict the doctrine of *res judicata* for the reason that public interest, as well as private interest, demands an end to litigation as well as the protection of the individual from being vexed twice for the same cause. Indeed, to adhere otherwise would "subject the public peace and quiet to the will and neglect of individuals and prefer the gratification of the litigious disposition on the part of suitors to the preservation of the public tranquility and happiness." However, as in this case, we do not see how untempered overzealousness can help work justice into a situation where an application of the principle of *res judicata* is clearly not proper.

11. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATION; NOVATION; NEVER PRESUMED, AND THE *ANIMUS NOVANDI*, MUST APPEAR BY EXPRESS AGREEMENT OF THE PARTIES, OR BY ACTS THAT ARE TOO CLEAR AND UNEQUIVOCAL TO BE MISTAKEN.— As to the issue of novation raised by petitioner, we are not persuaded by the latter's theory that the acceptance of rental payments by respondents pending the final determination of the instant petition amounts to a novation of

the decision of the CA ordering petitioner to vacate the subject leased premises. In the first place, there is nothing to novate because as petitioner himself pounds on, the judgment to vacate has not yet become final. Furthermore, it bears stressing that novation is never presumed, and the *animus novandi*, whether totally or partially, must appear by express agreement of the parties, or by acts that are too clear and unequivocal to be mistaken. In the present case, no intent to novate can be gleaned from the parties' actuations as they entered into the subsequent lease contracts with the qualification that the instant petition is pending before this Court. Hence, the final outcome of the judgment in this case will only operate as a resolutory condition to the existing contract between the parties as regards the leased premises.

APPEARANCES OF COUNSEL

Ferdinand S. Agustin for himself.
Icaonapo Litong Morales & Associates Law Office for respondents.

D E C I S I O N

PUNO, *C.J.*:

Before us is a petition for review on *certiorari* under Rule 45 seeking a review of the Decision[1] and Resolution[2] of the Court of Appeals (CA) in CA G.R. SP No. 80586 partly reversing the decision[3] of the Regional Trial Court (RTC), Branch 33, Manila.

As borne by the records, respondent spouses Mariano delos Santos and Presentacion delos Santos are the lawful owners of apartment units located at 230 Manrique Street, Sampaloc, Manila.[4] On the other hand, petitioner Ferdinand Agustin has continuously

[1] Promulgated on February 3, 2005.

[2] Dated May 18, 2005.

[3] Dated October 14, 2003.

[4] *Rollo*, p. 30.

occupied one of respondents' apartment units since 1990 for a monthly rent of two thousand pesos (₱2,000.00). The monthly rental was increased to two thousand three hundred pesos (₱2,300.00) in May 1999.[5]

On May 10, 2000, respondents filed a complaint for ejectment against petitioner before Branch 22 of the Metropolitan Trial Court (MeTC) of Manila docketed as Civil Case No. 167142-CV. Respondents alleged that they needed to repossess the apartment unit occupied by the petitioner because their daughter's children would be studying at the University of Sto. Tomas in Manila.[6]

In a decision dated January 9, 2002, the MeTC, Branch 22 held:

> Based on the evidence adduced by both parties, this Court is of the opinion, and so holds that the instant complaint for ejectment lodged by the plaintiffs against the defendants, MUST BE DISMISSED for lack of cause of action, it appearing that plaintiffs failed to comply with the requirements when the ground for ejectment is personal need of the premises.
>
> WHEREFORE, premises considered, the instant complaint is hereby DISMISSED without prejudice to the right of the plaintiffs to collect the monthly rental of two thousand three hundred pesos (₱2,300.00) agreed upon in the Lease Contract and the corresponding fifteen percent (15%) increase thereof, in accordance with the new rent control law with costs against the plaintiff.
>
> The counterclaim is likewise dismissed.
>
> SO ORDERED.[7]

The decision lapsed into finality and was enforced by the respondents through the imposition and collection of the monthly rent and the corresponding fifteen percent (15%) increase thereon. A few months thereafter, respondents, in a Notice of Termination dated October 10, 2002, informed petitioner of the termination

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[5] *Id.* at p. 62.

[6] *Id.*

[7] *Id.* at p. 64.

of the verbal month-to-month contract of lease and gave him thirty (30) days within which to vacate and peacefully surrender the premises.[8]

The petitioner failed to vacate the premises despite notice. Thus, respondents again filed a complaint for ejectment against petitioner on the ground of termination of the contract of lease. The second ejectment case, which is the subject of the instant petition, was docketed as Civil Case No. 174168 in Branch 15 of the MeTC of Manila.

In a decision dated June 12, 2003, the MeTC, Branch 15 ruled that petitioner's reliance on *res judicata* was misplaced because the cause of action in Civil Case No. 174168 is anchored on a different ground.[9] According to the MeTC, the verbal lease contract that existed between the parties on a month-to-month basis pursuant to Article 1687 of the Civil Code is one with a fixed term, and terminates at the end of each month, if notice to vacate is properly given. Accordingly, the lease period had already expired. Hence:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiffs and against defendant, ordering the latter and all persons claiming right under him, to vacate the subject premises and surrender peaceful possession thereof to the plaintiffs, and for defendant to pay plaintiffs:
>
> a) the fair rental value or reasonable compensation for the continued use and occupation of the premises at the rate of ₱5,000.00 per month effective upon the date of filing of the complaint on November 19, 2002 and until the premises shall have been totally vacated; and
>
> b) attorney's fees in the amount of Ten Thousand (₱10,000.00) Pesos, plus the costs of suit.
>
> SO ORDERED.[10]

On appeal, the RTC of Manila reversed the MeTC decision, thus:

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[8] CA *Rollo*, p. 99.

[9] *Rollo*, p. 66.

[10] *Id*.

The Court agrees with the first error cited by the defendant-appellant.

Indeed, the Court *a quo* cannot require the defendant-appellant to pay the plaintiffs-appellees the amount of Php5,000.00 per month as the fair rental value or a reasonable compensation for the continued use and occupation of the premises because before the termination of the month to month verbal contract of lease, the rental being paid was ₱2,530.00 per month.

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The court *a quo* was in error when it ruled that *res judicata* does not apply in this case.

The court *a quo* ruled that there is no *res judicata* because there is no identity of cause of action. The Court stated that in the first ejectment case decided by Hon. Hipolito dela Vega the ground for ejectment was based on the need by the lessor of the leased premises, while the case at bar is based on the expiration or termination. This is erroneous because there is only one cause of action-–unlawful detainer–although this cause of action may give the plaintiffs several reliefs. They may eject the defendant on the ground of 'need of premises by owner' or 'expiration of the period of verbal lease agreement'. And when the plaintiffs-appellees filed two separate complaints for these reliefs against the defendant-appellant, such acts constitute splitting up of the cause of action. Thus, under Section 4, Rule 2 of the Revised Rules of Civil Procedure, 'If two or more suits are instituted on the basis of the same cause of action, the filing of one or a judgment upon the merits in any one is available as a ground for the dismissal of the others.

Consequently, since the ejectment case based on 'the use of the premises by the owner' filed by the plaintiffs-appellees was dismissed on the merits by the Honorable Judge Hipolito dela Vega, the filing of the case at bar against the defendant-appellant may be dismissed on the ground of *res judicata*.

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WHEREFORE, the judgment appealed from is REVERSED on the ground of *res judicata*. The Clerks of Court of the Regional Trial Court and the Metropolitan Trial Court of Manila are ordered to return to the appellant the excess of ₱5,000.00 a month or the sum of ₱2,217 a month beginning August 2003. The supersedeas bond put up by

the appellant is ordered cancelled and the appellees are ordered to pay the cost of the supersedeas bond; and to pay the cost of suit.

SO ORDERED.[11]

Respondents repaired to the CA, which partially reversed the findings of the RTC. In its decision, the CA found that the acts and omissions complained of and involved in the two civil cases were not the same.[12] Likewise, the appellate court applied the "same evidence" test and decided that there was no identity of causes of action between the first and second cases of ejectment as different facts and evidence were needed for the resolution of each case, and consequently, the principle of *res judicata* as a bar by prior judgment was inapplicable.[13] It was also found that *res judicata* in the concept of "conclusiveness of judgment" will not apply since the "personal need" issue decided upon in the first case is different from and does not encompass any element of the "expiration of lease contract" at issue in the second case.[14] Lastly, the CA declared that the lease contract between the parties was on a month-to-month basis and that petitioner should vacate the subject premises because his lease had already expired.[15] Thus, the dispositive portion of the decision reads:

WHEREFORE, premises considered, the Decision dated October 14, 2003 of the Regional Trial Court, Branch 33, Manila is PARTLY REVERSED as follows:

a) Appellees-petitioners' complaint for Ejectment is GRANTED;

b) Appellant-respondent and all persons claiming right under him are hereby ORDERED TO VACATE the subject premises and to surrender peaceful possession thereof to appellees-petitioners; and

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[11] *Id.* at pp. 70-72.

[12] *Id.* at p. 37.

[13] *Id.* at pp. 38-39.

[14] *Id.* at p. 40.

[15] *Id.* at p. 41.

c) The appellees-petitioners must reimburse the appellant-respondent the amount in excess of the monthly rental of ₱2,530.00 that the appellees-petitioners can charge until the appellant-respondent surrenders peaceful possession of the premises to them.

SO ORDERED.[16]

Petitioner filed a motion for reconsideration of said Decision, which was also denied by the appellate court.

Persisting in his position that the principle of *res judicata* in its concept of bar by prior judgment should apply in the instant case and that therefore, the first suit for ejectment should operate as a bar to the present action for ejectment, petitioner is now before us questioning the order of the CA for him to vacate the leased premises.

Res judicata is defined as "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment."[17] According to the doctrine of *res judicata*, an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit.[18] To state simply, a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in the former suit.[19]

The principle of *res judicata* is applicable by way of: 1) "bar by prior judgment" and 2) "conclusiveness of judgment." We

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[16] *Id.* at p. 42.

[17] *Oropeza Marketing Corporation v. Allied Banking Corporation*, G.R. No. 129788, December 3, 2002, 393 SCRA 278, 285, quoting Black's Law Dictionary, 4th Ed. (1968).

[18] *Philippine National Bank v. Barreto, et al.*, 52 Phil. 818, 823-824 (1929).

[19] *Taganas v. Emulsan*, G.R. No. 146980, September 2, 2003, 410 SCRA 237, 241-242.

have had occasion to explain the difference between these two aspects of *res judicata* as follows:

> There is "bar by prior judgment" when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. In this instance, the judgment in the first case constitutes an absolute bar to the second action. Otherwise put, the judgment or decree of the court of competent jurisdiction on the merits concludes the litigation between the parties, as well as their privies, and constitutes a bar to a new action or suit involving the same cause of action before the same or other tribunal.
>
> But where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is the concept of *res judicata* known as "conclusiveness of judgment." Stated differently, any right, fact or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claim, demand, purpose, or subject matter of the two actions is the same.[20]

In the case at bar, petitioner seeks to apply the principle of *res judicata* in its concept of "bar by prior judgment" by pointing out that the final decision rendered in the first case for ejectment, Civil Case No. 167142-CV, constitutes a bar to the litigation of the second ejectment suit, the subject of the instant petition.[21]

We find no merit in the argument of the petitioner.

Res judicata applies in the concept of "bar by prior judgment" if the following requisites concur: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; and

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[20] *Oropeza Marketing Corp. v. Allied Banking Corp., supra* note 17*; Alamayri v. Pabale, et al.,* G.R. No. 151243, April 30, 2008.

[21] Civil Case No. 174168.

(4) there must be, between the first and the second action, identity of parties, of subject matter and of causes of action.[22]

In the case before us, the existence of and compliance with the first three elements is undisputed. Likewise, there is no issue as to the identity of the parties in the two actions for ejectment. Hence, the identity of subject matter and the identity of causes of action between the first and second ejectment cases are the only remaining bones of contention in need of our final determination concerning the issue of *res judicata*.

As to the subject matter, we find that there is no identity. The subject matter of an action is "the matter or thing with respect to which the controversy has arisen, concerning which the wrong has been done, and this ordinarily is the property, or the contract and its subject matter, or the thing in dispute."[23] In an unlawful detainer case, the subject matter is the contract of lease between the parties while the breach thereof constitutes the suit's cause of action.[24] In the present case, the lease contract subject of the controversy is verbal and on a monthly basis. In these instances, it is well settled that the lease is one with a definite period which expires after the last day of any given thirty-day period.[25] Following this reasoning, it becomes apparent that what exists between the parties is not just one continuous contract of lease, but a succession of lease contracts, each spanning a period of one month. Hence, to be accurate, each

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[22] *Cruz v. CA*, G.R. No. 164797, February 13, 2006, 482 SCRA 379, 388; *Taganas v. Emulsan, supra* note 19; *Arenas v. Court of Appeals, et al.*, G.R. No. 126640, November 23, 2000, 345 SCRA 617, 628; *Filipinas Investment and Finance Corporation v. Intermediate Appellate Court*, G.R. Nos. 66059-60, December 4, 1989, 179 SCRA 728, 736.

[23] *Bachrach Corporation v. Court of Appeals*, G.R. No. 128349, September 25, 1998, 296 SCRA 487, 494; *Filipinas Investment and Finance Corporation v. Intermediate Appellate Court, id.*; *Yusingco v. Ong Hing Lian*, No. L-26523, December 24, 1971, 42 SCRA 598, 603.

[24] *Bachrach Corporation v. Court of Appeals, id.; Siapian v. Court of Appeals*, G.R. No. 111928, March 1, 2000, 327 SCRA 11, 18.

[25] *Baens v. Court of Appeals*, No. 57091, November 23, 1983, 125 SCRA 634, 644; *La Jolla, Inc. v. Court of Appeals*, G.R. No. 115851, June 20, 2001, 359 SCRA 102, 110.

action for ejectment—each referring to a unique thirty-day period of occupation of respondents' property by the petitioner—deals with a separate and distinct lease contract corresponding to a separate and distinct juridical relation between the parties. Considering, therefore, that the subject matter of Civil Case No. 167142-CV is a different contract of lease from the subject matter of the instant case, it is obvious that there is no identity of subject matter between the first ejectment suit and the ejectment suit subject of the present action.

Since there is no identity of subject matter between the two cases, it is but logical to conclude that there is likewise no identity of causes of action. A cause of action is the act or omission by which a party violates the legal right of the other.[26] Here, petitioner argues that there is but one single cause of action in both ejectment suits as "the alleged acts of dispossession or unlawful withholding of possessions were the same delict or wrong that were alleged and prayed for by the respondents in both complaints for ejectment."[27] Petitioner is mistaken. In the first action for ejectment, respondents' cause of action consists of petitioner's continued possession of the premises in violation of respondents' legal rights under the provisions of the amended Rent Control Act, which rights were deemed included into the lease contract existing at the time of the filing of the case in May 2000.[28] On the other hand, the cause of action in the second suit only materialized when petitioner refused to vacate the premises despite receipt of the notice of termination of lease sent by respondents on October 10, 2002 and the expiration of the 30-day grace period given him. From that moment on, petitioner's possession of the leased premises became unlawful

[26] Rule 2, Section 2, 1997 Rules of Civil Procedure; *Bachrach Corportion v. Court of Appeals*, *supra* note 24; *Development Bank of the Philippines v. Pundogar*, G.R. No. 96921, January 29, 1993, 218 SCRA 118, 132; *Racoma v. Fortich*, No. L-29380, June 10, 1971, 39 SCRA 520, 524; *Santos v. Intermediate Appellate Court*, G.R. No. 66671, October 28, 1986, 145 SCRA 238, 245.

[27] *Rollo*, p. 144.

[28] See *Chua v. Victorio*, G.R. No. 157568, May 18, 2004, 428 SCRA 447, 456.

and a new cause of action accrued. Hence, the cause of action in the present case for ejectment only arose subsequent to the dismissal of the first ejectment suit dated January 9, 2002. Therefore, while the causes of action in the first and second ejectment suits are similar in that both consist of unlawful possession by petitioner, they are not identical. Each act of refusal to vacate by petitioner—one in May 2000 and another in October 2002—breached separate and distinct lease contracts which consequently gave birth to separate and distinct causes of action. Petitioner's contention that there is but one single cause of action in the two ejectment suits must perforce fail.

We have previously employed various tests in determining whether or not there is identity of causes of action as to warrant the application of the principle of *res judicata*. One test of identity is the "absence of inconsistency test" where it is determined whether the judgment sought will be inconsistent with the prior judgment. If no inconsistency is shown, the prior judgment shall not constitute a bar to subsequent actions.[29] In one case,[30] we held that the failure of the petitioner to secure an injunction to prevent the respondents from entering the land and gathering nuts is not inconsistent with the petitioner's being adjudged the owner of the land. In another case,[31] we found that affirmative relief in a subsequent action for specific performance and recovery of ownership and possession with damages against the petitioner would be inconsistent with a prior judgment holding the same petitioner the owner of the lot under litigation.

Applying the same test to the case before us, we are convinced that a finding in the instant case that the lease contract has already expired would not be inconsistent with the finding of lack of cause of action in the first ejectment case. Petitioner asserts that the expiration of the lease contract is one of the requisites of ejectment on the ground of "need of premises," and that necessarily, the issue of expiration of the lease contract

[29] *Tan v. Valdehueza*, No. L-38745, August 6, 1975, 66 SCRA 61, 64.

[30] *Id.*

[31] *Valencia, et al. v. Regional Trial Court*, G.R. No. 82112, April 3, 1990, 184 SCRA 80, 92.

had already been disposed of in the first ejectment case. Accordingly, petitioner contends that a decision in favor of respondents in the instant case would in effect be inconsistent with the decision rendered in the first ejectment case. Petitioner's contention is bereft of merit. We reiterate that the subject matter of the first ejectment suit, on the one hand, and the subject matter of the second ejectment suit, on the other, are two separate and distinct contracts of lease. Given these facts, the issue of expiration of lease contract involved in the first case is different and far removed from the issue of expiration of the lease contract subject of the instant case. Logically, any ruling on the expiration of lease contract in the earlier ejectment case will never be conclusive on this subsequent case.

Conceding, for the sake of argument, petitioner's premise that the first and second ejectment cases involve the same lease contract, petitioner's argument still does not hold water, but even serves to boost respondents' case. It is to be noted that by singling out the issue of the expiration of the lease contract, petitioner invoked the application of *res judicata* in the concept of "conclusiveness of judgment." Well settled is the rule that where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein.[32] In the first case for ejectment, it bears stressing that the dismissal of the complaint only declared that the respondents failed to comply with the requirements when the ground for ejectment is personal need of premises. Notably, no express pronouncement can be found in the decision of the MeTC of Manila, Branch 22 as to whether or not the lease contract subsisting between the parties had already expired. The decision therefore only directly attests to respondents' lack of cause of action when the ground for ejectment is personal need of premises, and not to the particular issue of expiration of the contract of lease subsisting between the parties. Hence, we cannot sustain petitioner's reliance on the doctrine of

[32] *Alamayri v. Pabale, et al., supra* note 20.; *Oropeza Marketing Corp. v. Allied Banking Corp., supra* note 17.

conclusiveness of judgment as regards the expiration of the purportedly subsisting lease contract.

The more common approach in ascertaining identity of causes of action is the "same evidence test," whereby the following question serves as a sufficient criterion: "would the same evidence support and establish both the present and former causes of action?"[33] If the answer is in the affirmative, then the prior judgment is a bar to the subsequent action; conversely, it is not.

In our view, a simple application of this test to the facts of the instant case readily reveals that the evidence necessary to obtain affirmative relief in the present action for ejectment based on expiration of lease contract is not the same as that in the first ejectment case based on "need of premises." At this juncture, we again stress that there is no identity of subject matter between the previous and present ejectment suits. This finding necessarily translates to the utter difference in the pieces of evidence necessary to prove the causes of action in the two actions.

Aside from the "absence of inconsistency test" and "same evidence test," we have also ruled that a previous judgment operates as a bar to a subsequent one when it had "touched on [a] matter already decided,"[34] or if the parties are in effect "litigating for the same thing."[35] Under these tests, however, petitioner's reliance on the applicability of the principle of *res judicata* is still for naught, given that the two cases for ejectment do not share the same subject matter. We have consistently held that a judgment in a previous case of ejectment could not serve as a bar to a subsequent one if the latter is predicated on a new factual and juridical situation. As a consequence, even in cases where the dismissal of a suit brought for the ejectment of the lessee for nonpayment of rentals for a given period becomes

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[33] *Santos v. Intermediate Appellate Court, supra* note 26; *Cruz v. CA, supra* note 22; *Development Bank of the Philippines v. Pundogar, supra* note 26.

[34] *Arenas v. Court of Appeals, et al., supra* note 22 at 629.

[35] *Id.*

final and executory, the lessor is still not precluded from making a new demand upon the tenant to vacate should the latter again fail to pay the rents due or should another ground for ejectment arise, in which case such subsequent demand and refusal of the tenant to vacate shall constitute a new cause of action.[36]

Finally, the circumstances of the case at bar are comparable to those in ***Siapian v. Court of Appeals,*** which likewise involved a monthly verbal contract of lease. We disposed of the issue of identity of causes of action in the following manner:

> The first ejectment case had for a cause of action based on the need for the premises. The second ejectment case involved a different cause of action, that is, for non-payment of rentals up to February 1982. In the third case, the cause of action was the need for the premises and non-payment of rentals from November 1987 up to May 1988. In this latest ejectment suit, the cause of action is the non-payment of rentals from December 1987 accumulating to ₱17,064.65. Clearly, the cause of action and the circumstances present in the instant case are not the same but differ markedly from those in previous suits cited. Reliance on the doctrine of *res judicata* by petitioner is sadly misplaced.[37]

We are not unaware of authorities that tend to widen rather than to restrict the doctrine of *res judicata* for the reason that public interest, as well as private interest, demands an end to litigation as well as the protection of the individual from being vexed twice for the same cause-.[38] Indeed, to adhere otherwise would "subject the public peace and quiet to the will and neglect of individuals and prefer the gratification of the litigious disposition on the part of suitors to the preservation of the public tranquility

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[36] *Guiang v. Samano*, G.R. No. 50501, April 22, 1991, 196 SCRA 114, 120; *Limpan Investment Corporation v. Lim Sy*, No. L-31920, April 8, 1988, 159 SCRA 484, 491; *Viray v. Mariñas*, No. L-33168, January 11,1973, 49 SCRA 45, 53.

[37] *Supra* note 24 at 21.

[38] *Vda. de Cruzo v. Carriaga, Jr.*, G.R. Nos. 75109 & L-10174, June 28, 1989, 174 SCRA 330, 341, citing *Paz v. Inandan*, 75 Phil. 608 (1945).

and happiness."[39] However, as in this case, we do not see how untempered overzealousness can help work justice into a situation where an application of the principle of *res judicata* is clearly not proper.

As to the issue of novation raised by petitioner, we are not persuaded by the latter's theory that the acceptance of rental payments by respondents pending the final determination of the instant petition amounts to a novation of the decision of the CA ordering petitioner to vacate the subject leased premises. In the first place, there is nothing to novate because as petitioner himself pounds on, the judgment to vacate has not yet become final. Furthermore, it bears stressing that novation is never presumed, and the *animus novandi*, whether totally or partially, must appear by express agreement of the parties, or by acts that are too clear and unequivocal to be mistaken.[40] In the present case, no intent to novate can be gleaned from the parties' actuations as they entered into the subsequent lease contracts with the qualification that the instant petition is pending before this Court. Hence, the final outcome of the judgment in this case will only operate as a resolutory condition to the existing contract between the parties as regards the leased premises.

IN VIEW WHEREOF, the instant petition is *DENIED*. The decision of the Court of Appeals is *AFFIRMED*.

SO ORDERED.

Carpio, Corona, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

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[39] *Cruz v. CA, supra* note 22, citing *Heirs of the Late Faustina Adalid v. Court of Appeals,* G.R. No. 122202, May 26, 2005, 459 SCRA 27, 39.

[40] *California Bus Lines, Inc. v. State Investment House, Inc.*, G.R. No. 147950, December 11, 2003, 418 SCRA 297, 309.

FIRST DIVISION

[G.R. No. 169338. January 20, 2009]

NEW BIAN YEK COMMERCIAL, INC., represented by DANFORD S. SY, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN (VISAYAS), RODOLFO V. GONZALES, JR., Mayor of the Municipality of Valencia, Negros Oriental, ROLANDO B. OBAÑANA, Municipal Treasurer of the Municipality of Valencia, Negros Oriental, ERWIN VERGARA, Provincial Attorney of Negros Oriental, ALEX ABELIDO and DOMINADOR ABELIDO,** *respondents*.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; OFFICE OF THE OMBUDSMAN; ABSENT GRAVE ABUSE OF DISCRETION, THE SUPREME COURT WILL NOT INTERFERE WITH THE OMBUDSMAN'S FINDING OF PROBABLE CAUSE.— To afford the Ombudsman a wide latitude of discretion, the Court, as a general rule, does not interfere with the Ombudsman's determination of whether or not there is probable cause against the respondent. The Court only exercises its power of judicial review when the Ombudsman committed grave abuse of discretion such as when he ignores the clear sufficiency of evidence to support a finding of probable cause.

2. ID.; ADMINISTRATIVE LAW; GOVERNMENT PROCUREMENT; PD 1594; NOT VIOLATED BY THE RESPONDENT PUBLIC OFFICIALS WHEN IT RELEASED THE RETENTION MONEY TO THE CONTRACTOR; RETENTION MONEY, WHEN MAY BE RELEASED BY THE PROCURING ENTITY.— Under the rules on government procurement, retention money is a form of security which seeks to ensure that the work is satisfactorily done and on schedule. It is withheld by the procuring entity (*i.e.*, the government) from progress payments due to the contractor to guarantee indemnity for uncorrected discovered defects and third-party liabilities in infrastructure projects. CI6 of the Implementing Rules and Regulations of PD 1594 provides for

two instances when the procuring entity may release the retention money. First, the contractor is entitled, as a matter of right, to receive the total retention money upon final acceptance by the procuring entity of the works. Second, when the procuring entity has paid at least 50% of the total contract price, the contractor may request the procuring entity to release the retention money provided that it (contractor) submits, in lieu thereof, a surety bond callable on demand. Notably, in this case, the municipality released the retention money more than a year after the project should have been completed. Moreover, petitioner neither averred that Gonzales and Obañana released the retention money prior to the final acceptance of the work nor required Legacy to submit a surety bond callable on demand in favor of the municipality. Thus, petitioner failed to show that the said officials violated PD 1594 when they released the retention money to Legacy.

3. CRIMINAL LAW; REPUBLIC ACT 3019, SECTION 3 (E) THEREOF; FINDING OF PROBABLE CAUSE AGAINST PRIVATE RESPONDENTS FOR VIOLATION THEREOF, WARRANTED.— Nevertheless, there was sufficient ground to engender a well-founded belief that Gonzales and Obañana violated Section 3(e) of RA 3019. The February 11, 2003 writ of preliminary attachment prohibited Gonzales and Obañana from paying the balance of the contract price (including the retention money) to Legacy and created a lien over the said money in favor of petitioner. By releasing the balance of the contract price, they impaired petitioner's lien and caused it (petitioner) undue injury. In effect, Gonzales and Obañana extended unwarranted benefits to Legacy and, ultimately, the Abelidos who were able to take full control of the money which, by virtue of the February 11, 2003 writ of preliminary attachment, was in *custodia legis*. Thus, the Ombudsman committed grave abuse of discretion in finding that there was no probable cause against Gonzales, Obañana and the Abelidos for violation of Section 3(e) of RA 3019. However, he correctly ruled that there was no probable cause against Vergara. He rendered his opinion on February 4, 2003, that is, before the RTC ordered the issuance of the writ of preliminary attachment and neither facilitated nor participated in releasing the balance of the Valencia project's contract price.

APPEARANCES OF COUNSEL

Palma & Pon-Palma for petitioner.

R E S O L U T I O N

CORONA, *J.*:

On August 13, 2000, the municipality of Valencia, Negros Oriental awarded to Legacy Construction (Legacy), a corporation owned by respondents Alex Abelido and Dominador Abelido, the ₱14,621,967.79, 300-day[1] contract for the improvement of its waterworks system (Valencia project).

In connection with the Valencia project, Legacy through its project engineer, Jaime Lu, purchased from petitioner New Bian Yek Commercial, Inc. pipes worth ₱2,816,590.[2] As payment for the pipes, Lu issued two personal checks[3] to petitioner. The said checks were, however, dishonored upon presentment but Legacy did not replace them. Because Legacy had already received a significant portion of the contract price from the municipality, petitioner demanded payment for the pipes (amounting to ₱1,766,950) on December 11, 2002. Legacy, however, ignored petitioner's demand.

On April 15, 2002, petitioner requested respondent Rodolfo V. Gonzales, Jr., municipal mayor of Valencia, Negros Oriental, to pay for Legacy's obligation using the retention money[4] withheld

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[1] The Valencia project should have been completed on May 13, 2001.

[2] Legacy returned ₱350,000 worth of pipes.

[3] Lu issued the following Philippine National Bank checks to petitioner:

Check No.	Amount
0014298	₱ 800,000.00
0014299	966,950.00
TOTAL	₱1,766,950.00

[4] Implementing Rules and Regulations of Presidential Decree (PD) 1594, CI6 provides:

CI 6. RETENTION MONEY

1) Progress payments are subject to retention of ten percent (10%) referred to as "retention money." Such retention shall be based on

by the municipality for the Valencia project. Unsure of what to do, Gonzales referred the matter to Negros Oriental provincial attorney, respondent Erwin B. Vergara.

On January 29, 2003, petitioner filed a complaint for sum of money with a prayer for the issuance of a writ of preliminary attachment[5] against Legacy, Alex Abelido, Lu and the municipality of Valencia in the Regional Trial Court (RTC) of Dumaguete City, Branch 44.

On February 4, 2003, Vergara issued an opinion wherein he noted that Lu, pursuant to the special power of attorney extended

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the total amount due to the contractor prior to any deduction and shall be retained from every progress payment until fifty percent (50%) of the value of works, as determined by the Government, are completed. If after fifty percent (50%) completion, the work is satisfactorily done and on schedule, no additional retention shall be made; otherwise, the ten percent (10%) shall be imposed.

2) The total "retention money" shall be due for release upon acceptance of the works. The contractor may however request the substitution of the retention money for each progress billing with surety bonds callable on demand of amounts equivalent to the retention money substituted for and acceptable to government, provided that the project is on schedule and is satisfactorily undertaken. Otherwise, the ten percent (10%) retention shall be made. Said surety bonds, to be posted in favor of government, shall be valid for a duration of to be determined by the concerned government implementing agency and will answer for the purpose for which the ten percent (10%) retention is intended, *i.e.*, to cover uncorrected discovered defects and third party liabilities.

(This has been superceded by paragraph 6 of Annex-E of the Implementing Rules and Regulations of RA 9184 which was published in the Manila Times on September 23, 2003 and took effect on October 8, 2003.)

Compare paragraph IX-c of the construction contract between the Municipality of Valencia and Legacy which provides:

c. The total retention money shall be released after 50% of the contract work is satisfactorily completed and on schedule, provided further, that [Legacy] posts an irrevocable standby letter of credit in favor of the government to answer and … for the … purpose for which the ten percent (10%) retention is intended; and warrant immediately correction works on those found defective and below standard specification; …

[5] Docketed as Civil Case No. 13318.

by Legacy, was only authorized "to sign vouchers, paper documents which [were] incidental with any transaction." He was not allowed to purchase supplies for the Valencia project on behalf of Legacy. Consequently, because petitioner failed to prove that the pipes were used in the said project, it could not invoke its supplier's lien. Thus, Vergara recommended that the municipality release the retention money to Legacy.[6]

Meanwhile, after conducting the requisite hearing, the RTC found that Alex Abelido had left the country and the balance of the contract price (amounting to ₱3 million) was the only fund petitioner could run after to recover Legacy's liability. Thus, in its February 7, 2003 order,[7] the RTC ordered the issuance of a writ of preliminary attachment prohibiting Gonzales or his agents or representatives from releasing any payment (including the retention money) to Legacy.[8]

On February 11, 2003, a writ of preliminary attachment was issued pursuant to the February 7, 2003 order of the RTC. Despite the issuance thereof, Gonzales adopted Vergara's recommendation and instructed the municipal treasurer, respondent Rolando Obañana, to release the retention money to Legacy on March 12, 2003.[9]

On November 19, 2004, petitioner filed an affidavit-complaint against respondents in the Office of the Ombudsman.[10] Gonzales, Vergara and Obañana allegedly violated Section 3(e) of the Anti-Graft and Corrupt Practices Act (RA 3019)[11] when they released

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[6] Annex "C", *Rollo*, pp. 63-64.

[7] Issued by Judge Alvin Tan. Annex "D", *id.*, pp. 65-65.

[8] Upon the motion of respondents, the RTC, in its April 11, 2003 order, ordered the quashal of the writ of preliminary attachment. It, however, reinstated the said writ in its December 3, 2003 order.

[9] The municipality fully paid the contract price on March 23, 2003.

[10] Docketed as OBM-V-C-04-0609-K. Annex "A", *Rollo*, pp. 23-31. (Petitioner's administrative complaint against respondents was docketed as OMB-V-A-0609-K.)

[11] RA 3019, Sec. 3(e) provides:

Section 3. *Corrupt practices of public officers.*—In addition to acts or omissions of public officers already penalized by existing law, the following

the retention money to Legacy in spite of the February 11, 2003 writ of preliminary attachment. They conspired with the Abelidos in depriving petitioner of payment for Legacy's just obligation. Such act was therefore undertaken in bad faith, with manifest partiality and in utter disregard of petitioner's rights under PD 1594.

The Ombudsman found no probable cause for violation of Section 3(e) of RA 3019. He held that Vergara's opinion was in accord with law and jurisprudence. Consequently, because they adopted Vergara's opinion, Gonzales and Obañana acted in good faith. Thus, in his March 10, 2005 resolution, the Ombudsman dismissed the complaint for lack of merit.[12]

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shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

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

x x x x x x x x x

See *Peralta v. Desierto*, G.R. No. 153152, 19 October 2005, 473 SCRA 322.

To be criminally liable for violating Section 3(e) of RA 3019, the following requisites must be proven:

a. the accused is a public officer or a private person charged in conspiracy with the former;
b. that he or she caused undue injury to any party, whether the government or a private party;
c. that the said public officer commits the prohibited acts during the performance of his or her official duties or in relation to his or her public responsibilities;
d. such undue injury is caused by giving unwarranted benefits, advantage or preference to such parties; and
e. that the public officer acted with manifest partiality, evident bad faith or gross inexcusable negligence.

[12] Penned by graft investigation and prosecutor officer II Sarah Jo A. Vergara and approved by deputy ombudsman for the Visayas Primo C. Miro on March 21, 2005. *Rollo,* pp. 101-106.

Petitioner moved for reconsideration but it was denied.[13] Thus, it filed this petition for *certiorari* asserting that the Ombudsman committed grave abuse of discretion in dismissing the complaint against respondents insofar as their criminal liability was concerned.

The petition is partially granted.

To afford the Ombudsman a wide latitude of discretion, the Court, as a general rule, does not interfere with the Ombudsman's determination of whether or not there is probable cause against the respondent. The Court only exercises its power of judicial review when the Ombudsman committed grave abuse of discretion such as when he ignores the clear sufficiency of evidence to support a finding of probable cause.[14]

In this case, petitioner insists that Gonzales, Vergara and Obañana extended unwarranted benefits, advantage or preference to the Abelidos when they released the retention money to Legacy despite the presence of a writ of preliminary attachment.[15]

Under the rules on government procurement, retention money is a form of security which seeks to ensure that the work is satisfactorily done and on schedule. It is withheld by the procuring entity (*i.e.,* the government) from progress payments due to the contractor to guarantee indemnity for uncorrected discovered defects and third-party liabilities in infrastructure projects.[16]

CI6 of the Implementing Rules and Regulations of PD 1594[17] provides for two instances when the procuring entity may release the retention money. First, the contractor is entitled, as a matter of right, to receive the total retention money upon final acceptance by the procuring entity of the works. Second, when the procuring

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[13] Dated May 24, 2005. *Id.*, pp. 119-121.

[14] *Tilendo v. Ombudsman,* G.R. No. 165975, 13 September 2007, 533 SCRA 331, 346.

[15] See *Constantino v. Sandiganbayan,* G.R. No. 140656, 13 September 2007, 533 SCRA 205, 221. (There are two modes of committing a violation of Section 3(e) of RA 3019.)

[16] Implementing Rules and Regulations of PD 1594, CI6, *supra* note 3.

[17] *Id.*

entity has paid at least 50% of the total contract price, the contractor may request the procuring entity to release the retention money provided that it (contractor) submits, in lieu thereof, a surety bond callable on demand.

Notably, in this case, the municipality released the retention money more than a year after the project should have been completed. Moreover, petitioner neither averred that Gonzales and Obañana released the retention money prior to the final acceptance of the work nor required Legacy to submit a surety bond callable on demand in favor of the municipality.[18] Thus, petitioner failed to show that the said officials violated PD 1594 when they released the retention money to Legacy.

Nevertheless, there was sufficient ground to engender a well-founded belief that Gonzales and Obañana violated Section 3(e) of RA 3019.

The February 11, 2003 writ of preliminary attachment prohibited Gonzales and Obañana from paying the balance of the contract price (including the retention money) to Legacy and created a lien over the said money in favor of petitioner. By releasing the balance of the contract price, they impaired petitioner's lien and caused it (petitioner) undue injury. In effect, Gonzales and Obañana extended unwarranted benefits to Legacy and, ultimately, the Abelidos who were able to take full control of the money which, by virtue of the February 11, 2003 writ of preliminary attachment, was in *custodia legis*.

Thus, the Ombudsman committed grave abuse of discretion in finding that there was no probable cause against Gonzales, Obañana and the Abelidos for violation of Section 3(e) of RA 3019. However, he correctly ruled that there was no probable cause against Vergara. He rendered his opinion on February 4, 2003, that is, before the RTC ordered the issuance of the writ of preliminary attachment and neither facilitated nor participated in releasing the balance of the Valencia project's contract price.

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[18] *Ombudsman v. Tongson*, G.R. No. 169029, 22 August 2006, 499 SCRA 567.

WHEREFORE, the petition is hereby *PARTIALLY GRANTED*. The March 10, 2005 and May 24, 2005 resolutions of the Office of the Ombudsman (Visayas) in OMB-V-C-04-0609-K are *REVERSED* and *SET ASIDE* except insofar as respondent Erwin B. Vergara is concerned. New judgment is hereby rendered finding probable cause for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act (RA 3019) against respondents Rodolfo V. Gonzales, Jr., Rolando Obañana, Alex Abelido and Dominador Abelido. Accordingly, the Office of the Ombudsman (Visayas) is directed to file the necessary information against respondents.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 169472. January 20, 2009]

FRANCISCO LANDICHO, FEDERICO LANDICHO AND BUENAVENTURA LANDICHO, *petitioners, vs.* **FELIX SIA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTIONS OF FACT ARE NOT PROPER THEREIN; EXCEPTION.— The case before us involves the determination of whether the petitioners are tenants of the land purchased by the respondent, which is essentially a question of fact. As a general rule, questions of fact are not proper in a petition under Rule 45. But, since the findings of facts of the DARAB and the Court of Appeals contradict each other, it is crucial to go through

the evidence and documents on record as a matter of exception to the rule.

2. LABOR AND SOCIAL LEGISLATION; AGRICULTURAL TENANCY; TENANCY RELATIONSHIP; REQUISITES TO EXIST; TERM "TENANTS," DEFINED.— A tenant is defined under Section 5(a) of Republic Act No. 1199, otherwise known as the Agricultural Tenancy Act of the Philippines, as: x x x a person who, himself and with the aid available from within his immediate farm household, cultivates the land belonging to, or possessed by, another, with the latter's consent for purposes of production, sharing the produce with the landholder under the share tenancy system, or paying to the landholder a price certain or ascertainable in produce or in money or both, under the leasehold tenancy system. A tenancy relationship arises between a landholder and a tenant once they agree, expressly or impliedly, to undertake jointly the cultivation of a land belonging to the landholder, as a result of which relationship the tenant acquires the right to continue working on and cultivating the land. The existence of a tenancy relationship cannot be presumed and claims that one is a tenant do not automatically give rise to security of tenure. For a tenancy relationship to exist, all of the following essential requisites must be present: (1) the parties are the landowner and the tenant; (2) the subject matter is agricultural land; (3) there is consent between the parties; (4) the purpose is agricultural production; (5) there is personal cultivation by the tenant; and, (6) there is sharing of the harvests between the parties.

3. ID.; ID.; ID.; NOT PRESENT IN CASE AT BAR.— Not all of these requisites obtain in the case at bar. The essential element of consent is absent because the landowners never recognized petitioners Federico and Buenaventura Landicho as legitimate tenants of the subject land. And, although Federico and Buenaventura claim that they are tenants of "Lot No. 9896 and Lot No. 9897," respectively, simply because they continuously cultivated and openly occupied the subject land; there was no evidence presented to establish the presence of the essential requisites of a tenancy relationship other than the self-serving statements of the petitioners. Furthermore, both the 1976 and the 1987 *Kasulatan* only mentioned Francisco as the tenant of the subject parcels of land, and there was no mention of petitioners Federico and Buenaventura.

4. ID.; ID.; ID.; A TILLER OR FARMWORKER DOES NOT AUTOMATICALLY BECOME AN AGRICULTURAL TENANT BY MERE OCCUPATION OR CULTIVATION OF AN AGRICULTURAL LAND.— The petitioners cannot rely on their self-serving statements to prove the existence of a tenancy relationship because independent and concrete evidence, aside from self-serving statements, is needed to prove personal cultivation, sharing of harvests, or consent of the landowner. A tiller or a farmworker does not automatically become an agricultural tenant recognized under agrarian laws by mere occupation or cultivation of an agricultural land.

5. ID.; ID.; ID.; THE FACT OF RECEIPT, WITHOUT AN AGREED SYSTEM OF SHARING, DOES NOT *IPSO FACTO* CREATE A TENANCY.— There was also no evidence presented to show that Federico and Buenaventura gave a share of their harvest to the Aragons. Independent evidence, such as receipts, must be presented to show that there was a sharing of the harvest between the landowner and the tenant. And, assuming the landowners received a share of the harvest, it was held in the case of ***Cornelio de Jesus, et al. v. Moldex Realty, Inc.*** that "[t]he fact of receipt, without an agreed system of sharing, does not *ipso facto* create a tenancy." There is no tenancy relationship between the Aragons and petitioners Federico and Buenaventura without the essential elements of consent and sharing of agricultural produce.

6. ID.; ID.; ID.; IMPLIED TENANCY; CONTINUOUS CULTIVATION OF THE LAND, WITHOUT INTENT ON THE PART OF THE LANDOWNER TO INSTITUTE THE TILLER AS AGRICULTURAL TENANTS AND ABSENT THE ESSENTIAL REQUISITES OF A TENANCY RELATIONSHIP WILL NOT GIVE RISE TO IMPLIED TENANCY.— Neither can we give any weight to the petitioners' contention that there was an implied tenancy by reason alone of their continuous cultivation of the land. Acquiescence by the landowner of their cultivation of the land does not create an implied tenancy if the landowners have never considered petitioners Federico and Buenaventura as tenants of the land and if the essential requisites of a tenancy relationship are lacking. There was no intention to institute the petitioners as agricultural tenants. In the case of ***Epitacio Sialana v. Mary Y. Avila, et al.*** it was held that "x x x for an

implied tenancy to come about, the actuations of the parties taken in their entirety must be demonstrative of an intent to continue a prior lease established by the landholder x x x."

7. ID.; ID.; ID.; HOW EXTINGUISHED.— With respect to petitioner Francisco Landicho, the Court of Appeals also correctly held that although Francisco was the legal tenant of the subject land, he voluntarily surrendered his tenancy rights when he knowingly and freely executed the 1987 *Kasulatan*. This conclusion finds basis in the investigation conducted by the PARO, where during the mediation conference, petitioner Francisco Landicho admitted that he voluntarily surrendered his tenancy rights over the subject parcels of land in consideration of PhP3,000.00. The tenancy relationship was validly extinguished through the execution of the 1987 *Kasulatan* and upon the voluntary surrender of the landholdings pursuant to Section 8 of Republic Act No. 3844, otherwise known as the Agricultural Land Reform Code, to wit: SECTION 8. Extinguishment of Agricultural Leasehold Relation. — The agricultural leasehold relation established under this Code shall be extinguished by: (1) Abandonment of the landholding without the knowledge of the agricultural lessor; (2) Voluntary surrender of the landholding by the agricultural lessee, written notice of which shall be served three months in advance; or (3) Absence of the persons under Section nine to succeed to the lessee, in the event of death or permanent incapacity of the lessee.

8. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; A PERSON IS NOT INCAPACITATED TO CONTRACT MERELY BECAUSE OF ADVANCED YEARS OR BY REASON OF PHYSICAL INFIRMITIES.— The petitioners also failed to support their claim that the Aragons took advantage of Francisco's old age and illiteracy and employed fraudulent schemes in order to deceive him into signing the *Kasulatan*. It has been held that "[a] person is not incapacitated to contract merely because of advanced years or by reason of physical infirmities. It is only when such age or infirmities impair the mental faculties to such extent as to prevent one from properly, intelligently, and fairly protecting her property rights, is she considered incapacitated."

9. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; A NOTARIZED DOCUMENT IS

PRESUMED REGULAR AND VALID ABSENT A FULL, CLEAR AND CONVINCING EVIDENCE TO THE CONTRARY.— The petitioners' contention that the Aragons employed fraud, aside from being unsubstantiated, is also contrary to the records of the case. Both the 1976 and the 1987 *Kasulatan* were also written in Tagalog, which is the language understood by Francisco Landicho. They were written in an uncomplicated manner and clearly stated that he is returning the land that he has been cultivating to the landowners because he is already old and could no longer work on the land. The 1987 *Kasulatan* also states that the contents of the document were read to him and that he understands the same. It is also important to note that both the 1976 and 1987 *Kasulatan* are duly notarized and are considered as public documents evidencing the surrender of Francisco's tenancy rights over the subject landholdings. They were executed with all the legal formalities of a public document and thus the legal presumption of the regularity and validity of the *Kasulatan* are retained in the absence of full, clear and convincing evidence to overcome such presumption. Strong evidence is required to prove a defect of a public instrument, and since such strong and convincing evidence was not presented in the instant case, the 1976 and the 1987 *Kasulatan* are presumed valid.

10. LABOR AND SOCIAL LEGISLATION; AGRICULTURAL TENANCY; AGRICULTURAL LAND REFORM CODE; ACTION TO ENFORCE RIGHTS AS AN AGRICULTURAL TENANT; PRESCRIPTIVE PERIOD; STATUTE OF LIMITATIONS.— An action to enforce rights as an agricultural tenant is barred by prescription if not filed within three (3) years. Section 38 of Republic Act No. 3844, otherwise known as the Agricultural Land Reform Code, specifically provides that: SECTION 38. Statute of Limitations. — An action to enforce any cause of action under this Code shall be barred if not commenced within three years after such cause of action accrued. The records of the case show that the protest before the DAR Legal Division of Lucena was filed sometime in 1992 when the case was set for a mediation conference. Even assuming that they have a cause of action, this arose in 1987 when they were ejected from the landholdings they were cultivating which means that it took them about five (5) years to file a protest before the DAR Legal Division of Lucena, and it took them seven (7) years to file a Complaint before the DARAB. Clearly,

their cause of action has already prescribed. Accordingly, the petitioners' complaint against the respondent is dismissible on the ground of prescription and for lack of cause of action.

APPEARANCES OF COUNSEL

Rexie M. Maristela for petitioners.
Natalio T. Paril, Jr. for respondent.

D E C I S I O N

PUNO, *C.J.*:

At bar is a Petition for Review on *Certiorari* of the Decision[1] and Resolution[2] of the Court of Appeals in CA G.R. SP No. 61554, dated February 23, 2005 and July 6, 2005, respectively, reversing the decision of the Department of Agrarian Reform (DAR), Adjudication Board (DARAB), in DARAB Case No. 4599. The DARAB decision affirmed with modification the Decision of the Provincial Adjudicator of Region IV, Quezon, in PARAD Case No. IV-QUI-0343-94 dated October 24, 1995, awarding the petitioners disturbance compensation, a home lot consisting of 200 square meters, and damages. The appellate court found that the complaint against the respondent is dismissible for lack of cause of action on the ground of prescription.

The instant case involves three parcels of agricultural land located in Barangay Mateona, Tayabas, Quezon, covered by Transfer Certificate of Title (TCT) No. 135953 - Lot No. 9297,[3] TCT No. 135952 - Lot No. 9856,[4] and TCT No. 135929 - Lot

[1] *Rollo*, pp. 73-80.

[2] *Id.* at pp. 81-83.

[3] There appears to be a discrepancy in the Records of the Department of Agrarian Reform Adjudication Board, pp. 7-8. According to the 1976 *Kasulatan sa Pagsasauli ng Gawaing Palayan*, TCT No. 135953 contains Lot No. 9297, but the 1987 Kasulatan ng Pagsasauli ng Gawain provides that TCT No. 135953 contains Lot No. 9897.

[4] According to the 1976 Kasulatan sa Pagsasauli ng Gawaing Palayan, TCT No. 135952 contains Lot No. 9856, but the 1987 Kasulatan ng Pagsasauli ng Gawain provides that TCT No. 135953 contains Lot No. 9856.

No. 9895,[5] with an aggregate area of approximately 27,287 square meters. The subject parcels of land were originally owned by Loreanne Z. Aragon, Alberto Z. Aragon, Jr., and Alberto Z. Aragon III (Aragons).[6] The agricultural land was tenanted by the late Arcadio Landicho from 1949 until his death in 1972[7] after which his tenancy rights were succeeded by his son, petitioner Francisco Landicho.[8] The other petitioners, Buenaventura Landicho, Francisco Landicho's son, and Federico Landicho, Francisco's brother, helped him cultivate the land.[9]

On January 31, 1976, Francisco Landicho voluntarily surrendered his tenancy rights over the three parcels of land to Eloisa Zolota, married to Alberto Aragon, through a notarized "*Kasulatan sa Pagsasauli ng Gawaing Palayan*" (1976 *Kasulatan*),[10] for a consideration of PhP1,000.00. The 1976 *Kasulatan* provides, *viz.*:

KASULATAN SA PAGSASAULI NG GAWAING PALAYAN

HAYAG SA SINUMANG MAKABABASA:

Ako, ***Francisco,***[sic] ***Landicho****, may sapat na gulang, may asawa, filipino, at sa ngayon ay naninirahan sa nayon ng Mationa, bayan ng Tayabas, lalawigan ng Quezon, sa bisa ng Kasulatang ito'y*

NAGSASAYSAY:

Na ***ako ang tunay at rehistradong mangagawa ng tatlong (3) parcelang palayan*** *na may kasamang niogan, na natatayo sa nayon ng Mationa, bayan ng Tayabas, lalawigan ng Quezon, na ang*

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[5] According to the 1976 *Kasulatan sa Pagsasauli ng Gawaing Palayan*, TCT No. 135929 contains Lot No. 9895, but the 1987 *Kasulatan ng Pagsasauli ng Gawain* provides that TCT No. 135953 contains Lot No. 9895.

[6] *Rollo*, p. 73; Records of the Department of Agrarian Reform Adjudication Board, p. 33.

[7] Records of the Department of Agrarian Reform Adjudication Board, pp. 1 and 60.

[8] *Id.* at p. 33.

[9] *Rollo*, p. 8; Records of the Department of Agrarian Reform Adjudication Board, p. 34.

[10] Records of the Department of Agrarian Reform Adjudication Board, p. 7.

mga sukat, at hangganan nito ay lalong makikilala at matutonton sa mga palatandaang sumusunod: (emphasis supplied)

TRANSFER CERTIFICATE OF TITLE No. T-135953

"A parcel of land (**Lot 9297** of the Cad. Survey of Tayabas), with the improvements thereon, situated in the Barrio of Mationa, Municipality of Tayabas, Quezon. x x x containing an area of Four Thousand Three Hundred Eighty Three (4,383) square meters more or less, x x x."

TRANSFER CERTIFICATE OF TITLE No. T-135952

"A parcel of land (**Lot 9856** of the Cad. Survey of Tayabas) with the improvements thereon, situated in the Barrio of Mationa, Municipality of Tayabas. x x x containing an area of Nineteen Thousand Thirty Two (19,032) square meters, more or less, x x x."

TRANSFER CERTIFICATE OF TITLE No. T-135929

"A parcel of land (**Lot 9895** of the Cadastral Survey of Tayabas), with the improvements thereon, situated in the Barrio of Mationa, Municipality of Tayabas, x x x containing an area of Three Thousand Eight Hundred Seventy Two (3,872) square meters, more or less, x x x."

Na sapagkat ako ay mayroon pang ilang palayang ginagawa at ***alang-alang din sa halagang ISANG LIBONG PISO (₱1,000.00),*** *salaping umiiral na ibinayad at tinanggap ko naman ng buong kasiyahan buhat kay Eloisa Zolota, may sapat na gulang, Filipino* [sic] *kasal kay Alberto Aragon at sa ngayon ay naninirahan din dito sa bayan ng Tayabas, lalawigan ng Quezon, ay aking* ***kusang loob na ISASAULI AT IBABALIK sa may-ari nito ang tatlong (3) parcelang palayan*** *na binabanggit sa itaas nito x x x.* (emphasis supplied)

SA KATUNAYAN NG LAHAT, ay nilalagdaan ko ito ngayong ika-31 ng Enero, taong 1976, dito sa bayan ng Tayabas, lalawigan ng Quezon.

DIGPI NG KANANG HINLALAKI
FRANCISCO LANDICHO
Manggagawa

x x x x x x x x x

Notwithstanding the execution of the 1976 *Kasulatan*, the petitioners continued cultivating the subject landholdings[11] until 1987 when another notarized "*Kasulatan ng Pagsasauli ng Gawaing Palayan*" (1987 *Kasulatan*)[12] was executed on July 2, 1987 by Francisco Landicho through which he surrendered his tenancy rights to the Aragons for a consideration of Ph₱3,000.00.[13] The 1987 *Kasulatan* provides, *viz.*:

KASULATAN NG PAGSASAULI NG GAWAIN

TANTUIN ANG SINUMANG MAKAKABASA NITO:

Ako, ***FRANCISCO LANDICHO****, asawa ni Lucia Reyes, may sapat na gulang, filipino,*[sic] *at naninirahan sa bayan ng Tayabas, lalawigan ng Quezon, dito ay nagsasalaysay ng mga sumusunod:* (emphasis supplied)

Na ako ang siyang gumagawa at nagaalaga ng tatlong palagay na lupa *na mayroong pagkakaayos gaya ng sumusunod:* (emphasis supplied)

TRANSFER CERTIFICATE OF TITLE NO. T-135953

A parcel of land (**Lot 9897** of the Cad. Survey of Tayabas), with the improvements thereon, situated in the Barrio of Mationa, Municipality of Tayabas, Quezon. x x x containing an area of Four Thousand Eight Hundred Three [sic] (4,383) square meters

A parcel of land (**Lot 9856)** of the Cadastral Survey of Tayabas), with the improvements thereon, situated in the Barrio of Mationa, Municipality of Tayabas. x x x containing an area of Nineteen Thousand Thirty Two (19,032) square meters, more or less

A parcel of land (**Lot 9895** of the Cad. Survey of Tayabas), with the improvements thereon, situated in the Barrio of Mationa, Municipality of Tayabas x x x containing an area of Three Thousand Eight Hundred Seventy Two (3,872) square meters, more or less

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[11] *Id.* at p. 2.

[12] *Id.* at p. 8.

[13] *Id.* at p. 34. The consideration of PhP3,000.00 was not stated in the 1987 *Kasulatan* but was admitted by Francisco Landicho during a mediation conference held at the Provincial Agrarian Reform Office on July 22, 1992.

Naitong [sic] *naulit na lupa ay pagaari nila Loreanne Z. Aragon, Alberto Aragon, Jr., Alberto Aragon III, gayondin* ***sapagkat ako ay matanda na at gayondin hindi ko na kayang gumawa sa naulit na lupa,*** *kaya itong naulit na lupa* ***ay aking ISINASAULI at IBINABALIK*** *sa naulit na mayaring nasasabi sa taas nito;* (emphasis supplied)

Na simula ngayon ay mayroong karapatan na sila na kumuha o humanap ng ibang gagawa sa naulit na lupa at hindi na akong makikiaalam dito, at gayondin ***mayroong laya silang ipagbili*** *ang naulit na lupa, at hindi ako makikialam dito; na ito ay* ***binasa sa akin at naunawaan ko naman ang nilalaman nito****;* (emphasis supplied)

SA KATUNAYAN ng lahat, [sic] *ng ito ako'y lumagda sa kasulatang ito ngayong ika 2 ng Hulyo, /*[sic]*1987 dito sa Tayabas, Quezon.*

Diin ng Kgg. Hin'ki
FRANCISCO LANDICHO
Manggagawa

x x x x x x x x x

On the same day as the execution of the 1987 *Kasulatan*, the three parcels of land were sold to respondent Felix L. Sia by the spouses Alberto P. Aragon and Eloisa Zolota Aragon by virtue of a general power of attorney executed in their favor by their children, the Aragons. A "Deed of Absolute Sale"[14] was executed, whereby the three parcels of land mentioned above were sold, transferred and conveyed by way of an absolute sale for and in consideration of Ph₱50,000.00.

Upon the sale of the subject land to respondent Felix Sia, he converted the same to a residential subdivision without a DAR Clearance and ejected the petitioners from the subject land.[15] Aggrieved, the petitioners first sought the assistance of Barangay Agrarian Reform Committee (BARC) Chairman Rosalio

[14] *Id.*

[15] Records of the Department of Agrarian Reform Adjudication Board, p. 2; *rollo,* p. 8.

Cabuyao,[16] who in turn brought the matter to the Provincial Agrarian Reform Office (PARO) of Quezon.

Petitioners Federico Landicho and Buenaventura Landicho then filed a protest before the DAR PARO, Legal Division of Lucena City[17] alleging that they are the tenants of the parcels of land owned by respondent Felix Sia and claimed that they are entitled to a disturbance compensation. During the mediation conference held at the DAR Provincial Agrarian Reform Office on July 22, 1992, it was admitted by Francisco Landicho that he voluntarily surrendered his tenancy rights over the subject parcels of land in consideration of PhP3,000.00.[18] Thus, in the Report and Recommendation[19] of DAR Provincial Legal Officer III, Ernesto M. Arro, Jr., dated October 1, 1992, it was found that the petitioners had no claim for tenancy rights over the subject parcels of land. It was held by the DAR Provincial Legal Officer that Francisco Landicho is the legal and *bona fide* tenant of the parcels of land but he cannot be awarded disturbance compensation because he voluntarily surrendered his tenancy rights over the said properties twice, through the 1976 and the 1987 *Kasulatan*. In the case of Buenaventura and Federico Landicho, it was found that they are merely farm helpers of Francisco Landicho and are not entitled to disturbance compensation.

Dissatisfied with the ruling of the DAR PARO of Lucena City, petitioners Buenaventura and Federico Landicho filed another Protest before the DAR Legal Division, Region IV, Pasig, Metro Manila. On February 15, 1993, a Memorandum[20] was issued by Legal Officer II, Dandumum D. Sultan, Jr., which also dismissed the protest of the petitioners. It was likewise

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[16] Records of the Department of Agrarian Reform Adjudication Board, p. 3.

[17] Records of the Department of Agrarian Reform Adjudication Board, p. 33; *rollo,* p. 8.

[18] Records of the Department of Agrarian Reform Adjudication Board, p. 34; *rollo,* p. 8.

[19] Records of the Department of Agrarian Reform Adjudication Board, p. 33.

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

found that Federico and Buenaventura are not tenants of the land in question but are merely farm helpers of the legitimate tenant, Francisco Landicho, who surrendered his tenancy rights to the former owner, the Aragons. During an interview with Buenaventura Landicho conducted by Legal Officer II Dandumum Sultan, Jr. it was affirmed by Buenaventura that it was only Francisco Landicho, his father, who was allowed and permitted to work on the subject land and that both he and Federico had not secured the permission of the landowner to farm the land.[21]

In response to the complaint of BARC Chairman Rosalio Cabuyao, DAR Region IV Director Percival C. Dalugdug wrote a letter, dated April 25, 1994, stating that the results of an investigation conducted by their representatives revealed that Buenaventura Landicho and Federico Landicho are not tenants of the subject land and are thus not entitled to disturbance compensation. It was also stated in the letter that it is only Francisco Landicho who is the legitimate tenant of the land owned by the Aragons. However, he surrendered his tenancy rights by virtue of the 1976 and 1987 *Kasulatan*.[22] The letter[23] states:

Ika-25 ng Abril 1994

G. Rosalio J. Cabuyao
BARC Chairman
Brgy. Mationa, Tayabas, Quezon

Mahal na G. Cabuyao,

Kami po ay lumiham sa inyo upang ipaabot sa inyo ang pinakahuling ulat mula sa aming PARO sa Quezon I [sic] *hinggil sa inyong iniharap na reklamo na ayon po sa inyo ay hindi binibigyang pansin ni Atty. Rolando Roldan.*

x x x x x x x x x

Hinggil naman sa pagbibigay ng disturbance compensation *kina G. Buenaventura at Federico Landicho, ikinalulungkot po naming*

[21] *Id.*

[22] *Id.* at p. 38.

[23] *Id.*

ipaalam sa inyo na wala tayong sapat na batayan upang magawa ito. ***Ayon sa pagsisiyasat na isinagawa ng aming kawani, ang magkapatid na Buenaventura at Federico ay hindi kasama o walang ugnayang kasama*** **(tenancy relationship)** ***sa may-ari*** *ng lupa sapagkat ang kanilang ama ang siyang may karapatan at lehitimong kasama. Ayon din sa ulat,* ***sa pamamagitan ng kasulatan sa pagsasauli ng gawaing palayan ay isinuko na ni G. Francisco Landicho ang kanyang mga karapatan*** *bilang kasama at magsasaka sa lupang pinaguusapan.* x x x.

Maraming salamat po sa inyong pagsulat at sana ay nabigyang linaw namin ang inyong hinaing.

Sumasainyo,

(Sgd.)
Percival C. Dalugdug
Direktor Pangrehiyon

On June 10, 1994, petitioners Francisco Landicho, Federico Landicho and Buenaventura Landicho filed a Complaint[24] against Alberto Aragon, Jr., Alberto Aragon III and Felix Sia before the DARAB for fixing and payment of disturbance compensation and awarding of home lot. The petitioners allege that they are tenants of the subject land since January 31, 1976 and that they were unlawfully ejected from the subject land by virtue of the 1976 and 1987 *Kasulatan* which they allege to be invalid, since they were executed by Francisco through the insidious words, undue influence and strategy employed by the Aragons, in connivance with respondent Sia.

In their Answer[25] dated July 7, 1994, the Aragons recognized only Francisco as their former tenant until he surrendered his tenancy rights through the 1976 *Kasulatan* and finally surrendered the land upon the execution of the 1987 *Kasulatan*. They assert that there was no undue advantage exerted over petitioner Francisco Landicho since the 1976 and the 1987 *Kasulatan* were written in Tagalog, a language understood by Francisco.[26]

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[24] *Id.* at pp. 1- 4.

[25] *Id.* at pp. 13-15.

[26] *Id.* at p. 13.

They raised the defense that the petitioners have no cause of action on the grounds of prescription, laches, and estoppel, that the claim is barred by prior judgment, and that the claim has been abandoned or otherwise extinguished.[27] On the other hand, respondent Felix Sia, in his Answer with Counterclaim[28] dated July 11, 1994, alleged that when he bought the subject parcels of land, they were free from tenants since Francisco had already relinquished his tenancy rights therein through the execution of public documents.

After the filing of the parties' respective position papers, the DAR Provincial Adjudicator of Region IV rendered a decision in PARAD Case No. IV-QUI-0343-94,[29] dated October 24, 1995, in favor of the petitioners. Provincial Adjudicator Oscar C. Dimacali ruled that against their will, the petitioners were dispossessed of the land that they have been cultivating. He also ruled that it is not necessary to decide on the issue of whether Federico and Buenaventura are merely farm helpers of Francisco, nor is it essential to determine whether the 1976 and 1987 *Kasulatan* are valid. The dispositive portion[30] of the decision reads:

WHEREFORE, premises considered, the following are hereby ordered:

1. defendant Felix Sia to pay each of the plaintiffs a disturbance compensation equivalent to five (5) years based from the average normal harvest to be determined by the MARO concerned who is hereby required to make a report to this Office within one (1) month from receipt hereof;

2. defendant Felix Sia to provide each plaintiff a homelot [sic] of 200 square meters in the subject landholdings; and,

3. defendants to pay the plaintiffs jointly and severally the sum of ₱10,000.00 as moral damages and ₱5,000.00 as exemplary damages.

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[27] *Id.* at p. 14.

[28] *Id.* at pp. 16-18.

[29] *Rollo*, pp. 87-90.

[30] *Id.* at p. 90.

No pronounce [sic] as to cost.

SO ORDERED.

The Aragons and respondent Sia appealed the foregoing decision to the DARAB,[31] which issued a decision[32] on September 18, 2000 that affirmed in part the decision of the Provincial Adjudicator, and deleted the award of disturbance compensation on the basis of the finding that the petitioners are still *bona fide* tenants in their respective landholdings. The DARAB did not give credit to the report and recommendation of Legal Officer III Ernesto M. Arro and Legal Officer II Dandumum D. Sultan, Jr. that Francisco Landicho voluntarily surrendered his tenancy rights.[33] The DARAB found that a tenancy relationship exists between the petitioners and the Aragons and that when Felix Sia became the owner of the subject land, he assumed to exercise the rights and obligations that pertain to the previous owners. The dispositive portion[34] of the DARAB decision provides:

WHEREFORE, premises considered, the appealed decision dated October 24, 1995, is hereby affirmed with MODIFICATION in so far as the disturbance compensation which is not obtaining in the case at bar considering that plaintiffs-appellees are still bona fide tenants in their respective landholdings.

Furthermore, the DAR-BALA of Quezon Province in coordination with the Office of the DAR Secretary, is hereby directed to file criminal charges for illegal conversion against defendants-appellants, if circumstances may still warrant.

No Pronouncement as to Costs.

SO ORDERED.

Felix Sia then filed a Petition for Review[35] under Rule 43 with the Court of Appeals, which rendered a decision[36] on February

[31] DARAB Case No. 4599.

[32] *Rollo*, pp. 91-98.

[33] *Id.* at p. 95.

[34] *Id.* at p. 97.

[35] *Id.* at pp. 102-113.

[36] *Id.* at pp. 73-80.

23, 2005 that set aside the decision of the DARAB and dismissed the complaint. The Court of Appeals found that the essential requisites are not present to establish a tenancy relationship between petitioners Buenaventura and Federico Landicho and the Aragons, and that the tenant-landlord relationship between Francisco Landicho and the Aragons also ended upon the surrender of his tenancy rights through the 1976 and 1987 *Kasulatan*; consequently, no tenancy relationship also exists between the petitioners and respondent Felix Sia. The Court of Appeals also ruled that even assuming that the petitioners have a cause of action, the same had already prescribed since the complaint was only filed seven years from the time the cause of action accrued.[37]

On March 22, 2005, the petitioners filed a Motion for Reconsideration[38] of the Court of Appeals decision. The Court of Appeals issued a Resolution[39] on July 6, 2005, denying the motion for reconsideration.

Hence, this Petition for Review on *Certiorari*[40] of the Decision and Resolution of the Court of Appeals with the following assignment of errors:[41]

> The Honorable Court of Appeals erred:
>
> 1. When it gave due course to the petition and consequently granted the same; and
> 2. When it disregarded the finding of facts [sic] of the DARAB that petitioners are *bonafide* [sic] tenants of the land purchased by herein respondent and therefore entitled to security of tenure.

The parties filed their respective Memoranda[42] which both raised the following issues:[43] (1) whether or not the petitioners

[37] *Id.* at p. 79.

[38] *Id.* at pp. 15-17.

[39] *Id.* at pp. 81-83.

[40] *Id.* at pp. 58-72.

[41] *Id.* at p. 65.

[42] *Id.* at pp. 174-197 and 199-209.

[43] *Id.* at pp. 182 and 203A.

are *bona fide* tenants of the land purchased by the respondent; and (2) whether or not the cause of action of the petitioners already prescribed at the time of the filing of the complaint.

We deny the petition.

The case before us involves the determination of whether the petitioners are tenants of the land purchased by the respondent, which is essentially a question of fact. As a general rule, questions of fact are not proper in a petition under Rule 45.[44] But, since the findings of facts of the DARAB and the Court of Appeals contradict each other, it is crucial to go through the evidence and documents on record as a matter of exception to the rule.[45]

In determining the existence of a tenancy relationship between the petitioners and the respondent, it is necessary to make a distinction between petitioner Francisco Landicho and petitioners Buenaventura and Federico Landicho.

With respect to Francisco, both the petitioners and the respondent agree that he was recognized by the Aragons as a *bona fide* tenant of the subject land when he continued the cultivation of the land after the death of his father Arcadio in 1972.[46] The dispute between the parties arose when the petitioners were ejected from the land on the basis of the 1976 and the 1987 *Kasulatan*, the validity of which is questioned by the petitioners. The petitioners assert that the Aragons, the predecessors-in-interest of the respondent, through insidious words and machinations, took advantage of Francisco Landicho's illiteracy and old age in order to make him sign the 1976 and 1987 *Kasulatan*.[47] The Aragons and respondent Felix Sia deny that they took advantage of petitioner Francisco Landicho and the respondent also denies employing any fraudulent scheme[48]

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[44] RULES OF COURT, Rule 45, Sec. 1.

[45] *Esquivel v. Reyes*, 457 Phil. 509, 516-517 (2003); *De Jesus v. Moldex Realty, Inc.*, G.R. No. 153595, November 23, 2007, 538 SCRA 316, 320.

[46] Records of the Department of Agrarian Reform Adjudication Board, pp. 1 and 13.

[47] *Id.* at pp. 2, 49 and 56.

[48] *Rollo*, p. 189.

since both the 1976 and the 1987 *Kasulatan* were written in Tagalog, a language understood by Francisco Landicho.[49] They further argue that these are public documents, the validity of which cannot be collaterally attacked.[50] They aver that the 1976 and 1987 *Kasulatan* were voluntarily executed by Francisco Landicho and that he willingly surrendered his tenancy rights, which thus validly extinguished the tenancy relationship.[51]

With respect to Buenaventura and Federico Landicho, it is asserted by the petitioners that they have been cultivating the three lots, which were divided among them for cultivation in this wise:

TCT No. 135953 with Lot No. 9895- tenanted by Francisco Landicho

TCT No. 135952 with Lot No. 9896- tenanted by Federico Landicho

TCT No. 135929 with Lot No. 9897- tenanted by Buenaventura Landicho.[52]

They claim that there was an implied tenancy relationship because the Aragons have personal knowledge of the fact that the petitioners were the ones who cultivated the land[53] and they were in continuous possession of the land until sometime in 1987 when they were unlawfully ejected by virtue of the invalid 1987 *Kasulatan*.[54]

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[49] Records of the Department of Agrarian Reform Adjudication Board, p. 13.

[50] *Id.* at p. 17.

[51] Records of the Department of Agrarian Reform Adjudication Board, p. 29; *rollo*, p. 181.

[52] Records of the Department of Agrarian Reform Adjudication Board, p. 2. The 1976 *Kasulatan*, which is found in the Records of the Department of Agrarian Reform Adjudication Board, pp. 7-8, designated the lots as TCT No. 135953 - Lot No. 9297, TCT No. 135952 - Lot No. 9856, and TCT No. 135929 - Lot No. 9895. The 1987 *Kasulatan*, on the other hand, provides that TCT No. 135953 contains Lot No. 9897, Lot No. 9856, and Lot No. 9895.

[53] *Rollo*, p. 203A.

[54] Records of the Department of Agrarian Reform Adjudication Board, p. 44.

The DARAB did not give credit to the report and recommendation of the DAR Provincial Legal Officer and DAR Provincial Adjudicator of Region IV that Francisco Landicho voluntarily surrendered his tenancy rights through the 1987 *Kasulatan* and that Federico and Buenaventura Landicho were merely farm helpers. The DARAB found that a landlord-tenant relationship exists between the petitioners and the respondent and ruled in this wise:

> However, We find it hard to believe that plaintiffs-appellees who have been tilling the land in question for so long a time, would suddenly lose interest in it for good time [sic] when they know that full ownership over the same would soon be in their hands. Besides, plaintiffs-appellees Francisco Landicho *et.*, [sic] *al.*, would not even thought [sic] of filing a complaint if they have already abandoned or surrendered the subject landholdings in favor of herein defendants-appellants. Anyone in his right mind for that matter, would not waste time[,] effort and money especially if he is poor to prosecute an unworthy action.[55]

The Court of Appeals reversed the decision of the DARAB and agreed with the ruling of the DAR PARO and the Region IV DAR Legal Division that only petitioner Francisco Landicho was the tenant of all of the three lots covered by TCT No. 135953, TCT No. 135952 and TCT No. 135929 and that he voluntarily surrendered his tenancy rights upon the execution of the 1987 *Kasulatan*. The Court of Appeals also agreed with the PARO and the Region IV DAR that Federico and Buenaventura Landicho were merely farm helpers of Francisco, ruling that they were considered as part of the *bona fide* tenant's immediate farm household and for this reason, the Aragons cannot be faulted for not questioning their possession and cultivation of the subject landholdings.[56]

We agree with the Court of Appeals and give credence to the findings of the DAR PARO and Region IV DAR.

A tenant is defined under Section 5(a) of Republic Act No. 1199, otherwise known as the Agricultural Tenancy Act of the Philippines, as:

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[55] *Rollo*, p. 95.

[56] *Id.* at p. 78.

x x x a person who, himself and with the aid available from within his immediate farm household, cultivates the land belonging to, or possessed by, another, with the latter's consent for purposes of production, sharing the produce with the landholder under the share tenancy system, or paying to the landholder a price certain or ascertainable in produce or in money or both, under the leasehold tenancy system.[57]

A tenancy relationship arises between a landholder and a tenant once they agree, expressly or impliedly, to undertake jointly the cultivation of a land belonging to the landholder, as a result of which relationship the tenant acquires the right to continue working on and cultivating the land.[58]

The existence of a tenancy relationship cannot be presumed and claims that one is a tenant do not automatically give rise to security of tenure.[59] For a tenancy relationship to exist, all of the following essential requisites must be present: (1) the parties are the landowner and the tenant; (2) the subject matter is agricultural land; (3) there is consent between the parties; (4) the purpose is agricultural production; (5) there is personal cultivation by the tenant; and, (6) there is sharing of the harvests between the parties.[60]

Not all of these requisites obtain in the case at bar.

The essential element of consent is absent because the landowners never recognized petitioners Federico and Buenaventura Landicho as legitimate tenants of the subject land. And, although Federico and Buenaventura claim that they are tenants of "Lot No. 9896 and Lot No. 9897,"[61] respectively,

[57] Republic Act No. 1199 (1954), Sec. 5(a).

[58] Republic Act No. 1199 (1954), Sec. 6.

[59] *Cornelio de Jesus, et al. v. Moldex Realty, Inc.*, G.R. No. 153595, November 23, 2007, 538 SCRA 316, 321.

[60] *Verde v. Macapagal*, G.R. No. 151342, June 23, 2005, 461 SCRA 97, 106; *Vda. de Victoria v. Court of Appeals*, G.R. No. 147550, January 26, 2005, 449 SCRA 319, 335.

[61] The 1976 and 1987 *Kasulatan,* which are found in the Records of the Department of Agrarian Reform Adjudication Board, pp. 7-8 designated the lots as Lot No. 9856 and Lot No. 9895.

simply because they continuously cultivated and openly occupied the subject land; there was no evidence presented to establish the presence of the essential requisites of a tenancy relationship other than the self-serving statements of the petitioners. Furthermore, both the 1976 and the 1987 *Kasulatan* only mentioned Francisco as the tenant of the subject parcels of land, and there was no mention of petitioners Federico and Buenaventura.

The petitioners cannot rely on their self-serving statements to prove the existence of a tenancy relationship because independent and concrete evidence, aside from self-serving statements, is needed to prove personal cultivation, sharing of harvests, or consent of the landowner.[62] A tiller or a farmworker does not automatically become an agricultural tenant recognized under agrarian laws by mere occupation or cultivation of an agricultural land.[63]

The DARAB did not cite any evidence to show the existence of the requisites of a tenancy relationship and merely based the conclusion that the petitioners are tenants of the Aragons on the weak reasoning that filing a complaint is inconsistent with the voluntary surrender of the landholdings and that it is unlikely that petitioners would suddenly lose interest in the subject land when they know that ownership would soon be transferred to them.[64] The DARAB's inferences are without basis and are purely speculative, and except for its sweeping conclusion, there is no other independent and concrete evidence in the record of the case that would sustain the finding that Federico and Buenaventura are tenants of the Aragons.

It was not shown that Federico and Buenaventura cultivated the land with the consent of the landowners. The Court of Appeals correctly held that only Francisco was the *bona fide*

[62] *Heirs of Jugalbot v. Court of Appeals*, G.R. No. 170346, March 12, 2007, 518 SCRA 202, 214-215, citing *Berenguer, Jr. v. Court of Appeals*, G.R. No. 60287, August 17, 1988, 164 SCRA 431, 438-439.

[63] *Danan v. Court of Appeals*, G.R. No. 132759, October 25, 2005, 474 SCRA 113, 126.

[64] *Rollo,* p. 95.

tenant of the land in question and that Federico and Buenaventura were just farm helpers of Francisco, as part of his immediate farm household.[65] This is supported by the evidence on record where, in the Memorandum of DAR Region IV Legal Officer II Dandumum Sultan, Jr., it is stated that during an interview conducted with Buenaventura Landicho, he disclosed that it was only Francisco Landicho, his father, who was allowed and permitted to work on the subject land and that both he and Federico had not secured the permission of the landowner to farm the land.[66]

There was also no evidence presented to show that Federico and Buenaventura gave a share of their harvest to the Aragons. Independent evidence, such as receipts, must be presented to show that there was a sharing of the harvest between the landowner and the tenant.[67] And, assuming the landowners received a share of the harvest, it was held in the case of **Cornelio de *Jesus, et al. v. Moldex Realty, Inc.***[68] that "[t]he fact of receipt, without an agreed system of sharing, does not *ipso facto* create a tenancy."[69]

There is no tenancy relationship between the Aragons and petitioners Federico and Buenaventura without the essential elements of consent and sharing of agricultural produce.[70]

Neither can we give any weight to the petitioners' contention that there was an implied tenancy by reason alone of their continuous cultivation of the land. Acquiescence by the landowner of their cultivation of the land does not create an implied tenancy if the landowners have never considered petitioners Federico and Buenaventura as tenants of the land and if the essential requisites of a tenancy relationship are lacking. There was no

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[65] *Id.* at p. 78.

[66] Records of the Department of Agrarian Reform Adjudication Board, p. 36.

[67] *Heirs of Jugalbot v. Court of Appeals*, G.R. No. 170346, March 12, 2007, 518 SCRA 202, 213.

[68] G.R. No. 153595, November 23, 2007, 538 SCRA 316.

[69] *Id.* at p. 323.

[70] *Supra*, note 67.

intention to institute the petitioners as agricultural tenants. In the case of ***Epitacio Sialana v. Mary Y. Avila, et al.***[71] it was held that "x x x for an implied tenancy to come about, the actuations of the parties taken in their entirety must be demonstrative of an intent to continue a prior lease established by the landholder x x x."[72]

With respect to petitioner Francisco Landicho, the Court of Appeals also correctly held that although Francisco was the legal tenant of the subject land, he voluntarily surrendered his tenancy rights when he knowingly and freely executed the 1987 *Kasulatan*.[73] This conclusion finds basis in the investigation conducted by the PARO, where during the mediation conference, petitioner Francisco Landicho admitted that he voluntarily surrendered his tenancy rights over the subject parcels of land in consideration of PhP3,000.00.[74] The tenancy relationship was validly extinguished through the execution of the 1987 *Kasulatan* and upon the voluntary surrender of the landholdings pursuant to Section 8 of Republic Act No. 3844, otherwise known as the Agricultural Land Reform Code, to wit:

SECTION 8. Extinguishment of Agricultural Leasehold Relation. — The agricultural leasehold relation established under this Code shall be extinguished by:

(1) Abandonment of the landholding without the knowledge of the agricultural lessor;

(2) Voluntary surrender of the landholding by the agricultural lessee, written notice of which shall be served three months in advance; or

(3) Absence of the persons under Section nine to succeed to the lessee, in the event of death or permanent incapacity of the lessee.[75]

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[71] G.R. No. 143598, July 20, 2006, 495 SCRA 501.

[72] *Id.* at p. 509.

[73] *Rollo,* p. 78.

[74] Records of the Department of Agrarian Reform Adjudication Board, p. 34; *rollo,* p. 8.

[75] Republic Act No. 3844 (1963), Sec. 8.

The petitioners also failed to support their claim that the Aragons took advantage of Francisco's old age and illiteracy and employed fraudulent schemes in order to deceive him into signing the *Kasulatan*. It has been held that "[a] person is not incapacitated to contract merely because of advanced years or by reason of physical infirmities. It is only when such age or infirmities impair the mental faculties to such extent as to prevent one from properly, intelligently, and fairly protecting her property rights, is she considered incapacitated."[76]

The petitioners' contention that the Aragons employed fraud, aside from being unsubstantiated, is also contrary to the records of the case. Both the 1976 and the 1987 *Kasulatan* were also written in Tagalog, which is the language understood by Francisco Landicho. They were written in an uncomplicated manner and clearly stated that he is returning the land that he has been cultivating to the landowners because he is already old and could no longer work on the land.[77] The 1987 *Kasulatan* also states that the contents of the document were read to him and that he understands the same.

It is also important to note that both the 1976 and 1987 *Kasulatan* are duly notarized and are considered as public documents evidencing the surrender of Francisco's tenancy rights over the subject landholdings. They were executed with all the legal formalities of a public document and thus the legal presumption of the regularity and validity of the *Kasulatan* are retained in the absence of full, clear and convincing evidence to overcome such presumption.[78] Strong evidence is required to prove a defect of a public instrument,[79] and since such strong and convincing evidence was not presented in the instant case, the 1976 and the 1987 *Kasulatan* are presumed valid.

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[76] *Mario J. Mendezona v. Julio H. Ozamiz, et al.*, 426 Phil. 888, 906 (2002).

[77] Records of the Department of Agrarian Reform Adjudication Board, p. 8.

[78] *Hermenegildo Agdeppa v. Emiliano Ibe*, G.R. No. 96770, March 30, 1993, 220 SCRA 584, 594, *citing Favor v. Court of Appeals*, G.R. No. 80821, February 21, 1991, 194 SCRA 308, 313.

[79] *Supra*, note 74.

Coming now to the second issue of prescription, the petitioners argue that they did not sleep on their rights because although the Complaint with the DARAB was filed on June 10, 1994, they already filed a protest before the DAR Legal Division of Lucena prior to their Complaint before the DARAB.[80]

This contention cannot be sustained.

An action to enforce rights as an agricultural tenant is barred by prescription if not filed within three (3) years.[81] Section 38 of Republic Act No. 3844, otherwise known as the Agricultural Land Reform Code, specifically provides that:

SECTION 38. Statute of Limitations. — An action to enforce any cause of action under this Code shall be barred if not commenced within three years after such cause of action accrued.[82]

The records of the case show that the protest before the DAR Legal Division of Lucena was filed sometime in 1992 when the case was set for a mediation conference.[83] Even assuming that they have a cause of action, this arose in 1987 when they were ejected from the landholdings they were cultivating which means that it took them about five (5) years to file a protest before the DAR Legal Division of Lucena, and it took them seven (7) years to file a Complaint before the DARAB. Clearly, their cause of action has already prescribed.

Accordingly, the petitioners' complaint against the respondent is dismissible on the ground of prescription and for lack of cause of action.

IN VIEW WHEREOF, the Decision and Resolution of the Court of Appeals under review are hereby *AFFIRMED* without pronouncement as to costs.

SO ORDERED.

Carpio, Corona, Azcuna, and *Leonardo-de Castro, JJ.*, concur.

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[80] *Rollo,* p. 206.

[81] Republic Act No. 3844 (1963), Sec. 38.

[82] *Id.*

[83] Records of the Department of Agrarian Reform Adjudication Board; p. 34; *rollo,* p. 8.

THIRD DIVISION

[G.R. No. 169712. January 20, 2009]

MA. WENELITA S. TIRAZONA, *petitioner, vs.* **PHILIPPINE EDS TECHNO-SERVICE INC. (PET INC.) AND/OR KEN KUBOTA, MAMORU ONO and JUNICHI HIROSE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; SECOND MOTION FOR RECONSIDERATION IS NOT ALLOWED IN THE ABSENCE OF EXTRAORDINARY PERSUASIVE REASON.— Section 2, Rule 52 of the Rules of Court explicitly decrees that no second motion for reconsideration of a judgment or final resolution by the same party shall be entertained. Accordingly, a second motion for reconsideration is a prohibited pleading, which shall not be allowed, except for extraordinarily persuasive reasons and only after an express leave shall have first been obtained. In this case, we fail to find any such extraordinarily persuasive reason to allow Tirazona's Second Motion for Reconsideration.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; DISMISSAL OF EMPLOYEE; AWARD OF SEPARATION PAY, UNDER THE DOCTRINE OF COMPASSIONATE JUSTICE, IS NOT WARRANTED WHEN THE EMPLOYEE WAS VALIDLY DISMISSED FOR LOSS OF TRUST AND CONFIDENCE.— As a general rule, an employee who has been dismissed for any of the just causes enumerated under Article 282 of the Labor Code is not entitled to separation pay. In *Sy v. Metropolitan Bank & Trust Company*, we declared that only **unjustly dismissed employees** are entitled to retirement benefits and other privileges including reinstatement and backwages. Although by way of exception, the grant of separation pay or some other financial assistance may be allowed to an employee dismissed for just causes on the basis of equity, in *Philippine Long Distance Telephone Company v. National Labor Relations Commission*, we set the limits for such a grant and gave the following *ratio* for the same: **[S]eparation pay shall be allowed as a measure of social justice only in those**

instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. x x x. In accordance with the above pronouncements, Tirazona is not entitled to the award of separation pay. Contrary to her exaggerated claims, Tirazona was not just "gracelessly expelled" or "simply terminated" from the company on **22 April 2002.** She was found to have violated the trust and confidence reposed in her by her employer when she arrogantly and unreasonably demanded from PET and its officers/directors the exorbitant amount of ₱2,000,000.00 in damages, coupled with a threat of a lawsuit if the same was not promptly paid within five days. This unwarranted imposition on PET and its officers/directors was made after the company sent Tirazona a letter, finding her handling of the situation involving a rank-and-file employee to be less than ideal, and merely reminding her to be more circumspect when dealing with the more delicate concerns of their employees. To aggravate the situation, Tirazona adamantly and continually refused to cooperate with PET's investigation of her case and to provide an adequate explanation for her actions. Verily, the actions of Tirazona reflected an obdurate character that is arrogant, uncompromising, and hostile. By immediately and unreasonably adopting an adverse stance against PET, she sought to impose her will on the company and placed her own interests above those of her employer. Her motive for her actions was rendered even more questionable by her exorbitant and arbitrary demand for ₱2,000,000.00 payable within five days from demand. Her attitude towards her employer was clearly inconsistent with her position of trust and confidence. Her poor character became even more evident when she read what was supposed to be a confidential letter of the legal counsel of PET to PET officers/directors expressing his legal opinion on Tirazona's administrative case. PET was, therefore, fully justified in terminating Tirazona's employment for loss of trust and confidence.

APPEARANCES OF COUNSEL

Law Firm of Lapeña Villanueva Manzano & Associates for petitioner.

Jimenez Gonzales Bello Valdez Caluya & Fernandez for respondents.

R E S O L U T I O N

CHICO-NAZARIO, *J.*:

Before Us is a Motion for Leave to File [a] Second Motion for Reconsideration,[1] with the Second Motion for Reconsideration incorporated therein, where petitioner Ma. Wenelita Tirazona (Tirazona) seeks the reconsideration of the Resolution[2] of this Court dated 23 June 2008. Said Resolution denied for lack of merit petitioner's previous Motion for Reconsideration,[3] which sought the reversal of our Decision[4] dated 14 March 2008 or, in the alternative, modification thereof by awarding her separation pay and retirement benefits under existing laws.

In our 14 March 2008 Decision, we subscribed to the factual findings of the National Labor Relations Commission (NLRC) and the Court of Appeals that Tirazona, being the Administrative Manager of Philippine EDS Techno-Service, Inc. (PET), was a managerial employee who held a position of trust and confidence; that after PET officers/directors called her attention to her improper handling of a situation involving a rank-and-file employee, she claimed that she was denied due process for which she demanded ₱2,000,000.00 indemnity from PET and its officers/directors; that she admitted to reading a confidential letter addressed to PET officers/directors containing the legal opinion of the counsel of PET regarding her case; and that she was validly terminated from her employment on the ground that she willfully breached the trust and confidence reposed in her by her employer. In the end, we concluded that:

> Tirazona, in this case, has given PET more than enough reasons to distrust her. The arrogance and hostility she has shown towards the company and her stubborn, uncompromising stance in almost

[1] *Rollo*, pp. 252-261.

[2] *Id.* at 250.

[3] *Id.* at 232-249.

[4] Penned by Associate Justice Minita V. Chico-Nazario with Associate Justices Consuelo Ynares-Santiago, Ma. Alicia Austria-Martinez, Antonio Eduardo B. Nachura and Ruben T. Reyes, concurring; *rollo*, pp. 207-230.

all instances justify the company's termination of her employment. Moreover, Tirazona's reading of what was supposed to be a confidential letter between the counsel and directors of the PET, even if it concerns her, only further supports her employer's view that she cannot be trusted. In fine, the Court cannot fault the actions of PET in dismissing petitioner.[5]

Hence, the *fallo* of our 14 March 2008 Decision reads:

WHEREFORE, premises considered, the instant petition is hereby **DENIED** for lack of merit and the Decision of the Court of Appeals dated 24 May 2005 is hereby AFFIRMED. Costs against the petitioner.[6]

On 29 April 2008, Tirazona moved for reconsideration[7] of our afore-mentioned Decision. She argued therein that the Court failed to consider the length of her service to PET in affirming her termination from employment. She prayed that her dismissal be declared illegal. Alternatively, should the Court uphold the legality of her dismissal, Tirazona pleaded that she be awarded separation pay and retirement benefits, out of humanitarian considerations.

In our Resolution[8] dated 23 June 2008, we denied Tirazona's Motion for Reconsideration, as the same did not present any substantial arguments that would warrant a modification of our previous ruling. We thus decreed:

ACCORDINGLY, the Court resolves to ***DENY*** the motion for reconsideration with ***FINALITY*** for lack of merit.

On 21 August 2008, Tirazona filed the instant Motion for Leave to File [a] Second Motion for Reconsideration, with the Second Motion for Reconsideration incorporated therein, raising essentially the same arguments and prayers contained in her first Motion for Reconsideration.

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[5] *Id.* at 228.

[6] *Id*.

[7] *Id.* at 232-247.

[8] *Id.* at 250.

The Court thereafter required PET to comment on the above motion. On 19 November 2008, PET filed its Comment/ Opposition,[9] to which Tirazona filed her Reply[10] on 8 December 2008.

After thoroughly scrutinizing the averments of the present Motion, the Court unhesitatingly declares the same to be completely unmeritorious.

Section 2, Rule 52 of the Rules of Court explicitly decrees that no second motion for reconsideration of a judgment or final resolution by the same party shall be entertained. Accordingly, a second motion for reconsideration is a prohibited pleading, which shall not be allowed, except for extraordinarily persuasive reasons and only after an express leave shall have first been obtained.[11] In this case, we fail to find any such extraordinarily persuasive reason to allow Tirazona's Second Motion for Reconsideration.

As a general rule, an employee who has been dismissed for any of the just causes enumerated under Article 282[12] of the Labor Code is not entitled to separation pay.[13] In *Sy v.*

[9] *Id.* at 274-282.

[10] *Id.* at 443-447.

[11] *Ortigas and Company Limited Partnership v. Velasco,* 324 Phil. 483, 489 (1996).

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

a. Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

b. Gross and habitual neglect by the employee of his duties;

c. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

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

e. Other causes analogous to the foregoing.

[13] Section 7, Rule I, Book VI of the Omnibus Rules Implementing the Labor Code provides:

Metropolitan Bank & Trust Company,[14] we declared that only **unjustly dismissed employees** are entitled to retirement benefits and other privileges including reinstatement and backwages.

Although by way of exception, the grant of separation pay or some other financial assistance may be allowed to an employee dismissed for just causes on the basis of equity,[15] in *Philippine Long Distance Telephone Company v. National Labor Relations Commission*,[16] we set the limits for such a grant and gave the following *ratio* for the same:

[S]eparation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. x x x.

A contrary rule would, as the petitioner correctly argues, have the effect, of rewarding rather than punishing the erring employee for his offense. And we do not agree that the punishment is his dismissal only and that the separation pay has nothing to do with the wrong he has committed. Of course it has. Indeed, if the employee who steals from the company is granted separation pay even as he is validly dismissed, it is not unlikely that he will commit a similar offense in his next employment because he thinks he can expect a like leniency if he is again found out. This kind of misplaced compassion is not going to do labor in general any good as it will encourage the infiltration of its ranks by those who do not deserve the protection and concern of the Constitution.

The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged.

Sec. 7. *Termination of employment by employer*. — The just causes for terminating the services of an employee shall be those provided in Article 282 of the Code. The separation from work of an employee for a just cause does not entitle him to the termination pay provided in the Code, without prejudice, however, to whatever rights, benefits and privileges he may have under the applicable individual or collective agreement with the employer or voluntary employer policy or practice.

[14] G.R. No. 160618, 2 November 2006, 506 SCRA 580, 588.

[15] *Philippine Commercial International Bank v. Abad*, G.R. No. 158045, 28 February 2005, 452 SCRA 579, 587.

[16] G.R. No. 80609, 23 August 1988, 164 SCRA 671, 682-683.

At best it may mitigate the penalty but it certainly will not condone the offense. Compassion for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege. Social justice cannot be permitted to be [a] refuge of scoundrels any more than can equity be an impediment to the punishment of the guilty. Those who invoke social justice may do so only if their hands are clean and their motives blameless and not simply because they happen to be poor. This great policy of our Constitution is not meant for the protection of those who have proved they are not worthy of it, like the workers who have tainted the cause of labor with the blemishes of their own character. (Emphasis ours.)

In accordance with the above pronouncements, Tirazona is not entitled to the award of separation pay.

Contrary to her exaggerated claims, Tirazona was not just "gracelessly expelled" or "simply terminated" from the company on **22 April 2002**. She was found to have violated the trust and confidence reposed in her by her employer when she arrogantly and unreasonably demanded from PET and its officers/directors the exorbitant amount of ₱2,000,000.00 in damages, coupled with a threat of a lawsuit if the same was not promptly paid within five days. This unwarranted imposition on PET and its officers/directors was made after the company sent Tirazona a letter, finding her handling of the situation involving a rank-and-file employee to be less than ideal, and merely reminding her to be more circumspect when dealing with the more delicate concerns of their employees. To aggravate the situation, Tirazona adamantly and continually refused to cooperate with PET's investigation of her case and to provide an adequate explanation for her actions.

Verily, the actions of Tirazona reflected an obdurate character that is arrogant, uncompromising, and hostile. By immediately and unreasonably adopting an adverse stance against PET, she sought to impose her will on the company and placed her own interests above those of her employer. Her motive for her actions was rendered even more questionable by her exorbitant and arbitrary demand for ₱2,000,000.00 payable within five days from demand. Her attitude towards her employer was clearly

inconsistent with her position of trust and confidence. Her poor character became even more evident when she read what was supposed to be a confidential letter of the legal counsel of PET to PET officers/directors expressing his legal opinion on Tirazona's administrative case. PET was, therefore, fully justified in terminating Tirazona's employment for loss of trust and confidence.

Tirazona also failed to persuade us to consider in her favor her length of service to PET.

In the Motion for Reconsideration filed on 29 April 2008 and in the instant motion, Tirazona prays for this Court to grant her separation and other retirement benefits, should we uphold the legality of her dismissal. She anchors her claim on the fact that she had allegedly been in the employ of PET for twenty-six (26) years and that the Court must give due consideration to the length of her service to the company.[17] However, in her Reply to the Comment/Opposition to the instant motion filed by PET, Tirazona retracted the above allegation and stated that the claim of twenty-six (26) years of employment with PET was an error committed through inadvertence. She then averred that the length of her employment with PET should indeed be counted from July 1999, which up to the present time will result in a period of eight (8) years, more or less.

We find that the above statement is still inaccurate. As this Court ruled in our Decision dated 14 March 2008, Tirazona was validly terminated from her employment on 22 April 2002. Therefore, counting from the time when Tirazona was employed by PET on 19 July 1999 up to the time when she was dismissed, she had only rendered a little more than **two (2) years and nine (9) months** of service to PET.

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[17] Tirazona has consistently maintained throughout this case that she was only employed by PET on **19 July 1999** as the Head of the Human Resource Department and as Administrative Manager. Such fact was explicitly stated in her **Complaint** and **Position Paper** before the Labor Arbiter; the **Letter of Employment** attached to said Position Paper; her **Petition for *Certiorari*** and **Memorandum** before the Court of Appeals; and her original **Petition for Review** and **Memorandum** before this Court.

Finally, the cases cited by Tirazona hardly support her cause.

In *Soco v. Mercantile Corporation of Davao*[18] and *Firestone Tire and Rubber Company of the Philippines v. Lariosa*,[19] separation pay was granted to the dismissed employees, as they were mere rank-and-file employees who did not have any previous derogatory record with their companies and in equitable regard for their long years of service spanning more than ten (10) years.

In *Farrol v. Court of Appeals*,[20] separation pay was awarded because the penalty of dismissal was held to be harsh and disproportionate to the offense committed and the dismissed employee had been at the service of the company for twenty four (24) years.

In *Negros Navigation Co. Inc. v. National Labor Relations Commission*,[21] separation pay was awarded to the employee dismissed, as it was the employer itself that prayed for the award of the same, in lieu of the employee's reinstatement.

Lastly, in *Philippine Commercial International Bank v. Abad*,[22] separation pay was ordered granted to a dismissed managerial employee because there was an express finding that the violation of the bank policies was not perpetrated for the employee's self-interest, nor did the employee exhibit any lack of moral depravity. The employee had also been in the service of the company for twenty-five (25) years.

Obviously, Tirazona's reliance upon the above-cited cases is misleading, as the circumstances therein are markedly different from those in the case at bar.

In sum, we hold that the award of separation pay or any other kind of financial assistance to Tirazona, under the guise

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[18] 232 Phil. 488 (1987).

[19] 232 Phil. 201 (1987).

[20] 382 Phil. 212 (2000).

[21] G.R. No. 78207, 6 December 1988, 168 SCRA 258.

[22] *Supra* note 15.

of compassionate justice, is not warranted in this case. To hold otherwise would only cause a disturbance of the sound jurisprudence on the matter and a perversion of the noble dictates of social justice.

While the Court commiserates with the plight of Tirazona, who has recently manifested[23] that she has since been suffering from her poor health condition, the Court cannot grant her plea for the award of financial benefits based solely on this unfortunate circumstance. For all its conceded merit, equity is available only in the absence of law and not as its replacement. Equity as an exceptional extenuating circumstance does not favor, nor may it be used to reward, the indolent[24] or the wrongdoer, for that matter. This Court will not allow a party, in the guise of equity, to benefit from its own fault.[25]

WHEREFORE, the Motion for Leave to File [a] Second Motion for Reconsideration is hereby *DENIED* for lack of merit and the Second Motion for Reconsideration incorporated therein is *NOTED WITHOUT ACTION* in view of the denial of the former.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Nachura, and *Leonardo-de Castro,*[*] *JJ.,* concur.

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[23] *Rollo*, pp. 268-273.

[24] *B. E. San Diego, Inc. v. Alzul*, G.R. No. 169501, 8 June 2007, 524 SCRA 402, 435.

[25] *Id.*

[*] Per Special Order No. 546, Associate Justice Teresita J. Leonardo-De Castro was designated to sit as additional member in view of the retirement of Associate Justice Ruben T. Reyes dated 5 January 2009.

FIRST DIVISION

[G.R. No. 169970. January 20, 2009]

PROTACIO VICENTE and DOMINGA VICENTE, represented by RONDOLF VICENTE, *petitioners, vs.* **DELIA SOLEDAD AVERA and RONBERTO VALINO, SHERIFF IV, Regional Trial Court, Branch 70, Pasig City,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; INJUNCTION; REQUISITES TO BE ENTITLED TO A WRIT OF INJUNCTION.— Injunction, as a preservative remedy, aims to protect substantive rights and interests. To be entitled to a writ of injunction, the complainant must establish the following requisites: (1) there must be a right in *esse* or the existence of a right to be protected; and (2) the act against which injunction is to be directed is a violation of such right. The grant of the writ is conditioned on the existence of the complainant's clear legal right, which means one clearly founded in or granted by law or is "enforceable as a matter of law."

2. ID.; ID.; ID.; ID.; PRESENT IN CASE AT BAR.— As the registered owners and actual possessors of the property in question, petitioners have a clear legal right to the property in dispute. Section 51 of Presidential Decree (P.D.) No. 1529 provides that registration is the operative act that conveys or affects registered land as against third persons. Thus, a TCT is the best proof of ownership of land. In the case at bar, it is undisputed that petitioners are the registered owners and actual possessors of the subject property. Moreover, as the registered owners, petitioners have the right to the possession of the property, which is one of the attributes of ownership. x x x To determine whether the second requisite for granting a writ of injunction exists, that the act against which injunction is to be directed is a violation of the complainant's right, we must examine the implications regarding the implementation of the writ of execution over TCT No. 14216. Pursuant to this writ of execution, Sheriff Valino served petitioners with a notice to vacate. If allowed to

be carried out, the act against which the injunction is directed, the implementation of the writ of execution, would violate petitioners' rights as the registered owners and actual possessors of the property in dispute. The registered owner has the right to possess and enjoy his property, without any limitations other than those imposed by law. The implementation of the writ of execution would unduly deprive petitioners, as the registered owners, of their right to possess the subject property, which is one of the attributes of ownership. We must stress that until petitioners' title is annulled in a proper proceeding, Avera has no enforceable right over the property in dispute.

3. CIVIL LAW; LAND REGISTRATION; TORRENS TITLE; CANNOT BE COLLATERALLY ATTACKED; CASE AT BAR.— It was erroneous for respondents to assail the deed of sale executed on October 1, 1987 in favor of petitioners, because this constitutes a collateral attack on petitioners' TCT. Section 48 of P.D. No. 1529 prohibits a collateral attack on a Torrens title. This Court has held that a petition which, in effect, questioned the validity of a deed of sale for registered land constitutes a collateral attack on a certificate of title. In the case at bar, respondents' allegation, that the deed of sale executed on October 1, 1987 in favor of petitioners does not exist, clearly constitutes a collateral attack on a certificate of title. The allegation of the inexistence of the deed of sale in effect attacks the validity of the TCT issued in the petitioners' names.

4. ID.; ID.; *LIS PENDENS*; EFFECT OF A NOTICE OF *LIS PENDENS*.— Section 24, Rule 14 of the 1964 Rules of Civil Procedure provides that a purchaser of the property affected by the notice of *lis pendens* is deemed to have constructive notice of the pendency of the action only from the time of filing such notice. Section 14, Rule 13 of the 1997 Rules of Civil Procedure reiterates this rule. Thus, a notice of *lis pendens* affects a transferee *pendente lite*, who by virtue of the notice, is bound by any judgment, which may be rendered for or against the transferor, and his title is subject to the results of the pending litigation. A notice of *lis pendens* neither affects the merits of a case nor creates a right or a lien. It serves to protect the real rights of the registrant while the case involving such rights is pending resolution. While the notice of *lis pendens* remains on a certificate of title, the registrant could rest secure that he

would not lose the property or any part of it during the litigation. Once a notice of *lis pendens* has been duly registered, any subsequent transaction affecting the land involved would have to be subject to the outcome of the litigation.

5. ID.; ID.; ID.; WHEN THE NOTICE OF *LIS PENDENS* DOES NOT AFFECT PARTY'S TITLE TO THE PROPERTY IN DISPUTE.— In the case at bar, the notice of *lis pendens* does not affect petitioners' title to the property in dispute. A notice of *lis pendens* concerns litigation between a transferor and a third party, where the transferee who acquires land with a notice of *lis pendens* annotated on the corresponding certificate of title stands in the shoes of his predecessor and in which case the transferee's title is subject to the results of the pending litigation. The notice of *lis pendens* does not concern litigation involving Rebuquiao, who transferred his title to the property in dispute to petitioners, and his title. The notice of *lis pendens* pertains to the JDRC case, an action for nullity of the marriage between Avera and Domingo. Since Rebuquiao's title to the property in dispute is not subject to the results of the JDRC case, petitioners' title to the same property is also not subject to the results of the JDRC case.

APPEARANCES OF COUNSEL

S.V. Ramos Law Office for petitioners.
Culvera Waytan Tabbu and Associates for respondents.

D E C I S I O N

PUNO, *C.J.*:

This Petition for Review on *Certiorari* seeks to set aside the Decision[1] and Resolution[2] of the Court of Appeals (CA), dated June 16, 2005 and October 4, 2005 respectively, in CA-G.R. CV No. 79327, which reversed the Decision[3] of the Regional Trial Court (RTC), Branch 208, Mandaluyong City, dated March 30, 2003.

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[1] *Rollo*, pp. 41-50.

[2] *Id.* at 51.

[3] *Id.* at 64-72.

Jovencio Rebuquiao was the registered owner of the property in dispute, then covered by Transfer Certificate of Title (TCT) No. 34351.[4] On October 1, 1987, Rebuquiao executed a Deed of Absolute Sale in favor of petitioners, spouses Protacio Vicente and Dominga Vicente, over the property in dispute.[5] Respondent Delia Soledad Avera alleges that on October 9, 1987, Jose Rebuquiao, pursuant to a Special Power of Attorney granted to him by Jovencio Rebuquiao, executed a Deed of Absolute Sale with Assumption of Mortgage in favor of Roberto Domingo, Avera's spouse at the time, and herself.[6]

On May 29, 1991, Avera filed a Petition for Declaration of Nullity of Marriage before the RTC, Branch 70, Pasig City, entitled "*Delia Soledad Domingo, etc. v. Roberto Domingo*" and docketed as JDRC Case No. 1989-J (JDRC case).[7] In this case, Avera asserted exclusive ownership over the property in dispute.[8] On January 23, 1992, a notice of *lis pendens* was inscribed on TCT No. 34351, pertaining to the JDRC case pending at the time.[9]

Since 1997, petitioners possessed the property in dispute.[10] On July 22, 1998, TCT No. 34351 was cancelled, and in lieu thereof, the Registry of Deeds issued petitioners TCT No. 14216 for the property in dispute, on the basis of the deed of sale executed on October 1, 1987.[11] The notice of *lis pendens* was carried over to TCT No. 14216.[12]

On November 28, 1994, the RTC, Branch 70, Pasig City, rendered a Decision in the JDRC case, declaring the marriage

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4 *Id.* at 41.

5 *Id.* at 64.

6 *Id.* at 42, 67.

7 *Id.* at 42.

8 *Id.*

9 *Id.*

10 *Id.* at 68.

11 *Id.* at 43.

12 *Id.*

of Avera and Domingo void and ordering the property acquired during their cohabitation to be put in the custody of Avera, including the property in dispute.[13] After the decision in the JDRC case became final and executory, the RTC, Branch 70, Pasig City, issued a Writ of Execution.[14] On June 13, 2001, the same trial court issued an *Alias* Writ of Execution, which reads:

> Movant declared in her motion that the said property is now registered in the name of another person, namely, Protacio Vicente, under TCT No. 14216 of the Register of Deeds of Mandaluyong City. It appearing, however, that the transfer was made notwithstanding the annotation thereon of the notice of *lis pendens* that the same property is the subject of the instant case, it can still be the subject of a writ of execution to satisfy the judgment in favor of herein petitioner.
>
> WHEREFORE, let an *alias* writ of execution be issued over Transfer Certificate of Title No. 34351, now covered by TCT No. 14216 of the Register of Deeds of Mandaluyong City.
>
> SO ORDERED.[15]

Pursuant to the *Alias* Writ of Execution, respondent Ronberto Valino, in his capacity as Sheriff IV of the RTC, Branch 70, Pasig City, served a Notice to Vacate dated August 15, 2001, on petitioners.[16] On August 17, 2001, petitioners filed an Affidavit of Third Party Claim before the RTC, Branch 70, Pasig City.[17]

On August 22, 2001, petitioners filed a Complaint for Injunction with Prayer for a Temporary Restraining Order (TRO) before the RTC, Branch 208, Mandaluyong City, to enjoin Sheriff Valino from implementing the *alias* writ of execution.[18] On September 4, 2001, the trial court issued a TRO[19] and, on May

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[13] Records, Vol. 1, pp. 377-385.

[14] *Id.* at 398.

[15] *Id.* at 399.

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

[17] Records, Vol. 1, pp. 50-51.

[18] *Rollo*, p. 15.

[19] *Id.* at 44.

29, 2002, a Writ of Preliminary Injunction, enjoining respondents from enforcing the notice to vacate.[20] On March 30, 2003, it rendered a decision, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered making the writ of preliminary injunction PERMANENT.
>
> Defendants' counterclaims are hereby dismissed for lack of merit.
>
> SO ORDERED.[21]

It held that petitioners were entitled to permanent injunction considering the following: (1) it is undisputed that petitioners are the registered owners of the subject property, which certificate of title confers upon them conclusive ownership of the property; and (2) the writ of execution issued in the JDRC case could only be issued against a party to the action, and thus not to the petitioners.[22]

On appeal, the CA reversed and set aside the decision of the RTC, Branch 208, Mandaluyong City.[23] The CA held that petitioners are bound by the outcome of the JDRC case, because the annotation of the notice of *lis pendens* (January 23, 1992) was ahead of petitioners' registration of the deed of sale executed on October 1, 1987 (July 22, 1998).[24] Petitioners filed a Motion for Reconsideration, which the CA denied.[25]

Petitioners raise the following issues before this Court:

I

THE CA ERRED IN ORDERING THE DISMISSAL OF THE COMPLAINT FOR INJUNCTION DESPITE THE FACT THAT THE PETITIONERS ARE THE REGISTERED OWNERS OF THE PROPERTY AND AS SUCH CANNOT BE EVICTED OUT THEREFROM UNLESS:

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[20] Records, Vol. 2, p. 553.

[21] *Rollo*, p. 72.

[22] *Id.* at 70.

[23] *Id.* at 50.

[24] *Id.* at 49.

[25] *Id.* at 51.

A. THE SALE FROM WHICH THEY BASED THEIR ACQUISITION IS DECLARED VOID.

B. THE TITLE ISSUED IN THEIR NAMES BASED ON THE DEED OF SALE IS LIKEWISE DECLARED VOID.

II

THE CA ERRED IN DISMISSING THE COMPLAINT BECAUSE IN SO DOING, IT MADE AN IMPLIED RECOGNITION THAT A REAL PROPERTY TITLED UNDER THE TORRENS SYSTEM MAY BE ATTACKED COLLATERALLY IN CONTRAVENTION OF LAW AND ESTABLISHED JURISPRUDENCE[.]

III

THE CA ERRED IN CONCLUDING THAT THE PETITIONERS ARE BOUND BY THE *LIS PENDENS* IT BEING CLEAR THAT THE PROPERTY WAS ACQUIRED LONG BEFORE THE *LIS PENDENS* WAS ANNOTATED. PETITIONERS' (sic) BECAME OWNERS OF THE PROPERTY ON OCTOBER 1, 1987 AND NOT ON JULY 20, 1998 WHEN THEIR OWNERSHIP WAS MERELY CONFIRMED BY THE TITLE ISSUED BY THE OFFICE OF THE REGISTER OF DEEDS.

Petitioners maintain that as the registered owners and actual possessors of the property in dispute, they are entitled to a writ of injunction that will prevent the implementation of the writ of execution corresponding to the JDRC case.

Respondents assert that petitioners are not entitled to the writ of injunction, because the petitioners are subject to the outcome of the JDRC case and thus the implementation of the writ of execution due to the notice of *lis pendens* annotated on their TCT. They further allege: (1) that there was no sale by Rebuquiao in favor of petitioners on October 1, 1987; and (2) if there was a sale, the same happened in 1997, the year petitioners registered the deed of sale executed in their favor.[26]

The core issue in the case at bar is whether injunction lies in favor of the petitioners to prevent the respondents from interfering in the exercise of their rights over the property in dispute.

[26] *Id.* at 110-114.

We find merit in the petition.

Injunction, as a preservative remedy, aims to protect substantive rights and interests.[27] To be entitled to a writ of injunction, the complainant must establish the following requisites: (1) there must be a right in *esse* or the existence of a right to be protected; and (2) the act against which injunction is to be directed is a violation of such right.[28] The grant of the writ is conditioned on the existence of the complainant's clear legal right, which means one clearly founded in or granted by law or is "enforceable as a matter of law."[29]

As the registered owners and actual possessors of the property in question, petitioners have a clear legal right to the property in dispute. Section 51 of Presidential Decree (P.D.) No. 1529 provides that registration is the operative act that conveys or affects registered land as against third persons.[30] Thus, a TCT is the best proof of ownership of land.[31] In the case at bar, it is undisputed that petitioners are the registered owners and actual possessors of the subject property. Moreover, as the

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[27] *Idolor v. Court of Appeals*, G.R. No. 141853, February 7, 2001, 351 SCRA 399, 405.

[28] *Borbajo v. Hidden View Homeowners, Inc.*, G.R. No. 152440, January 31, 2005, 450 SCRA 315, 326-327.

[29] *Boncodin v. National Power Corporation Employees Consolidated Union*, G.R. No. 162716, September 27, 2006, 503 SCRA 611, 623.

[30] This provision provides:

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.

[31] *Lee Tek Sheng v. Court of Appeals*, 354 Phil. 556, 561 (1998).

registered owners, petitioners have the right to the possession of the property, which is one of the attributes of ownership.[32]

It was erroneous for respondents to assail the deed of sale executed on October 1, 1987 in favor of petitioners, because this constitutes a collateral attack on petitioners' TCT. Section 48 of P.D. No. 1529 prohibits a collateral attack on a Torrens title.[33] This Court has held that a petition which, in effect, questioned the validity of a deed of sale for registered land constitutes a collateral attack on a certificate of title.[34] In the case at bar, respondents' allegation, that the deed of sale executed on October 1, 1987 in favor of petitioners does not exist, clearly constitutes a collateral attack on a certificate of title. The allegation of the inexistence of the deed of sale in effect attacks the validity of the TCT issued in the petitioners' names.

Petitioners' title to the property in dispute is not subject to the outcome of the litigation covered by the notice of *lis pendens* annotated on January 23, 1992. Section 24, Rule 14 of the 1964 Rules of Civil Procedure provides that a purchaser of the property affected by the notice of *lis pendens* is deemed to have constructive notice of the pendency of the action only from the time of filing such notice.[35] Section 14, Rule 13 of the

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[32] *Miranda v. Besa*, G.R. No. 146513, July 30, 2004, 435 SCRA 532, 540.

[33] This provision provides:

SECTION 48. *Certificate not subject to collateral attack.* — A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law.

[34] *Zaragoza v. Court of Appeals*, G.R. No. 106401, September 29, 2000, 341 SCRA 309, 316-317.

[35] This provision provides:

SECTION 24. *Notice of lis pendens*. — In an action affecting the title or the right of possession of real property, the plaintiff, at the time of filing the complaint, and the defendant, at the time of filing his answer, when affirmative relief is claimed in such answer, or at any time afterwards, may record in the office of the registrar of deeds of the province in which the property is situated a notice of the pendency of the action, containing the names of the parties and the object of the action or defense, and a description of the property in that province affected thereby. **From the time only of filing such notice for record shall a purchaser, or incumbrancer of the property affected**

1997 Rules of Civil Procedure reiterates this rule.[36] Thus, a notice of *lis pendens* affects a transferee *pendente lite*, who by virtue of the notice, is bound by any judgment, which may be rendered for or against the transferor, and his title is subject to the results of the pending litigation.[37]

A notice of *lis pendens* neither affects the merits of a case nor creates a right or a lien.[38] It serves to protect the real rights of the registrant while the case involving such rights is pending resolution.[39] While the notice of *lis pendens* remains on a certificate of title, the registrant could rest secure that he would not lose the property or any part of it during the litigation.[40]

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thereby, be deemed to have constructive notice of the pendency of the action, and only of its pendency against parties designated by their real names. (Emphasis supplied)

The notice of *lis pendens* hereinabove mentioned may be cancelled only upon order of the court, after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be recorded.

[36] This provision provides:

SECTION 14. *Notice of lis pendens.* — In an action affecting the title or the right of possession of real property, the plaintiff and the defendant, when affirmative relief is claimed in his answer, may record in the office of the registry of deeds of the province in which the property is situated a notice of the pendency of the action. Said notice shall contain the names of the parties and the object of the action or defense, and a description of the property in that province affected thereby. **Only from the time of filing such notice for record shall a purchaser, or encumbrancer of the property affected thereby, be deemed to have constructive notice of the pendency of the action, and only of its pendency against the parties designated by their real names.** (Emphasis supplied)

The notice of *lis pendens* hereinabove mentioned may be cancelled only upon order of the court, after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be recorded.

[37] *Yu v. Court of Appeals*, 321 Phil. 897, 902-903 (1995).

[38] *Romero v. Court of Appeals*, G.R. No. 142406, May 16, 2005, 458 SCRA 483, 495.

[39] *Po Lam v. Court of Appeals*, G.R. No. 116220, December 6, 2000, 347 SCRA 86, 96.

[40] *Id.*

Once a notice of *lis pendens* has been duly registered, any subsequent transaction affecting the land involved would have to be subject to the outcome of the litigation. For this reason, the Court has pronounced that a "purchaser who buys registered land with full notice of the fact that it is in litigation between the vendor and a third party stands in the shoes of his vendor and his title is subject to the incidents and result of the pending litigation."[41]

In the case at bar, the notice of *lis pendens* does not affect petitioners' title to the property in dispute. A notice of *lis pendens* concerns litigation between a transferor and a third party, where the transferee who acquires land with a notice of *lis pendens* annotated on the corresponding certificate of title stands in the shoes of his predecessor and in which case the transferee's title is subject to the results of the pending litigation. The notice of *lis pendens* does not concern litigation involving Rebuquiao, who transferred his title to the property in dispute to petitioners, and his title. The notice of *lis pendens* pertains to the JDRC case, an action for nullity of the marriage between Avera and Domingo. Since Rebuquiao's title to the property in dispute is not subject to the results of the JDRC case, petitioners' title to the same property is also not subject to the results of the JDRC case.

To determine whether the second requisite for granting a writ of injunction exists, that the act against which injunction is to be directed is a violation of the complainant's right, we must examine the implications regarding the implementation of the writ of execution over TCT No. 14216. Pursuant to this writ of execution, Sheriff Valino served petitioners with a notice to vacate.

If allowed to be carried out, the act against which the injunction is directed, the implementation of the writ of execution, would violate petitioners' rights as the registered owners and actual possessors of the property in dispute. The registered owner has

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[41] *Carrascoso, Jr. v. Court of Appeals*, G.R. No. 123672, December 14, 2005, 477 SCRA 666, 692-693.

the right to possess and enjoy his property, without any limitations other than those imposed by law.[42] The implementation of the writ of execution would unduly deprive petitioners, as the registered owners, of their right to possess the subject property, which is one of the attributes of ownership.[43]

We must stress that until petitioners' title is annulled in a proper proceeding, Avera has no enforceable right over the property in dispute. At this point, petitioners' possession of the subject property must be respected. Since Avera failed to prove her indubitable right over the subject property, we rule that petitioners possess a clear and unmistakable right over the property in dispute that requires the issuance of a writ of injunction to prevent any damage to their interests as registered owners.

IN VIEW WHEREOF, the petition is *GRANTED*. The Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 79327, dated June 16, 2005 and October 4, 2005 respectively, are *REVERSED* and *SET ASIDE*.

SO ORDERED.

Carpio, Corona, Azcuna, and *Leonardo-de Castro, JJ.*, concur.

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[42] *Heirs of Rosendo Sevilla Florencio v. Heirs of Teresa Sevilla De Leon*, G.R. No. 149570, March 12, 2004, 425 SCRA 447, 460.

[43] *Miranda v. Besa*, *supra* note 32.

FIRST DIVISION

[G.R. No. 170901. January 20, 2009]

DAVAO ORIENTAL ELECTRIC COOPERATIVE, INC., *petitioner, vs.* **THE PROVINCE OF DAVAO ORIENTAL,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE RULES AND REGULATIONS; FISCAL INCENTIVE REVIEW BOARD RESOLUTION NO. 24-87 RESTORING THE TAX EXEMPTION OF ALL ELECTRIC COOPERATIVES HAS NO RETROACTIVE APPLICATION.— First, we resolve the issue of retroactivity of FIRB Resolution No. 24-87. We affirm the ruling of the CA. Indeed, even a cursory reading of the resolution, quoted above, bares no indicia of retroactivity of its application. FIRB Resolution No. 24-87 is crystal clear in stating that "the tax and duty exemption privileges of electric cooperatives granted under the terms and conditions of Presidential Decree No. 269 . . . are restored effective July 1, 1987." There is no other way to construe it. The language of the law is plain and unambiguous. When the language of the law is clear and unequivocal, the law must be taken to mean exactly what it says.

2. TAXATION; GENERAL PRINCIPLES; DOCTRINE OF STRICT INTERPRETATION IN CONSTRUING TAX EXEMPTION, APPLIED.— [B]ecause taxes are the lifeblood of the nation, the court has always applied the doctrine of strict interpretation in construing tax exemptions. A claim for exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken. Elsewise stated, taxation is the rule, exemption therefrom is the exception.

3. ID.; REAL PROPERTY TAX; TAXPAYER REMEDIES; EFFECT OF FAILURE TO APPEAL THE ASSESSMENT OF THE PROPERTIES TO THE BOARD OF ASSESSMENT APPEALS.— [P]etitioner does not deny having duly received the two Notices of Assessment dated October 8, 1985 on

> October 10, 1985. It also admits that it did not file a protest before the Board of Assessment Appeals to question the assessment. x x x Having failed to appeal the assessment of its properties to the Board of Assessment Appeals, petitioner cannot now assail the validity of the tax assessment against it before the courts. Petitioner failed to exhaust its administrative remedies, and the consequence for such failure is clear – the tax assessment, as computed and issued by the Office of the Provincial Assessor, became final. Petitioner is deemed to have admitted the correctness of the assessment of its properties. In addition, Section 64 of PD No. 464 requires that the taxpayer must first pay under protest the tax assessed against him before he could seek recourse from the courts to assail its validity.

APPEARANCES OF COUNSEL

Casia Sembrano and Valles Law Offices for petitioner.
Alejandro A. Aquino for respondent.

D E C I S I O N

PUNO, *C.J.*:

On appeal is the Court of Appeals' (CA's) November 15, 2005 Decision[1] in CA-G.R. CV No. 67188 setting aside the March 15, 2000 Decision[2] of the Regional Trial Court (RTC) of Mati, Davao Oriental in Civil Case No. 1550 that dismissed the complaint for collection of delinquent real property taxes filed by the Province of Davao Oriental against the Davao Oriental Electric Cooperative, Inc.

The facts are as follows:

Petitioner Davao Oriental Electric Cooperative, Inc. was organized under Presidential Decree (PD) No. 269 which granted a number of tax and duty exemption privileges to electric

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[1] *Rollo*, pp. 14-27.

[2] CA *rollo*, pp. 49-64.

cooperatives.[3] In 1984, PD No. 1955[4] was enacted by then President Ferdinand E. Marcos. It withdrew all exemptions

[3] PD No. 269. National Electrification Administration Decree (1973).

Sec. 39. *Assistance to Cooperatives; Exemption from Taxes, Imposts, Duties, Fees; Assistance from the National Power Corporation.* Pursuant to the national policy declared in Section 2, the Congress hereby finds and declares that the following assistance to cooperative is necessary and appropriate:

(a) Provided that it operates in conformity with the purposes and provisions of this Decree, cooperatives (1) shall be permanently exempt from paying income taxes, and (2) for a period ending on December 31 of the thirtieth full calendar year after the date of a cooperative's organization or conversion hereunder, or until it shall become completely free of indebtedness incurred by borrowing, whichever event first occurs, shall be exempt from the payment (a) of all National Government, local government and municipal taxes and fees, including franchise, filing, recordation, license or permit fees or taxes and any fees, charges, or costs involved in any court or administrative proceeding in which it may be a party, and (b) of all duties or imposts on foreign goods acquired for its operations, the period of such exemption for a new cooperative formed by consolidation, as provided for in Section 29, to begin from as of the date of the beginning of such period for the constituent consolidating cooperative which was most recently organized or converted under this Decree: *Provided,* That the Board of Administrators shall, after consultation with the Bureau of Internal Revenue, promulgate rules and regulations for the proper implementation of the tax exemptions provided for in this Decree.

x x x x x x x x x

[4] Withdrawing, Subject to Certain Conditions, the Duty and Tax Privileges Granted to Private Business Enterprises and/or Persons Engaged in any Economic Activity, and for Other Purposes.

WHEREAS, the current economic crisis amounts to a grave emergency which affects the stability of the nation and requires immediate action;

WHEREAS, the issuance of this decree is an essential and necessary component of the national economic recovery program formulated to meet and overcome the emergency;

WHEREAS, Section 20 of Batas Pambansa Blg. 391, otherwise known as the Investment Incentives Policy Act of 1983, authorizes the President to restructure/rationalize all existing incentive systems/legislations to align them with overall economic development objectives and make them more responsive and meaningful to changing circumstances;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree:

from or any preferential treatment in the payment of duties, taxes, fees, imposts, and other charges granted to private business enterprises and/or persons engaged in any economic activity.

Due to the failure of petitioner to declare the value of its properties, the Office of the Provincial Assessor assessed its properties.[5] On October 8, 1985, the Provincial Assessor sent the Notice of Assessment to petitioner which duly received it.

Section 1. The provisions of any special or general law of the contrary notwithstanding, all exemptions from or any preferential treatment in the payment of duties, taxes, fees, imposts and other charges heretofore granted to private business enterprises and/or persons engaged in any economic activity are hereby withdrawn, except those enjoyed by the following:

(a) Those registered by the Board of Investments under Presidential Decree No. 1789, as amended by Batas Pambansa Blg. 391, and those registered by the Export Processing Zone Authority under Presidential Decree No. 66, as amended by Presidential Decree Nos. 1449, 1776-A and 1786;

(b) The copper mining industry in accordance with the provisions of LOI 1416;

(c) Those covered by international agreements to which the Philippines is a signatory;

(d) Those covered by the non-impairment clause of the Constitution; and

(e) Those that will be approved by the President of the Philippines upon the recommendation of the Minister of Finance.

Section 2. The Ministry of Finance shall promulgate the necessary rules and regulations to effectively implement the provisions of this Decree.

Section 3. All other laws, decrees, executive orders, administrative orders, rules, regulations or parts thereof which are inconsistent with this Decree are hereby repealed, amended or modified accordingly.

Section 4. This Decree shall take effect on October 15, 1984.

[5] P.D. No. 464, Sec. 7. Declaration of Real Property by the Assessor. — When any person, natural or juridical, by whom real property is required to be declared under Section six hereof refuses or fails for any reason to make such declaration within the time prescribed, the provincial or city assessor shall himself declare the property in the name of the defaulting owner, if known, or against an unknown owner, as the case may be, and shall assess the property for taxation in accordance with the provisions of this Code. No oath shall be required of a declaration thus made by the provincial or city assessor.

During the same year of 1985, the Fiscal Incentive Review Board (FIRB) issued FIRB Resolution No. 13-85, the Ministry of Finance issued Local Tax Regulation No. 3-85, and the Office of the Local Government Finance, Region XI, Davao City issued Regional Office Memorandum Circular No. 42-85, all of which reiterated the withdrawal of tax exemptions previously granted to business entities including electric cooperatives.

On January 8, 1986, then Pres. Marcos issued PD No. 2008,[6] requiring the Minister of Finance to immediately restore the tax exemption of all electric cooperatives. However, in December 1986, then Pres. Corazon C. Aquino issued Executive Order (EO) No. 93 which withdrew all tax and duty exemptions granted to private entities effective March 10, 1987. But Memorandum Order No. 65, dated January 23, 1987, suspended the implementation of the said EO until June 30, 1987 for cooperatives. Effective July 1, 1987, FIRB No. 24-87 restored the tax and duty exemption privileges of electric cooperatives under PD No. 269. FIRB Resolution No. 24-87 reads:

> BE IT RESOLVED, as it is hereby resolved, That the tax and duty exemption privileges of electric cooperatives granted under the terms and conditions of Presidential Decree No. 269 (creating the National Electrification Administration as a corporation, prescribing its powers and activities, appropriating the necessary funds therefore and declaring a national policy objective for the total electrification of the Philippines on an area coverage basis; the organization, promotion and development of electric cooperatives to attain the said objective, prescribing terms and conditions for their operations, the repeal of Republic Act No. 6038, and for other purposes), as amended, are restored effective July 1, 1987: Provided, however, That income from their electric service operations and other sources including the interest income from bank deposits and yield or any other monetary benefit from bank deposits and yield or any other similar arrangements shall remain taxable: Provided, further, That the electric cooperatives shall furnish the FIRB on an annual basis or as often as the FIRB may require them to do so, statistical and financial statements of

[6] Further Strengthening the Cooperative Movement by Amending Certain Provisions of Presidential Decree Numbered One Hundred Seventy-Five, as Amended by Presidential Decree Numbered Nineteen Hundred and Fifty-Five.

their operations and other information as may be required, for purposes of effective and efficient tax and duty exemption availment.

(SGD.) JAIME V. ONGPIN
Secretary of Finance
Chairman, FIRB

In May 1990, respondent filed a complaint for collection of delinquent real property taxes against petitioner for the years 1984 until 1989, amounting to one million eight hundred twenty-five thousand nine hundred twenty-eight pesos and twelve centavos (₱1,825,928.12).

Petitioner contends that it was exempt from the payment of real estate taxes from 1984 to 1989 because the restoration of tax exemptions under FIRB Resolution No. 24-87 retroacts to the date of withdrawal of said exemptions. Further, petitioner questions the classification made by respondent of some of its properties as real properties when it believes them to be personal properties, hence, not subject to realty tax.

On March 15, 2000, the RTC rendered its decision in favor of petitioner. It ruled, thus:

Inasmuch as the Fiscal Incentive Review Board (FIRB) Resolution No. 24-87 issued on June 14, 1987, RESTORED the duty and tax exemptions enjoyed by Electric Cooperatives established pursuant to PD 269 (Sec. 39) which were previously withdrawn, and that the said Resolution No. 24-87 was issued in compliance with the mandate of Executive Order No. 93 which has been declared as a valid delegation of legislative power pursuant to the Maceda[7] case, there is no question that the herein defendant as an electric cooperative established under PD 269 is exempt from the payment of its realty taxes during the period covered by the herein complaint – 1985 to December 31, 1987.

x x x x x x x x x

The dispositive portion of the decision reads as follows:

WHEREFORE, in view of the foregoing, judgment is rendered dismissing the complaint.

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[7] *Maceda v. Macaraig*, G.R. No. 88291, May 31, 1991, 197 SCRA 771.

Counterclaim is likewise dismissed.

No pronouncement as to costs.

SO ORDERED.[8]

Respondent appealed to the CA which set aside the ruling of the RTC. It held that:

A cursory reading of the aforecited resolution fails to indicate any semblance of retroactivity of the restoration of tax exemptions, in contrast to the ruling of the court *a quo* and to the contention of the Appellee that such restoration is retroactive from the date of withdrawal of exemption. The *FIRB Resolution No. 24-87* is very specific and clear that the tax and duty exemption privileges of electric cooperatives are restored effective 1 July 1987. Besides, it is settled that laws have no retroactive effect. It is settled that a "sound statutory construction is that a statute operates prospectively, unless the legislative intent to the contrary is made manifest either by the express terms of the statute or by necessary implication." . . .

The dispositive portion of the decision of the CA reads as follows:

WHEREFORE, premises considered, herein Appeal is GRANTED and the assailed Decision of the court *a quo* is hereby SET ASIDE. Plaintiff-Appellee Davao Oriental Electric Cooperative is hereby ordered to PAY Plaintiff-Appellant Province of Davao Oriental delinquent real property taxes from 1 January 1985 up to 31 December 1989 plus the corresponding penalties and surcharges imposed by law.

SO ORDERED.[9]

Hence, this appeal.[10]

Petitioner raises the following issues:

(1) WHETHER OR NOT THE HONORABLE COURT OF APPEALS HAD GRAVELY ERRED IN RULING THAT THE

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[8] RTC Records, p. 315.

[9] *Rollo*, p. 26.

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

RESTORATION OF THE TAX EXEMPTION UNDER FIRB RESOLUTION NO. 24-87 WAS NOT RETROACTIVE TO THE DATE OF EFFECTIVITY OF PD 1955.

(2) WHETHER OR NOT THE HONORABLE COURT OF APPEALS WAS CORRECT IN HOLDING THAT NOTWITHSTANDING THE RESTORATION OF SUCH TAX EXEMPTIONS UNDER FIRB RESOLUTION NO. 24-87, THE PETITIONER SHOULD STILL BE LIABLE FOR UNPAID TAXES FOR THE SUPPOSED FAILURE TO SUBMIT TO THE FIRB FINANCIAL STATEMENTS OF ITS OPERATIONS.

(3) WITHOUT CONCEDING ON THE FOREGOING, WHETHER OR NOT THE PETITIONER COULD BE MADE TO PAY TAXES BASED ON A WIDE-SWEEPING AND ERRONEOUS ASSESSMENT OF ITS REAL PROPERTIES.[11]

First, we resolve the issue of retroactivity of FIRB Resolution No. 24-87. We affirm the ruling of the CA. Indeed, even a cursory reading of the resolution, quoted above, bares no indicia of retroactivity of its application. FIRB Resolution No. 24-87 is crystal clear in stating that "the tax and duty exemption privileges of electric cooperatives granted under the terms and conditions of Presidential Decree No. 269 . . . are restored effective July 1, 1987." There is no other way to construe it. The language of the law is plain and unambiguous. When the language of the law is clear and unequivocal, the law must be taken to mean exactly what it says.

Further, because taxes are the lifeblood of the nation, the court has always applied the doctrine of strict interpretation in construing tax exemptions. A claim for exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken. Elsewise stated, taxation is the rule, exemption therefrom is the exception.[12]

Second, we rule on the issue of assessment of petitioner's real properties.

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[11] *Id.* at 6.

[12] *Paseo Realty & Development Corporation v. Court of Appeals, et al.*, G.R. No. 119286, October 13, 2004, 440 SCRA 235.

Petitioner contests the assessment by respondent of its properties. It claims that the tax declarations covering its properties were issued without prior consultation, and without its knowledge and consent. In addition, it argues that respondent classified its poles, towers and fixtures, overhead conductors and devices, station equipment, line transformers, *etc*. as real properties "when by [their] nature, use, purpose, and destination and by substantive law and jurisprudence, they are personal properties."[13]

However, petitioner does not deny having duly received the two Notices of Assessment dated October 8, 1985 on October 10, 1985.[14] It also admits that it did not file a protest before the Board of Assessment Appeals to question the assessment.[15] Section 30 of PD No. 464,[16] otherwise known as the "The Real Property Tax Code," provides:

> Sec. 30. Local Board of Assessment Appeals. — Any owner who is not satisfied with the action of the provincial or city assessor in the assessment of his property may, within sixty days from the date of receipt by him of the written notice of assessment as provided in this Code, appeal to the Board of Assessment Appeals of the province or city, by filing with it a petition under oath using the form prescribed for the purpose, together with copies of the tax declarations and such affidavit or documents submitted in support of the appeal.

Having failed to appeal the assessment of its properties to the Board of Assessment Appeals, petitioner cannot now assail the validity of the tax assessment against it before the courts. Petitioner failed to exhaust its administrative remedies, and the consequence for such failure is clear – the tax assessment, as computed and issued by the Office of the Provincial

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[13] "Answer with Affirmative Defenses & Counterclaim," RTC Records, p. 12.

[14] Exhibits "K", "K-1", "L", and "L-1", Exhibits of the Plaintiff, Civil Case No. 1550.

[15] *Rollo*, p. 9.

[16] Took effect on June 1, 1974.

Assessor, became final. Petitioner is deemed to have admitted the correctness of the assessment of its properties. In addition, Section 64 of PD No. 464 requires that the taxpayer must first pay under protest the tax assessed against him before he could seek recourse from the courts to assail its validity. The said section provides:

> SEC. 64. *Restriction upon power of court to impeach tax.* — No court shall entertain any suit assailing the validity of tax assessed under this Code until the taxpayer shall have paid, under protest, the tax assessed against him nor shall any court declare any tax invalid by reason of irregularities or informalities in the proceedings of the officers charged with the assessment or collection of taxes, or of failure to perform their duties within this time herein specified for their performance unless such irregularities, informalities or failure shall have impaired the substantial rights of the taxpayer; nor shall any court declare any portion of the tax assessed under the provisions of Code invalid except upon condition that the taxpayer shall pay the just amount of the tax, as determined by the court in the pending proceeding. (Emphasis supplied)

IN VIEW WHEREOF, petitioner's appeal is *DENIED*. The November 15, 2005 Decision of the Court of Appeals in CA-G.R. CV No. 67188 is *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Carpio, Corona, Azcuna, and *Leonardo-de Castro, JJ.*, concur.

FIRST DIVISION

[G.R. No. 170923. January 20, 2009]

SULO SA NAYON, INC. and/or PHILIPPINE VILLAGE HOTEL, INC. and JOSE MARCEL E. PANLILIO, *petitioners, vs.* **NAYONG PILIPINO FOUNDATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EJECTMENT; JURISDICTIONAL REQUISITE OF DEMAND TO PAY RENTALS AND TO VACATE THE PREMISES, COMPLIED WITH; DEMAND LETTER WITHOUT THE WORD "VACATE," SUFFICIENT IN CASE AT BAR.— Petitioners argue that the MeTC did not acquire jurisdiction to hear and decide the ejectment case because they never received any demand from respondent to pay rentals and vacate the premises, since such demand is a jurisdictional requisite. We reiterate the ruling of the MeTC, RTC and CA. Contrary to the claim of petitioners, documentary evidence proved that a demand letter dated March 26, 2001 was sent by respondent through registered mail to petitioners, requesting them "to pay the rental arrears or else it will be constrained to file the appropriate legal action and possess the leased premises." Further, petitioners' argument that the demand letter is "inadequate" because it contained no demand to vacate the leased premises does not persuade. We have ruled that: . . . . The word "vacate" is not a talismanic word that must be employed in all notices. The alternatives in this case are clear cut. The tenants must pay rentals which are fixed and which became payable in the past, failing which they must move out. There can be no other interpretation of the notice given to them. Hence, when the petitioners demanded that either he pays ₱18,000 in five days or a case of ejectment would be filed against him, he was placed on notice to move out if he does not pay. There was, in effect, a notice or demand to vacate.

2. CIVIL LAW; LEASE; A LESSEE IS NEITHER A BUILDER IN GOOD FAITH NOR IN BAD FAITH; ARTICLES 448 AND 546 OF THE CIVIL CODE, NOT APPLICABLE.— In the case at

bar, petitioners have no adverse claim or title to the land. In fact, as lessees, they recognize that the respondent is the owner of the land. What petitioners insist is that because of the improvements, which are of substantial value, that they have introduced on the leased premises with the permission of respondent, they should be considered builders in good faith who have the right to retain possession of the property until reimbursement by respondent. We affirm the ruling of the CA that introduction of valuable improvements on the leased premises does not give the petitioners the right of retention and reimbursement which rightfully belongs to a builder in good faith. Otherwise, such a situation would allow the lessee to easily "improve" the lessor out of its property. We reiterate the doctrine that a lessee is neither a builder in good faith nor in bad faith that would call for the application of Articles 448 and 546 of the Civil Code.

3. ID.; ID.; ID.; THE RIGHTS OF THE LESSEE THAT INTRODUCED IMPROVEMENT ON THE PREMISES ARE GOVERNED BY ARTICLE 1678 OF THE CIVIL CODE; CASE AT BAR.— His rights are governed by Article 1678 of the Civil Code. x x x Under Article 1678, the lessor has the option of paying one-half of the value of the improvements which the lessee made in good faith, which are suitable for the use for which the lease is intended, and which have not altered the form and substance of the land. On the other hand, the lessee may remove the improvements should the lessor refuse to reimburse.

4. ID.; ID.; LEASE CONTRACT; LAWS ARE DEEMED INCORPORATED IN EVERY CONTRACT; EJECTMENT PROPER IN CASES OF DEFAULT OR BREACH OF CONTRACT.— Basic is the doctrine that laws are deemed incorporated in each and every contract. Existing laws always form part of any contract. Further, the lease contract in the case at bar shows no special kind of agreement between the parties as to how to proceed in cases of default or breach of the contract. Petitioners maintain that the lease contract contains a default provision which does not give respondent the right to appropriate the improvements nor evict petitioners in cases of cancellation or termination of the contract due to default or breach of its terms. x x x Petitioners assert that respondent

committed a breach of the lease contract when it filed the ejectment suit against them. However, we find nothing in the above quoted provision that prohibits respondent to proceed the way it did in enforcing its rights as lessor. It can rightfully file for ejectment to evict petitioners, as it did before the court *a quo*.

APPEARANCES OF COUNSEL

Lindbergh S. Villamil for petitioners.
The Government Corporate Counsel for respondent.

D E C I S I O N

PUNO, *C.J.*:

On appeal are the Court of Appeals' (CA's) October 4, 2005 Decision[1] in CA-G.R. SP No. 74631 and December 22, 2005 Resolution,[2] reversing the November 29, 2002 Decision[3] of the Regional Trial Court (RTC) of Pasay City in Civil Case No. 02-0133. The RTC modified the Decision[4] of the Metropolitan Trial Court (MeTC) of Pasay City which ruled against petitioners and ordered them to vacate the premises and pay their arrears. The RTC declared petitioners as builders in good faith and upheld their right to indemnity.

The facts are as follows:

Respondent Nayong Pilipino Foundation, a government-owned and controlled corporation, is the owner of a parcel of land in Pasay City, known as the Nayong Pilipino Complex. Petitioner Philippine Village Hotel, Inc. (PVHI), formerly called Sulo sa Nayon, Inc., is a domestic corporation duly organized and existing under Philippine laws. Petitioner Jose Marcel E. Panlilio is its Senior Executive Vice President.

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[1] *Rollo*, pp. 43-53.

[2] *Id.* at 55-56.

[3] *Id.* at 144-159.

[4] *Id.* at 138-143.

On June 1, 1975, respondent leased a portion of the Nayong Pilipino Complex, consisting of 36,289 square meters, to petitioner Sulo sa Nayon, Inc. for the construction and operation of a hotel building, to be known as the Philippine Village Hotel. The lease was for an initial period of 21 years, or until May 1996. It is renewable for a period of 25 years under the same terms and conditions upon due notice in writing to respondent of the intention to renew at least 6 months before its expiration. Thus, on March 7, 1995, petitioners sent respondent a letter notifying the latter of their intention to renew the contract for another 25 years. On July 4, 1995, the parties executed a Voluntary Addendum to the Lease Agreement. The addendum was signed by petitioner Jose Marcel E. Panlilio in his official capacity as Senior Executive Vice President of the PVHI and by Chairman Alberto A. Lim of the Nayong Pilipino Foundation. They agreed to the renewal of the contract for another 25 years, or until 2021. Under the new agreement, petitioner PVHI was bound to pay the monthly rental on a per square meter basis at the rate of ₱20.00 per square meter, which shall be subject to an increase of 20% at the end of every 3-year period. At the time of the renewal of the lease contract, the monthly rental amounted to ₱725,780.00.

Beginning January 2001, petitioners defaulted in the payment of their monthly rental. Respondent repeatedly demanded petitioners to pay the arrears and vacate the premises. The last demand letter was sent on March 26, 2001.

On September 5, 2001, respondent filed a complaint for unlawful detainer before the MeTC of Pasay City. The complaint was docketed as Civil Case No. 708-01. Respondent computed the arrears of petitioners in the amount of twenty-six million one hundred eighty-three thousand two hundred twenty-five pesos and fourteen centavos (₱26,183,225.14), as of July 31, 2001.

On February 26, 2002, the MeTC rendered its decision in favor of respondent. It ruled, thus:

. . . . The court is convinced by the evidence that indeed, defendants defaulted in the payment of their rentals. It is basic that the lessee

is obliged to pay the price of the lease according to the terms stipulated (Art. 1657, Civil Code). Upon the failure of the lessee to pay the stipulated rentals, the lessor may eject *(sic)* and treat the lease as rescinded and sue to eject the lessee (*C. Vda[.] De Pamintuan v. Tiglao*, 53 Phil. 1). For non-payment of rentals, the lessor may rescind the lease, recover the back rentals and recover possession of the leased premises. . .

x x x x x x x x x

. . . Improvements made by a lessee such as the defendants herein on leased premises are not valid reasons for their retention thereof. The Supreme Court has occasion to address a similar issue in which it ruled that: *"The fact that petitioners allegedly made repairs on the premises in question is not a reason for them to retain the possession of the premises. There is no provision of law which grants the lessee a right of retention over the leased premises on that ground. Article 448 of the Civil Code, in relation to Article 546, which provides for full reimbursement of useful improvements and retention of the premises until reimbursement is made, applies only to a possessor in good faith, i.e., one who builds on a land in the belief that he is the owner thereof. This right of retention does not apply to a mere lessee, like the petitioners, otherwise, it would always be in his power to "improve" his landlord out of the latter's property (Jose L. Chua and Co Sio Eng vs. Court of Appeals and Ramon Ibarra, G.R. No. 109840, January 21, 1999)."*

Although the Contract of Lease stipulates that the building and all the improvements in the leased premises belong to the defendants herein, such will not defeat the right of the plaintiff to its property as the defendants failed to pay their rentals in violation of the terms of the contract. At most, defendants can only invoke [their] right under Article 1678 of the New Civil Code which grants them the right to be reimbursed one-half of the value of the building upon the termination of the lease, or, in the alternative, to remove the improvements if the lessor refuses to make reimbursement.

The dispositive portion of the decision reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered in favor of Nayong Pilipino Foundation, and against the defendant Philippine Village Hotel, Inc[.], and all persons claiming rights under it, ordering the latter to:

1. VACATE the subject premises and surrender possession thereof to plaintiff;

2. PAY plaintiff its rental arrearages in the sum of TWENTY SIX MILLION ONE HUNDRED EIGHTY THREE THOUSAND TWO HUNDRED TWENTY FIVE PESOS AND 14/100 (₱26,183,225.14) incurred as of July 31, 2001;

3. PAY plaintiff the sum of SEVEN HUNDRED TWENTY FIVE THOUSAND SEVEN HUNDRED EIGHTY PESOS (₱725,780.00) per month starting from August 2001 and every month thereafter by way of reasonable compensation for the use and occupation of the premises;

4. PAY plaintiff the sum of FIFTY THOUSAND PESOS (₱50,000.00) by way of attorney's fees[; and]

5. PAY the costs of suit.

The complaint against defendant Jose Marcel E. Panlilio is hereby dismissed for lack of cause of action. The said defendant's counterclaim however is likewise dismissed as the complaint does not appear to be frivolous or maliciously instituted.

SO ORDERED.[5]

Petitioners appealed to the RTC which modified the ruling of the MeTC. It held that:

. . . it is clear and undisputed that appellants-lessees were expressly required to construct a first-class hotel with complete facilities. The appellants were also unequivocally declared in the Lease Agreement as the owner of the improvements so constructed. They were even explicitly allowed to use the improvements and building as security or collateral on loans and credit accommodations that the Lessee may secure for the purpose of financing the construction of the building and other improvements (Section 2; pars. "A" to "B," Lease Agreement). Moreover, a time frame was setforth *(sic)* with respect to the duration of the lease initially for 21 years and renewable for another 25 years in order to enable the appellants-lessees to recoup their huge money investments relative to the construction and maintenance of the improvements.

x x x x x x x x x

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

Considering therefore, the elements of permanency of the construction and substantial value of the improvements as well as the undispute[d] ownership over the land improvements, these, immensely engender the application of Art. 448 of the Civil Code. The only remaining and most crucial issue to be resolved is whether or not the appellants as builders have acted in good faith in order for Art. 448 in relation to Art. 546 of the Civil Code may apply with respect to their rights over improvements.

x x x x x x x x x

. . . it is undeniable that the improvement of the hotel building of appellants (*sic*) PVHI was constructed with the written consent and knowledge of appellee. In fact, it was precisely the primary purpose for which they entered into an agreement. Thus, it could not be denied that appellants were *builders in good faith*.

Accordingly, and pursuant to Article 448 in relation to Art. 546 of the Civil Code, plaintiff-appellee has the sole option or choice, either to appropriate the building, upon payment of proper indemnity consonant to Art. 546 or compel the appellants to purchase the land whereon the building was erected. Until such time that plaintiff-appellee has elected an option or choice, it has no right of removal or demolition against appellants unless after having selected a compulsory sale, appellants fail to pay for the land (*Ignacio vs. Hilario*; 76 Phil. 605). This, however, is without prejudice from the parties agreeing to adjust their rights in some other way as they may mutually deem fit and proper.

The dispositive portion of the decision of the RTC reads as follows:

WHEREFORE, and in view of the foregoing, judgment is hereby rendered modifying the decision of [the] MTC, Branch 45 of Pasay City rendered on February 26, 2002 as follows:

1. Ordering plaintiff-appellee to submit within thirty (30) days from receipt of a copy of this decision a written manifestation of the option or choice it selected, *i.e.*, to appropriate the improvements upon payment of proper indemnity or compulsory sale of the land whereon the hotel building of PVHI and related improvements or facilities were erected;

2. Directing the plaintiff-appellee to desist and/or refrain from doing acts in the furtherance or exercise of its rights and

demolition against appellants unless and after having selected the option of compulsory sale and appellants failed to pay [and] purchase the land within a reasonable time or at such time as this court will direct;

3. Ordering defendants-appellants to pay plaintiff-appellee [their] arrears in rent incurred as of July 31, 2001 in the amount of ₱26,183,225.14;

4. Ordering defendants-appellants to pay to plaintiff-appellee the unpaid monthly rentals for the use and occupation of the premises pending this appeal from July to November 2002 only at ₱725,780.00 per month;

5. The fourth and fifth directives in the dispositive portion of the trial court's decision including that the last paragraph thereof JME Panlilio's complaint is hereby affirmed;

6. The parties are directed to adjust their respective rights in the interest of justice as they may deem fit and proper if necessary.

SO ORDERED.[6]

Respondent appealed to the CA which held that the RTC erroneously applied the rules on accession, as found in Articles 448 and 546 of the Civil Code when it held that petitioners were builders in good faith and, thus, have the right to indemnity. The CA held:

By and large, respondents are admittedly mere lessees of the subject premises and as such, cannot validly claim that they are builders in good faith in order to solicit the application of Articles 448 and 546 of the Civil Code in their favor. As it is, it is glaring error on the part of the RTC to apply the aforesaid legal provisions on the supposition that the improvements, which are of substantial value, had been introduced on the leased premises with the permission of the petitioner. To grant the respondents the right of retention and reimbursement as builders in good faith merely because of the valuable and substantial improvements that they introduced to the leased premises plainly contravenes the law and settled jurisprudential doctrines and would, as stated, allow the lessee to easily "improve" the lessor out of its property.

[6] *Id.* at 158-159.

. . . . Introduction of valuable improvements on the leased premises does not strip the petitioner of its right to avail of recourses under the law and the lease contract itself in case of breach thereof. Neither does it deprive the petitioner of its right under Article 1678 to exercise its option to acquire the improvements or to let the respondents remove the same.

Petitioners' Motion for Reconsideration was denied.

Hence, this appeal.[7]

Petitioners assign the following errors:

I

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE REVERSIBLE ERROR IN NOT HOLDING THAT PETITIONERS WERE BUILDERS IN GOOD FAITH OVER THE SUBSTANTIAL AND VALUABLE IMPROVEMENTS WHICH THEY HAD INTRODUCED ON THE SUBJECT PROPERTY, THUS COMPELLING THE APPLICATION OF ARTICLE 448 OF THE CIVIL CODE IN RELATION TO ARTICLE 546 OF THE SAME CODE, INSTEAD OF ARTICLE 1678 OF THE CIVIL CODE.

II

THE HONORABLE COURT OF APPEALS COMMITTED A SERIOUS REVERSIBLE ERROR WHEN IT DISREGARDED THE FACT THAT THE LEASE CONTRACT GOVERNS THE RELATIONSHIP OF THE PARTIES AND CONSEQUENTLY THE PARTIES MAY BE CONSIDERED TO HAVE IMPLIEDLY WAIVED THE APPLICATION OF ARTICLE 1678 OF THE CIVIL CODE TO THE INSTANT CASE.

III

ASSUMING ***ARGUENDO*** THAT THE PETITIONERS ARE NOT BUILDERS IN GOOD FAITH, THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE REVERSIBLE ERROR WHEN IT OVERLOOKED THE FACT THAT RESPONDENT ALSO ACTED IN BAD FAITH WHEN IT DID NOT HONOR AND INSTEAD BREACHED THE LEASE CONTRACT BETWEEN THE PARTIES, THUS BOTH PARTIES ACTED AS IF THEY ARE IN GOOD FAITH.

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[7] *Id.* at 10-41.

IV

TO SANCTION THE APPLICATION OF ARTICLE 1678 OF THE CIVIL CODE INSTEAD OF ARTICLE 448 OF THE CIVIL CODE IN RELATION TO ARTICLE 546 OF THE SAME CODE WOULD NOT ONLY WREAK HAVOC AND CAUSE SUBSTANTIAL INJURY TO THE RIGHTS AND INTERESTS OF PETITIONER PHILIPPINE VILLAGE HOTEL, INC. WHILE RESPONDENT NAYONG PILIPINO FOUNDATION, IN COMPARISON THERETO, WOULD SUFFER ONLY SLIGHT OR INCONSEQUENTIAL INJURY OR LOSS, BUT ALSO WOULD CONSTITUTE UNJUST ENRICHMENT ON THE PART OF RESPONDENT AT GREAT EXPENSE AND GRAVE PREJUDICE OF PETITIONERS.

V

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE REVERSIBLE ERROR IN NOT HOLDING THAT THE COURTS *A QUO* DID NOT ACQUIRE JURISDICTION OVER THE UNLAWFUL DETAINER CASE FOR NON-COMPLIANCE WITH JURISDICTIONAL REQUIREMENTS DUE TO THE ABSENCE OF A NOTICE TO VACATE UPON PETITIONERS.[8]

First, we settle the issue of jurisdiction. Petitioners argue that the MeTC did not acquire jurisdiction to hear and decide the ejectment case because they never received any demand from respondent to pay rentals and vacate the premises, since such demand is a jurisdictional requisite. We reiterate the ruling of the MeTC, RTC and CA. Contrary to the claim of petitioners, documentary evidence proved that a demand letter dated March 26, 2001 was sent by respondent through registered mail to petitioners, requesting them "to pay the rental arrears or else it will be constrained to file the appropriate legal action and possess the leased premises."

Further, petitioners' argument that the demand letter is "inadequate" because it contained no demand to vacate the leased premises does not persuade. We have ruled that:

. . . . The word "vacate" is not a talismanic word that must be employed in all notices. The alternatives in this case are clear cut. The tenants must pay rentals which are fixed and which became

[8] *Id.* at 22-23.

payable in the past, failing which they must move out. There can be no other interpretation of the notice given to them. Hence, when the petitioners demanded that either he pays ₱18,000 in five days or a case of ejectment would be filed against him, he was placed on notice to move out if he does not pay. There was, in effect, a notice or demand to vacate.[9]

In the case at bar, the language of the demand letter is plain and simple: respondent demanded payment of the rental arrears amounting to ₱26,183,225.14 within ten days from receipt by petitioners, or respondent will be constrained to file an appropriate legal action against petitioners to recover the said amount. The demand letter further stated that respondent will possess the leased premises in case of petitioners' failure to pay the rental arrears within ten days. Thus, it is clear that the demand letter is intended as a notice to petitioners to pay the rental arrears, and a notice to vacate the premises in case of failure of petitioners to perform their obligation to pay.

Second, we resolve the main issue of whether the rules on accession, as found in Articles 448 and 546 of the Civil Code, apply to the instant case.

Article 448 and Article 546 provide:

Art. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

Art. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

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[9] MeTC Decision, *citing Golden Gate Realty Corporation v. Intermediate Appellate Court*, No. 74289, July 31, 1987, 152 SCRA 684.

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

We uphold the ruling of the CA.

The late Senator Arturo M. Tolentino, a leading expert in Civil Law, explains:

> This article [Article 448] is manifestly intended to apply only to a case where one builds, plants, or sows on land in which he believes himself to have a claim of title,[10] and not to lands where the only interest of the builder, planter or sower is that of a holder, such as a tenant.[11]

In the case at bar, petitioners have no adverse claim or title to the land. In fact, as lessees, they recognize that the respondent is the owner of the land. What petitioners insist is that because of the improvements, which are of substantial value, that they have introduced on the leased premises with the permission of respondent, they should be considered builders in good faith who have the right to retain possession of the property until reimbursement by respondent.

We affirm the ruling of the CA that introduction of valuable improvements on the leased premises does not give the petitioners the right of retention and reimbursement which rightfully belongs to a builder in good faith. Otherwise, such a situation would allow the lessee to easily "improve" the lessor out of its property. We reiterate the doctrine that a lessee is neither a builder in

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[10] Tolentino, Arturo M., *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. II, 2004, citing *Floreza v. Evangelista*, 96 SCRA 130; Applied to co-owner: *Del Campo v. Abesia*, No. L-49219, April 15, 1988, 160 SCRA 379.

[11] *Alburo v. Villanueva*, 7 Phil. 277 (1907); *De Laureano v. Adil*, No. L-43345, July 29, 1976, 72 SCRA 148; *Floreza v. Evangelista*, No. L-25462, February 21, 1980, 96 SCRA 130; *Balucanag v. Francisco*, No. L-33422, May 30, 1983, 122 SCRA 498; *Southwestern University v. Salvador*, No. L-45013, May 28, 1979, 90 SCRA 318; *Castillo v. Court of Appeals*, No. L-48290, September 29, 1983, 124 SCRA 808.

good faith nor in bad faith[12] that would call for the application of Articles 448 and 546 of the Civil Code. His rights are governed by Article 1678 of the Civil Code, which reads:

> Art. 1678. If the lessee makes, in good faith, useful improvements which are suitable to the use for which the lease is intended, without altering the form or substance of the property leased, the lessor upon the termination of the lease shall pay the lessee one-half of the value of the improvements at that time. Should the lessor refuse to reimburse said amount, the lessee may remove the improvements, even though the principal thing may suffer damage thereby. He shall not, however, cause any more impairment upon the property leased than is necessary.
>
> With regard to ornamental expenses, the lessee shall not be entitled to any reimbursement, but he may remove the ornamental objects, provided no damage is caused to the principal thing, and the lessor does not choose to retain them by paying their value at the time the lease is extinguished.

Under Article 1678, the lessor has the option of paying one-half of the value of the improvements which the lessee made in good faith, which are suitable for the use for which the lease is intended, and which have not altered the form and substance of the land. On the other hand, the lessee may remove the improvements should the lessor refuse to reimburse.

Petitioners argue that to apply Article 1678 to their case would result to sheer injustice, as it would amount to giving away the hotel and its other structures at virtually bargain prices. They allege that the value of the hotel and its appurtenant facilities amounts to more than two billion pesos, while the monetary claim of respondent against them only amounts to a little more than twenty six-million pesos. Thus, they contend that it is the lease contract that governs the relationship of the parties, and consequently, the parties may be considered to have impliedly waived the application of Article 1678.

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[12] *Southwestern University v. Salvador*, No. L-45013, May 28, 1979, 90 SCRA 318, Concurring Opinion of J. Melencio-Herrera, *citing Alburo v. Villanueva*, 7 Phil. 277.

We cannot sustain this line of argument by petitioners. Basic is the doctrine that laws are deemed incorporated in each and every contract. Existing laws always form part of any contract. Further, the lease contract in the case at bar shows no special kind of agreement between the parties as to how to proceed in cases of default or breach of the contract. Petitioners maintain that the lease contract contains a default provision which does not give respondent the right to appropriate the improvements nor evict petitioners in cases of cancellation or termination of the contract due to default or breach of its terms. They cite paragraph 10 of the lease contract, which provides that:

> 10. DEFAULT. - . . . Default shall automatically take place upon the failure of the LESSEE to pay or perform its obligation during the time fixed herein for such obligations without necessity of demand, or, if no time is fixed, after 90 days from the receipt of notice or demand from the LESSOR. . .
>
> In case of cancellation or termination of this contract due to the default or breach of its terms, the LESSEE will pay all reasonable attorney's fees, costs and expenses of litigation that may be incurred by the LESSOR in enforcing its rights under this contract or any of its provisions, as well as all unpaid rents, fees, charges, taxes, assessment and others which the LESSOR may be entitled to.

Petitioners assert that respondent committed a breach of the lease contract when it filed the ejectment suit against them. However, we find nothing in the above quoted provision that prohibits respondent to proceed the way it did in enforcing its rights as lessor. It can rightfully file for ejectment to evict petitioners, as it did before the court *a quo*.

IN VIEW WHEREOF, petitioners' appeal is *DENIED*. The October 4, 2005 Decision of the Court of Appeals in CA-G.R. SP No. 74631 and its December 22, 2005 Resolution are *AFFIRMED*. Costs against petitioners.

SO ORDERED.

Carpio, Corona, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

FIRST DIVISION

[G.R. No. 172670. January 20, 2009]

RBC CABLE MASTER SYSTEM AND/OR EVELYN CINENSE, *petitioners, vs.* **MARCIAL BALUYOT,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; UNASSIGNED ERROR, WHEN CONSIDERED ON APPEAL; CASE AT BAR.— A perusal of respondent's pleadings filed in the proceedings below shows that he maintained that he did not abandon his job and the reason why he did not report to work for a month was because he was suspended by petitioners. Indeed, the pivotal issue in this case is whether or not he was illegally dismissed. The matter of abandonment has to be necessarily discussed for being corollary to the main issue of illegal dismissal. Petitioners' argument that the issue of abandonment was not properly raised on appeal is therefore incorrect. At any rate, an unassigned error closely related to the error properly assigned, or upon which the determination of the question raised by the error properly assigned is dependent, will be considered by the appellate court notwithstanding the failure to assign it as error.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ABANDONMENT; ELEMENTS.— To constitute abandonment, two elements must concur: (1) the failure to report for work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts. Mere absence is not sufficient. The employer has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning.

3. ID.; ID.; ID.; ID.; CIRCUMSTANCES NEGATING THE CHARGE OF ABANDONMENT.— In the case at bar, the charge of abandonment is belied by the following circumstances: *First,* the high improbability of private respondent to intentionally

abandon his work considering that he had already served a penalty of suspension for his infractions and violations as well as the petitioner's tacit condonation of the infractions he committed, by permitting him to go back to work and by asking him to execute a promissory note. It is incongruent to human nature, that after having ironed things out with his employer, an employee would just not report for work for no apparent reason. *Secondly*, there was no proof that petitioner sent private respondent a notice of termination on the ground of abandonment, if indeed it is true that he really failed to go back to work. Section 2, Rule XVI, Book V, Rules and regulations implementing the Labor Code provides that any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular act or omission constituting the ground for his dismissal. x x x *And lastly,* private respondent's filing of a case for illegal dismissal with the labor arbiter negates abandonment.

4. ID.; ID.; ID.; ILLEGAL DISMISSAL; RELIEFS GRANTED TO AN ILLEGALLY DISMISSED EMPLOYEE; CASE AT BAR.— [A]n employee who is illegally dismissed is entitled to the twin reliefs of full backwages and reinstatement. If reinstatement is not viable, separation pay is awarded to the employee. In awarding separation pay to an illegally dismissed employee, in lieu of reinstatement, the amount to be awarded shall be equivalent to **one (1) month** salary for every year of service. Under Republic Act No. 6715, employees who are illegally dismissed are entitled to full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time their actual compensation was withheld from them up to the time of their actual reinstatement **but if reinstatement is no longer possible, the backwages shall be computed from the time of their illegal termination up to the finality of the decision.** In the case at bar, considering the strained relations between the parties brought about by petitioners' filing of criminal cases against respondent, reinstatement is not viable. The Court of Appeals is therefore correct in awarding separation pay equivalent to one (1) month pay for every year of service computed from the date of his illegal dismissal on March 1, 2001 up to the finality of the decision.

APPEARANCES OF COUNSEL

Lauigan Catabay-Lauigan Law Office for petitioners.
Public Attorney's Office for respondent.

D E C I S I O N

PUNO, *C.J.*:

This is a petition for review of the Decision[1] of the Court of Appeals in CA-G.R. SP No. 85254 which modified the Decision[2] of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 034129-03. The NLRC reversed the Decision[3] of the Labor Arbiter in RAB II CN. 01-0007-02 dismissing the complaint for illegal dismissal filed by respondent Marcial Baluyot against petitioners RBC Cable Master System and/or Evelyn Cinense. On *certiorari*, the Court of Appeals affirmed the NLRC's finding that respondent was illegally dismissed with modification of the award of separation pay.

As found by the Court of Appeals, the facts are as follows:

Herein petitioner RBC Cable Master System (petitioner RBC) is a cable firm engaged in the business of providing home cable service, owned and managed by Engr. Reynaldo Cinense and his wife, co-petitioner Evelyn Cinense.

Sometime in March 1996, petitioner RBC hired herein private respondent Marcial Baluyot as a Lineman. As lineman, private respondent received a compensation of ₱110.00 per day plus an allowance of ₱100 as driver of the motorcycle he leased to petitioner. He was also given free gasoline and maintenance allowance, free cable subscription and other benefits accorded by law. In 1999, private

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[1] *Rollo*, pp. 32-45; dated November 25, 2005, penned by Justice Jose C. Reyes, Jr. and concurred in by Justices Eugenio S. Labitoria and Eliezer R. de los Santos.

[2] *Id.* at 92-96; dated December 10, 2003, penned by Commissioner Angelita A. Gacutan and concurred in by Commissioners Raul T. Aquino and Victoriano R. Calaycay.

[3] *Id.* at 82-90; dated November 5, 2002, penned by Executive Labor Arbiter Ricardo N. Olairez.

respondent was appointed as collector, which position he held up to March 2001 when he was allegedly illegally dismissed. Beginning March 2000, petitioner RBC imposed a new salary scheme for collectors where they are no longer paid monthly salaries and instead their remuneration was computed at the rate of 5% percent (sic) based on the total collections for a given month.

In the middle part of the year 2000, private respondent learned that his outstanding loan from cash advances accumulated to ₱18,000.00. The cash advances he made [were] pursuant to a long time practice for the employees of petitioner RBC to advance amounts of money in the form of cash vales with the condition that the same be deducted from their monthly salaries on a staggered or periodic basis.

Private respondent averred that upon the urgings of petitioner for him to promptly settled (sic) his obligations, the latter delivered a Yamaha motorcycle registered in his name, valued at ₱40,000.00 as a security for the loan. This agreement was evidenced by a Deed of Chattel mortgage executed in favor of petitioner RBC.

Petitioner RBC, on the other hand, alleged that it leased the said motorcycle from private respondent in connection with its various cable TV operations, for an agreed price of ₱100.00 per day. The lease of the motorcycle was terminated only after private respondent ceased owning the said motorcycle for failing to pay Eagle Financial Services, Group inc. (sic), his monthly amortizations for the same and after the motorcycle was re-possessed by said financing company. Petitioner RBC eventually purchased from Eagle Financial Services the said motorcycle for use in its Cable TV business.

On February 1, 2001, when private respondent reported for work, he was informed that no blank official receipts could be issued to him for his collection job for that day or for a month because he is being suspended. Thus, for one month, he did not report for work and when he reported back to duty, he was told by petitioner RBC that he is now out of job and is considered terminated.

Petitioner RBC denied dismissing private respondent by contending that it was private respondent who abandoned his work, when, sometime in March 2001, he left without any notice and never returned back for work. Petitioner RBC also alleged that private respondent in the course of his employment, committed several infractions, to wit:

a) On several occasions, private respondent Marcial Baluyot did not issue Official Receipts to subscribers for the monthly subscriptions and dues he collected from them;

b) Worst, private respondent willfully and deliberately did not remit to petitioner the amounts he collected from said subscribers.

c) That private respondent misappropriated said amounts for his own personal use. Because of private respondent's misappropriation of his collection of monthly cable rentals and subscription fees and theft of money belonging to petitioner, the latter filed a criminal case for Estafa against private respondent.

d) In order to cover up his misappropriations, private respondent falsified documents by making it appear that three customers paid to him in checks. The said checks were remitted to petitioner RBC but which all bounced because the account was already closed. And upon inquiry it was discovered that said checks were drawn against the current account of private respondent's wife who was then abroad. Because of this incident, petitioner RBC filed another Criminal case against private respondent for Falsification arising from his acts of forging and falsifying the aforementioned checks to be able to cover up for the amounts he misappropriated.

e) That private respondent was also engaged in illegal installation of cable lines to TV sets of persons who are not clients of petitioner.

f) That private respondent also twice stole a motorcycle belonging to petitioner RBC resulting in the filing of a criminal case against him for qualified theft.

Because of the foregoing infractions and misdeeds allegedly committed by private respondent, petitioner RBC was forced to suspend private respondent for one (1) month effective February 1, 2001 to February 28, 2001. Thereafter, private respondent was recalled back to work on March 1, 2001 and he executed a promissory note for the amount of his unremitted collections which included an undertaking that he will not repeat his various infractions, otherwise, he submits himself to automatic termination of his employment. Petitioner RBC, however alleged that sometime in the same month of March 2001, private respondent did not report for work without

permission from and/or prior notice to petitioner that is why petitioner considered private respondent absent without official leave (AWOL).

Private respondent however contended that after his suspension, he reported back to work. Upon his return, petitioner RBC told him that he is now out of job and is considered terminated. Thus, on January 8, 2002, private respondent filed a case for illegal dismissal before the Regional Arbitration Board in Tuguegarao City, Cagayan.

On November 5, 2002, the labor arbiter rendered a decision dismissing the complaint for illegal dismissal for lack [of] merit. The Labor Arbiter anchored his decision on the strength of his finding that private respondent abandoned his job and committed acts of dishonesty such as theft of company funds and property.

On appeal, the National Labor Relations Commission (NLRC), in the now assailed Decision dated December 10, 2003 reversed and set aside the decision of the labor arbiter and ruled that private respondent did not abandon his job but was illegally dismissed. The dispositive portion of the said assailed decision reads as follows:

> WHEREFORE, finding merit in the appeal, the decision dated November 5, 2002 is hereby reversed and set aside. A new judgment is entered finding respondents to have illegally dismissed complainant from his employment. Accordingly, respondents are hereby ordered to pay complainant his backwages from March 1, 2001 to November 5, 2002, the date of the decision of the labor arbiter. In addition complainant is entitled to separation pay in lieu of reinstatement equivalent to one-half (1/2) pay for every year of service from March 1996 to March 2001 based on his wage rate of ₱4,200. (*Rollo*, pp. 23-24)[4]

As aforestated, the Court of Appeals affirmed the decision of the NLRC with the modification that the award of separation pay be computed at one (1) month pay for every year of service reckoned from March 1, 2001 up to finality of its decision as follows:

WHEREFORE, in view of the foregoing, the instant Petition for *Certiorari* is **DENIED** and the assailed Decision of the National Labor Relations Commission dated December 10, 2003 is hereby **AFFIRMED**

[4] *Supra* note 1 at 32-37.

with modification that the award of separation pay be computed at one (1) month pay for every year of service reckoned from March 1, 2001 up to the finality of this decision.[5]

A motion for reconsideration of the Court of Appeals' decision was filed but the same was denied in a Resolution[6] dated April 10, 2006.

Hence, this Petition, raising the following grounds:

A. **The Court of Appeals abused its discretion amounting to lack or excess of jurisdiction in impliedly acknowledging that the NLRC can pass upon and resolve an un-litigated issue (abandonment) by making use of the same un-litigated issue to justify its finding of illegal dismissal.**

B. **The Court of Appeals abused its discretion amounting to lack or excess of jurisdiction in ruling that there was no abandonment even if it had no factual or legal basis for such finding.**

C. **The Court of Appeals abused its discretion amounting to lack or excess of jurisdiction in ruling that private respondent was illegally dismissed *despite overwhelming evidence of acts of dishonesty such as misappropriation of collections, falsification of documents to cover up said misappropriation, theft of company funds and property as well as abandonment – all Just Causes for Dismissal under Article 282 of the Labor Code of the Philippines as amended.***

D. **The Court of Appeals abused its discretion amounting to lack or excess of jurisdiction in ruling that the acts of dishonesty and other infractions were already condoned by petitioner since private respondent was already suspended and was even required to report back to work after his suspension.**

E. **The Court of Appeals abused its discretion amounting to lack or excess of jurisdiction in affirming the NLRC's award of Backwages and Separation Pay.**[7]

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[5] *Id.* at 44.

[6] *Rollo*, p. 48.

[7] *Id.* at 14-15.

The petition is unmeritorious.

There are two key issues in this case: (1) whether the issue of abandonment cannot be passed upon by the NLRC for not being raised on appeal; and (2) on the basis of other grounds, whether respondent was illegally dismissed.

On the first issue, we hold that the NLRC did not abuse its discretion when it resolved the issue on abandonment. Petitioners argue that the NLRC committed grave abuse of discretion when it went beyond the issues raised before it on appeal. Petitioners contend that Rule IV, Section 3-C of the 1990 NLRC Rules of Procedure limits the review powers of the NLRC in cases of perfected appeals, to those specific issues raised on appeal. According to petitioners, the assignment of errors in respondent's Appeal Memorandum[8] before the NLRC did not question the fact that he abandoned his job since nowhere therein did he raise any issue regarding the matter of abandonment.

We disagree. Respondent's Appeal Memorandum states:

GROUNDS FOR APPEAL:

1. THERE IS EVIDENCE OF GRAVE ABUSE OF DISCRETION ON THE PART OF THE LABOR ARBITER; AND

2. **THERE ARE SERIOUS ERRORS IN HIS FINDINGS OF FACT WHICH WOULD CAUSE GRAVE OR IRREPARABLE DAMAGE OR INJURY TO THE APPELLANTS.**

ASSIGNMENT OF ERRORS:

1. **THE HONORABLE EXECUTIVE LABOR ARBITER COMMITTED SERIOUS ERROR IN DISMISSING THE ABOVE-ENTITLED CASE FOR LACK OF MERIT;**

2. THE HONORABLE EXECUTIVE LABOR ARBITER ERRED SERIOUSLY IN ADMITTING RESPONDENT'S POSITION PAPER AFTER ISSUING AN ORDER SUBMITTING THE CASE FOR RESOLUTION;

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[8] *Id.* at 97-108.

3. THE HONORABLE EXECUTIVE LABOR ARBITER GRAVELY ERRED IN NOT EXPUNGING THE RESPONDENT'S POSITION PAPER FROM THE RECORDS;

4. THE EXECUTIVE LABOR ARBITER COMMITTED SERIOUS ERROR IN MISCONSTRUING ANNEXES "L" AND "M" PRESENTED BY APPELLEE AS ADMISSION OF THE OFFENSES IMPUTED AGAINST APPELLANT;

5. **THE EXECUTIVE LABOR ARBITER COMMITTED SERIOUS ERROR IN FAILING TO APPRECIATE THE EVIDENCES PRESENTED BY APPELLANT[.]**[9] (Emphasis added)

Although respondent did not specifically cite abandonment above, it is evident from the foregoing that he questioned the Labor Arbiter's factual finding that he was not illegally dismissed in his appeal before the NLRC. Moreover, contrary to petitioners' assertion, respondent never admitted that he abandoned his job. A perusal of respondent's pleadings filed in the proceedings below shows that he maintained that he did not abandon his job and the reason why he did not report to work for a month was because he was suspended by petitioners. Indeed, the pivotal issue in this case is whether or not he was illegally dismissed. The matter of abandonment has to be necessarily discussed for being corollary to the main issue of illegal dismissal. Petitioners' argument that the issue of abandonment was not properly raised on appeal is therefore incorrect. At any rate, an unassigned error closely related to the error properly assigned, or upon which the determination of the question raised by the error properly assigned is dependent, will be considered by the appellate court notwithstanding the failure to assign it as error.[10]

Now, on the other issues.

It is elementary rule that the Supreme Court is not a trier of facts. However, since the findings of the Labor Arbiter, on one

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

[10] *Radio Communications of the Philippines, Inc. v. NLRC*, G.R. Nos. 101181-84, June 22, 1992, 210 SCRA 222, *citing Vda. De Javellana v. Court of Appeals*, G.R. No. 60129, July 29, 1983, 123 SCRA 799.

hand, and the NLRC and the Court of Appeals, on the other, are conflicting, we are constrained to determine the facts of the case.

There are two reasons given by petitioners to support their contention that respondent was not illegally dismissed. First, respondent committed several infractions during the course of his employment. Second, respondent abandoned his job.

After a careful review of the case, we find sufficient evidence to warrant the finding that respondent was illegally dismissed.

First, we note that the memoranda[11] covering the alleged infractions committed by respondent during the course of his employment and respondent's written explanations[12] thereto were all executed prior to the Promissory Note[13] dated March 5, 2001 signed by respondent which states:

> I, Marcial Baluyot, an authorized collector commission basis of RBC CABLE has been earlier suspended due to unauthorized spending of my collection worth ₱6,330.00 pesos.
>
> **On March 1, 2001, I had been (sic) reported back to work with a promised (sic) not to repeat the abovementioned violation**, otherwise, I will submit myself for automatic termination from my work.
>
> Furthermore, I promised (sic) to pay the amount of **₱7,279.50 pesos including the interest equivalent to the amount spent with in (sic) a period of 3 (three) months** which will be deducted from my commission, every 15th and 30th of the month.

As can be gleaned above, after respondent was punished with suspension by petitioners, he was admitted back to work on the condition that he will not repeat the same violations and he will pay back the sums he owed. Hence, we agree with the Court of Appeals that these prove that petitioners had condoned the infractions previously committed by the respondent.

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[11] *Rollo,* pp. 53-55, 62.

[12] *Id.* at 56-58.

[13] *Id.* at 81.

Petitioners, however, insist that there was no condonation of the misdeeds committed by respondent. According to petitioners, the suspension of respondent was in the nature of a preventive suspension and he was admitted back to work in order for him to face the administrative process. Also, petitioners contend that the alleged penalty imposed upon respondent only pertains to the unauthorized appropriation of the amount of ₱6,330.00 and not to his other acts of dishonesty such as theft of company funds and property, illegal installation of cable lines and falsification of checks. It is also contended that the said promissory note was merely intended to prove the civil liability of respondent for the amount he misappropriated.

Petitioners' arguments deserve scant consideration. The tenor of the promissory note stating the conditions under which he will be admitted back to work negates petitioners' argument that his suspension was only preventive in nature. The facts that: (1) the other infractions were already known to petitioners and they have accepted respondent's explanations on the same prior to the execution of the promissory note; and (2) they continued to employ him thereafter lead us to believe that the penalty imposed covered his other infractions. Moreover, it should be noted that the promissory note obliges respondent to pay ₱7,279.50 with interest for a period of three (3) months which clearly contradicts petitioners' assertion that the penalty imposed was only for the misappropriation of the sum of ₱6,330.00.

We therefore affirm the finding of the Court of Appeals that the real controversy arose only when, after the execution of the promissory note, respondent allegedly failed to report back to work without notice to petitioners.

To constitute abandonment, two elements must concur: (1) the failure to report for work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts. Mere absence is not sufficient. The employer has the burden of proof to show a deliberate and unjustified refusal of the

employee to resume his employment without any intention of returning.[14]

The evidence in the case at bar shows that respondent has always humbly accepted his fault and asked for petitioners' forgiveness, *to wit*:

x x x x x x x x x

Ipagdarasal ko sa Diyos na sana palambutin ang inyong puso at bigyan pa po ninyo ako nang isang pang pagkakataong mapatunayan ang pagmamalasakit ko sa kompanyang ito at tuluyang maituwid ang aking pagkakamali.[15]

Hence, we find it hard to believe that he will just abandon his job after petitioners gave him a chance to continue working for them. We uphold the following findings of the Court of Appeals that respondent did not abandon his job:

In the case at bar, the charge of abandonment is belied by the following circumstances: *First*, the high improbability of private respondent to intentionally abandon his work considering that he had already served a penalty of suspension for his infractions and violations as well as the petitioner's tacit condonation of the infractions he committed, by permitting him to go back to work and by asking him to execute a promissory note. It is incongruent to human nature, that after having ironed things out with his employer, an employee would just not report for work for no apparent reason. *Secondly*, there was no proof that petitioner sent private respondent a notice of termination on the ground of abandonment, if indeed it is true that he really failed to go back to work. Section 2, Rule XVI, Book V, Rules and regulations implementing the Labor Code provides that any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular act or omission constituting the ground for his dismissal. In cases of abandonment of work, the notice shall be served at the worker's last known address (*Icawat vs. National Labor Relations Commission*, 334 SCRA 75, 81 [2000]). For this reason, We are constrained to give credence to private respondent's assertion that he attempted to report back to

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

[15] *Rollo*, p. 57.

work but he was just asked to leave as he was considered terminated. *And lastly,* private respondent's filing of a case for illegal dismissal with the labor arbiter negates abandonment. As held by the Supreme Court, a charge of abandonment is totally inconsistent with the immediate filing of a complaint for illegal dismissal, more so when it includes a prayer for reinstatement (*Globe Telecom, Inc. vs. Florendo-Flores*, 390 SCRA 201, 2002[sic]-203 [2002]).[16]

Finally, an employee who is illegally dismissed is entitled to the twin reliefs of full backwages and reinstatement. If reinstatement is not viable, separation pay is awarded to the employee.[17] In awarding separation pay to an illegally dismissed employee, in lieu of reinstatement, the amount to be awarded shall be equivalent to **one (1) month** salary for every year of service.[18] Under Republic Act No. 6715, employees who are illegally dismissed are entitled to full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time their actual compensation was withheld from them up to the time of their actual reinstatement **but if reinstatement is no longer possible, the backwages shall be computed from the time of their illegal termination up to the finality of the decision**.[19]

In the case at bar, considering the strained relations between the parties brought about by petitioners' filing of criminal cases against respondent, reinstatement is not viable. The Court of Appeals is therefore correct in awarding separation pay equivalent to one (1) month pay for every year of service computed from the date of his illegal dismissal on March 1, 2001 up to the finality of the decision.

IN VIEW WHEREOF, the petition is *DENIED*. The decision of the Court of Appeals is affirmed.

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[16] *Supra* note 1 at 42-43.

[17] *Torillo v. Leogardo, Jr.*, G.R. No. 77205, May 27, 1991, 197 SCRA 471.

[18] *Gaco v. National Labor Relations Commission*, G.R. No. 104690, 23 February 1994, 230 SCRA 260.

[19] *Petron Corporation v. National Labor Relations Commission*, G.R. No. 154532, October 27, 2006, 505 SCRA 586.

SO ORDERED.

Carpio, Corona, Azcuna, and *Leonardo-de Castro, JJ.,* concur.

SECOND DIVISION

[G.R. No. 173226. January 20, 2009]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **MANUEL O. GALLEGO, JR., JOSEPH L. GALLEGO and CHRISTOPHER GALLEGO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; EMINENT DOMAIN; JUST COMPENSATION; APPLICABILITY OF P.D. NO. 27/E.O. NO. 228 IN RELATION TO R.A. No. 6657 IN THE DETERMINATION OF JUST COMPENSATION, DISCUSSED; RELEVANT RULINGS, APPLIED.— The Court has already ruled on the applicability of agrarian laws, namely, P.D. No. 27/E.O. No. 228 in relation to Republic Act (R.A.) No. 6657, in prior cases concerning just compensation. In *Paris v. Alfeche* the Court held that the provisions of R.A. No. 6657 are also applicable to the agrarian reform process of lands placed under the coverage of P.D. No. 27/E.O. No. 228, which has not been completed upon the effectivity of R.A. No. 6657. Citing *Land Bank of the Philippines v. Court of Appeals,* the Court in *Paris* held that P.D. No. 27 and E.O. No. 228 have suppletory effect to R.A. No. 6657. x x x Particularly, in *Land Bank of the Philippines v. Natividad,* where the agrarian reform process in said case "is still incomplete as the just compensation to be paid private respondents has yet to be settled," the Court held therein that just compensation should be determined and the process concluded under R.A. No. 6657. The retroactive application of R.A. No. 6657 is not only statutory but is also founded on equitable considerations. In *Lubrica v. Land Bank*

of the Philippines, the Court declared that it would be highly inequitable on the part of the landowners therein to compute just compensation using the values at the time of taking in 1972, and not at the time of payment, considering that the government and the farmer-beneficiaries have already benefited from the land although ownership thereof has not yet been transferred in their names. The same equitable consideration is applicable to the factual milieu of the instant case. The records show that respondents' property had been placed under the agrarian reform program in 1972 and had already been distributed to the beneficiaries but respondents have yet to receive just compensation due them. The Court of Appeals fixed the just compensation based on the current market value of adjacent properties, citing the "peculiar circumstances" of the case. The appellate court, however, failed to cite any legal or factual basis in support of its conclusion. Quite the contrary, the law and jurisprudence on the determination of just compensation of agrarian lands are settled; they are different from the thrust of the appellate court. For the purpose of determining just compensation, Section 17 of R.A. No. 6657 states: SECTION 17. *Determination of Just Compensation*.— In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation. While the SAC is required to consider the acquisition cost of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declaration and the assessments made by the government assessors to determine just compensation, it is equally true that these factors have been translated into a basic formula by the DAR pursuant to its rule-making power under Section 49 of R.A. No. 6657. In *Land Bank of the Philippines v. Celada*, the Court upheld the applicability of DAR Administrative Order (A.O.) No. 5, series of 1998 in determining just compensation. Likewise, in *Land Bank of the Philippines v. Banal*, the Court ruled that the applicable formula

in fixing just compensation is DAR A.O. No. 6, series of 1992, as amended by DAR A.O. No. 11, series of 1994, then the governing regulation applicable to compulsory acquisition of lands, in recognition of the DAR's rule-making power to carry out the object of R.A. No. 6657. Because the trial court therein based its valuation upon a different formula and did not conduct any hearing for the reception of evidence, the Court ordered a remand of the case to the SAC for trial on the merits. The mandatory application of the aforementioned guidelines in determining just compensation has been reiterated recently in *Land Bank of the Philippines v. Lim*, where the Court ordered the remand of the case to the SAC for the determination of just compensation strictly in accordance with DAR A.O. No. 6, series of 1992, as amended.

2. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; REMAND OF THE CASE TO THE COURT OF APPEALS FOR RECEPTION OF FURTHER EVIDENCE TO ASCERTAIN THE JUST COMPENSATION.— The appraisal report, however, does not form part of the records of the case; thus, it has no probative weight. Any evidence that a party desires to submit for the consideration of the court must be formally offered by him, otherwise, it is excluded and rejected. Evidence not formally offered before the trial court cannot be considered on appeal, for to consider it at such stage will deny the other parties their right to rebut it. Although respondents are correct in asserting that DAR A.O. No. 5, series of 1998 is the governing formula in determining the just compensation in the case at bar, the evidence on record is not sufficient to determine the parameters required under DAR A.O. No. 5, series of 1998. Hence, the remand of the case to the appropriate court below is necessary also in order to allow respondents to properly present their evidence and petitioner to submit controverting evidence. This Court is not a trier of facts. To gain time and accelerate the final disposition of this case, the Court deems it best *pro hac vice* to commission the Court of Appeals as its agent to receive and evaluate the evidence of the parties. Its mandate is to ascertain the just compensation due in accordance with this Decision, applying Sec. 17 of R.A. No. 6657, DAR A.O. No. 5 of 1992, as amended, and the prevailing jurisprudence. The remand of cases before this Court to the Court of Appeals for the reception of further evidence is not a novel procedure. It

is sanctioned by the Rules of Court. In fact, the Court availed of the procedure in quite a few cases.

3. ID.; ID.; JUDGMENTS; EXECUTION PENDING APPEAL, GRANTED.— The execution of a judgment before becoming final by reason of appeal is recognized. However, this highly exceptional case must find itself firmly founded upon good reasons warranting immediate execution. For instance, execution pending appeal was granted by this Court where the prevailing party is of advanced age and in a precarious state of health and the obligation in the judgment is non-transmissible, being for support, or where the judgment debtor is insolvent. Execution pending appeal was also allowed by this Court where defendants were exhausting their income and have no other property aside from the proceeds of the subdivision lots subject of the action. In *Borja v. Court of Appeals*, the Court allowed the execution of the money judgment pending the resolution of the appeal on the merits. The Court noted that the circumstance of the case constituted a good reason to allow execution of the challenged judgment pending appeal. x x x The circumstances in *Borja* are similar to those in the instant case. The records show that almost 36 years have elapsed since the lands have been taken away from respondents but they have yet to receive the just compensation of the property in full. The original owner had died and one of the respondents is in need of urgent medical attention. There is no doubt that respondents are entitled to just compensation for their lands which obviously cannot be lower than the amount of ₱30,711,600.00 awarded by the Court of Appeals in the appealed decision. It is but first and proper that respondents' request be granted in view of the considerable period of time that has transpired since the taking in tandem with humanitarian considerations.

APPEARANCES OF COUNSEL

The Government Corporate Counsel and *LBP Legal Services Group* for petitioner.

Hugo E. Gutierrez and *Arreza & Associates* for respondents.

D E C I S I O N

TINGA, *J.*:

This instant petition for review on *certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure seeks the reversal of the Decision[2] and Resolution[3] of the Court of Appeals in CA-G.R. SP No. 77676. The Court of Appeals' Decision modified the amount of just compensation awarded by the Regional Trial Court (RTC) sitting as a Special Agrarian Court, Branch 29, Cabanatuan City to respondents for the expropriation of their property for the comprehensive agrarian reform program of the Department of Agrarian Reform (DAR), while the Resolution denied petitioner's motion for reconsideration of the Decision.

The following factual antecedents are undisputed and are matters of record:

Respondents Manuel O. Gallego, Jr., Joseph L. Gallego and Christopher L. Gallego are the co-owners of several parcels of agricultural lands located in Barangay Sta. Rita and Barangay Concepcion in Cabiao, Nueva Ecija. The lands have an aggregate area of 142.3263 hectares and are covered by Transfer Certificate of Title Nos. T-139629, T-139631 and T-139633.[4]

Sometime in 1972, the DAR placed a portion of the property under the coverage of Presidential Decree No. 27 (P.D. No. 27). However, the DAR and respondents failed to agree on the amount of just compensation, prompting respondents to file on 10 December 1998 a petition before the RTC of Cabanatuan City.[5] The petition, docketed as Agrarian Case No. 127-AF,

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[1] *Rollo*, pp. 23-53.

[2] Dated 29 September 2005 and penned by *J*. Josefina Guevara-Salonga, Chairperson of the Special Sixth Division, and concurred in by *JJ*. Hakim S. Abdulwahid and Fernanda Lampas Peralta; *id.* at 7.

[3] Dated 23 June 2006; *id.* at 18-19.

[4] *Id.* at 8.

[5] *Id.*

named the DAR and herein petitioner Land Bank of the Philippines (LBP) as respondents and prayed that just compensation be fixed in accordance with the valuation formula under P.D. No. 27 based on an Average Gross Production of 109.535 *cavans* per hectare including interest at 6% compounded annually as provided under PARC Resolution No. 92-24-1.[6]

Petitioner LBP filed an answer, averring that only 76.8324 hectares and not 89.5259 hectares as was alleged in the petition were placed under the coverage of P.D. No. 27 and that just compensation should be determined based on an Average Gross Production of 65 *cavans* and/or 56.6 *cavans* per hectare which were the values at the time of taking of the property. Although the DAR did not file an answer, it was represented at the hearings by a certain Atty. Benjamin T. Bagui.[7]

During the course of the hearing of the petition, the coverage of respondents' lands had expanded to a bigger area. In order to conform to the increase in the area placed under agrarian reform, respondents filed on 14 October 2002 an amended petition, stating that as certified by the Municipal Agrarian Reform Office (MARO) of Cabiao, Nueva Ecija, 122.8464 hectares of the property had already been placed under the operation of P.D. No. 27. In the answer filed by the DAR as well as during the pre-trial, the counsels for DAR and petitioner LBP stipulated that the property subject of the petition was irrigated and had a total area of 120 hectares, more or less.[8]

After the pre-trial conference, the trial court issued an Order dated 08 November 2002,[9] embodying the agreed stipulation that the property placed under agrarian reform had an area of 120 hectares, more or less, and directing the MARO of Cabiao, Nueva Ecija to submit the records pertaining to the exact landholdings already processed and acquired by petitioner LBP. In a Supplemental Pre-Trial Order dated 25 November

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[6] *Id.* at 196.

[7] *Id.* at 201.

[8] *Id.* at 9.

[9] Records (Vol. 1), p. 176.

2002,[10] the trial court stated that in view of the parties' agreement that the property was irrigated and had an area of 120 hectares, the only factual issue to be resolved would be the correct Average Gross Production, based on which just compensation would be fixed.[11]

On 14 March 2003, the trial court rendered a Decision,[12] adopting respondents' formula which was based on an Average Gross Production of 121.6 *cavans* per hectare. The dispositive portion of the RTC Decision reads:

> WHEREFORE, judgment is hereby rendered in favor of the petitioners, and the Land Bank of the Philippines is ordered to pay the petitioners Manuel O. Gallego, Joseph L. Gallego and Christopher L. Gallego in a manner set forth in Sections 17 and 18 of R.A. No. 6657 (Comprehensive Land Reform Code) the total amount of ₱52,209,720.00 as the just compensation for 122.8464 hectares of ricelands distributed and awarded to tenants-beneficiaries surveyed, described and subdivided into lots with corresponding lot numbers, and areas as indicated in the Summary of Farmer-Beneficiaries and Lot Distribution in Gallego Estate, consisting of six (6) pages, which is annexed hereto and made part of this Decision, including all improvements of roads and irrigation canals therein existing. The amount of ₱1,179,027.00 or whatever amount the Land Bank of the Philippines has paid to the Gallegos as initial or provisional valuation shall be deducted from the amount of ₱52,209,720.00.
>
> SO ORDERED.[13]

In arriving at the amount of just compensation, the trial court adopted the formula prescribed in P.D. No. 27, which fixed the land value as equivalent to 2.5 multiplied by the Government Support Price of *palay* multiplied by the Average Gross Production per hectare of the three preceding agricultural years. The trial court used the values of ₱500.00 as Government Support Price

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

[11] *Rollo*, p. 10.

[12] *Id.* at 107-115.

[13] *Id.* at 114-115.

for *palay* and 121.6 *cavans* per hectare as Average Gross Production of respondents' property. Applying Article 1958[14] of the Civil Code, the trial court also imposed "interest in kind" payable from 1972 to 2002 by multiplying by 1.8 the Average Gross Production of *palay* of 121.6 *cavans* per hectare multiplied by 2.5.

Both petitioner LBP and the DAR separately moved for the reconsideration of the trial court's Decision. In its Order dated 28 April 2003, the trial court denied both motions.[15]

Only petitioner LBP appealed from the trial court's Decision. According to petitioner LBP, the trial court erred in applying values that had no basis in law instead of adopting the Average Gross Production established by the Barangay Committee on Land Production under DAR Circular No. 26, series of 1973, and the mandated Government Support Price of ₱35 per *cavan* of *palay* under Section 2 of Executive Order (E.O.) No. 228.

Upon motion by respondents, the Court of Appeals issued a Resolution on 5 November 2004, ordering the release of ₱2,000,000.00 in favor of respondents as partial execution of the Decision of the trial court. The appellate court allowed the partial execution on the grounds that respondent Manuel Gallego was in need of an urgent medical operation and that there was no longer any question that respondents were entitled to just compensation.[16]

The Court of Appeals rendered the assailed Decision on 29 September 2005.[17] The appellate court agreed that the values applied by the trial court in fixing just compensation had no legal basis because the formula under P.D. No. 27 and E.O. No. 228 mandated a Government Support Price of ₱35.00 per

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[14] CIVIL CODE, Art. 1958. In the determination of the interest, if it is payable in kind, its value shall be appraised at the current price of the products or goods at the time and place of payment.

[15] *Rollo*, p. 10.

[16] CA *rollo*, pp. 216-216A.

[17] *Supra* note 2.

cavan of *palay*. It also held that the imposition of interest based on Article 1958 of the Civil Code was improper because said article does not apply to the expropriation of land but contemplates cases of simple loan or *mutuum*.

According to the Court of Appeals, the peculiar circumstances of the case persuaded the appellate court to fix just compensation based on the current market value of the subject property on the premise that the provisions of P.D. No. 27 and E.O. No. 228 serve only as guiding principles and are not conclusive on the courts. The appellate court fixed the property's value at the current market rate of ₱25.00 per square meter similar to that of other properties located in Barangay Sta. Rita and Barangay Concepcion.

The dispositive portion of the Decision reads:

> WHEREFORE, the foregoing considered, the assailed Decision is hereby **MODIFIED** in that the award in the amount of ₱52,209,720.00 as just compensation for 122.8464 hectares of ricelands is hereby **REDUCED** to THIRTY MILLION SEVEN HUNDRED ELEVEN THOUSAND SIX HUNDRED PESOS (₱30,711,600.00) computed based on the current fair market value of the expropriated parcels of land at the rate of ₱25.00 per square meter.
>
> The amount of One Million One Hundred Seventy Nine Thousand and Twenty Seven Pesos (₱1,179,027.00) or whatever amount the petitioner has paid to the Gallegos as initial or provisional valuation, as well as the Two Million Pesos (₱2,000,000.00) already released pursuant to this Court's Resolution dated 5 November 2004 as partial execution of the court *a quo's* decision shall be deducted from the foregoing award.[18]

Petitioner LBP sought reconsideration but was denied in a Resolution dated 23 June 2006. Hence, the instant petition, raising the following issues:

> 1. IS IT LAWFUL OR VALID FOR THE COURT *A QUO* AND THE APPELLATE COURT TO USE THE ALLEGED CURRENT MARKET VALUE IN DETERMINING SUBJECT PROPERTY'S JUST

[18] *Supra* note 2 at 15.

COMPENSATION, IN EFFECT RETROACTIVELY APPLYING R.A. NO. 6657 IN OBVIOUS CONTRAVENTION OF P.D. NO. 27/E.O. NO. 228.

2. IS IT LAWFUL OR VALID FOR THE COURT *A QUO* AND THE APPELLATE COURT TO USE AN INEXISTENT GOVERNMENT SUPPORT PRICE ALLEGEDLY IN THE AMOUNT OF FIVE HUNDRED PESOS (₱500.00) IN APPARENT VIOLATION OF THE LEGISLATED GOVERNMENT SUPPORT PRICE (GSP) AMOUNTING TO THIRTY FIVE PESOS (₱35.00) FOR EVERY CAVAN OF 50 KILOS OF PALAY?

3. IS IT LAWFUL OR VALID FOR THE APPELLATE COURT TO REQUIRE THE RELEASE OF TWO MILLION PESOS (PhP 2,000,000.00), WHICH DOES NOT CONSTITUTE AS THE INITIAL AMOUNT OF VALUATION FOR SUBJECT PROPERTY, IN FAVOR OF RESPONDENTS?[19]

On 26 July 2006, the Court issued a Resolution requiring the LBP Legal Department, the counsel for petitioner LBP, to submit proof of written conformity of the Office of the Government Corporate Counsel (OGCC) to represent petitioner LBP in the instant petition to conform to the Court's directive in *Land Bank of the Philippines v. Teresita Panlilio-Luciano*.[20] Pursuant to said Resolution, the LBP Legal Department submitted through a Compliance/Manifestation[21] a copy of the Letter of Authority issued by the OGCC authorizing Atty. Rafael L. Berbaño and Atty. Jose Marie A. Quimboy to appear as collaborating counsels in all LBP cases. The OGCC likewise filed a Manifestation and Motion[22] stating its conformity to the appearance of the LBP Legal Department on behalf of petitioner LBP and formally entering its appearance as collaborating counsel for petitioner LBP. In a Resolution dated 13 November 2006, the Court noted the separate manifestations of the OGCC and the LBP Legal Department and directed respondents to file a comment on the petition.[23]

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[19] *Supra* note 1 at 35.

[20] G.R. No. 165428, 17 January 2005.

[21] *Rollo*, pp. 212-215.

[22] *Id.* at 221-223.

[23] *Id.* at 229-230.

Contrary to respondents' claim, the petition is accompanied by a valid verification and certification of non-forum shopping. Annexed to the petition is a special power of attorney[24] issued by Wilfredo C. Maldia, Officer-In-Charge, Agrarian and Domestic Banking Sector of the LBP pursuant to Board Resolution No. 03-077. In the resolution, the LBP Board of Directors approved the designation of any LBP lawyer as attorney-in-fact to appear before the courts in all cases where LBP is a party.[25] Pursuant thereto, Attys. Berbaño and Quimboy were constituted as duly authorized representatives and attorneys-in-fact in the instant case with full power to sign the verification of non-forum shopping.[26]

After petitioner filed a reply[27] to respondents' comment, respondents filed a Motion for Partial Execution, praying for the release of ₱3,179,027.00 by way of partial execution of judgment, alleging that no partial execution of the award to respondents had been effected so far notwithstanding the Court of Appeals' Resolution dated 05 November 2004 and Decision dated 29 September 2005. Thereafter, respondents filed a Supplemental Comment dated 24 March 2008. For its part, petitioner LBP filed a Comment dated 10 April 2008 on respondents' Motion for Partial Execution and a Reply to respondents' Supplemental Comment.

Now to the core issue of just compensation.

Citing *Gabatin v. Land Bank of the Philippines*,[28] petitioner LBP argues that respondents' property was acquired under the effectivity of P.D. No. 27 and E.O. No. 228; thus, the formula provided therein should apply in fixing just compensation. Petitioner also pointed out the trial court's failure to take judicial notice of the mandated Government Support Price of ₱35.00 per *cavan* for *palay* at the time of taking in 1972.

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[24] *Id.* at 187.

[25] *Id.* at 277.

[26] *Id.* at 187.

[27] *Id.* at 255-276.

[28] 486 Phil. 366 (2004).

The petition lacks merit.

The Court has already ruled on the applicability of agrarian laws, namely, P.D. No. 27/E.O. No. 228 in relation to Republic Act (R.A.) No. 6657, in prior cases concerning just compensation.

In *Paris v. Alfeche*,[29] the Court held that the provisions of R.A. No. 6657 are also applicable to the agrarian reform process of lands placed under the coverage of P.D. No. 27/E.O. No. 228, which has not been completed upon the effectivity of R.A. No. 6657. Citing *Land Bank of the Philippines v. Court of Appeals*,[30] the Court in *Paris* held that P.D. No. 27 and E.O. No. 228 have suppletory effect to R.A. No. 6657, to wit:

> We cannot see why Sec. 18 of RA [No.] 6657 should not apply to rice and corn lands under PD [No.] 27. Section 75 of RA [No.] 6657 clearly states that the provisions of PD [No.] 27 and EO [No.] 228 shall only have a suppletory effect. Section 7 of the Act also provides –
>
> > Sec. 7. *Priorities*.—The DAR, in coordination with the PARC shall plan and program the acquisition and distribution of all agricultural lands through a period of (10) years from the effectivity of this Act. Lands shall be acquired and distributed as follows:
> >
> > Phase One: *Rice and Corn lands under P.D.* 27; all idle or abandoned lands; all private lands voluntarily offered by the owners of agrarian reform; x x x and all other lands owned by the government devoted to or suitable for agriculture, which shall be acquired and distributed immediately upon the effectivity of this Act, with the implementation to be completed within a period of not more than four (4) years (emphasis supplied).
>
> This eloquently demonstrates that RA [No.] 6657 includes PD [No.] 27 lands among the properties which the DAR shall acquire and distribute to the landless. And to facilitate the acquisition and distribution thereof, Secs. 16, 17 and 18 of the Act should be adhered to. In *Association of Small Landowners of the Philippines v.*

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[29] 416 Phil. 473 (2001).

[30] 378 Phil. 1248 (1999).

Secretary of Agrarian Reform[,] this Court applied the provisions (of) RA 6657 to rice and corn lands when it upheld the constitutionality of the payment of just compensation for PD [No.] 27 lands through the different modes stated in Sec. 18.[31]

Particularly, in *Land Bank of the Philippines v. Natividad*,[32] where the agrarian reform process in said case "is still incomplete as the just compensation to be paid private respondents has yet to be settled," the Court held therein that just compensation should be determined and the process concluded under R.A. No. 6657.[33]

The retroactive application of R.A. No. 6657 is not only statutory[34] but is also founded on equitable considerations. In *Lubrica v. Land Bank of the Philippines*,[35] the Court declared that it would be highly inequitable on the part of the landowners therein to compute just compensation using the values at the time of taking in 1972, and not at the time of payment, considering that the government and the farmer-beneficiaries have already benefited from the land although ownership thereof has not yet been transferred in their names. The same equitable consideration is applicable to the factual milieu of the instant case. The records show that respondents' property had been placed under the agrarian reform program in 1972 and had already been distributed to the beneficiaries but respondents have yet to receive just compensation due them.

The Court of Appeals fixed the just compensation based on the current market value of adjacent properties, citing the "peculiar circumstances" of the case. The appellate court, however, failed

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[31] *Paris v. Alfeche*, *supra* note 29 at 488-489.

[32] G.R. No. 127198, 16 May 2005, 458 SCRA 441.

[33] *Id.* at 451.

[34] See Republic Act No. 6657, Section 75. *Suppletory Application of Existing Legislation.* —The provisions of Republic Act Number 3844, as amended, Presidential Decree Numbers 27 and 266 as amended, Executive Order Numbers 228 and 229, both Series of 1987, and other laws not inconsistent with this Act shall have suppletory effect.

[35] G.R. No. 170220, 20 November 2006, 507 SCRA 415.

to cite any legal or factual basis in support of its conclusion. Quite the contrary, the law and jurisprudence on the determination of just compensation of agrarian lands are settled; they are different from the thrust of the appellate court.

For the purpose of determining just compensation, Section 17 of R.A. No. 6657 states:

> SECTION 17. *Determination of Just Compensation*.—In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

While the SAC is required to consider the acquisition cost of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declaration and the assessments made by the government assessors to determine just compensation, it is equally true that these factors have been translated into a basic formula by the DAR pursuant to its rule-making power under Section 49 of R.A. No. 6657.[36] In *Land Bank of the Philippines v. Celada*,[37] the Court upheld the applicability of DAR Administrative Order (A.O.) No. 5, series of 1998 in determining just compensation.

Likewise, in *Land Bank of the Philippines v. Banal*,[38] the Court ruled that the applicable formula in fixing just compensation is DAR A.O. No. 6, series of 1992, as amended by DAR A.O. No. 11, series of 1994, then the governing regulation applicable to compulsory acquisition of lands, in recognition of the DAR's rule-making power to carry out the object of R.A. No. 6657.

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[36] *Land Bank of the Philippines v. Celada*, G.R. No. 164876, 23 January 2006, 479 SCRA 495, 506-507.

[37] G.R. No. 164876, 23 January 2006, 479 SCRA 495.

[38] 478 Phil. 701 (2004).

Because the trial court therein based its valuation upon a different formula and did not conduct any hearing for the reception of evidence, the Court ordered a remand of the case to the SAC for trial on the merits.

The mandatory application of the aforementioned guidelines in determining just compensation has been reiterated recently in *Land Bank of the Philippines v. Lim*,[39] where the Court ordered the remand of the case to the SAC for the determination of just compensation strictly in accordance with DAR A.O. No. 6, series of 1992, as amended.

In line with the pronouncement in *Celada*, respondents argue that the just compensation should be based on DAR A.O. No. 5, series of 1998, which requires values for Capitalized Net Income, Comparable Sales and Market Value. Thus, respondents attached to the comment an appraisal report of the fair market value of the properties. Using the figures therein, respondents arrived at the value of ₱78,195,694.07 as just compensation.

The appraisal report, however, does not form part of the records of the case; thus, it has no probative weight. Any evidence that a party desires to submit for the consideration of the court must be formally offered by him, otherwise, it is excluded and rejected. Evidence not formally offered before the trial court cannot be considered on appeal, for to consider it at such stage will deny the other parties their right to rebut it.[40] Although respondents are correct in asserting that DAR A.O. No. 5, series of 1998 is the governing formula in determining the just compensation in the case at bar, the evidence on record is not sufficient to determine the parameters required under DAR A.O. No. 5, series of 1998. Hence, the remand of the case to the appropriate court below is necessary also in order to allow respondents to properly present their evidence and petitioner to submit controverting evidence. This Court is not a trier of facts.

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[39] G.R. No. 171941, 02 August 2007, 529 SCRA 129.

[40] 436 Phil. 699 (2002).

To gain time and accelerate the final disposition of this case, the Court deems it best *pro hac vice* to commission the Court of Appeals as its agent to receive and evaluate the evidence of the parties. Its mandate is to ascertain the just compensation due in accordance with this Decision, applying Sec. 17 of R.A. No. 6657, DAR A.O. No. 5 of 1992, as amended, and the prevailing jurisprudence.[41]

The remand of cases before this Court to the Court of Appeals for the reception of further evidence is not a novel procedure. It is sanctioned by the Rules of Court.[42] In fact, the Court availed of the procedure in quite a few cases.[43]

Respondents likewise pray for the partial execution of the judgment pending appeal. They aver that the agrarian reform process has remained pending for the past 35 years from the time of the expropriation of the subject properties and that the original owner had died while one of the respondents is in need of urgent medical attention.

The execution of a judgment before becoming final by reason of appeal is recognized. However, this highly exceptional case must find itself firmly founded upon good reasons warranting immediate execution. For instance, execution pending appeal was granted by this Court where the prevailing party is of advanced age and in a precarious state of health and the obligation in the judgment is non-transmissible, being for support, or where the judgment debtor is insolvent. Execution pending appeal was also allowed by this Court where defendants were exhausting their income and have no other property aside from the proceeds of the subdivision lots subject of the action.[44]

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[41] See *Land Bank of the Philippines v. Lim*, G.R. No. 171941, 2 August 2007; 529 SCRA 129, 141-142.

[42] REVISED RULES OF COURT, Rule 46, Sec. 6.

[43] See *Republic v. Court of Appeals*, 359 Phil. 530 (1998); *Manotok Realty Inc., et al. v. CLT Realty Development Corporation*, G.R. No. 123346, December 14, 2007, 540 SCRA 304.

[44] *David v. Court of Appeals*, 342 Phil. 387, 390-391 (1997).

In *Borja v. Court of Appeals*,[45] the Court allowed the execution of the money judgment pending the resolution of the appeal on the merits. The Court noted that the circumstance of the case constituted a good reason to allow execution of the challenged judgment pending appeal. The Court explained, thus:

> x x x The case has been dragging for more than ten years since it was filed in 1979, with no early resolution of the appeal in sight. The elevation of the records alone from the trial court took all of six years. The proceedings in the appellate court will entail further delay. The petitioner has grown old with the case and is now 76 years of age. He fears he may no longer be in this world when the case is finally decided.
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> x x x x x x x x x
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> The important point is that if the appealed judgment is annulled, the complaint of the petitioner will have to be tried anew and will probably be appealed whatever its outcome. It will take years again before it is finally decided. By that time, the petitioner may be facing a different judgment from a Court higher than an earthly tribunal. The decision on his complaint, even if it be in his favor, will become meaningless as far as he himself is concerned.[46]

The circumstances in *Borja* are similar to those in the instant case. The records show that almost 36 years have elapsed since the lands have been taken away from respondents but they have yet to receive the just compensation of the property in full. The original owner had died and one of the respondents is in need of urgent medical attention. There is no doubt that respondents are entitled to just compensation for their lands which obviously cannot be lower than the amount of ₱30,711,600.00 awarded by the Court of Appeals in the appealed decision. It is but first and proper that respondents' request be granted in view of the considerable period of time that has transpired since the taking in tandem with humanitarian considerations.

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[45] G.R. No. 95667, 08 May 1991, 196 SCRA 847.

[46] *Id.* at 850.

WHEREFORE, the instant petition for review on *certiorari* is *DENIED* and the decision and resolution of the Court of Appeals in CA-G.R. SP No. 77676 are *REVERSED* and *SET ASIDE*. Agrarian Case No. 127-AF is *REMANDED* to the Court of Appeals, which is directed to receive evidence and determine with dispatch the just compensation due respondents strictly in accordance with Sec. 17 of R.A. No. 6657, DAR A.O. No. 5, series of 1998, as amended, and the prevailing jurisprudence. The Court of Appeals is directed to conclude the proceedings and submit to this Court a report on its findings and recommended conclusions within forty-five (45) days from notice of this Decision. The Court of Appeals is further directed to raffle this case immediately upon receipt of this Decision.

The Court by way of execution pending appeal of this Decision hereby *ORDERS* petitioner to pay to respondents the amount of ₱30,711,600.00 awarded by the Court of Appeals, less whatever amounts they have been paid thus far.

This Decision is immediately executory.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 173227. January 20, 2009]

SEBASTIAN SIGA-AN, *petitioner, vs.* **ALICIA VILLANUEVA,** *respondent.*

SYLLABUS

1. CIVIL LAW; LOANS; INTEREST; EXPLAINED.— Interest is a compensation fixed by the parties for the use or forbearance of money. This is referred to as monetary interest. Interest may also be imposed by law or by courts as penalty or indemnity for damages. This is called compensatory interest. The right to interest arises only by virtue of a contract or by virtue of damages for delay or failure to pay the principal loan on which interest is demanded.

2. ID.; ID.; ID.; TWO CONDITIONS THAT MUST CONCUR TO ALLOW PAYMENT OF MONETARY INTEREST.— Article 1956 of the Civil Code, which refers to monetary interest, specifically mandates that no interest shall be due unless it has been expressly stipulated in writing. As can be gleaned from the foregoing provision, payment of monetary interest is allowed only if: (1) there was an express stipulation for the payment of interest; and (2) the agreement for the payment of interest was reduced in writing. The concurrence of the two conditions is required for the payment of monetary interest. Thus, we have held that collection of interest without any stipulation therefor in writing is prohibited by law.

3. ID.; ID.; ID.; ID.; CONDITIONS, NOT PRESENT IN CASE AT BAR.— It appears that petitioner and respondent did not agree on the payment of interest for the loan. Neither was there convincing proof of written agreement between the two regarding the payment of interest. x x x It is evident that respondent did not really consent to the payment of interest for the loan and that she was merely tricked and coerced by petitioner to pay interest. Hence, it cannot be gainfully said that such promissory note pertains to an express stipulation of interest or written agreement of interest on the loan between petitioner and respondent. We have carefully examined the RTC Decision and

found that the RTC did not make a ruling therein that petitioner and respondent agreed on the payment of interest at the rate of 7% for the loan. The RTC clearly stated that although petitioner and respondent entered into a valid oral contract of loan amounting to ₱540,000.00, they, nonetheless, never intended the payment of interest thereon. While the Court of Appeals mentioned in its Decision that it concurred in the RTC's ruling that petitioner and respondent agreed on a certain rate of interest as regards the loan, we consider this as merely an inadvertence because, as earlier elucidated, both the RTC and the Court of Appeals ruled that petitioner is not entitled to the payment of interest on the loan. The rule is that factual findings of the trial court deserve great weight and respect especially when affirmed by the appellate court. We found no compelling reason to disturb the ruling of both courts. Petitioner's reliance on respondent's alleged admission in the Batas Pambansa Blg. 22 cases that they had agreed on the payment of interest at the rate of 7% deserves scant consideration. In the said case, respondent merely testified that after paying the total amount of loan, petitioner ordered her to pay interest. Respondent did not categorically declare in the same case that she and respondent made an *express* stipulation in writing as regards payment of interest at the rate of 7%. As earlier discussed, monetary interest is due only if there was an *express* stipulation in writing for the payment of interest.

4. ID.; ID.; ID.; TWO INSTANCES WHEN INTEREST MAY BE IMPOSED EVEN IN THE ABSENCE OF EXPRESS STIPULATION.— There are instances in which an interest may be imposed even in the absence of express stipulation, verbal or written, regarding payment of interest. Article 2209 of the Civil Code states that if the obligation consists in the payment of a sum of money, and the debtor incurs delay, a legal interest of 12% per annum may be imposed as indemnity for damages if no stipulation on the payment of interest was agreed upon. Likewise, Article 2212 of the Civil Code provides that interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent on this point. All the same, the interest under these two instances may be imposed only as a penalty or damages for breach of contractual obligations. It cannot be charged as a compensation for the use or forbearance of money. In other words, the two instances

apply only to compensatory interest and not to monetary interest.

5. ID.; CREDIT TRANSACTIONS; LOAN; PRINCIPLE OF *SOLUTIO INDEBITI*, EXPLAINED; APPLICATION.— Under Article 1960 of the Civil Code, if the borrower of loan pays interest when there has been no stipulation therefor, the provisions of the Civil Code concerning *solutio indebiti* shall be applied. Article 2154 of the Civil Code explains the principle of *solutio indebiti*. Said provision provides that if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises. In such a case, a creditor-debtor relationship is created under a quasi-contract whereby the payor becomes the creditor who then has the right to demand the return of payment made by mistake, and the person who has no right to receive such payment becomes obligated to return the same. The quasi-contract of *solutio indebiti* harks back to the ancient principle that no one shall enrich himself unjustly at the expense of another. The principle of *solutio indebiti* applies where (1) a payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) the payment is made through mistake, and not through liberality or some other cause. We have held that the principle of *solutio indebiti* applies in case of erroneous payment of undue interest. It was duly established that respondent paid interest to petitioner. Respondent was under no duty to make such payment because there was no express stipulation in writing to that effect. There was no binding relation between petitioner and respondent as regards the payment of interest. The payment was clearly a mistake. Since petitioner received something when there was no right to demand it, he has an obligation to return it.

6. ID.; ID.; ID.; WHEN THE OBLIGATION AROSE FROM A QUASI-CONTRACT OF *SOLUTIO INDEBITI*, 6% INTEREST PER ANNUM SHOULD BE IMPOSED ON THE TOTAL AMOUNT INCLUSIVE OF DAMAGES AWARDED AND ATTORNEY'S FEES.— In the present case, petitioner's obligation arose from a quasi-contract of *solutio indebiti* and not from a loan or forbearance of money. Thus, an interest of 6% per annum should be imposed on the amount to be refunded as well as on the damages awarded and on the attorney's fees, to be

computed from the time of the extra-judicial demand on 3 March 1998, 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.

7. ID.; DAMAGES; MORAL DAMAGES; AWARDED.— Article 2217 of the Civil Code provides that moral damages may be recovered if the party underwent physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury. Respondent testified that she experienced sleepless nights and wounded feelings when petitioner refused to return the amount paid as interest despite her repeated demands. Hence, the award of moral damages is justified. However, its corresponding amount of ₱300,000.00, as fixed by the RTC and the Court of Appeals, is exorbitant and should be equitably reduced. Article 2216 of the Civil Code instructs 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. To our mind, the amount of ₱150,000.00 as moral damages is fair, reasonable, and proportionate to the injury suffered by respondent.

8. ID.; ID.; EXEMPLARY DAMAGES; AWARDED TO DETER SERIOUS WRONGDOINGS.— Article 2232 of the Civil Code states that in a quasi-contract, such as *solutio indebiti*, exemplary damages may be imposed if the defendant acted in an oppressive manner. Petitioner acted oppressively when he pestered respondent to pay interest and threatened to block her transactions with the PNO if she would not pay interest. This forced respondent to pay interest despite lack of agreement thereto. Thus, the award of exemplary damages is appropriate. The amount of ₱50,000.00 imposed as exemplary damages by the RTC and the Court is fitting so as to deter petitioner and other lenders from committing similar and other serious wrongdoings.

9. ID.; ID.; AWARD OF ATTORNEY'S FEES, PROPER.— Jurisprudence instructs that in awarding attorney's fees, the trial court must state the factual, legal or equitable justification for awarding the same. In the case under consideration, the RTC stated in its Decision that the award of attorney's fees

equivalent to 25% of the amount paid as interest by respondent to petitioner is reasonable and moderate considering the extent of work rendered by respondent's lawyer in the instant case and the fact that it dragged on for several years. Further, respondent testified that she agreed to compensate her lawyer handling the instant case such amount. The award, therefore, of attorney's fees and its amount equivalent to 25% of the amount paid as interest by respondent to petitioner is proper.

APPEARANCES OF COUNSEL

Voltaire Francisco B. Banzon for petitioner.
J.P. Villanueva & Associates Law Office for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before Us is a Petition[1] for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to set aside the Decision,[2] dated 16 December 2005, and Resolution,[3] dated 19 June 2006 of the Court of Appeals in CA-G.R. CV No. 71814, which affirmed *in toto* the Decision,[4] dated 26 January 2001, of the Las Pinas City Regional Trial Court, Branch 255, in Civil Case No. LP-98-0068.

The facts gathered from the records are as follows:

On 30 March 1998, respondent Alicia Villanueva filed a complaint[5] for sum of money against petitioner Sebastian Siga-an before the Las Pinas City Regional Trial Court (RTC), Branch 255, docketed as Civil Case No. LP-98-0068. Respondent alleged that she was a businesswoman engaged in

[1] *Rollo*, pp. 9-23.

[2] Penned by Associate Justice Josefina Guevara-Salonga with Associate Justices Eliezer R. de Los Santos and Fernanda Lampas-Peralta, concurring; *rollo*, pp. 24-32.

[3] *Rollo*, pp. 34-35.

[4] Penned by Judge Florentino M. Alumbres; records, pp. 510-516.

[5] Records, pp. 1-5.

supplying office materials and equipments to the Philippine Navy Office (PNO) located at Fort Bonifacio, Taguig City, while petitioner was a military officer and comptroller of the PNO from 1991 to 1996.

Respondent claimed that sometime in 1992, petitioner approached her inside the PNO and offered to loan her the amount of ₱540,000.00. Since she needed capital for her business transactions with the PNO, she accepted petitioner's proposal. The loan agreement was not reduced in writing. Also, there was no stipulation as to the payment of interest for the loan.[6]

On 31 August 1993, respondent issued a check worth ₱500,000.00 to petitioner as partial payment of the loan. On 31 October 1993, she issued another check in the amount of ₱200,000.00 to petitioner as payment of the remaining balance of the loan. Petitioner told her that since she paid a total amount of ₱700,000.00 for the ₱540,000.00 worth of loan, the excess amount of ₱160,000.00 would be applied as interest for the loan. Not satisfied with the amount applied as interest, petitioner pestered her to pay additional interest. Petitioner threatened to block or disapprove her transactions with the PNO if she would not comply with his demand. As all her transactions with the PNO were subject to the approval of petitioner as comptroller of the PNO, and fearing that petitioner might block or unduly influence the payment of her vouchers in the PNO, she conceded. Thus, she paid additional amounts in cash and checks as interests for the loan. She asked petitioner for receipt for the payments but petitioner told her that it was not necessary as there was mutual trust and confidence between them. According to her computation, the total amount she paid to petitioner for the loan and interest accumulated to ₱1,200,000.00.[7]

Thereafter, respondent consulted a lawyer regarding the propriety of paying interest on the loan despite absence of agreement to that effect. Her lawyer told her that petitioner could not validly collect interest on the loan because there was

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[6] *Id.* at 2.

[7] *Id.* at 2-3.

no agreement between her and petitioner regarding payment of interest. Since she paid petitioner a total amount of ₱1,200,000.00 for the ₱540,000.00 worth of loan, and upon being advised by her lawyer that she made overpayment to petitioner, she sent a demand letter to petitioner asking for the return of the excess amount of ₱660,000.00. Petitioner, despite receipt of the demand letter, ignored her claim for reimbursement.[8]

Respondent prayed that the RTC render judgment ordering petitioner to pay respondent (1) ₱660,000.00 plus legal interest from the time of demand; (2) ₱300,000.00 as moral damages; (3) ₱50,000.00 as exemplary damages; and (4) an amount equivalent to 25% of ₱660,000.00 as attorney's fees.[9]

In his answer[10] to the complaint, petitioner denied that he offered a loan to respondent. He averred that in 1992, respondent approached and asked him if he could grant her a loan, as she needed money to finance her business venture with the PNO. At first, he was reluctant to deal with respondent, because the latter had a spotty record as a supplier of the PNO. However, since respondent was an acquaintance of his officemate, he agreed to grant her a loan. Respondent paid the loan in full.[11]

Subsequently, respondent again asked him to give her a loan. As respondent had been able to pay the previous loan in full, he agreed to grant her another loan. Later, respondent requested him to restructure the payment of the loan because she could not give full payment on the due date. He acceded to her request. Thereafter, respondent pleaded for another restructuring of the payment of the loan. This time he rejected her plea. Thus, respondent proposed to execute a promissory note wherein she would acknowledge her obligation to him, inclusive of interest, and that she would issue several postdated checks to guarantee the payment of her obligation. Upon his approval of respondent's request for restructuring of the loan, respondent executed a

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[8] *Id.* at 3-4.

[9] *Id.* at 4-5.

[10] *Id.* at 150-160.

[11] *Id.* at 3-4.

promissory note dated 12 September 1994 wherein she admitted having borrowed an amount of ₱1,240,000.00, inclusive of interest, from petitioner and that she would pay said amount in March 1995. Respondent also issued to him six postdated checks amounting to ₱1,240,000.00 as guarantee of compliance with her obligation. Subsequently, he presented the six checks for encashment but only one check was honored. He demanded that respondent settle her obligation, but the latter failed to do so. Hence, he filed criminal cases for Violation of the Bouncing Checks Law (Batas Pambansa Blg. 22) against respondent. The cases were assigned to the Metropolitan Trial Court of Makati City, Branch 65 (MeTC).[12]

Petitioner insisted that there was no overpayment because respondent admitted in the latter's promissory note that her monetary obligation as of 12 September 1994 amounted to ₱1,240,000.00 inclusive of interests. He argued that respondent was already estopped from complaining that she should not have paid any interest, because she was given several times to settle her obligation but failed to do so. He maintained that to rule in favor of respondent is tantamount to concluding that the loan was given interest-free. Based on the foregoing averments, he asked the RTC to dismiss respondent's complaint.

After trial, the RTC rendered a Decision on 26 January 2001 holding that respondent made an overpayment of her loan obligation to petitioner and that the latter should refund the excess amount to the former. It ratiocinated that respondent's obligation was only to pay the loaned amount of ₱540,000.00, and that the alleged interests due should not be included in the computation of respondent's total monetary debt because there was no agreement between them regarding payment of interest. It concluded that since respondent made an excess payment to petitioner in the amount of ₱660,000.00 through mistake, petitioner should return the said amount to respondent pursuant to the principle of *solutio indebiti*.[13]

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[12] *Id.* at 4-5.

[13] *Id.* at 514-515.

The RTC also ruled that petitioner should pay moral damages for the sleepless nights and wounded feelings experienced by respondent. Further, petitioner should pay exemplary damages by way of example or correction for the public good, plus attorney's fees and costs of suit.

The dispositive portion of the RTC Decision reads:

> WHEREFORE, in view of the foregoing evidence and in the light of the provisions of law and jurisprudence on the matter, judgment is hereby rendered in favor of the plaintiff and against the defendant as follows:
>
> (1) Ordering defendant to pay plaintiff the amount of ₱660,000.00 plus legal interest of 12% per annum computed from 3 March 1998 until the amount is paid in full;
>
> (2) Ordering defendant to pay plaintiff the amount of ₱300,000.00 as moral damages;
>
> (3) Ordering defendant to pay plaintiff the amount of ₱50,000.00 as exemplary damages;
>
> (4) Ordering defendant to pay plaintiff the amount equivalent to 25% of ₱660,000.00 as attorney's fees; and
>
> (5) Ordering defendant to pay the costs of suit.[14]

Petitioner appealed to the Court of Appeals. On 16 December 2005, the appellate court promulgated its Decision affirming *in toto* the RTC Decision, thus:

> WHEREFORE, the foregoing considered, the instant appeal is hereby DENIED and the assailed decision [is] AFFIRMED *in toto*.[15]

Petitioner filed a motion for reconsideration of the appellate court's decision but this was denied.[16] Hence, petitioner lodged the instant petition before us assigning the following errors:

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[14] *Id.* at 515-516.

[15] *Rollo*, p. 32.

[16] *Id.* at 34-35.

I.

THE RTC AND THE COURT OF APPEALS ERRED IN RULING THAT NO INTEREST WAS DUE TO PETITIONER;

II.

THE RTC AND THE COURT OF APPEALS ERRED IN APPLYING THE PRINCIPLE OF *SOLUTIO INDEBITI*.[17]

Interest is a compensation fixed by the parties for the use or forbearance of money. This is referred to as monetary interest. Interest may also be imposed by law or by courts as penalty or indemnity for damages. This is called compensatory interest.[18] The right to interest arises only by virtue of a contract or by virtue of damages for delay or failure to pay the principal loan on which interest is demanded.[19]

Article 1956 of the Civil Code, which refers to monetary interest,[20] specifically mandates that no interest shall be due unless it has been expressly stipulated in writing. As can be gleaned from the foregoing provision, payment of monetary interest is allowed only if: (1) there was an express stipulation for the payment of interest; and (2) the agreement for the payment of interest was reduced in writing. The concurrence of the two conditions is required for the payment of monetary interest. Thus, we have held that collection of interest without any stipulation therefor in writing is prohibited by law.[21]

It appears that petitioner and respondent did not agree on the payment of interest for the loan. Neither was there convincing proof of written agreement between the two regarding the

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[17] *Id.* at 16.

[18] Paras, *CIVIL CODE OF THE PHILIPPINES ANNOTATED* (13th Edition, 1995, Volume V), p. 854; Caguioa, *COMMENTS AND CASES ON CIVIL LAW*, (1st Edition, Volume VI), p. 260.

[19] *Baretto v. Santa Marina*, 37 Phil. 568, 571 (1918).

[20] *Supra* note 18.

[21] *Ching v. Nicdao*, G.R. No. 141181, 27 April 2007, 522 SCRA 316, 361; *Tan v. Valdehueza*, 160 Phil. 760, 767 (1975).

payment of interest. Respondent testified that although she accepted petitioner's offer of loan amounting to ₱540,000.00, there was, nonetheless, no verbal or written agreement for her to pay interest on the loan.[22]

Petitioner presented a handwritten promissory note dated 12 September 1994[23] wherein respondent purportedly admitted owing petitioner "capital and interest." Respondent, however, explained that it was petitioner who made a promissory note and she was told to copy it in her own handwriting; that all her transactions with the PNO were subject to the approval of petitioner as comptroller of the PNO; that petitioner threatened to disapprove her transactions with the PNO if she would not pay interest; that being unaware of the law on interest and fearing that petitioner would make good of his threats if she would not obey his instruction to copy the promissory note, she copied the promissory note in her own handwriting; and that such was the same promissory note presented by petitioner as alleged proof of their written agreement on interest.[24] Petitioner did not rebut the foregoing testimony. It is evident that respondent did not really consent to the payment of interest for the loan and that she was merely tricked and coerced by petitioner to pay interest. Hence, it cannot be gainfully said that such promissory note pertains to an express stipulation of interest or written agreement of interest on the loan between petitioner and respondent.

Petitioner, nevertheless, claims that both the RTC and the Court of Appeals found that he and respondent agreed on the payment of 7% rate of interest on the loan; that the agreed 7% rate of interest was duly admitted by respondent in her testimony in the Batas Pambansa Blg. 22 cases he filed against respondent; that despite such judicial admission by respondent, the RTC and the Court of Appeals, citing Article 1956 of the Civil Code, still held that no interest was due him since the agreement on

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[22] TSN, 18 April 2000, pp. 7-8.

[23] Records, p. 321.

[24] *Rollo*, pp. 70-71; TSN, 18 April 2000, pp. 17-18.

interest was not reduced in writing; that the application of Article 1956 of the Civil Code should not be absolute, and an exception to the application of such provision should be made when the borrower admits that a specific rate of interest was agreed upon as in the present case; and that it would be unfair to allow respondent to pay only the loan when the latter very well knew and even admitted in the Batas Pambansa Blg. 22 cases that there was an agreed 7% rate of interest on the loan.[25]

We have carefully examined the RTC Decision and found that the RTC did not make a ruling therein that petitioner and respondent agreed on the payment of interest at the rate of 7% for the loan. The RTC clearly stated that although petitioner and respondent entered into a valid oral contract of loan amounting to ₱540,000.00, they, nonetheless, never intended the payment of interest thereon.[26] While the Court of Appeals mentioned in its Decision that it concurred in the RTC's ruling that petitioner and respondent agreed on a certain rate of interest as regards the loan, we consider this as merely an inadvertence because, as earlier elucidated, both the RTC and the Court of Appeals ruled that petitioner is not entitled to the payment of interest on the loan. The rule is that factual findings of the trial court deserve great weight and respect especially when affirmed by the appellate court.[27] We found no compelling reason to disturb the ruling of both courts.

Petitioner's reliance on respondent's alleged admission in the Batas Pambansa Blg. 22 cases that they had agreed on the payment of interest at the rate of 7% deserves scant consideration. In the said case, respondent merely testified that after paying the total amount of loan, petitioner ordered her to pay interest.[28] Respondent did not categorically declare in the same case that she and respondent made an *express* stipulation in writing as

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[25] *Id.* at 17-18.

[26] Records, p. 514.

[27] *Pantranco North Express Inc. v. Standard Insurance Company, Inc.*, G.R. No. 140746, 16 March 2005, 453 SCRA 482, 490.

[28] CA *rollo*, p. 88.

regards payment of interest at the rate of 7%. As earlier discussed, monetary interest is due only if there was an *express* stipulation in writing for the payment of interest.

There are instances in which an interest may be imposed even in the absence of express stipulation, verbal or written, regarding payment of interest. Article 2209 of the Civil Code states that if the obligation consists in the payment of a sum of money, and the debtor incurs delay, a legal interest of 12% per annum may be imposed as indemnity for damages if no stipulation on the payment of interest was agreed upon. Likewise, Article 2212 of the Civil Code provides that interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent on this point.

All the same, the interest under these two instances may be imposed only as a penalty or damages for breach of contractual obligations. It cannot be charged as a compensation for the use or forbearance of money. In other words, the two instances apply only to compensatory interest and not to monetary interest.[29] The case at bar involves petitioner's claim for monetary interest.

Further, said compensatory interest is not chargeable in the instant case because it was not duly proven that respondent defaulted in paying the loan. Also, as earlier found, no interest was due on the loan because there was no written agreement as regards payment of interest.

Apropos the second assigned error, petitioner argues that the principle of *solutio indebiti* does not apply to the instant case. Thus, he cannot be compelled to return the alleged excess amount paid by respondent as interest.[30]

Under Article 1960 of the Civil Code, if the borrower of loan pays interest when there has been no stipulation therefor, the provisions of the Civil Code concerning *solutio indebiti* shall be applied. Article 2154 of the Civil Code explains the principle of *solutio indebiti*. Said provision provides that if

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[29] *Supra* note 18 at 856-857.

[30] *Rollo*, pp. 18-20.

something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises. In such a case, a creditor-debtor relationship is created under a quasi-contract whereby the payor becomes the creditor who then has the right to demand the return of payment made by mistake, and the person who has no right to receive such payment becomes obligated to return the same. The quasi-contract of *solutio indebiti* harks back to the ancient principle that no one shall enrich himself unjustly at the expense of another.[31] The principle of *solutio indebiti* applies where (1) a payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) the payment is made through mistake, and not through liberality or some other cause.[32] We have held that the principle of *solutio indebiti* applies in case of erroneous payment of undue interest.[33]

It was duly established that respondent paid interest to petitioner. Respondent was under no duty to make such payment because there was no express stipulation in writing to that effect. There was no binding relation between petitioner and respondent as regards the payment of interest. The payment was clearly a mistake. Since petitioner received something when there was no right to demand it, he has an obligation to return it.

We shall now determine the propriety of the monetary award and damages imposed by the RTC and the Court of Appeals.

Records show that respondent received a loan amounting to ₱540,000.00 from petitioner.[34] Respondent issued two checks with a total worth of ₱700,000.00 in favor of petitioner as payment

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[31] *Moreño-Lentfer v. Wolff*, G.R. No. 152317, 10 November 2004, 441 SCRA 584, 591.

[32] *Id.*

[33] *Velez v. Balzarza*, 73 Phil. 630, 632 (1942).

[34] TSN, 18 April 2000, p. 7.

of the loan.[35] These checks were subsequently encashed by petitioner.[36] Obviously, there was an excess of ₱160,000.00 in the payment for the loan. Petitioner claims that the excess of ₱160,000.00 serves as interest on the loan to which he was entitled. Aside from issuing the said two checks, respondent also paid cash in the total amount of ₱175,000.00 to petitioner as interest.[37] Although no receipts reflecting the same were presented because petitioner refused to issue such to respondent, petitioner, nonetheless, admitted in his Reply-Affidavit[38] in the Batas Pambansa Blg. 22 cases that respondent paid him a total amount of ₱175,000.00 cash in addition to the two checks. Section 26 Rule 130 of the Rules of Evidence provides that the declaration of a party as to a relevant fact may be given in evidence against him. Aside from the amounts of ₱160,000.00 and ₱175,000.00 paid as interest, no other proof of additional payment as interest was presented by respondent. Since we have previously found that petitioner is not entitled to payment of interest and that the principle of *solutio indebiti* applies to the instant case, petitioner should return to respondent the excess amount of ₱160,000.00 and ₱175,000.00 or the total amount of ₱335,000.00. Accordingly, the reimbursable amount to respondent fixed by the RTC and the Court of Appeals should be reduced from ₱660,000.00 to ₱335,000.00.

As earlier stated, petitioner filed five (5) criminal cases for violation of Batas Pambansa Blg. 22 against respondent. In the said cases, the MeTC found respondent guilty of violating Batas Pambansa Blg. 22 for issuing five dishonored checks to petitioner. Nonetheless, respondent's conviction therein does not affect our ruling in the instant case. The two checks, subject matter of this case, totaling ₱700,000.00 which respondent claimed as payment of the ₱540,000.00 worth of loan, were not among the five checks found to be dishonored or bounced in the five criminal cases. Further, the MeTC found that respondent made

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[35] Exhibits A & B; records, pp. 367, 371 and 372.

[36] CA *rollo*, pp. 58-63.

[37] TSN, 18 April 2000, p. 23.

[38] CA *rollo*, pp. 94-96.

an overpayment of the loan by reason of the interest which the latter paid to petitioner.[39]

Article 2217 of the Civil Code provides that moral damages may be recovered if the party underwent physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury. Respondent testified that she experienced sleepless nights and wounded feelings when petitioner refused to return the amount paid as interest despite her repeated demands. Hence, the award of moral damages is justified. However, its corresponding amount of ₱300,000.00, as fixed by the RTC and the Court of Appeals, is exorbitant and should be equitably reduced. Article 2216 of the Civil Code instructs 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.[40] To our mind, the amount of ₱150,000.00 as moral damages is fair, reasonable, and proportionate to the injury suffered by respondent.

Article 2232 of the Civil Code states that in a quasi-contract, such as *solutio indebiti*, exemplary damages may be imposed if the defendant acted in an oppressive manner. Petitioner acted oppressively when he pestered respondent to pay interest and threatened to block her transactions with the PNO if she would not pay interest. This forced respondent to pay interest despite lack of agreement thereto. Thus, the award of exemplary damages is appropriate. The amount of ₱50,000.00 imposed as exemplary damages by the RTC and the Court is fitting so as to deter petitioner and other lenders from committing similar and other serious wrongdoings.[41]

Jurisprudence instructs that in awarding attorney's fees, the trial court must state the factual, legal or equitable

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[39] Records, pp. 510-516.

[40] *Philippine Airlines v. Court of Appeals*, G.R. No. 123238, 22 September 2008.

[41] *Id.*

justification for awarding the same.[42] In the case under consideration, the RTC stated in its Decision that the award of attorney's fees equivalent to 25% of the amount paid as interest by respondent to petitioner is reasonable and moderate considering the extent of work rendered by respondent's lawyer in the instant case and the fact that it dragged on for several years.[43] Further, respondent testified that she agreed to compensate her lawyer handling the instant case such amount.[44] The award, therefore, of attorney's fees and its amount equivalent to 25% of the amount paid as interest by respondent to petitioner is proper.

Finally, the RTC and the Court of Appeals imposed a 12% rate of legal interest on the amount refundable to respondent computed from 3 March 1998 until its full payment. This is erroneous.

We held in *Eastern Shipping Lines, Inc. v. Court of Appeals*,[45] 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 equivalent to a forbearance of credit.

In the present case, petitioner's obligation arose from a quasi-contract of *solutio indebiti* and not from a loan or forbearance of money. Thus, an interest of 6% per annum should be imposed on the amount to be refunded as well as

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[42] *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.

[43] Records, p. 515.

[44] TSN, 18 April 2000, pp. 35-36.

[45] G.R. No. 97412, 12 July 1994, 234 SCRA 78, 95-97.

on the damages awarded and on the attorney's fees, to be computed from the time of the extra-judicial demand on 3 March 1998,[46] 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.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CV No. 71814, dated 16 December 2005, is hereby *AFFIRMED* with the following *MODIFICATIONS*: (1) the amount of ₱660,000.00 as refundable amount of interest is reduced to THREE HUNDRED THIRTY FIVE THOUSAND PESOS (₱335,000.00); (2) the amount of ₱300,000.00 imposed as moral damages is reduced to ONE HUNDRED FIFTY THOUSAND PESOS (₱150,000.00); (3) an interest of 6% per annum is imposed on the ₱335,000.00, on the damages awarded and on the attorney's fees to be computed from the time of the extra-judicial demand on 3 March 1998 up to the finality of this Decision; and (4) an interest of 12% per annum is also imposed from the finality of this Decision up to its satisfaction. Costs against petitioner.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Nachura, and *Leonardo-de Castro,*[*] *JJ.*, concur.

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[46] Records, p. 7.

[*] Per Special Order No. 546, Associate Justice Teresita J. Leonardo-De Castro was designated to sit as additional member in view of the retirement of Associate Justice Ruben T. Reyes dated 5 January 2009.

THIRD DIVISION

[G.R. No. 174290. January 20, 2009]

ST. MARY OF THE WOODS SCHOOL, INC. and MARCIAL P. SORIANO, *petitioners, vs.* **OFFICE OF THE REGISTRY OF DEEDS OF MAKATI CITY and HILARIO P. SORIANO,** *respondents.*

[G.R. No. 176116. January 20, 2009]

ST. MARY OF THE WOODS SCHOOL, INC. and MARCIAL P. SORIANO, *petitioners, vs.* **OFFICE OF THE REGISTRY OF DEEDS OF MAKATI CITY, NATIONAL BUREAU OF INVESTIGATION, and HILARIO P. SORIANO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION, WHEN COMMITTED.— Grave abuse of discretion is committed when an act is 1) done contrary to the Constitution, the law or jurisprudence; or 2) executed "whimsically or arbitrarily" in a manner "so patent and so gross as to amount to an evasion of a positive duty, or to a virtual refusal to perform the duty enjoined." What constitutes grave abuse of discretion is such capricious and arbitrary exercise of judgment as that which is equivalent, in the eyes of the law, to lack of jurisdiction. It does not encompass an error of law.

2. ID.; ID.; ID.; PURPOSE OF THE GENERAL RULE REQUIRING THE FILING OF A MOTION FOR RECONSIDERATION BEFORE RESORT TO *CERTIORARI*; EXCEPTIONS THERETO, ENUMERATED.— The general rule that the filing of a Motion for Reconsideration before resort to *certiorari* will lie is intended to afford the public respondent an opportunity to correct any factual or fancied error attributed to it by way of re-examination of the legal and factual aspects of the case. This rule, however, is subject to certain recognized exceptions, to wit: (1) where the order or a resolution, is a patent nullity,

as where the court *a quo* has no jurisdiction; (2) where the questions raised in the *certiorari* proceeding have been duly raised and passed upon in the lower court; (3) where there is an urgent necessity for the resolution of the question, and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (4) where, under the circumstances, a Motion for Reconsideration would be useless; (5) where petitioner was deprived of due process and there is extreme urgency for relief; (6) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (7) where the proceedings in the lower court are a nullity for lack of due process; (8) where the proceedings were *ex parte* or were such that the petitioner had no opportunity to object; and (9) where the issue raised is one purely of law or where public interest is involved.

3. ID.; ID.; ID.; DISMISSAL OF THE PETITION FOR FAILURE TO FILE MOTION FOR RECONSIDERATION.— In the case at bar, petitioners aver that they dispensed with the filing of a Motion for Reconsideration of the 18 August 2006 before the Court of Appeals because of the extreme urgency of the relief prayed for, and the issues raised herein are purely of law and involve public interest, therefore, placing the instant case within the ambit of the exceptions to the general rule. Petitioners claim that at the time of filing of this Petition, private respondent was taking steps and other measures to present for registration the 18 August 2006 Resolution of the Court of Appeals to the Office of the Registry of Deeds of Makati City so as to already re-annotate the Notice of *Lis Pendens* on the TCTs of the subject properties, prompting petitioners to immediately file the instant Petition without seeking reconsideration of the assailed Resolution. We find that petitioners' reasons for excusing themselves from filing a Motion for Reconsideration before filing the present Petition for *Certiorari* are baseless and unsubstantiated. Petitioners' averment of sense of urgency in that private respondent was already taking steps and other measures to have the Notice of *Lis Pendens* re-annotated by presenting the 18 August 2006 Resolution of the Court of Appeals to the Office of the Registry of Deeds of Makati City deserves scant consideration. Petitioners never described with particularity, much less, presented proof of the steps purportedly taken by the private respondent that would justify their

immediate resort to this Court on *certiorari* without seeking reconsideration of the Resolution in question from the Court of Appeals. Petitioners simply made a sweeping allegation that absolutely has no basis. The records themselves are bare of any proof that would convince this Court that the private respondent indeed, took steps to have the challenged Resolution implemented. In fact, petitioners themselves, in their letter dated 8 September 2006 addressed to the Office of the Registry of Deeds of Makati City, pointed out that the questioned Resolution of the Court of Appeals did not yet order the said Office to re-annotate the Notice of *Lis Pendens*. Petitioners explained in their letter that the 18 August 2006 Resolution granting private respondent's Motion to Reinstate/Re-annotate Notice of *Lis Pendens* is a mere indication that private respondent can proceed with the legal procedure leading to the actual re-annotation of the said notice. They even reminded the Register of Deeds of Makati City that even if it would be furnished with a copy of the assailed Resolution, it had no authority to reinstate/re-annotate the Notice of *Lis Pendens* without a proper and direct order from the appellate court. More importantly, petitioners explicitly revealed in their letter that they intended to file a Motion for Reconsideration with the Court of Appeals, as its Resolution dated 18 August 2006 had not yet acquired finality. Why then did petitioners not proceed with filing their motion for reconsideration, and opted to immediately file the present Petition for *Certiorari*? Similarly baseless is petitioners' bare assertion, without even an attempt at explaining, that the issues subject of the Petition at bar involve public interest sufficient to excuse them from filing a Motion for Reconsideration of the Resolution dated 18 August 2006. Given the foregoing, the Court dismisses the instant Petition for *Certiorari* for petitioners' failure to comply with a condition precedent for filing such a petition.

4. CIVIL LAW; LAND REGISTRATION; *LIS PENDENS*, DEFINED; PURPOSE THEREOF.— *Lis pendens*, which literally means pending suit, refers to the jurisdiction, power or control which a court acquires over property involved in a suit, pending the continuance of the action, and until final judgment. Founded upon public policy and necessity, *lis pendens* is intended (1) to keep the properties in litigation within the power of the court until the litigation is terminated and to prevent the defeat of the judgment or decree by subsequent alienation; and (2) to

announce to the whole world that a particular property is in litigation and serves as a warning that one who acquires an interest over said property does so at his own risk, or that he gambles on the result of the litigation over said property.

5. REMEDIAL LAW; CIVIL PROCEDURE; THE COURT HAS THE POWER TO CANCEL NOTICE OF *LIS PENDENS*; GROUNDS THEREFOR.— A trial court has, however, the inherent power to cancel a notice of *lis pendens*, under the express provisions of law. As provided for by Sec. 14, Rule 13 of the 1997 Rules of Civil Procedure, a notice of *lis pendens* may be cancelled on two grounds: (1) if the annotation was for the purpose of molesting the title of the adverse party; or (2) when the annotation is not necessary to protect the title of the party who caused it to be recorded.

6. ID.; ACTIONS; FORUM SHOPPING, ESSENCE OF.— Forum shopping is committed by a party who, having received an adverse judgment in one forum, seeks another opinion in another court**,** other than by appeal or the special civil action of *certiorari*. More accurately, however, **forum shopping is the institution of two or more suits in different courts,** either simultaneously or successively, in order to ask the courts to rule on the same or related causes and/or to grant the same or substantially the same reliefs. The essence of forum-shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, to secure a favorable judgment. Forum-shopping is present when in the two or more cases pending, there is identity of parties, rights of action and reliefs sought.

7. ID.; ID.; ID.; FILING OF A MOTION TO REINSTATE/RE-ANNOTATE NOTICE OF *LIS PENDENS* CANNOT BE CONSIDERED FORUM SHOPPING.— In the present case, what were filed by the private respondent before the appellate court were an appeal and a motion relative to the same case. The appeal and the motion filed by the private respondent cannot be regarded as separate and distinct cases or suits. It is settled that **the office of a motion is not to initiate new litigation, but to bring up a material but incidental matter arising in the progress of the case** in which the motion was filed. A motion is **not an independent right or remedy,** but is confined to **incidental matters** in the progress of a cause. It relates to some

question that is **collateral** to the main object of the action and is **connected with and dependent upon the principal remedy.** Private respondent's Motion to Reinstate/Re-annotate Notice of *Lis Pendens* is, at the very least, a mere reiteration of one particular issue already raised in the appeal, and an insistence on the urgency of resolving the same ahead of the other issues. The filing of said Motion cannot be considered forum shopping and the admission thereof by the Court of Appeals did not constitute grave abuse of discretion.

8. CIVIL LAW; LAND REGISTRATION; SITUATIONS WHERE THE PROCEDURES PRESCRIBED UNDER P.D. NO. 1529 WILL APPLY; CASE AT BAR.— [P]etitioners futilely attempt to convince this Court that the Court of Appeals acted with grave abuse of discretion in granting private respondent's Motion to Reinstate/Re-annotate Notice of *Lis Pendens* in violation of the proper procedures prescribed under Presidential Decree No. 1529: x x x It is clear that the afore-quoted procedure applies only when the instrument is already presented for registration and: (1) the Register of Deeds is in doubt with regard to the proper step to be taken or memorandum to be made in pursuance of any deed, mortgage or other instrument presented to him for registration; or (2) where any party in interest does not agree with the action taken by the Register of Deeds with reference to any such instrument; and (3) when the registration is denied. None of these situations is present in this case. There was no evidence that the 18 August 2006 Resolution of the Court of Appeals was already presented to the Register of Deeds of Makati City for the re-annotation of the Notice of *Lis Pendens*. There is also no showing that the Register of Deeds denied the re-annotation.

9. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTION OF LAW; WHEN DOES A QUESTION OF LAW EXIST; DETERMINATION THEREOF IS BEST LEFT TO THE APPELLATE COURT.— A question of law exists when there is doubt or controversy as to what the law is on a certain state of facts, and there is a question of fact when the doubt or difference arises as to the truth or falsehood of facts, or when the query necessarily invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to one another and to the whole, and probabilities of the

situation. Ordinarily, the determination of whether an appeal involves only questions of law or questions both of law and of fact is best left to the appellate court, and all doubts as to the correctness of such conclusions will be resolved in favor of the Court of Appeals.

10. ID.; ID.; MOTION TO DISMISS; NATURE OF A MOTION TO DISMISS BASED ON LACK OF CAUSE OF ACTION, EXPLAINED.— Settled is the rule that in a Motion to Dismiss based on lack of cause of action, the issue is passed upon on the basis of the allegations in the complaint, assuming them to be true. The court does not inquire into the truth of the allegations and declare them to be false; otherwise, it would be a procedural error and a denial of due process to the plaintiff. Only the statements in the complaint may be properly considered, and the court cannot take cognizance of external facts or hold preliminary hearings to ascertain their existence. To put it simply, the test for determining whether a complaint states or does not state a cause of action against the defendants is whether or not, admitting hypothetically the truth of the allegations of fact made in the complaint, the judge may validly grant the relief demanded in the complaint. In a Motion to Dismiss based on failure to state a cause of action, there cannot be any question of fact or "doubt or difference as to the truth or falsehood of facts," simply because there are no findings of fact in the first place. What the trial court merely does is to apply the law to the facts as alleged in the complaint, assuming such allegations to be true. It follows then that any appeal therefrom could only raise questions of law or "doubt or controversy as to what the law is on a certain state of facts." Therefore, a decision dismissing a complaint based on failure to state a cause of action necessarily precludes a review of the same decision on questions of fact. One is the legal and logical opposite of the other.

11. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION, NOT A CASE OF.— Finally, we do not perceive any abusive exercise of power in the Resolution dated 9 November 2006 of the Court of Appeals requiring the submission of the original copies of the documents involved in Civil Case No. 03-954 to enable the NBI to perform a comparative analysis of Tomas Q. Soriano's signatures therein. It must be stressed that in its 17 January 2005 Order, the trial

court expressed a finding that "in the beholder of untrained eyes, the signatures in the Deed of Assignment and in the Second Amendment of Credit Agreement are the same." Considering that the trial court made a finding of fact as regards the issue of forgery and such issue was properly raised in the private respondent's appeal with the appellate court, it certainly behooves the appellate court to review the said findings. Accordingly, as the Court of Appeals has the power to inquire into the allegations of forgery made in the private respondent's Complaint, it can validly require the submission of the original copies of the documents involved in Civil Case No. 03-954 to enable the NBI to perform a comparative analysis of Tomas Q. Soriano's signatures therein.

APPEARANCES OF COUNSEL

Fornier & Fornier Law Firm for petitioners.
The Solicitor General for public respondent.
Peter Paul S. Romero for H.P. Soriano.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court are two special civil actions for *Certiorari* and Prohibition under Rule 65 of the 1997 Revised Rules of Civil Procedure, which were consolidated per Resolution[1] dated 5 February 2007.

The petitioners in **G.R. No. 174290**, namely: St. Mary of the Woods School, Inc. (SMWSI) and Marcial P. Soriano, seek to annul and set aside on the ground of grave abuse of discretion tantamount to lack or excess of jurisdiction the Resolution[2] dated 18 August 2006 of the Court of Appeals in CA-G.R. CV No. 85561, which granted herein private respondent Hilario P. Soriano's Motion to Reinstate/Re-annotate the Notice of *Lis*

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[1] *Rollo* (G.R. No. 176116), p. 297.

[2] Penned by Associate Justice Santiago Javier Ranada with Associate Justices Portia Aliño-Hormachuelos and Amelita G. Tolentino, concurring; *rollo* (G.R. No. 174290), pp. 30-34.

Pendens over Transfer Certificates of Title (TCT) No. 175029,[3] 220977[4] and 220978,[5] of the Registry of Deeds of Makati City, all registered in the name of herein petitioner SMWSI.

The afore-named petitioners are the same petitioners in **G.R. No. 176116** in which they also seek to annul and set aside, on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction, the three Resolutions similarly rendered by the Court of Appeals in CA-G.R. CV No. 85561, to wit: (1) Resolution[6] dated 18 August 2006 denying petitioners' Motion to Dismiss Appeal of herein private respondent Hilario P. Soriano; (2) Resolution[7] dated 9 November 2006 denying for lack of merit petitioners' Motion for Reconsideration of the 18 August 2006 Resolution of the appellate court, as well as the supplement to the said motion; and (3) Resolution[8] dated 9 November 2006 requiring the Register of Deeds of Makati City to submit to the appellate court the original copies of the documents involved in Civil Case No. 03-954 so that they can be presented to the National Bureau of Investigation (NBI) for comparative analysis of the signatures of Tomas Q. Soriano.

Petitioner SMWSI is an educational institution incorporated and existing by virtue of the laws of the Republic of the Philippines. It is the current registered owner of the three parcels of land (subject properties), located in Makati City and covered by TCTs No. 175029, No. 220977 and No. 220978. Petitioner Marcial P. Soriano is the President of petitioner SMWSI.

Private respondent Hilario P. Soriano, on the other hand, is one of the siblings of petitioner Marcial P. Soriano.

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[3] *Rollo* (G.R. No. 174290), pp. 35-37.

[4] *Id.* at 38-40.

[5] *Id.* at 41-43.

[6] Penned by Associate Justice Santiago Javier Ranada with Associate Justices Portia Aliño-Hormachuelos and Amelita G. Tolentino, concurring; *rollo* (G.R. No. 176116), pp. 55-58.

[7] *Rollo* (G.R. No. 176116), p. 59.

[8] *Id.* at 60.

The consolidated cases presently before this Court originated from the Complaint[9] filed on 14 August 2003 by the private respondent with the Regional Trial Court (RTC) of Makati City, Branch 148, for Declaration of Nullity of Deed of Assignment, Deed of Sale and Cancellation of TCTs No. 156249, No. 156250, and No. 156251 of the Register of Deeds of Makati, Metro Manila,[10] registered in the name of Oro Development Corporation (ODC); and TCT No. 175029, registered in the name of petitioner SMWSI. Named defendants therein were the petitioners, together with ODC, Antonio P. Soriano, Aurelia P. Soriano-Hernandez, Rosario P. Soriano-Villasor, Eugenia Ma. P. Soriano-Lao and Josefina P. Soriano (hereinafter collectively referred to as petitioners, *et al.*). The Complaint was docketed as Civil Case No. 03-954.

In his Complaint, private respondent alleged that during the marriage of his parents, Tomas Q. Soriano and Josefina P. Soriano, the couple acquired both real and personal properties, including the subject properties, which were then covered by TCTs No. 169941,[11] No. 114408,[12] and No. 114409.[13] On 10 May 1988, the Soriano couple allegedly executed[14] a Deed of Assignment[15] in favor of ODC involving the subject properties to pay for Tomas Q. Soriano's subscription of stocks in the said corporation. On 14 June 1988, Tomas Q. Soriano died[16] intestate.

By virtue of the said Deed of Assignment, the ownership and title over the subject properties were transferred to ODC.

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[9] *Rollo* (G.R. No. 174290), pp. 44-51.

[10] Now Makati City.

[11] *Rollo* (G.R. No. 174290), pp. 64-66.

[12] *Id.* at 67-69.

[13] *Id.* at 70-72.

[14] The Deed of Assignment and the Minutes of the Meeting of the Board of Directors of ODC dated 7 May 1988 were signed by the couple and Eugenia P. Soriano (See *rollo* [G.R. No. 174290], p. 79).

[15] *Rollo* (G.R. No. 174290), pp. 74-77.

[16] As evidenced by a Certificate of Death; *id.* at 73.

Consequently, TCTs No. 169941, No. 114408 and No. 114409 were cancelled and the new TCTs No. 156249,[17] No. 156250[18] and No. 156251[19] were issued in the name of ODC.

Thereafter, on 26 April 1991, ODC executed[20] in favor of petitioner SMWSI a Deed of Sale[21] over the subject property covered by TCT No. 156249. By virtue of the sale, petitioner SMWSI acquired ownership and title over the particular property. Thus, TCT No. 156249 was cancelled and the new TCT No. 175209 was issued in the name of petitioner SMWSI.

Private respondent claimed that several years after his father Tomas Q. Soriano's death, he discovered that the latter's signature in the Deed of Assignment of 10 May 1988 in favor of ODC was a forgery. Being very familiar with his father's signature, private respondent compared Tomas Q. Soriano's purported signature in the Deed of Assignment of 10 May 1988 with Tomas Q. Soriano's genuine signature in another document captioned Second Amendment of Credit Agreement.[22] Private respondent also presented a Certification[23] from the Records Management and Archives Office which stated that the forged Deed of Assignment dated 10 May 1988 was not available in the files of the Office.

Meanwhile, by reason of the pendency of Civil Case No. 03-954, a Notice of *Lis Pendens* was annotated on TCTs No. 156249, No. 156250, and No. 156251, in the name of ODC. With the subsequent cancellation of TCT No. 156249 and the

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

[18] *Id.* at 88-90.

[19] *Id.* at 91-93.

[20] The Deed of Sale was signed by Josefina P. Soriano, Rosario P. Soriano and Marcial P. Soriano. The said transaction was contained in the Minutes of the Meeting of the Board of Directors of ODC dated 25 April 1991 (See *rollo* [G.R. No. 174290], p. 97).

[21] *Rollo* (G.R. No. 174290), pp. 94-96.

[22] *Id.* at 82-84.

[23] *Id.* at 85.

issuance of TCT No. 175209 in the name of petitioner SMWSI, the Notice of *Lis Pendens* was carried over to the new certificate of title.

In a Joint Affidavit[24] dated 18 July 1990 executed by petitioner Marcial P. Soriano, it appears that the other individual defendants in Civil Case No. 03-954, and private respondent, recognized and acknowledged the validity, legality and propriety of the transfer of the subject properties from Tomas Q. Soriano to ODC. On this basis, defendants filed with the RTC a Motion to Dismiss[25] Civil Case No. 03-954 on the grounds that: (1) the Complaint states no cause of action; (2) the claim set forth in the Complaint has been paid, waived, abandoned or otherwise extinguished; (3) the Complaint is barred by estoppel or laches; (4) the Complaint is barred by prescription; (5) the titles to the subject properties are incontestable and can no longer be annulled; and (6) a condition precedent for filing the claim has not been complied with, *i.e.*, the compromise agreement failed despite earnest efforts towards that end.

On 17 January 2005, the RTC issued an Order[26] dismissing the private respondent's Complaint. The RTC ratiocinated in this manner:

> A careful reading of the [14] August 2003 Complaint filed by [herein private respondent] Hilario P. Soriano would suffice that he indeed failed to state that he has a right over the [subject properties] and that the [herein petitioners, *et al.*] have the obligation to observe such right. Assuming for the sake of argument that the signature was forged, the [private respondent] did not state that he was deprived of his share in the legitime of the deceased. Thus, his right over the [subject properties which were] assigned by the deceased was not clearly defined and stated in the [C]omplaint filed.
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> x x x x x x x x x
>
> x x x. Also, the [private respondent] must comply with the provision of the Civil Code of [the] Philippines, to wit:

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[24] *Id.* at 125-127.

[25] *Id.* at 105-124.

[26] Penned by Judge Oscar B. Pimental, *id.* at 170-182.

"Article 222[27] – No suit shall be filed or maintained between members of the same family unless it should appear that earnest efforts toward a compromise have been made, but that the same have failed, subject to the limitations in Article 2035."

x x x. There is no showing in the allegations in the [C]omplaint of the [private respondent] that he complied with the requirement of the law. Thus, the Court finds merit in the position of the [petitioners, *et al.*]

x x x x x x x x x

x x x. Clearly, the act of the [private respondent] in acknowledging the legality, validity and genuineness of the [D]eed of [A]ssignment in the [J]oint [A]ffidavit placed him in no better position to question the validity of the subject document. [Private respondent] never questioned the distribution of the properties among the heirs of Tomas Soriano. [Private respondent] even accepted the conveyance of a parcel of land covered by TCT No. 156253. By accepting said property as his share in the estate of his late father, [private respondent] is now deemed to have been paid or compensated because there was delivery of his share in the estate of the deceased. It can now be conclusively presumed that his share in the legitime of deceased Tomas Soriano was fully awarded to [private respondent]. He is now estopped in questioning the validity of the [D]eed of [A]ssignment by Tomas Q. Soriano in favor of [ODC]. Accordingly, all subsequent conveyances involving the subject properties can no longer be questioned by [private respondent] Hilario P. Soriano.[28]

Accordingly, the RTC decreed:

WHEREFORE, finding merits on the [M]otion to [D]ismiss filed by [herein petitioners, *et al.*] and in the prayer set forth in the [A]nswer of defendants Josefina P. Soriano and Rosario P. Soriano-Villasor, the dismissal of this case is hereby GRANTED. Accordingly, the Complaint filed by [private respondent] Hilario P. Soriano is dismissed because it asserts no cause of action and the claim or demand set forth in the [private respondent's] pleading has been waived, abandoned, or otherwise extinguished, and that a condition precedent for filing the claim has not been complied with.[29]

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[27] Now Article 151 of the Family Code of the Philippines.

[28] *Rollo* (G.R. No. 174290), pp. 177-179, 181-182.

[29] *Id.* at 182.

In the interim, the subject properties covered by TCTs No. 156250 and No. 156251 in the name of ODC were also transferred to petitioner SMWSI by virtue of a Deed of Sale dated 3 February 2005. TCTs No. 156250 and No. 156251 in the name of ODC were then cancelled and the new TCTs No. 220977 and No. 220978 were issued in the name of petitioner SMWSI. The Notice of *Lis Pendens* annotated on the cancelled TCTs was copied into the new TCTs in the name of petitioner SMWSI.

Aggrieved by the RTC Order dated 17 January 2005, private respondent moved for its reconsideration, but the RTC denied the same in an Order[30] dated 26 April 2005.

On 16 May 2005, petitioners, *et al.*, filed with the RTC a Motion to Cancel Notice of *Lis Pendens*[31] annotated on the titles covering the subject properties, which Motion was opposed by the private respondent.

The very next day, 17 May 2005, private respondent filed a Notice of Appeal stating his intention to elevate the RTC Orders dated 17 January 2005 and 26 April 2005 to the Court of Appeals. Private respondent's appeal before the Court of Appeals was docketed as CA-G.R. CV No. 85561.

Meanwhile, the RTC issued its Order[32] dated 20 June 2005 granting the Motion to Cancel Notice of *Lis Pendens* filed by petitioners, *et al.*, and ordering the Registrer of Deeds of Makati City to cancel the Notice of *Lis Pendens* annotated on TCTs No. 156249, No. 156250, No. 156251 in the name of ODC and TCT No. 175029 in the name of petitioner SMWSI. The RTC justified its latest Order as follows:

> As mentioned in the case, the notice of *lis pendens* can be cancelled if it is not necessary to protect the interest of the party who caused it to be recorded. In this case, the [herein private respondent's] interest should be considered on whether the notice of *lis pendens* should be cancelled or not. As it is the Court believes that the cancellation

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[30] *Id.* at 199-201.

[31] *Id.* at 202-207.

[32] *Id.* at 225-228.

is proper in this case. First, the Court still has jurisdiction of the case considering that the Notice of Appeal was only filed on [17 May 2005], while the Motion to cancel Notice of *Lis Pendens* was filed on [16 May 2005]. Second, [private respondent] Hilario P. Soriano has no interest to be protected insofar as the subject properties are concerned because of his acknowledgment that he already received his share in the estate of Tomas Soriano. Lastly, the contention of the [private respondent] that the motion is premature is not tenable. The authority of the Court to Cancel Notice of *Lis Pendens* is even evident in the Comment/Opposition of the [private respondent] which states that "While it may be true that the cancellation of a notice of *lis pendens* may be ordered at any given time even before final judgment, x x x."[33]

On 4 July 2005, the petitioners, *et al.,* filed with the RTC a Motion for Issuance of Supplement to Order Cancelling Notice of *Lis Pendens*[34] to clarify that TCTs No. 156249, No. 156250, and No. 156251 in the name of ODC were already cancelled and replaced with TCTs No. 175209, No. 220977, and No. 220978 all registered in the name of petitioner SMWSI in which the Notice of *Lis Pendens* was carried over. The private respondent, on the other hand, filed a Motion for Reconsideration of the RTC Order dated 20 June 2005 with Comment on the petitioners, *et al.*'s, Motion for Issuance of Supplement to the same RTC Order.

On 15 July 2005, the RTC issued another Order[35] by way of supplement to its Order dated 20 June 2005, directing anew the Registrer of Deeds of Makati City to cancel the Notice of *Lis Pendens* annotated on TCTs No. 175029, No. 220977 and No. 220978 in the name of petitioner SMWSI.

In a subsequent Order[36] dated 15 August 2005, the RTC denied for lack of merit private respondent's Motion for Reconsideration of the RTC Order dated 20 June 2005.

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[33] *Id.* at 228.

[34] *Id.* at 229-232.

[35] *Id.* at 248-249.

[36] *Id.* at 250.

On 28 September 2005, private respondent received a directive from the Court of Appeals dated 20 September 2005 requiring him to file his Appellant's Brief pursuant to his Notice of Appeal dated 17 May 2005. In compliance therewith, private respondent submitted his Appellant's Brief to the Court of Appeals with the following assignment of errors:

1. The lower court erred in dismissing the [C]omplaint on the ground that no certificate from a signature expert was attached to affirm the conclusion of the [herein private respondent] that the signature of Tomas Q. Soriano in the [D]eed of [A]ssignment was forged and on the ground that neither can the certificate issued by the Records Management and Archive Office support such allegation and that the [herein petitioners, *et al.*] cannot shoulder the burden caused by the Notary Public in failing to file the notarized documents, if he indeed failed.
2. The lower court erred in dismissing the [C]omplaint on the ground that the [private respondent] failed to state that he has a right over the subject properties and that the [petitioners, *et al.*] have the obligation to observe such right.
3. The lower court erred in ruling that Article 151 of the Family Code should have been complied with.
4. The lower court erred in denying [private respondent's] [M]otion for [R]econsideration despite valid and compelling arguments that warrant the reconsideration prayed for.
5. The lower court erred in granting [petitioners, *et al.*] [M]otion for [C]ancellation of *Lis Pendens*.
6. The lower court erred in dismissing the [C]omplaint on the ground that by accepting the conveyance of a parcel of land covered by TCT No. 156253 as his share in the estate of his late father, [private respondent] is now deemed to have been paid or compensated because there was delivery of his share in the estate of the deceased.[37]

While CA-G.R. CV No. 85561 was still pending, and since the Notice of *Lis Pendens* annotated on the TCTs of the subject properties in the name of petitioner SMWSI was already cancelled

[37] *Id.* at 260-261.

per RTC Orders dated 20 June 2005 and 15 July 2005, petitioner SMWSI mortgaged the subject properties on 15 February 2006 for the amount of ₱8,000,000.00.

On 14 March 2006, private respondent filed before the Court of Appeals a Motion to Reinstate/Re-annotate Notice of *Lis Pendens* on the TCTs of the subject properties given that there was yet no final judgment of dismissal of his Complaint, as its dismissal had been duly appealed. Moreover, it had not been shown that the Notice of *Lis Pendens* was to molest the petitioners, *et al.*, or that the same was not necessary to protect his interests; thus, its re-annotation on the TCTs of the subject properties while the appeal was pending would be in accordance with public policy. Petitioners, *et al.*, opposed the aforesaid Motion of private respondent.

On 17 March 2006, petitioners, *et al.*, filed a Motion to Dismiss Appeal on the ground that "the issues in the appeal are and can only be questions of law, the appellate jurisdiction over which belongs exclusively to the Supreme Court, thus the dismissal of [private respondent's] appeal is mandatory pursuant to Supreme Court Circular No. 2-90 and Section 2, Rule 50 of the 1997 Rules of Civil procedure."[38]

Thereafter, on 18 August 2006, the Court of Appeals issued a Resolution granting private respondent's Motion to Reinstate/ Re-annotate Notice of *Lis Pendens* on the TCTs of the subject properties. The Court of Appeals ruled that although the RTC found that private respondent had no interest to be protected by the Notice of *Lis Pendens*, since the appellate court already acquired jurisdiction over the case, it was the latter which must ascertain the propriety of canceling the Notice of *Lis Pendens* upon proper motion and hearing.[39] On the same day, the Court of Appeals also issued a separate Resolution denying petitioners, *et al.*'s, Motion to Dismiss Appeal of private respondent. According to the appellate court, private respondent raised both questions of fact and law in his appeal; hence, the ground for

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[38] *Id.* at 271.

[39] *Id.* at 33.

the dismissal of the appeal relied upon by the petitioners, *et al.,* was untenable.

G.R. No. 174290[40]

Aggrieved by the Resolution dated 18 August 2006 of the Court of Appeals granting private respondent's Motion to Reinstate/Re-annotate Notice of *Lis Pendens* on the subject properties, petitioners, without filing a Motion for Reconsideration, filed on 11 September 2006 before this Court the instant Petition for *Certiorari* under Rule 65 of the 1997 Revised Rules of Civil Procedure alleging grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the appellate court in rendering the assailed Resolution. The Petition is docketed as G.R. No. 174290.

Petitioners maintain that the RTC Orders canceling the Notice of *Lis Pendens* on the TCTs of the subject properties were valid and proper as they were issued on the basis of private respondent's lack of interest/right over the subject properties to be protected by the annotation of such Notice. Moreover, the cancellation of the Notice of *Lis Pendens* is authorized by Section 14,[41] Rule 13 of the 1997 Revised Rules of Civil

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[40] In this case, the only petitioners are SMWSI and Marcial P. Soriano. The rest of the original defendants in Civil Case No. 03-954 and CA-G.R. CV No. 85561 did not anymore join in filing this Petition for *Certiorari*.

[41] Section 14. *Notice of lis pendens*. In an action affecting the title or the right of possession of real property, the plaintiff and the defendant, when affirmative relief is claimed in his answer, may record in the office of the registry of deeds of the province in which the property is situated a notice of the pendency of the action. Said notice shall contain the names of the parties and the object of the action or defense, and a description of the property in that province affected thereby. Only from the time of filing such notice for record shall a purchaser, or encumbrancer of the property affected thereby, be deemed to have constructive notice of the pendency of the action, and only of its pendency against the parties designated by their real names.

The notice of *lis pendens* hereinabove mentioned may be cancelled only upon order of the court, after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be recorded.

Procedure, as well as under Section 77,[42] Presidential Decree No. 1529.[43] Hence, the reinstatement of the Notice of *Lis Pendens* should not have been allowed.

Petitioners opine that the Court of Appeals gravely abused its discretion when it ordered the re-annotation of the Notice of *Lis Pendens* based on the mere motion filed by private respondent, as it was violative of the proper procedures prescribed under Presidential Decree No. 1529.

Grave abuse of discretion is committed when an act is 1) done contrary to the Constitution, the law or jurisprudence; or 2) executed "whimsically or arbitrarily" in a manner "so patent and so gross as to amount to an evasion of a positive duty, or to a virtual refusal to perform the duty enjoined." What constitutes grave abuse of discretion is such capricious and arbitrary exercise of judgment as that which is equivalent, in the eyes of the law, to lack of jurisdiction.[44] It does not encompass an error of law.[45]

At the outset, it is significant to note that petitioners filed the instant Petition without filing a Motion for Reconsideration of the assailed Resolution. A Motion for Reconsideration of

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[42] Section 77. *Cancellation of lis pendens.* Before final judgment, a notice of *lis pendens* may be canceled upon order of the court, after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be registered. It may also be canceled by the Register of Deeds upon verified petition of the party who caused the registration thereof.

At any time after final judgment in favor of the defendant, or other disposition of the action such as to terminate finally all rights of the plaintiff in and to the land and/or buildings involved, in any case in which a memorandum or notice of *lis pendens* has been registered as provided in the preceding section, the notice of *lis pendens* shall be deemed canceled upon the registration of a certificate of the clerk of court in which the action or proceeding was pending stating the manner of disposal thereof.

[43] Also known as "Property Registration Decree."

[44] *Pablo-Gualberto v. Gualberto V*, G.R. No. 154994, 28 June 2005, 461 SCRA 450, 467.

[45] *Romy's Freight Service v. Castro*, G.R. No. 141637, 8 June 2006, 490 SCRA 160, 166.

the order or resolution is a condition precedent for the filing of a Petition for *Certiorari* challenging the issuance of the same.[46]

The general rule that the filing of a Motion for Reconsideration before resort to *certiorari* will lie is intended to afford the public respondent an opportunity to correct any factual or fancied error attributed to it by way of re-examination of the legal and factual aspects of the case.[47] This rule, however, is subject to certain recognized exceptions, to wit: (1) where the order or a resolution, is a patent nullity, as where the court *a quo* has no jurisdiction; (2) where the questions raised in the *certiorari* proceeding have been duly raised and passed upon in the lower court; (3) where there is an urgent necessity for the resolution of the question, and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (4) where, under the circumstances, a Motion for Reconsideration would be useless; (5) where petitioner was deprived of due process and there is extreme urgency for relief; (6) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (7) where the proceedings in the lower court are a nullity for lack of due process; (8) where the proceedings were *ex parte* or were such that the petitioner had no opportunity to object; and (9) where the issue raised is one purely of law or where public interest is involved.[48]

In the case at bar, petitioners aver that they dispensed with the filing of a Motion for Reconsideration of the 18 August 2006 before the Court of Appeals because of the extreme urgency of the relief prayed for, and the issues raised herein are purely of law and involve public interest, therefore, placing the instant case within the ambit of the exceptions to the general rule. Petitioners claim that at the time of filing of this Petition, private

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[46] *Estate of Salvador Serra Serra v. Heirs of Primitivo Hernaez*, G.R. No. 142913, 9 August 2005, 466 SCRA 120, 127.

[47] *Davao New Town Development Corporation v. Commission on the Settlement of Land Problems*, G.R. No. 141523, 8 June 2005, 459 SCRA 491, 505-506.

[48] *Tan, Jr. v. Sandiganbayan*, 354 Phil. 463, 469-470 (1998).

respondent was taking steps and other measures to present for registration the 18 August 2006 Resolution of the Court of Appeals to the Office of the Registry of Deeds of Makati City so as to already re-annotate the Notice of *Lis Pendens* on the TCTs of the subject properties, prompting petitioners to immediately file the instant Petition without seeking reconsideration of the assailed Resolution.

We find that petitioners' reasons for excusing themselves from filing a Motion for Reconsideration before filing the present Petition for *Certiorari* are baseless and unsubstantiated.

Petitioners' averment of sense of urgency in that private respondent was already taking steps and other measures to have the Notice of *Lis Pendens* re-annotated by presenting the 18 August 2006 Resolution of the Court of Appeals to the Office of the Registry of Deeds of Makati City deserves scant consideration. Petitioners never described with particularity, much less, presented proof of the steps purportedly taken by the private respondent that would justify their immediate resort to this Court on *certiorari* without seeking reconsideration of the Resolution in question from the Court of Appeals. Petitioners simply made a sweeping allegation that absolutely has no basis. The records themselves are bare of any proof that would convince this Court that the private respondent indeed, took steps to have the challenged Resolution implemented. In fact, petitioners themselves, in their letter[49] dated 8 September 2006 addressed to the Office of the Registry of Deeds of Makati City, pointed out that the questioned Resolution of the Court of Appeals did not yet order the said Office to re-annotate the Notice of *Lis Pendens*. Petitioners explained in their letter that the 18 August 2006 Resolution granting private respondent's Motion to Reinstate/ Re-annotate Notice of *Lis Pendens* is a mere indication that private respondent can proceed with the legal procedure leading to the actual re-annotation of the said notice. They even reminded the Register of Deeds of Makati City that even if it would be furnished with a copy of the assailed Resolution, it had no authority to reinstate/re-annotate the Notice of *Lis Pendens* without a

[49] *Rollo* (G.R. No. 174290), pp. 325-326.

proper and direct order from the appellate court. More importantly, petitioners explicitly revealed in their letter that they intended to file a Motion for Reconsideration with the Court of Appeals, as its Resolution dated 18 August 2006 had not yet acquired finality. Why then did petitioners not proceed with filing their motion for reconsideration, and opted to immediately file the present Petition for *Certiorari*?

Similarly baseless is petitioners' bare assertion, without even an attempt at explaining, that the issues subject of the Petition at bar involve public interest sufficient to excuse them from filing a Motion for Reconsideration of the Resolution dated 18 August 2006.

Given the foregoing, the Court dismisses the instant Petition for *Certiorari* for petitioners' failure to comply with a condition precedent for filing such a petition.

Granting *arguendo* that the present special civil action for *certiorari* can be given due course, the Court still finds that the Court of Appeals did not commit any grave abuse of discretion in granting private respondent's Motion to Reinstate/Re-annotate Notice of *Lis Pendens*.

Lis pendens, which literally means pending suit, refers to the jurisdiction, power or control which a court acquires over property involved in a suit, pending the continuance of the action, and until final judgment. Founded upon public policy and necessity, *lis pendens* is intended (1) to keep the properties in litigation within the power of the court until the litigation is terminated and to prevent the defeat of the judgment or decree by subsequent alienation; and (2) to announce to the whole world that a particular property is in litigation and serves as a warning that one who acquires an interest over said property does so at his own risk, or that he gambles on the result of the litigation over said property.[50]

A trial court has, however, the inherent power to cancel a notice of *lis pendens*, under the express provisions of

[50] *Romero v. Court of Appeals*, G.R. No. 142406, 16 May 2005, 458 SCRA 483, 492.

law.[51] As provided for by Sec. 14, Rule 13 of the 1997 Rules of Civil Procedure, a notice of *lis pendens* may be cancelled on two grounds: (1) if the annotation was for the purpose of molesting the title of the adverse party; or (2) when the annotation is not necessary to protect the title of the party who caused it to be recorded.

Considering that the dismissal of private respondent's Complaint by the RTC was appealed to the Court of Appeals, which Complaint refers to the properties covered by TCTs No. 175209, No. 220977, and No. 220978 that bear the annotations of *lis pendens*, and such properties therefore are irrefragably still the subject matter of litigation, the appellate court rightly saw the need for giving notice to the public of such a fact. The necessity becomes even more compelling considering that petitioner SMWSI had already entered into transactions with third parties involving the subject properties.

On the issue of jurisdiction of the Court of Appeals to entertain the issue on the notice of *lis pendens*, we adhere to the Court of Appeals' ratiocination, thus:

> However, as the dismissal of this case by the lower court has been appealed to us, we now have jurisdiction over the case.
>
> The doctrine of *lis pendens* is based on consideration of public policy and convenience, under the view that once a court has taken cognizance of a controversy, it should be impossible to interfere with the consummation of the judgment by any *ad interim* transfer, encumbrance, or change of possession.
>
> Now that the case is pending before us on appeal, there is no certainty as to the outcome of the case. There is a need to warn the whole world that a particular property is in litigation, serving as a warning that the one who acquires an interest over said property does so at his own risk, or that he gambles on the result of the litigation over said property.
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> x x x. Although the lower court made a finding that [herein private respondent] Hilario has no interest to be protected by the annotation of the notice of the pendency of the case as we now have jurisdiction

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[51] *Fernandez v. Court of Appeals*, 397 Phil. 205, 216 (2000).

over the case, we have to ascertain for ourselves the propriety of canceling the annotation of the notice of *lis pendens* upon proper motion and hearing.[52]

There is likewise no merit in petitioners' contention that the filing by private respondent with the Court of Appeals of an appeal (where he already raised the issue of re-annotating the Notice of *Lis Pendens*) and, subsequently, a separate Motion to Reinstate/Re-annotate Notice of *Lis Pendens* is tantamount to forum shopping.

Forum shopping is committed by a party who, having received an adverse judgment in one forum, seeks another opinion in another court**,** other than by appeal or the special civil action of *certiorari*. More accurately, however, **forum shopping is the institution of two or more suits in different courts**, either simultaneously or successively, in order to ask the courts to rule on the same or related causes and/or to grant the same or substantially the same reliefs.[53] The essence of forum-shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, to secure a favorable judgment. Forum-shopping is present when in the two or more cases pending, there is identity of parties, rights of action and reliefs sought.[54]

In the present case, what were filed by the private respondent before the appellate court were an appeal and a motion relative to the same case. The appeal and the motion filed by the private respondent cannot be regarded as separate and distinct cases or suits. It is settled that **the office of a motion is not to initiate new litigation, but to bring up a material but incidental matter arising in the progress of the case** in which the motion was filed. A motion is **not an independent right or remedy,** but is confined to **incidental matters** in the progress of a cause. It relates to some question that is **collateral** to the main object of the action and is **connected with and**

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[52] *Rollo* (G.R. No. 174290), pp. 32-33.

[53] *Young v. Keng Seng*, 446 Phil. 823, 832 (2003).

[54] *Casupanan v. Laroya*, 436 Phil. 582, 593 (2002).

dependent upon the principal remedy.[55] Private respondent's Motion to Reinstate/Re-annotate Notice of *Lis Pendens* is, at the very least, a mere reiteration of one particular issue already raised in the appeal, and an insistence on the urgency of resolving the same ahead of the other issues. The filing of said Motion cannot be considered forum shopping and the admission thereof by the Court of Appeals did not constitute grave abuse of discretion.

Finally, petitioners futilely attempt to convince this Court that the Court of Appeals acted with grave abuse of discretion in granting private respondent's Motion to Reinstate/Re-annotate Notice of *Lis Pendens* in violation of the proper procedures prescribed under Presidential Decree No. 1529:

> Section 117. *Procedure.* When the Register of Deeds is in doubt with regard to the proper step to be taken or memorandum to be made in pursuance of any deed, mortgage or other instrument presented to him for registration, or where any party in interest does not agree with the action taken by the Register of Deeds with reference to any such instrument, the question shall be submitted to the Commissioner of Land Registration by the Register of Deeds, or by the party in interest thru the Register of Deeds.
>
> Where the instrument is denied registration, the Register of Deeds shall notify the interested party in writing, setting forth the defects of the instrument or legal grounds relied upon, and advising him that if he is not agreeable to such ruling, he may, without withdrawing the documents from the Registry, elevate the matter by *consulta* within five days from receipt of notice of the denial of registration to the Commissioner of Land Registration.
>
> The Register of Deeds shall make a memorandum of the pending *consulta* on the certificate of title which shall be canceled *motu proprio* by the Register of Deeds after final resolution or decision thereof, or before resolution, if withdrawn by petitioner.
>
> The Commissioner of Land Registration, considering the *consulta* and the records certified to him after notice to the parties and hearing, shall enter an order prescribing the step to be taken or memorandum

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[55] *Arquiza v. Court of Appeals*, G.R. No. 160479, 8 June 2005, 459 SCRA 753, 762-763.

to be made. His resolution or ruling in *consultas* shall be conclusive and binding upon all Registers of Deeds, provided, that the party in interest who disagrees with the final resolution, ruling or order of the Commissioner relative to *consultas* may appeal to the Court of Appeals within the period and in the manner provided in Republic Act No. 5434.

It is clear that the afore-quoted procedure applies only when the instrument is already presented for registration and: (1) the Register of Deeds is in doubt with regard to the proper step to be taken or memorandum to be made in pursuance of any deed, mortgage or other instrument presented to him for registration; or (2) where any party in interest does not agree with the action taken by the Register of Deeds with reference to any such instrument; and (3) when the registration is denied. None of these situations is present in this case.

There was no evidence that the 18 August 2006 Resolution of the Court of Appeals was already presented to the Register of Deeds of Makati City for the re-annotation of the Notice of *Lis Pendens*. There is also no showing that the Register of Deeds denied the re-annotation.

G.R. No. 176116[56]

Unsatisfied with the other Resolution dated 18 August 2006 of the Court of Appeals denying their Motion to Dismiss Appeal, petitioners moved for its reconsideration, but it was denied by the appellate court in a Resolution[57] dated 9 November 2006. In a separate Resolution[58] also dated 9 November 2006, the Court of Appeals ordered the Register of Deeds of Makati City to submit the original copies of the Minutes of the Meeting of the Board of Directors of ODC dated 7 May 1988, together with the Deed of Assignment dated 10 May 1988 entered into by and between Tomas Q. Soriano and ODC involving the subject

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[56] In this case, the only petitioners are SMWSI and Marcial P. Soriano. The rest of the original defendants in Civil Case No. 03-954 and CA-G.R. CV No. 85561 did not anymore join in filing this Petition for *Certiorari*.

[57] *Rollo* (G.R. No. 176116), p.59.

[58] *Id.* at 60.

properties, so that they could be referred to the NBI for comparative analysis of Tomas Q. Soriano's signatures.

Following the foregoing development, petitioners filed before this Court another Petition for *Certiorari* under Rule 65 of the 1997 Revised Rules of Civil Procedure on 29 December 2006, docketed as G.R. No. 176116.

Petitioners assert that the Court of Appeals acted with grave abuse of discretion amounting to lack or excess of jurisdiction in refusing to dismiss private respondent's appeal in its Resolutions dated 18 August 2006 and 9 November 2006, even though the appeal raised only questions of law. Petitioners argue that an appeal raising pure questions of law must be filed with the Supreme Court *via* Petition for Review under Rule 45 and not with the Court of Appeals.

Petitioners also contend that the Resolution dated 9 November 2006 of the Court of Appeals ordering the submission of documents so that the NBI could perform a comparative analysis of Tomas Q. Soriano's signatures, was apparently for the purpose of finding out whether forgery was committed in the Deed of Assignment dated 10 May 1988. Petitioners assert that the appellate court has absolutely no original jurisdiction to rule whether Tomas Q. Soriano's signature was forged in the Deed of Assignment in question. There is no need for the Court of Appeals to have done an analytical comparison of Tomas Q. Soriano's signatures considering that the RTC made no factual finding as regards the existence or non-existence of forgery. Accordingly, the Court of Appeals has no power to inquire into the allegations of forgery made in the private respondent's Complaint, and for it to proceed to do so is grave abuse of discretion tantamount to lack or excess of jurisdiction.

The Court resolves first the issue of whether the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying petitioners' Motion to Dismiss Appeal.

In resolving such issue, it is necessary to determine only if private respondent's appeal to the Court of Appeals involves

purely questions of law, in which case, the proper mode of appeal would be a Petition for Review on *Certiorari* to the Supreme Court under Rule 45 of the 1997 Revised Rules of Civil Procedure; or questions of fact or mixed questions of fact and law, in which case, the proper mode would be by ordinary appeal to the Court of Appeals under Rule 41.

A question of law exists when there is doubt or controversy as to what the law is on a certain state of facts, and there is a question of fact when the doubt or difference arises as to the truth or falsehood of facts, or when the query necessarily invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to one another and to the whole, and probabilities of the situation. Ordinarily, the determination of whether an appeal involves only questions of law or questions both of law and of fact is best left to the appellate court, and all doubts as to the correctness of such conclusions will be resolved in favor of the Court of Appeals.[59]

Among the grounds raised by petitioners in seeking the dismissal by the RTC of private respondent's Complaint in Civil Case No. 03-954 are: (1) the Complaint stated no cause of action;[60] (2) the claim or demand set forth in the Complaint had been paid, waived, abandoned, or otherwise extinguished;[61] and (3) a condition precedent for filing the claim has not been complied with.[62]

Settled is the rule that in a Motion to Dismiss based on lack of cause of action, the issue is passed upon on the basis of the allegations in the complaint, assuming them to be true. The court does not inquire into the truth of the allegations and declare them to be false; otherwise, it would be a procedural error and

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[59] *China Road and Bridge Corporation v. Court of Appeals*, 401 Phil. 590, 598-599 (2000).

[60] 1997 REVISED RULES OF CIVIL PROCEDURE, Rule 16, Section 1(g).

[61] *Id.*, Section 1(h).

[62] *Id.*, Section 1(j).

a denial of due process to the plaintiff. Only the statements in the complaint may be properly considered, and the court cannot take cognizance of external facts or hold preliminary hearings to ascertain their existence. To put it simply, the test for determining whether a complaint states or does not state a cause of action against the defendants is whether or not, admitting hypothetically the truth of the allegations of fact made in the complaint, the judge may validly grant the relief demanded in the complaint.[63]

In a Motion to Dismiss based on failure to state a cause of action, there cannot be any question of fact or "doubt or difference as to the truth or falsehood of facts," simply because there are no findings of fact in the first place. What the trial court merely does is to apply the law to the facts as alleged in the complaint, assuming such allegations to be true. It follows then that any appeal therefrom could only raise questions of law or "doubt or controversy as to what the law is on a certain state of facts." Therefore, a decision dismissing a complaint based on failure to state a cause of action necessarily precludes a review of the same decision on questions of fact. One is the legal and logical opposite of the other.[64]

Hence, private respondent did raise a question of law when he assigned as an error in his appeal to the Court of Appeals the RTC's alleged error in dismissing his Complaint in Civil Case No. 03-954 for failure to state a cause of action.

It must be remembered, however, that the basis of the RTC Order on 17 January 2005 dismissing private respondent's Complaint was not only its failure to state a cause of action, but also the fact that the claim or demand set forth therein had been paid, waived, abandoned, or otherwise extinguished, and that the condition precedent for filing a claim had not been complied with.

According to the RTC, the Complaint was dismissible on the ground that the claim or demand set forth therein had been

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[63] *China Road and Bridge Corporation v. Court of Appeals, supra* note 58.

[64] *Id*.

paid, waived, abandoned, or otherwise extinguished. Private respondent, in accepting a certain parcel of land as his share in the estate of his late father Tomas Q. Soriano, was now deemed to have been paid or compensated because his share in the estate of the deceased had been delivered to him. In arriving at such a finding, the RTC necessarily made a preliminary determination of the facts in order to verify that, indeed, private respondent's claim or demand had been paid. When the private respondent assigned as error in his appeal such finding of the RTC, he raised not only a question of law, but also a question of fact.

The Court agrees in the following observation and pronouncement made by the Court of Appeals:

> The lower court evaluated the documents [herein private respondent] Hilario submitted to prove his claim of forgery. The lower court practically made a finding of fact that the signature of Tomas Q. Soriano in the [D]eed of [A]ssignment is a forgery when the court stated that "the signatures in the [D]eed of [A]ssignment and in the [S]econd [A]mendment of [C]redit [A]greement are the same." Whether the signature of Tomas Q. Soriano was a forgery or not should have been determined during a trial, and not merely in the resolution of a [M]otion to [D]ismiss.
>
> [Private respondent] Hilario likewise raised the issue of whether or not there was payment or estoppel as claimed by the [herein peititoners]. At first glance, it could be surmised that the issue of estoppel is a question of law. However, in this case, there is a question of fact involved.
>
> [Private respondent] Hilario comments that there is precisely a need to factually ascertain whether there has been full payment or award of his legitime, as a compulsory heir of Tomas Q. Soriano, before the court can conclude that [private respondent] Hilario is estopped from questioning the [D]eed of [A]ssignment.
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> x x x x x x x x x
>
> As [private respondent] Hilario raised questions of fact as well as questions of law in his appeal, the ground for dismissal relied upon by the [petitioners] is not applicable in his case.[65]

[65] *Rollo* (G.R. No. 176116), pp. 57-58.

The rule is that the determination of whether an appeal involves only questions of law or questions of both law and fact is best left to the appellate court, and all doubts as to the correctness of such conclusions will be resolved in favor of the Court of Appeals.[66]

Finally, we do not perceive any abusive exercise of power in the Resolution dated 9 November 2006 of the Court of Appeals requiring the submission of the original copies of the documents involved in Civil Case No. 03-954 to enable the NBI to perform a comparative analysis of Tomas Q. Soriano's signatures therein.

It must be stressed that in its 17 January 2005 Order, the trial court expressed a finding that "in the beholder of untrained eyes, the signatures in the Deed of Assignment and in the Second Amendment of Credit Agreement are the same."[67] Considering that the trial court made a finding of fact as regards the issue of forgery and such issue was properly raised in the private respondent's appeal with the appellate court, it certainly behooves the appellate court to review the said findings. Accordingly, as the Court of Appeals has the power to inquire into the allegations of forgery made in the private respondent's Complaint, it can validly require the submission of the original copies of the documents involved in Civil Case No. 03-954 to enable the NBI to perform a comparative analysis of Tomas Q. Soriano's signatures therein.

WHEREFORE, premises considered, these consolidated Petitions for *Certiorari* are hereby *DISMISSED*.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Nachura, and *Leonardo-de Castro,*[*] *JJ.,* concur.

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[66] *China Road and Bridge Corporation v. Court of Appeals, supra* note 58.

[67] *Rollo* (G.R. No. 174290), p. 178.

[*] Per Special Order No. 546, Associate Justice Teresita J. Leonardo-De Castro was designated to sit as additional member in view of the retirement of Associate Justice Ruben T. Reyes dated 5 January 2009.

EN BANC

[G.R. No. 174372. January 20, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ELPIDIO ANTONIO,** *appellant.*

SYLLABUS

REMEDIAL LAW; EVIDENCE; AN AFFIDAVIT OF DESISTANCE PRESENTED AFTER CONVICTION BY THE TRIAL COURT IS FROWNED UPON.— It bears noting that the affidavit was presented *after* the judgment of conviction by the trial court was promulgated which, as a rule, the Court frowns upon. For AAA's supposed Affidavit of Desistance to warrant a new trial, it must deny the truth of her complaint, not merely seek the withdrawal of appellant's prosecution. Her statement that there is no sufficient basis for her father to be convicted of rape and it is unjust to convict her father and let him suffer ("*walang sapat na batayan at hindi makatarungan na mahatulan at magdusa ang aking amang si Elpidio Antonio*") is just a legal conclusion. *Apropos* is this Court's pronouncement in *People v. Junio*: x x x The unreliable character of [the affidavit of desistance] is shown by the fact that after going through the process of having accused-appellant arrested by the police, positively identifying him as the person who raped her, enduring the humiliation of a physical examination of her private parts, and then repeating her accusations in open court by recounting her anguish, [the victim] would suddenly turn around and declare that "[a]fter a careful deliberation over the case, (she) find(s) that the same does not merit nor warrant criminal prosecution." Parenthetically, the affidavit is of doubtful authenticity, for AAA's purported signature thereon is different from her signature on her Complaint-Affidavit which she identified in open court.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.

Sibal Vargas Gomez-Valdez & Associates Law Office for appellant.

D E C I S I O N

CARPIO MORALES, *J.*:

The Court of Appeals having affirmed the conviction of Elpidio Antonio (appellant) by the trial court of two counts of rape of his minor daughter AAA and the denial by the trial court of his Motion for Reconsideration and Motion for New Trial anchored in the main on AAA's purported execution of an Affidavit of Desistance, the present appeal was lodged.

Appellant Elpidio Antonio was by separate Informations charged with two counts of rape of his minor daughter AAA before the Regional Trial Court (RTC) of Nueva Ecija. The first, docketed as Criminal Case No. 3765, alleged

x x x x x x x x x

That on or about the 6th day of June 1994, at Barangay San Roque, Municipality of San Isidro, Province of Nueva Ecija and within the jurisdiction of this Honorable Court, the above-named accused with the use of force, pointing a kitchen knife to her, and taking advantage of his superior strength, did then and there, willfully, unlawfully and feloniously lay with and have sexual intercourse with the offended party [AAA], his daughter, a minor, about 14 years of age, against her will and in their own house.

x x x x x x x x x[1]

The second, docketed as Criminal Case No. 3770, alleged

x x x x x x x x x

That on or about the 14th day of August, 1994, at Barangay San Roque, Municipality of San Isidro, Province of Nueva Ecija and within the jurisdiction of this Honorable Court, the above-named accused with the use of force, pointing a kitchen knife to her, and taking advantage of his superior strength, did then and there willfully, unlawfully and feloniously lay with and have sexual intercourse with the offended party [AAA], his daughter, a minor, about 14 years of age, against her will and in their own house.[2]

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[1] Records, p. 1.

[2] *Id.* at 4.

x x x x x x x x x

The two cases were jointly tried.

Culled from the records of the cases is the following version of the prosecution:[3]

At around 6:00 o'clock in the morning of June 6, 1994, the then 13-year-old AAA[4] who was sleeping with her six siblings at their house in San Isidro, Nueva Ecija awoke to find her father–herein appellant lying beside her, touching her breasts and vagina. Over her resistance, and at the point of a bladed weapon, he undressed her and inserted his penis into her vagina causing it to bleed. And he threatened to kill her if she reveals to anyone what he had done.

In the morning of August 14, 1994, again as AAA was sleeping at their house with her siblings, she awoke to find appellant mashing and sucking her breasts, licking her vagina, pointing a bladed weapon at her, following which, over her resistance, he undressed her and himself and inserted his penis into her vagina. Again blood oozed from her vagina.

On August 20, 1994 or thereabouts, AAA's mother BBB, who was in Manila at the time the rapes took place, returned to their house and learned from AAA what had happened to her. She thus brought AAA to San Antonio Hospital for medical examination which yielded the following findings on the private and other parts of her body:

1. Healed Lacerations at 1, 4, 7, 9 o'clock
2. Negative Discharge
3. Breasts – [F]irm, Supple, Brownish Areola and Nipples
4. Abdomen – Flat and Firm.[5]

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[3] *Vide* TSN, May 18, 1998, pp. 2-46; TSN, May 22, 1998, pp. 2-23; TSN, May 29, 1998, pp. 2-15; TSN, July 14, 1998, pp. 2-7.

[4] AAA was born October 11, 1980, Birth Certificate-Exhibit "A", to Teresa Antonio and Elpidio Antonio; records, p. 70.

[5] Exhibit "B", *id.* at 14.

Dr. Benjamin Lopez (Dr. Lopez) who conducted the medical examination explained that the lacerations on AAA's hymen could have been due to the entry of a hard object into the vagina.[6]

Admitting that AAA is his daughter, appellant denied the charges, claiming that they were filed at BBB's instance in retaliation for his having driven her away from home following an altercation on August 13, 1994. And to show BBB's motive, appellant presented his mother who claimed that BBB demanded the payment by appellant of ₱100,000 and the transfer to her of the house and lot she (mother) owned as conditions for the dropping of the charges.[7]

By Decision[8] of August 15, 2000, Branch 36 of the Nueva Ecija RTC found appellant guilty of both charges, disposing as follows:

> WHEREFORE, accused ELPIDIO ANTONIO *Y* SALAZAR, who, after hearing, was found guilty of RAPE, as charged, beyond reasonable doubt, is sentenced to suffer the penalty of DEATH, for each count of Rape, or two (2) deaths and to indemnify the victim [AAA] the sum of SEVENTY FIVE THOUSAND (P75,000.00) pesos for each count. And said Elpidio S. Antonio is further condemned to pay ₱50,000.00 for moral damages and another ₱50,000.00 for exemplary damages.
>
> SO ORDERED.[9] (Underscoring supplied)

After the promulgation of the trial court's judgment, appellant filed a Motion for Reconsideration[10] and a Motion for New Trial[11] anchored in the main on, as stated earlier, the purported execution by AAA of a September 23, 2000 Affidavit of Desistance reading:

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[6] TSN, May 29, 1989, p. 9.

[7] TSN, September 8, 1999, pp. 2-18.

[8] Records, pp. 271-286.

[9] *Id.* at 286.

[10] *Id.* at 289-322.

[11] *Id.* at 323-326.

Ako, [AAA], dalaga, may sapat na gulang, at kasalukuyang naninirahan sa San Roque, San Isidro, Nueva Ecija, matapos manumpa nang ayon sa batas, ay malaya at kusang-loob na nagsasaysay ng mga sumusunod:

1. *Na ako ang nagsampa ng kasong Rape, Criminal Case Nos. 3765 at 3770 laban sa aking amang si Elpidio Antonio, na nakabinbin sa Regional Trial Court (RTC), Branch 36, Gapan, Nueva Ecija, at ang kapasiyan at hatol ng Hukom, Kgg. Arturo M. Bernardo, ay nakatakdang basahin sa ika-18 ng Setyembere 2000;*

2. *Na matapos kong muling pag-aralan nagayong ako ay mayroon nag sapat na gulang at kalayaan, ang mga pangyayari kaugnay ng mga kasong isinampa ko laban sa aking amang si Elpidio Antonio – ay lubusan kong napatunayan, naliwanagan, at naipasya sa aking sarili na walang sapat na batayan at hindi makatarungan na mahatulan at magdusa ang aking amang si Elpidio Antonio dahil ang tutuo ang kasong ito ay bunga lamang ng malubhang personal na alitan na namamagitan noon sa aking amang si Elpidio Antonio at inang si Thelma Manalad, at pinili kong pinanigan ang aking ina sa aking paniniwala noon na sya ang agrabyado at tama;*

3. *Na sa ngalan ng katarungan at sa bisa ng sinumpaang salaysay na ito ay kusang-loob kong iniurong at lubusang pinawawalan ng saysay ang aking nabanggit sa demandang Rape, Criminal Cases Nos. 3765 at 3770 laban sa aking amang si Elpidio Antonio, at walang sinumang pumilit, tumakot, at nangako ng anumang pabuya upang gawin ko ang sinumpaang salaysay pag-uurong ng demandang ito.*[12] (Underscoring supplied)

The trial court denied both motions.[13]

The records of the cases were thereupon elevated for automatic review to this Court which, following *People v. Mateo*[14] providing for an intermediate review of criminal

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[12] *Id.* at 327.

[13] *Id.* at 332.

[14] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 653-658.

cases where the death penalty, life imprisonment and *reclusion perpetua* are imposed, referred them to the Court of Appeals.[15]

By Decision[16] of April 25, 2006, the Court of Appeals affirmed the trial court's decision, hence, the present appeal.

Appellant hinges his appeal on the execution by AAA of an Affidavit of Desistance.[17] Thus he faults the trial court

x x x IN ITS FINDING THAT THE ACCUSED IS GUILTY BEYOND REASONABLE DOUBT OF TWO COUNTS OF RAPE, DESPITE SUBSEQUENT RETRACTION AND SUBMISSION OF [THE] AFFIDAVIT OF DESISTANCE BY THE OFFENDED PARTY.

x x x x x x x x x

x x x IN DENYING THE MOTION FOR NEW TRIAL AND IN NOT GIVING CREDENCE AND DISALLOWING THE PROBATIVE VALUE OF [THE] AFFIDAVIT OF DESISTANCE OF THE OFFENDED PARTY.[18] (Underscoring supplied)

The appeal is bereft of merit.

It bears noting that the affidavit was presented *after* the judgment of conviction by the trial court was promulgated which, as a rule, the Court frowns upon.[19]

For AAA's supposed Affidavit of Desistance to warrant a new trial, it must deny the truth of her complaint, not merely seek the withdrawal of appellant's prosecution.[20] Her statement

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[15] CA *rollo*, p. 190.

[16] Penned by Court of Appeals Associate Justice Jose L. Sabio, Jr., with the concurrence of Associate Justices Regalado E. Maambong and Arturo G. Tayag. CA *rollo*, pp. 192-208.

[17] CA *rollo*, pp. 78-108.

[18] *Id.* at 92.

[19] *Vide Firaza v. People*, G.R. No. 154721, March 22, 2007, 518 SCRA 681, 692.

[20] *People v. Garcia*, G.R. No. 110990, October 28, 1994, 327 SCRA 826, 401.

that there is no sufficient basis for her father to be convicted of rape and it is unjust to convict her father and let him suffer ("*walang sapat na batayan at hindi makatarungan na mahatulan at magdusa ang aking amang si Elpidio Antonio*") is just a legal conclusion.

Apropos is this Court's pronouncement in *People v. Junio*:[21]

> x x x The unreliable character of [the affidavit of desistance] is shown by the fact that after going through the process of having accused-appellant arrested by the police, positively identifying him as the person who raped her, enduring the humiliation of a physical examination of her private parts, and then repeating her accusations in open court by recounting her anguish, [the victim] would suddenly turn around and declare that "[a]fter a careful deliberation over the case, (she) find(s) that the same does not merit nor warrant criminal prosecution."[22]

Parenthetically, the affidavit is of doubtful authenticity, for AAA's purported signature thereon is different from her signature on her Complaint-Affidavit which she identified in open court.[23]

The conviction of appellant for both counts of rape must thus stand.

In view, however, of the enactment of Republic Act No. 9346 prohibiting the imposition of the death penalty, the penalty imposed for each count of rape is reduced to *reclusion perpetua*.[24]

WHEREFORE, the Decision of the Court of Appeals dated April 25, 2006 affirming the decision of Branch 36 of the Nueva Ecija dated August 15, 2000 is *AFFIRMED* with

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[21] G.R. No. 110990, October 28, 1994, 237 SCRA 826.

[22] *Id.* at 834.

[23] *Vide* Exhibits "C-2"-"C-3", records, pp. 12-13; records, p. 327; TSN, May 18, 1998, pp. 13-14.

[24] *Vide* Section 2, Republic Act No. 9346.

MODIFICATION that the penalty imposed on accused-appellant, Elpidio Antonio, for each count of rape, is reduced to *reclusion perpetua*, with no eligibility for parole.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 174975. January 20, 2009]

LUISA KHO MONTAÑER, ALEJANDRO MONTAÑER, JR., LILLIBETH MONTAÑER-BARRIOS, and RHODORA ELEANOR MONTAÑER-DALUPAN, *petitioners, vs.* **SHARI'A DISTRICT COURT, FOURTH SHARI'A JUDICIAL DISTRICT, MARAWI CITY, LILING DISANGCOPAN, and ALMAHLEEN LILING S. MONTAÑER,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; SHARI'A DISTRICT COURT; JURISDICTION; HAS AUTHORITY TO HEAR AND RECEIVE EVIDENCE TO DETERMINE WHETHER DECEASED IS NOT A MUSLIM.— We cannot agree with the contention of the petitioners that the district court does not have jurisdiction over the case because of an allegation in their answer with a motion to dismiss that Montañer, Sr. is not a Muslim. Jurisdiction of a court over the nature of the action and its subject matter does not depend upon the defenses set forth in an answer or

a motion to dismiss. Otherwise, jurisdiction would depend almost entirely on the defendant or result in having "a case either thrown out of court or its proceedings unduly delayed by simple stratagem. Indeed, the "defense of lack of jurisdiction which is dependent on a question of fact does not render the court to lose or be deprived of its jurisdiction." The same rationale applies to an answer with a motion to dismiss. In the case at bar, the Shari'a District Court is not deprived of jurisdiction simply because petitioners raised as a defense the allegation that the deceased is not a Muslim. The Shari'a District Court has the authority to hear and receive evidence to determine whether it has jurisdiction, which requires an *a priori* determination that the deceased is a Muslim. If after hearing, the Shari'a District Court determines that the deceased was not in fact a Muslim, the district court should dismiss the case for lack of jurisdiction.

2. ID.; SPECIAL PROCEEDINGS; SPECIAL PROCEEDING, DEFINED; A PROCEEDING FOR ISSUANCE OF LETTERS ADMINISTRATION, SETTLEMENT AND DISTRIBUTION OF THE ESTATE OF THE DECEASED IS A SPECIAL PROCEEDING.— The underlying assumption in petitioners' second argument, that the proceeding before the Shari'a District Court is an ordinary civil action against a deceased person, rests on an erroneous understanding of the proceeding before the court *a quo*. Part of the confusion may be attributed to the proceeding before the Shari'a District Court, where the parties were designated either as plaintiffs or defendants and the case was denominated as a special civil action. We reiterate that the proceedings before the court *a quo* are for the issuance of letters of administration, settlement, and distribution of the estate of the deceased, which is a special proceeding. Section 3(c) of the Rules of Court (Rules) defines a special proceeding as "a remedy by which a party seeks to establish a status, a right, or a particular fact." This Court has applied the Rules, particularly the rules on special proceedings, for the settlement of the estate of a deceased Muslim. In a petition for the issuance of letters of administration, settlement, and distribution of estate, the applicants seek to establish the fact of death of the decedent and later to be duly recognized as among the decedent's heirs, which would allow them to exercise their right to participate in the settlement and liquidation of the estate of the decedent.

Here, the respondents seek to establish the fact of Alejandro Montañer, Sr.'s death and, subsequently, for private respondent Almahleen Liling S. Montañer to be recognized as among his heirs, if such is the case in fact.

3. ID.; ID.; SPECIAL PROCEEDING AND CIVIL ACTION, DISTINGUISHED; APPLICATION.— Petitioners' argument, that the prohibition against a decedent or his estate from being a party defendant in a civil action applies to a special proceeding such as the settlement of the estate of the deceased, is misplaced. Unlike a civil action which has definite adverse parties, a special proceeding has no definite adverse party. The definitions of a civil action and a special proceeding, respectively, in the Rules illustrate this difference. A civil action, in which "a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong" necessarily has definite adverse parties, who are either the plaintiff or defendant. On the other hand, a special proceeding, "by which a party seeks to establish a status, right, or a particular fact," has one definite party, who petitions or applies for a declaration of a status, right, or particular fact, but no definite adverse party. In the case at bar, it bears emphasis that the estate of the decedent is not being sued for any cause of action. As a special proceeding, the purpose of the settlement of the estate of the decedent is to determine all the assets of the estate, pay its liabilities, and to distribute the residual to those entitled to the same.

4. ID.; COURTS; JURISDICTION; THE COURT WILL NOT AUTOMATICALLY LOSE JURISDICTION IF A PARTY PAID DEFICIENT DOCKET FEES PRESCRIBED BY THE CLERK OF COURT; CASE AT BAR.— Filing the appropriate initiatory pleading and the payment of the prescribed docket fees vest a trial court with jurisdiction over the subject matter. If the party filing the case paid less than the correct amount for the docket fees because that was the amount assessed by the clerk of court, the responsibility of making a deficiency assessment lies with the same clerk of court. In such a case, the lower court concerned will not automatically lose jurisdiction, because of a party's reliance on the clerk of court's insufficient assessment of the docket fees. As "every citizen has the right to assume and trust that a public officer charged by law with certain duties

knows his duties and performs them in accordance with law," the party filing the case cannot be penalized with the clerk of court's insufficient assessment. However, the party concerned will be required to pay the deficiency. In the case at bar, petitioners did not present the clerk of court's assessment of the docket fees. Moreover, the records do not include this assessment. There can be no determination of whether private respondents correctly paid the docket fees without the clerk of court's assessment.

5. ID.; CIVIL PROCEDURE; MOTIONS; NOTICE OF HEARING; LIBERAL CONSTRUCTION OF THE RULES ON NOTICE OF HEARING TO AVOID MISCARRIAGE OF JUSTICE.— Petitioners' fourth argument, that private respondents' motion for reconsideration before the Shari'a District Court is defective for lack of a notice of hearing, must fail as the unique circumstances in the present case constitute an exception to this requirement. The Rules require every written motion to be set for hearing by the applicant and to address the notice of hearing to all parties concerned. The Rules also provide that "no written motion set for hearing shall be acted upon by the court without proof of service thereof." However, the Rules allow a liberal construction of its provisions "in order to promote [the] objective of securing a just, speedy, and inexpensive disposition of every action and proceeding." Moreover, this Court has upheld a liberal construction specifically of the rules of notice of hearing in cases where "a rigid application will result in a manifest failure or miscarriage of justice especially if a party successfully shows that the alleged defect in the questioned final and executory judgment is not apparent on its face or from the recitals contained therein." In these exceptional cases, the Court considers that "no party can even claim a vested right in technicalities," and for this reason, cases should, as much as possible, be decided on the merits rather than on technicalities.

6. ID.; ID.; ID.; ID.; CASE AT BAR.— The case at bar falls under this exception. To deny the Shari'a District Court of an opportunity to determine whether it has jurisdiction over a petition for the settlement of the estate of a decedent alleged to be a Muslim would also deny its inherent power as a court to control its process to ensure conformity with the law and

justice. To sanction such a situation simply because of a lapse in fulfilling the notice requirement will result in a miscarriage of justice. In addition, the present case calls for a liberal construction of the rules on notice of hearing, because the rights of the petitioners were not affected. This Court has held that an exception to the rules on notice of hearing is where it appears that the rights of the adverse party were not affected. The purpose for the notice of hearing coincides with procedural due process, for the court to determine whether the adverse party agrees or objects to the motion, as the Rules do not fix any period within which to file a reply or opposition. In probate proceedings, "what the law prohibits is not the absence of **previous** notice, but the absolute absence thereof and lack of opportunity to be heard." In the case at bar, as evident from the Shari'a District Court's order dated January 17, 2006, petitioners' counsel received a copy of the motion for reconsideration in question. Petitioners were certainly not denied an opportunity to study the arguments in the said motion as they filed an opposition to the same. Since the Shari'a District Court reset the hearing for the motion for reconsideration in the same order, petitioners were not denied the opportunity to object to the said motion in a hearing. Taken together, these circumstances show that the purpose for the rules of notice of hearing, procedural process, was duly observed.

APPEARANCES OF COUNSEL

Cabili Law Office for petitioners.
K.B. Dipatuan Law Office for private respondents.

D E C I S I O N

PUNO, *C.J.*:

This Petition for *Certiorari* and Prohibition seeks to set aside the Orders of the Shari'a District Court, Fourth Shari'a Judicial District, Marawi City, dated August 22, 2006[1] and September 21, 2006.[2]

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[1] *Rollo*, pp. 110-111.

[2] *Id.* at 115.

On August 17, 1956, petitioner Luisa Kho Montañer, a Roman Catholic, married Alejandro Montañer, Sr. at the Immaculate Conception Parish in Cubao, Quezon City.[3] Petitioners Alejandro Montañer, Jr., Lillibeth Montañer-Barrios, and Rhodora Eleanor Montañer-Dalupan are their children.[4] On May 26, 1995, Alejandro Montañer, Sr. died.[5]

On August 19, 2005, private respondents Liling Disangcopan and her daughter, Almahleen Liling S. Montañer, both Muslims, filed a "Complaint" for the judicial partition of properties before the Shari'a District Court.[6] The said complaint was entitled "*Almahleen Liling S. Montañer and Liling M. Disangcopan v. the Estates and Properties of Late Alejandro Montañer, Sr., Luisa Kho Montañer, Lillibeth K. Montañer, Alejandro Kho Montañer, Jr., and Rhodora Eleanor K. Montañer*," and docketed as "Special Civil Action No. 7-05."[7] In the said complaint, private respondents made the following allegations: (1) in May 1995, Alejandro Montañer, Sr. died; (2) the late Alejandro Montañer, Sr. is a Muslim; (3) petitioners are the first family of the decedent; (4) Liling Disangcopan is the widow of the decedent; (5) Almahleen Liling S. Montañer is the daughter of the decedent; and (6) the estimated value of and a list of the properties comprising the estate of the decedent.[8] Private respondents prayed for the Shari'a District Court to order, among others, the following: (1) the partition of the estate of the decedent; and (2) the appointment of an administrator for the estate of the decedent.[9]

Petitioners filed an Answer with a Motion to Dismiss mainly on the following grounds: (1) the Shari'a District Court has no jurisdiction over the estate of the late Alejandro Montañer, Sr.,

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[3] *Id.* at 60.

[4] *Id.* at 63-65.

[5] *Id.* at 73.

[6] *Id.* at 74-82.

[7] *Id.* at 74.

[8] *Id.* at 75-77.

[9] *Id.* at 78-79.

because he was a Roman Catholic; (2) private respondents failed to pay the correct amount of docket fees; and (3) private respondents' complaint is barred by prescription, as it seeks to establish filiation between Almahleen Liling S. Montañer and the decedent, pursuant to Article 175 of the Family Code.[10]

On November 22, 2005, the Shari'a District Court dismissed the private respondents' complaint. The district court held that Alejandro Montañer, Sr. was not a Muslim, and its jurisdiction extends only to the settlement and distribution of the estate of deceased Muslims.[11]

On December 12, 2005, private respondents filed a Motion for Reconsideration.[12] On December 28, 2005, petitioners filed an Opposition to the Motion for Reconsideration, alleging that the motion for reconsideration lacked a notice of hearing.[13] On January 17, 2006, the Shari'a District Court denied petitioners' opposition.[14] Despite finding that the said motion for reconsideration "lacked notice of hearing," the district court held that such defect was cured as petitioners "were notified of the existence of the pleading," and it took cognizance of the said motion.[15] The Shari'a District Court also reset the hearing for the motion for reconsideration.[16]

In its first assailed order dated August 22, 2006, the Shari'a District Court reconsidered its order of dismissal dated November 22, 2005.[17] The district court allowed private respondents to adduce further evidence.[18] In its second assailed order dated

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[10] *Id.* at 83, 89-96.

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

[12] *Id.* at 102-109.

[13] *Id.* at 128-129.

[14] *Id.* at 138.

[15] *Id.*

[16] *Id.*

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

[18] *Id.* at 111.

September 21, 2006, the Shari'a District Court ordered the continuation of trial, trial on the merits, adducement of further evidence, and pre-trial conference.[19]

Seeking recourse before this Court, petitioners raise the following issues:

I.

RESPONDENT SHARI'A DISTRICT COURT – MARAWI CITY LACKS JURISDICTION OVER PETITIONERS WHO ARE ROMAN CATHOLICS AND NON-MUSLIMS.

II.

RESPONDENT SHARI'A DISTRICT COURT – MARAWI CITY DID NOT ACQUIRE JURISDICTION OVER "THE ESTATES AND PROPERTIES OF THE LATE ALEJANDRO MONTAÑER, SR." WHICH IS NOT A NATURAL OR JURIDICAL PERSON WITH CAPACITY TO BE SUED.

III.

RESPONDENT SHARI'A DISTRICT COURT DID NOT ACQUIRE JURISDICTION OVER THE COMPLAINT OF PRIVATE RESPONDENTS AGAINST PETITIONERS DUE TO NON-PAYMENT OF THE FILING AND DOCKETING FEES.

IV.

RESPONDENT SHARI'A DISTRICT COURT—MARAWI CITY COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT DENIED THE OPPOSITION OF PETITIONERS AND THEN GRANTED THE MOTION FOR RECONSIDERATION OF RESPONDENTS LILING DISANGCOPAN, *ET AL*. WHICH WAS FATALLY DEFECTIVE FOR LACK OF A "NOTICE OF HEARING."

V.

RESPONDENT SHARI'A DISTRICT COURT—MARAWI CITY COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT SET SPL. CIVIL ACTION 7-05 FOR TRIAL EVEN IF THE COMPLAINT PLAINLY REVEALS THAT RESPONDENT ALMAHLEEN LILING S. MONTAÑER SEEKS

[19] *Id.* at 115.

RECOGNITION FROM ALEJANDRO MONTAÑER, SR. WHICH CAUSE OF ACTION PRESCRIBED UPON THE DEATH OF ALEJANDRO MONTAÑER, SR. ON MAY 26, 1995.

In their Comment to the Petition for *Certiorari*, private respondents stress that the Shari'a District Court must be given the opportunity to hear and decide the question of whether the decedent is a Muslim in order to determine whether it has jurisdiction.[20]

Jurisdiction: Settlement of the Estate of Deceased Muslims

Petitioners' first argument, regarding the Shari'a District Court's jurisdiction, is dependent on a question of fact, whether the late Alejandro Montañer, Sr. is a Muslim. Inherent in this argument is the premise that there has already been a determination resolving such a question of fact. It bears emphasis, however, that the assailed orders **did not** determine whether the decedent is a Muslim. The assailed orders did, however, set a hearing for the purpose of resolving this issue.

Article 143(b) of Presidential Decree No. 1083, otherwise known as the Code of Muslim Personal Laws of the Philippines, provides that the Shari'a District Courts have exclusive original jurisdiction over the settlement of the estate of deceased Muslims:

ARTICLE 143. Original jurisdiction. — (1) The Shari'a District Court shall have exclusive original jurisdiction over:

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(b) All cases involving disposition, distribution and settlement of the estate of deceased Muslims, probate of wills, issuance of letters of administration or appointment of administrators or executors regardless of the nature or the aggregate value of the property.

The determination of the nature of an action or proceeding is controlled by the averments and character of the relief sought in the complaint or petition.[21] The designation given by parties

[20] *Id.* at 191.

[21] *Vda. de Manalo v. Court of Appeals*, 402 Phil. 152, 161 (2001).

to their own pleadings does not necessarily bind the courts to treat it according to the said designation. Rather than rely on "a *falsa descriptio* or defective caption," courts are "guided by the substantive averments of the pleadings."[22]

Although private respondents designated the pleading filed before the Shari'a District Court as a "Complaint" for judicial partition of properties, it is a petition for the issuance of letters of administration, settlement, and distribution of the estate of the decedent. It contains sufficient jurisdictional facts required for the settlement of the estate of a deceased Muslim,[23] such as the fact of Alejandro Montañer, Sr.'s death as well as the allegation that he is a Muslim. The said petition also contains an enumeration of the names of his legal heirs, so far as known to the private respondents, and a probable list of the properties left by the decedent, which are the very properties sought to be settled before a probate court. Furthermore, the reliefs prayed for reveal that it is the intention of the private respondents to seek judicial settlement of the estate of the decedent.[24] These include the following: (1) the prayer for the partition of the estate of the decedent; and (2) the prayer for the appointment of an administrator of the said estate.

We cannot agree with the contention of the petitioners that the district court does not have jurisdiction over the case because of an allegation in their answer with a motion to dismiss that Montañer, Sr. is not a Muslim. Jurisdiction of a court over the nature of the action and its subject matter does not depend upon the defenses set forth in an answer[25] or a motion to dismiss.[26]

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[22] *Heirs of Celso Amarante v. Court of Appeals*, G.R. No. 76386, May 21, 1990, 185 SCRA 585, 594.

[23] *Musa v. Moson*, G.R. No. 95574, August 16, 1991, 200 SCRA 715, 719.

[24] *Vda. de Manalo v. Court of Appeals*, *supra* note 21, at 162.

[25] *Salas v. Castro*, G.R. No. 100416, December 2, 1992, 216 SCRA 198, 204.

[26] *Hilado v. Chavez*, G.R. No. 134742, September 22, 2004, 438 SCRA 623, 641.

Otherwise, jurisdiction would depend almost entirely on the defendant[27] or result in having "a case either thrown out of court or its proceedings unduly delayed by simple stratagem.[28] Indeed, the "defense of lack of jurisdiction which is dependent on a question of fact does not render the court to lose or be deprived of its jurisdiction."[29]

The same rationale applies to an answer with a motion to dismiss.[30] In the case at bar, the Shari'a District Court is not deprived of jurisdiction simply because petitioners raised as a defense the allegation that the deceased is not a Muslim. The Shari'a District Court has the authority to hear and receive evidence to determine whether it has jurisdiction, which requires an *a priori* determination that the deceased is a Muslim. If after hearing, the Shari'a District Court determines that the deceased was not in fact a Muslim, the district court should dismiss the case for lack of jurisdiction.

Special Proceedings

The underlying assumption in petitioners' second argument, that the proceeding before the Shari'a District Court is an ordinary civil action against a deceased person, rests on an erroneous understanding of the proceeding before the court *a quo*. Part of the confusion may be attributed to the proceeding before the Shari'a District Court, where the parties were designated either as plaintiffs or defendants and the case was denominated as a special civil action. We reiterate that the proceedings before the court *a quo* are for the issuance of letters of administration, settlement, and distribution of the estate of the deceased, which

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[27] *Salas v. Castro*, *supra* note 25.

[28] *Vda. de Manalo v. Court of Appeals*, *supra* note 21, at 163.

[29] *Salas v. Castro*, *supra* note 25.

[30] *Mamadsual v. Moson*, G.R. No. 92557, September 27, 1990, 190 SCRA 82, 87.

In the abovementioned case, the Court held that the Special Rules of Procedure in Shari'a Courts, Ijra-at-al-Mahakim al Shari'a, proscribe "the filing of a motion to dismiss in lieu of an answer which would stop the running of the period to file an answer and cause undue delay."

is a special proceeding. Section 3(c) of the Rules of Court (Rules) defines a special proceeding as "a remedy by which a party seeks to establish a status, a right, or a particular fact." This Court has applied the Rules, particularly the rules on special proceedings, for the settlement of the estate of a deceased Muslim.[31] In a petition for the issuance of letters of administration, settlement, and distribution of estate, the applicants seek to establish the fact of death of the decedent and later to be duly recognized as among the decedent's heirs, which would allow them to exercise their right to participate in the settlement and liquidation of the estate of the decedent.[32] Here, the respondents seek to establish the fact of Alejandro Montañer, Sr.'s death and, subsequently, for private respondent Almahleen Liling S. Montañer to be recognized as among his heirs, if such is the case in fact.

Petitioners' argument, that the prohibition against a decedent or his estate from being a party defendant in a civil action[33] applies to a special proceeding such as the settlement of the estate of the deceased, is misplaced. Unlike a civil action which has definite adverse parties, a special proceeding has no definite adverse party. The definitions of a civil action and a special proceeding, respectively, in the Rules illustrate this difference. A civil action, in which "a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong"[34] necessarily has definite adverse parties, who are either the plaintiff or defendant.[35] On the other hand, a special proceeding, "by which a party seeks to establish a status, right, or a particular fact,"[36] has one definite party, who petitions or applies for a declaration of a status, right, or particular fact, but no definite adverse party. In the case at bar, it bears emphasis that the

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[31] *Musa v. Moson*, *supra* note 23, at 721-722.

[32] *Vda. de Manalo v. Court of Appeals*, *supra* note 21, at 165.

[33] *Ventura v. Hon. Militante*, 374 Phil. 562 (1999).

[34] RULES OF COURT, Rule 1, Sec. 3, par. (a).

[35] RULES OF COURT, Rule 3, Sec. 1.

[36] RULES OF COURT, Rule 1, Sec. 3, par. (c).

estate of the decedent is not being sued for any cause of action. As a special proceeding, the purpose of the settlement of the estate of the decedent is to determine all the assets of the estate,[37] pay its liabilities,[38] and to distribute the residual to those entitled to the same.[39]

Docket Fees

Petitioners' third argument, that jurisdiction was not validly acquired for non-payment of docket fees, is untenable. Petitioners point to private respondents' petition in the proceeding before the court *a quo*, which contains an allegation estimating the decedent's estate as the basis for the conclusion that what private respondents paid as docket fees was insufficient. Petitioners' argument essentially involves two aspects: (1) whether the clerk of court correctly assessed the docket fees; and (2) whether private respondents paid the correct assessment of the docket fees.

Filing the appropriate initiatory pleading and the payment of the prescribed docket fees vest a trial court with jurisdiction over the subject matter.[40] If the party filing the case paid less than the correct amount for the docket fees because that was the amount assessed by the clerk of court, the responsibility of making a deficiency assessment lies with the same clerk of court.[41] In such a case, the lower court concerned will not automatically lose jurisdiction, because of a party's reliance on the clerk of court's insufficient assessment of the docket fees.[42] As "every citizen has the right to assume and trust that

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[37] *Pacific Banking Corporation Employees Organization v. Court of Appeals*, 312 Phil. 578, 593 (1995).

[38] *Id.*

[39] *Vda. de Manalo v. Court of Appeals*, *supra* note 21, at 165.

[40] *Sun Insurance Office, Ltd. v. Asuncion*, G.R. Nos. 79937-38, February 13, 1989, 170 SCRA 274, 285.

[41] *Rivera v. Del Rosario*, G.R. No. 144934, January 15, 2004, 419 SCRA 626, 635.

[42] *Id.*

a public officer charged by law with certain duties knows his duties and performs them in accordance with law," the party filing the case cannot be penalized with the clerk of court's insufficient assessment.[43] However, the party concerned will be required to pay the deficiency.[44]

In the case at bar, petitioners did not present the clerk of court's assessment of the docket fees. Moreover, the records do not include this assessment. There can be no determination of whether private respondents correctly paid the docket fees without the clerk of court's assessment.

Exception to Notice of Hearing

Petitioners' fourth argument, that private respondents' motion for reconsideration before the Shari'a District Court is defective for lack of a notice of hearing, must fail as the unique circumstances in the present case constitute an exception to this requirement. The Rules require every written motion to be set for hearing by the applicant and to address the notice of hearing to all parties concerned.[45] The Rules also provide that "no written motion set for hearing shall be acted upon by the court without proof of service thereof."[46] However, the Rules allow a liberal construction of its provisions "in order to promote [the] objective of securing a just, speedy, and inexpensive disposition of every action and proceeding."[47] Moreover, this Court has upheld a liberal construction specifically of the rules of notice of hearing in cases where "a rigid application will result in a manifest failure or miscarriage of justice especially if a party successfully shows that the alleged defect in the questioned final and executory judgment is not apparent on its face or from the recitals

[43] *Ayala Land, Inc. v. Spouses Carpo*, 399 Phil. 327, 334 (2000), citing *Segovia v. Barrios*, 75 Phil. 764, 767 (1946).

[44] *Fil-Estate Golf and Development, Inc. v. Navarro*, G.R. No. 152575, June 29, 2007, 526 SCRA 51, 61.

[45] RULES OF COURT, Rule 15, Secs. 4-5.

[46] RULES OF COURT, Rule 15, Sec. 6.

[47] RULES OF COURT, Rule 2, Sec. 6.

contained therein."[48] In these exceptional cases, the Court considers that "no party can even claim a vested right in technicalities," and for this reason, cases should, as much as possible, be decided on the merits rather than on technicalities.[49]

The case at bar falls under this exception. To deny the Shari'a District Court of an opportunity to determine whether it has jurisdiction over a petition for the settlement of the estate of a decedent alleged to be a Muslim would also deny its inherent power as a court to control its process to ensure conformity with the law and justice. To sanction such a situation simply because of a lapse in fulfilling the notice requirement will result in a miscarriage of justice.

In addition, the present case calls for a liberal construction of the rules on notice of hearing, because the rights of the petitioners were not affected. This Court has held that an exception to the rules on notice of hearing is where it appears that the rights of the adverse party were not affected.[50] The purpose for the notice of hearing coincides with procedural due process,[51] for the court to determine whether the adverse party agrees or objects to the motion, as the Rules do not fix any period within which to file a reply or opposition.[52] In probate proceedings, "what the law prohibits is not the absence of **previous** notice, but the absolute absence thereof and lack of opportunity to be heard."[53] In the case at bar, as evident from the Shari'a District Court's order dated January 17, 2006,

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[48] *Vlason Enterprises Corporation v. Court of Appeals*, 369 Phil. 269, 299 (1999).

[49] *Goldloop Properties, Inc. v. Court of Appeals*, G.R. No. 99431, August 11, 1992, 212 SCRA 498, 504.

[50] *Victory Liner, Inc. v. Malinias*, G.R. No. 151170, May 29, 2007, 523 SCRA 279, 291-292.

[51] *Vlason Enterprises Corporation v. Court of Appeals*, *supra* note 48, at 299-300.

[52] *Victory Liner, Inc. v. Malinias*, *supra* note 50, at 292.

[53] *De Borja, et al. v. Tan, et al.*, 93 Phil. 167, 171 (1953).

petitioners' counsel received a copy of the motion for reconsideration in question. Petitioners were certainly not denied an opportunity to study the arguments in the said motion as they filed an opposition to the same. Since the Shari'a District Court reset the hearing for the motion for reconsideration in the same order, petitioners were not denied the opportunity to object to the said motion in a hearing. Taken together, these circumstances show that the purpose for the rules of notice of hearing, procedural process, was duly observed.

Prescription and Filiation

Petitioners' fifth argument is premature. Again, the Shari'a District Court has not yet determined whether it has jurisdiction to settle the estate of the decedent. In the event that a special proceeding for the settlement of the estate of a decedent is pending, questions regarding heirship, including prescription in relation to recognition and filiation, should be raised and settled in the said proceeding.[54] The court, in its capacity as a probate court, has jurisdiction to declare who are the heirs of the decedent.[55] In the case at bar, the determination of the heirs of the decedent depends on an affirmative answer to the question of whether the Shari'a District Court has jurisdiction over the estate of the decedent.

IN VIEW WHEREOF, the petition is *DENIED*. The Orders of the Shari'a District Court, dated August 22, 2006 and September 21, 2006 respectively, are *AFFIRMED*. Cost against petitioners.

SO ORDERED.

Carpio, Corona, Azcuna, and *Leonardo-de Castro, JJ.*, concur.

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[54] *Portugal v. Portugal-Beltran*, G.R. No. 155555, August 16, 2005, 467 SCRA 184, 198.

[55] *Uriarte v. Court of First Instance Negros Occidental, et al.*, 144 Phil. 205, 215-216 (1970).

SECOND DIVISION

[G.R. No. 178242. January 20, 2009]

HEIRS OF NORBERTO J. QUISUMBING, *petitioners, vs.* **PHILIPPINE NATIONAL BANK and SANTIAGO LAND DEVELOPMENT CORPORATION,** *respondents.*

SYLLABUS

1. CIVIL LAW; MORTGAGE; REDEMPTION; SIMULTANEOUS TENDER OF PAYMENT IS REQUIRED TO MAKE THE REDEMPTION VALID; EXCEPTION.— [W]hether the redemption is being made under Act No. 3135 or the General Banking Act, as amended by Presidential Decree No. 1828, or under P.D. No. 694, the mortgagor or his assignee is required to tender payment to make said redemption valid – something which petitioners' predecessor failed to do. The only instance when this rule may be construed liberally, *i.e.*, allow the non-simultaneous tender of payment, is if a judicial action is instituted by the redemptioner.

2. ID.; ID.; ID.; ID.; ID.; CONDITIONS THAT MUST BE COMPLIED WITH FOR THE EXCEPTION TO APPLY; APPLICATION.— For this exception to apply, however, certain conditions must be met, *viz*: It should, however, be noted that in *Hi-Yield Realty, Inc. v. Court of Appeals*, we held that the action for judicial redemption should be **filed on time** and **in good faith,** the redemption price is finally determined and paid within a reasonable time, and the rights of the parties are respected. **Stated otherwise, the foregoing interpretation has three critical dimensions: (1) timely redemption or redemption by expiration date; (2) good faith as always, meaning, the filing of the action must have been for the sole purpose of determining the redemption price and not to stretch the redemptive period indefinitely; and (3) once the redemption price is determined within a reasonable time, the redemptioner must make prompt payment in full.** While Quisumbing filed the Complaint on May 7, 1985, days or even weeks before the expiration of the one-year redemption period reckoned from the dates of registration

of the different certificates of sale, it cannot be said that he was motivated by good faith when he filed the Complaint, as contemplated in the above ruling. For the Complaint was filed not for the sole purpose of determining the redemption price, but, as Quisumbing himself admitted on direct examination, it was to seek the annulment of Sec. 25 of P.D. No. 694. x x x Clearly, from the admissions reflected in the testimony, Quisumbing's filing of the Complaint was not solely due to a mere disagreement in the redemption price; rather, it was because he was not willing to pay whatever amount PNB would compute on the basis of Sec. 25 of P.D. No. 694. By questioning the constitutionality of said provision, Quisumbing, wittingly delayed the redemption, since he must have known that raising the issue of constitutionality of a statute in any suit would result in a litigious process which could stretch for an indefinite period as, in fact, the history of the present case shows. More importantly, his act of executing his Affidavit of Redemption on April 23, 1985 and alleging therein his oft-repeated excuse of "PNB's refusal to allow him to redeem the subject properties" even before PNB could provide him the computations by April 30, 1985, as he himself requested in his April 23, 1985 letter, and before PNB's actual refusal as stated in its May 3, 1985 letter, reflected that from the very beginning, his mindset was that if any redemption would be had, the same should be made according to his terms and conditions and under Act No. 3135, not P.D. No. 694. Indubitably, such actuations belie good faith and, therefore, the exception as enunciated in *Tolentino* case would not apply.

APPEARANCES OF COUNSEL

Quisumbing Torres for petitioners.

Padilla Law Office for Santiago Land Development Corporation.

Cayetano Sebastian Ata Dado & Cruz Law Offices for PNB.

D E C I S I O N

CARPIO MORALES,* ***J.:***

From the Court of Appeals Decision[1] of February 14, 2007 denying petitioners' appeal from the Decision[2] of the Regional Trial Court, Branch 62, Makati City in Civil Case No. 10513, they come to this Court on petition for review on *certiorari*.

Culled from the eight-volume records of the case are the following facts:

In 1984, spouses Ricardo C. Silverio and Beatriz Sison-Silverio (spouses Silverio) and Ricardo C. Silverio as Chairman of the Board of the following companies, namely Delta Motors Corporation (Delta Motors), Komatsu Industries (Komatsu), R.C. Silverio Management Corporation (RCSMC), through Deeds of Assignment[3] dated April 11 and 12, 1985, assigned to Atty. Norberto J. Quisumbing (Quisumbing) their rights of redemption with respect to various real properties which herein respondent Philippine National Bank (PNB) had foreclosed and acquired as the highest bidder. The properties included lots in Quezon City, Manila, Pampanga and Bulacan in the name of Ricardo C. Silverio, married to Beatriz Sison; a lot in Tagaytay in the name of Ricardo C. Silverio; lots in Nueva Ecija in the name of RCSMC; lots in Baguio and Benguet in the name of Delta Motors; a lot in Zambales in the name of RCSMC; and a lot in Rizal (actually Pasong Tamo, Makati) including improvements in the name of Komatsu (hereafter referred to as Pasong Tamo property).

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* Acting Chairperson in lieu of Justice Leonardo A. Quisumbing who took no part.

1 "*Heirs of Norberto Quisumbing v. Philippine National Bank and Santiago Land Development Corporation*," Annex "A" of Petition, *rollo*, pp. 130-145. Penned by Associate Justice Jose C. Reyes, Jr., and concurred in by Associate Justices Jose L. Sabio, Jr., and Myrna Dimaranan Vidal.

2 Annex "EE", *id* at 747-757. Penned by Judge Roberto C. Diokno.

3 Exhibit "BB", *id.* at 316-324.

By letter[4] dated April 8, 1985, Quisumbing made a formal tender of redemption to PNB for the abovementioned properties, with the request that he be informed within 10 days of the total amount of the redemption prices so "he would know how much to pay." Quisumbing furnished the sheriffs who conducted the sales, as well as the registers of deeds in the various localities where the properties are situated, with a copy of said tender letter.

Acting on Quisumbing's tender of redemption, the PNB, by letter of April 15, 1985, requested copies of the Deeds of Assignment so that it may "have a basis to reply to" his request.[5] Quisumbing furnished PNB with copies of the Deeds, requesting a reply to his tender letter and requested for the computation of the total amount of redemption price for which he gave PNB until April 30, 1985 to do so. Before PNB could reply, however, or on April 23, 1985, Quisumbing executed an Affidavit of Redemption,[6] furnishing PNB, the sheriffs and the registers of deeds a copy thereof.

Before the one-year redemption period expired, PNB, by letter dated May 3, 1985,[7] denied Quisumbing's offer of redemption on the ground that the Deeds of Assignment were invalid for not having been registered and for being against Art. 1491 (5) of the Civil Code; that the tender was not proper because it was not accompanied by actual money payment; and that the amount Quisumbing offered was way below that required under Sec. 25 of P.D. No. 694.

Quisumbing thus filed a Complaint[8] before the Regional Trial Court (RTC) of Makati[9] against PNB to compel it to allow him to exercise his right of redemption over the foreclosed properties and to inform him of the total amount of redemption price. At

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[4] Annex "N", *id.* at 188-192.

[5] *Vide* letter, Annex "O", *id.* at 357 and 359.

[6] Annex "Q", *id.* at 193-196.

[7] *Vide* letter, records, Vol. I, pp. 142-143.

[8] Annex "C", *id.* at 147-155.

[9] N.B.: initially filed with Branch 149 but assailed Decision rendered by Branch 62.

the same time, he caused the annotation of a notice of *lis pendens* on the certificates of title of the properties.

In its Answer,[10] PNB contended that Quisumbing had no cause of action as his tender offer was "pro-forma," as the same was unaccompanied by cash payment; that the offer was not in accordance with Section 25 of P.D. No. 694, as amended; that the assignment of rights made in Quisumbing's favor was ineffectual because the same was not registered and annotated on the certificates of title of the properties; that the Deeds of Assignment executed by RSCMC, Komatsu and Delta Motors were defectively acknowledged as public instruments; and that the assignments were barred by Article 1491 (5) of the Civil Code.[11] During the pendency of the case, Quisumbing died, hence, he was substituted by his heirs-herein petitioners on September 14, 1990.

On December 8, 1989, with the approval by Branch 149 of the Makati RTC, the herein other respondent Santiago Land Development Corporation (SLDC) intervened, it having purchased *pendente lite* from PNB the Pasong Tamo property, and adopted in its Answer-in-Intervention PNB's defenses as set forth in its Answer, and raised additional defenses.

Petitioners thus filed before the appellate court a Petition for *Certiorari*, docketed as CA-G.R. SP No. 25826, questioning, *inter alia*, the trial court's grant of SLDC's move to intervene, arguing that SLDC should have joined as an additional defendant for it to be bound by all prior proceedings.

By Decision dated July 6, 1992, the appellate court granted the petition of petitioners and nullified the trial court's Order

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[10] Annex "D", *id.* at 209-213.

[11] Art. 1491(5) justices, judges, prosecuting attorneys, clerks of superior and inferior courts, and other officers and employees connected with the administration of justice, the property and rights in litigation or levied upon an execution before the court within whose jurisdiction or territory they exercise their respective functions; this prohibition includes the act of acquiring by assignment and shall apply to lawyers, with respect to the property and rights which may be the object of any litigation in which they may take part by virtue of their profession.

granting SLDC's intervention. SLDC appealed to this Court via *certiorari*, docketed as G.R. No. 106194.

By Decision[12] of January 28, 1997, the Court dismissed SLDC's petition and affirmed the appellate court's decision, ruling that SLDC is a transferee *pendente lite* and, as such, could no longer intervene as the law already considers it joined or substituted in the pending action, hence, bound by all prior proceedings and barred from presenting a new or different claim.

SLDC thereupon filed a Motion for Partial Substitution in Civil Case No. 10513, which was granted on April 14, 1998.

By Decision[13] of October 24, 2000, the trial court dismissed petitioner's Amended Complaint as against PNB, as well as that against SLDC, ruling that Quisumbing did not make a valid tender of redemption as it was not accompanied by cash payment; that Sec. 25 of P.D. No. 694 is not unconstitutional and was applicable not only to direct debtors/mortgagors but constructively also to accommodation mortgagors following *Nepomuceno v. RFC*.[14] Aggrieved, petitioners appealed to the Court of Appeals.

By the assailed Decision of February 14, 2007, the appellate court affirmed the trial court's decision, holding that there was no valid offer to redeem the properties owing to Quisumbing's failure to validly tender payment; and that even if his filing of the complaint was considered as judicial redemption, it was still ineffectual due to non-tender of the redemption price. On account of such ruling, the appellate court no longer ruled on the issue of the constitutionality of Sec. 25 of P.D. 694 and on the validity of the Deeds of Assignment. Petitioners' motion for reconsideration having been denied by Resolution dated June 5, 2007, this present petition was filed.

Petitioners insist that Quisumbing made a valid tender of redemption because he did not have to tender the redemption

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[12] *Santiago Land Development Corporation v. Court of Appeals*, G.R. No. 106194, January 28, 1997, 267 SCRA 79.

[13] *Vide* note 2.

[14] 110 Phil 42 (1960).

prices due to, so they claim, PNB's outright refusal to accept or allow any redemption, and that he perfected a 'judicial redemption' following *Tioseco v. CA.*[15] They assail the ruling of the trial court that spouses Silverio were accommodation mortgagors or direct debtors/mortgagors and that Sec. 25 of P.D. No. 694 applies to accommodation mortgagors, as well as the trial and appellate court's ruling that Sec. 25 is not unconstitutional despite its being violative, so petitioners contend, of the due process and equal protection clauses of the Constitution.

Petitioners maintain that Sec. 25 applies only to debtors-mortgagors, hence, the case at bar should have been governed by the general law on redemption — Sec. 6 of Republic Act No. 3135 *vis a vis* Rule 39, Sec. 30. In support of their position, they draw attention to the fact that all the certificates of sale state that the proceedings/sale were pursuant to an "extra-judicial foreclosure of real estate mortgage under RA 3135 as amended," without any mention whatsoever of P.D. No. 694. Petitioners thus conclude that Sec. 25 of P.D. No. 694 should be struck down for being void for vagueness; and that it is arbitrary and unreasonable because it grants a preferred position to PNB which may abuse to unjustly enrich itself at the expense of mortgagors, hence, violative of the right to due process.

At all events, they argue that assuming that Sec. 25 applies to accommodation mortgagors such as the spouses Silverio still, the redemption price would be based on the value of the properties foreclosed, not on the obligations of the debtor, as what PNB insists on doing.

In its Comment,[16] PNB, averring that what petitioners are raising are questions of fact, maintains that the Deeds of Assignment are void for being against public policy because at the time they were executed, Quisumbing was already the lawyer not only of the spouses Silverio but also of Komatsu and the other companies, the properties of which were being foreclosed.

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[15] G.R. No. 66597, August 29, 1986, 143 SCRA 705.

[16] *Rollo*, pp. 1663-1715.

In its separate Comment,[17] SLDC argues that the present petition, insofar as the Pasong Tamo property is concerned, is barred by *res judicata*, the Court in *Komatsu Industries (Phils.) Inc. v. Philippine National Bank and Santiago Land Development Corporation and Maximo Contreras, (Komatsu* case)[18] having declared PNB's extrajudicial foreclosure of the said property and eventual sale to SLDC valid. It adds that, since in G.R. No. 106194 or the "Intervention Case," it was held that a purchaser *pendente lite* — SLDC is bound by the outcome of the case instituted by the transferor — PNB, then Quisumbing, as transferee *pendente lite* of Komatsu's right to redeem the Pasong Tamo property, "must also necessarily be bound by the outcome of the *Komatsu* case" — and that, perforce, "if he cannot intervene, then neither can he be allowed to file or maintain a separate case."

Maintaining that Quisumbing's "judicial redemption" should not be allowed, SLDC contends that since redemption is inconsistent with the claim of invalidity of a foreclosure sale, then Komatsu's act of assigning its right of redemption to Quisumbing was incompatible with its earlier remedy of contesting the validity of PNB's foreclosure and is, therefore, prohibited.

SLDC further avers that Sec. 25 of PD No. 694 does not violate the due process clause, its provision requiring the mortgagors to pay the redemption price being in line with the purpose of the law, *viz* "to protect the investment of the government in the institution."

Aside from reiterating their previous arguments, petitioners, in their Consolidated Reply,[19] refute SLDC's and PNB's arguments. They contend that the action is not barred by *res judicata* because in the *Komatsu* case, the Court "contemplated" that the issue of validity of the exercise of redemption would not be resolved in that case but in Civil Case No. 10513, and the reason why Quisumbing was not required to intervene in

[17] *Id.* at 1485-1589.

[18] G.R. No. 127682, April 24, 1998, 289 SCRA 604.

[19] *Rollo*, pp. 1728-1809.

Komatsu was because he was not a party thereto, and the case involved annulment of the foreclosure sale, not the exercise of the right of redemption.

Petitioners further maintain that the issue of whether the assignment of rights made in Quisumbing's favor was barred for being against public policy (under Art. 1491[5] of the Civil Code) can no longer be raised as an issue, respondents having failed to raise it in the proceedings below; and assuming *arguendo* that it had been raised, said provision would not apply, as what were assigned were merely the rights of redemption, not the properties themselves, and Quisumbing did not represent Komatsu or the other companies in the annulment of foreclosure proceedings.

In a Supplemental Petition[20] filed on August 28, 2007, petitioners submit that the sale of the Philippine Government's remaining minority shares (12.28%) in the PNB on August 1, 2007 reinforces their argument that if Sec. 25 of P.D. No. 694 is made applicable to accommodation mortgagors, the same should be struck down for being unconstitutional, as it would then be violative of the equal protection clause. And they assert that if, indeed, the purpose of said provision is to protect the government's investment in PNB, then it has ceased to exist due to the privatization of said institution and, as such, Sec. 25 should be struck down.

The pivotal issue that needs to be resolved is whether the original plaintiff, Atty. Norberto J. Quisumbing, made a valid tender of redemption.

The Court rules in the negative.

Sec. 25 of P.D. No. 694 otherwise known as the Revised Charter of the Philippine National Bank enacted on May 8, 1975 provides:

Section 25. *Right of redemption of foreclosed property Right of possession during redemption period.* Within one year from the registration of the foreclosure sale of real estate, **the mortgagor shall**

[20] *Id.* at 1469-1479.

have the right to redeem the property by paying all claims of the Bank against him on the date of the sale including all the costs and other expenses incurred by reason of the foreclosure sale and custody of the property, as well as charges and accrued interests.

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)

On the other hand, under Act No. 3135, AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGES (which took effect on March 6, 1924), as amended by Act. No. 4118, redemption of extra-judicially foreclosed properties is undertaken as follows:

SECTION 6. 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, inclusive, of the Code of Civil Procedure**, in so far as these are not inconsistent with the provisions of this Act. (Emphasis supplied)

And the pertinent provision of the Code of Civil Procedure, now Section 28 of Rule 39 of the Revised Rules of Civil Procedure, reads:

SEC. 28. *Time and manner of, and amounts payable on, successive redemptions; notice to be given and filed.* – The judgment obligor, or redemptioner, may redeem the property from the purchaser, at any time within one (1) year from the date of the registration of the certificate of sale, **by paying the purchaser the amount of his purchase, with one per centum per month interest thereon in addition, up to the time of redemption, together with the amount of any**

assessments or taxes which the purchaser may have paid thereon after purchase, and interest on such last named amount of the same rate; and if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such other lien, with interest. (Emphasis supplied)

As to the requisites for a valid tender of redemption in case of extra-judicially foreclosed properties by banks, *Banco Filipino Savings and Mortgage Bank, Inc., v. Court of Appeals*,[21] instructs:

Section 6 of Act 3135 provides for the requisites for a valid redemption, thus:

> SEC. 6. 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 sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, insofar as these are not inconsistent with the provisions of this Act.

However, considering that petitioner is a banking institution, the determination of the redemption price is governed by Section 78 of the General Banking Act which provides:

> In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate which is security for any loan granted before the passage of this Act or under the provisions of this Act, the mortgagor or debtor whose real property has been sold at public auction, judicially or extrajudicially, for the full or partial payment of an obligation to any bank, banking or credit institution, within the purview of this Act shall have the right, within one year after the sale of the real estate as a result of the foreclosure of the respective mortgage, to redeem the property by paying the amount fixed by the court in the

[21] G.R. No. 143896, July 8, 2005, 463 SCRA 64, 73-76.

> order of execution, or the amount due under the mortgage deed, as the case may be, with interest thereon at the rate specified in the mortgage, and all the costs, and judicial and other expenses incurred by the bank or institution concerned by reason of the execution and sale and as a result of the custody of said property less the income received from the property.

Clearly, the right of redemption should be exercised within the specified time limit, which is one year from the date of registration of the certificate of sale. The redemptioner should make an **actual tender in good faith of the full amount of the purchase price as provided above, *i.e.*, the amount fixed by the court in the order of execution or the amount due under the mortgage deed, as the case may be, with interest thereon at the rate specified in the mortgage, and all the costs, and judicial and other expenses incurred by the bank or institution concerned by reason of the execution and sale and as a result of the custody of said property less the income received from the property**.

x x x x x x x x x

In *BPI Family Savings Bank, Inc. vs. Veloso*, we held:

The general rule in redemption is that it is not sufficient that a person offering to redeem manifests his desire to do so. The statement of intention must be accompanied by an actual and simultaneous tender of payment. This constitutes the exercise of the right to repurchase.

x x x x x x x x x

Whether or not respondents were diligent in asserting their willingness to pay is irrelevant. **Redemption within the period allowed by law is not a matter of intent but a question of payment or valid tender of the full redemption price within said period**. (Emphasis supplied)

Evidently, whether the redemption is being made under Act No. 3135 or the General Banking Act, as amended by Presidential Decree No. 1828, or under P.D. No. 694, the mortgagor or his assignee is required to tender payment to make said redemption valid – something which petitioners' predecessor failed to do. The only instance when this rule may be construed liberally,

i.e., allow the non-simultaneous tender of payment, is if a judicial action is instituted by the redemptioner.[22]

Petitioner however claims, citing *Banco Filipino Savings and Mortgage Bank v. Court of Appeals* and *Lee Chuy Realty Corporation v. Court of Appeals* that in case of disagreement over the redemption price, the redemptioner may preserve his right of redemption through judicial action which must be filed within the one-year period of redemption. The filing of a court action to enforce redemption, being equivalent to a formal offer to redeem, would have the effect of preserving his redemptive rights and "freezing" the expiration of the one-year period. *Bona fide* tender of the redemption price, within the prescribed period is only essential to preserve the right of redemption for future enforcement beyond such period of redemption and within the period prescribed for the action by the statute of limitations. **Where the right to redeem is exercised through judicial action within the reglementary period**, **the offer to redeem, accompanied by a *bona fide* tender of the redemption price, while proper**, **may be unessential**. (Emphasis supplied)

For this exception to apply, however, certain conditions must be met, *viz*:

It should, however, be noted that in *Hi-Yield Realty, Inc. v. Court of Appeals*, we held that the action for judicial redemption should be **filed on time** and **in good faith**, the redemption price is finally determined and paid within a reasonable time, and the rights of the parties are respected. **Stated otherwise, the foregoing interpretation has three critical dimensions: (1) timely redemption or redemption by expiration date; (2) good faith as always, meaning, the filing of the action must have been for the sole purpose of determining the redemption price and not to stretch the redemptive period indefinitely; and (3) once the redemption price is determined within a reasonable time, the redemptioner must make prompt payment in full.** (Emphasis supplied)

While Quisumbing filed the Complaint on May 7, 1985, days or even weeks before the expiration of the one-year redemption

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[22] *Tolentino v. Court of Appeals and Citytrust Banking Corporation*, G.R. No. 171354, March 7, 2007, 517 SCRA 732, 744-745.

period reckoned from the dates of registration of the different certificates of sale, it cannot be said that he was motivated by good faith when he filed the Complaint, as contemplated in the above ruling. For the Complaint was filed not for the sole purpose of determining the redemption price, but, as Quisumbing himself admitted on direct examination, it was to seek the annulment of Sec. 25 of P.D. No. 694, thus:

> Q: **And what is the purpose of your present suit**?
>
> A: To compel the redemption, because the redemption were (sic) disallowed unless the entire obligation rather than just leaving the purchase price of the foreclosure sale is paid. **The purpose of suit therefore, is to seek the annulment of that provision of Section 25 of the Revised Chapter (sic) of the Philippine National Bank, which provides that redemption can be effected only by paying the entire claim of the Philippine National Bank, against in this case, Delta Motors Corporation**. As the Complaint alleges the sale . . . contrary to law, moral, customs, public security, since the law favors in the long line of decisions of the right of redemption. Second, with such a provision no one can get a fair price at a foreclosure sale of an individual property.[23] (Emphasis and underscoring supplied)

And on cross-examination, when questioned why he wrote to PNB on April 8, 1985 offering to redeem the property when the Deeds of Assignment in his favor were not yet executed, Quisumbing replied:

> x x x x x x x x x
>
> Q: The Deeds of Assignment were executed either on April 12 or 11 in the case of Komatsu, 1985. Why did you write PNB a tender of letter as early as April 8 when the Deeds of Assignment were not yet executed – have not yet been executed?
>
> A: Well, there might have been a delay in the execution of the Deeds of Assignment; **but since I was certain that PNB will**

[23] TSN, hearing of Civil Case No. 10513 on March 3, 1987, records, Vol. III, pp. 190-191.

> **reject a redemption, not in accordance with Sec. 25 of its charter**. In other words, just offering the purchase price derive from… we began the process of redemption early. Besides, the Philippine National Bank, in some cases, in other creditors of . . .[24]

x x x (Emphasis and underscoring supplied)

Clearly, from the admissions reflected in the testimony, Quisumbing's filing of the Complaint was not solely due to a mere disagreement in the redemption price; rather, it was because he was not willing to pay whatever amount PNB would compute on the basis of Sec. 25 of P.D. No. 694. By questioning the constitutionality of said provision, Quisumbing, wittingly delayed the redemption, since he must have known that raising the issue of constitutionality of a statute in any suit would result in a litigious process which could stretch for an indefinite period as, in fact, the history of the present case shows. More importantly, his act of executing his Affidavit of Redemption on April 23, 1985 and alleging therein his oft-repeated excuse of "PNB's refusal to allow him to redeem the subject properties" even before PNB could provide him the computations by April 30, 1985, as he himself requested in his April 23, 1985 letter, and before PNB's actual refusal as stated in its May 3, 1985 letter, reflected that from the very beginning, his mindset was that if any redemption would be had, the same should be made according to his terms and conditions and under Act No. 3135, not P.D. No. 694. Indubitably, such actuations belie good faith and, therefore, the exception as enunciated in *Tolentino* case would not apply.

Had Quisumbing believed in good faith that Act No. 3135 was applicable, he could have tendered the amount as computed thereunder, if only to show that he was able and willing to redeem the properties.

Respecting the issues raised by petitioners that Sec. 25 of P.D. No. 694 is unconstitutional, the same has been rendered moot and academic by the full privatization of PNB pursuant

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[24] *Id.* at 199.

to E.O. 80[25] which repealed said P.D., as well as the subsequent sale of the remaining shares of the government on August, 2007 which converted it from a government financial institution to a private banking institution.

The foregoing discussions render it unnecessary to address the other points pleaded by petitioners, such as the validity of the Deeds of Assignment, whether the Silverio spouses are accommodation mortgagors or direct debtors/mortgagors, or whether the suit is barred by the principle of *res judicata*.

WHEREFORE, the petition is *DENIED*. The February 14, 2007 Decision of the Court of Appeals and the June 5, 2007 Resolution in CA-G.R. CV No. 69337 are *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

Tinga, Chico-Nazario,[**] *Velasco, Jr.,* and *Brion, JJ.,* concur.

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[25] **EXECUTIVE ORDER NO. 80**

PROVIDING FOR THE 1986 REVISED CHARTER OF THE PHILIPPINE NATIONAL BANK (December 3, 1986)

x x x x x x x x x

Sec. 38. Repealing Clauses. **Subject to Section 31 of this Charter, Presidential Decree No. 694, as amended, is hereby repealed**. All other laws, decrees, acts, executive orders, administrative orders, proclamations, rules and regulations or parts thereof inconsistent with any of the provisions of this Charter are hereby repealed or modified accordingly. (emphasis supplied)

x x x x x x x x x

Sec. 31. Banking Operations under the 1986 Revised Charters; Governing Laws. **The Banking operations of the Bank shall be governed by the provisions of this Charter** beginning on January 1, 1987, or on such subsequent date as may be determine by the President of the Philippine upon the recommendation of the Minister of Finance. (Emphasis supplied)

[**] Additional member per Raffle dated September 3, 2007 and pursuant to Administrative Circular No. 42-2007 in A.M. No. 07-6-13-SC.

THIRD DIVISION

[G.R. No. 179190. January 20, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALBERTO L. MAHINAY,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT.— Prevailing jurisprudence uniformly holds that findings of fact of the trial court, particularly when affirmed by the Court of Appeals, are binding upon this Court. As a general rule, when the question is raised as to whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand and the manner in which they gave their testimonies, and therefore could better discern if such witnesses were telling the truth; the trial court is thus in the best position to weigh conflicting testimonies. In the instant case, the trial court even categorically stated that Mahinay "was hesitant, uneasy and evasive in his answers to the questions propounded by the prosecutor."

2. CRIMINAL LAW; RAPE; NOT NEGATED BY THE PRESENCE OF OTHER PERSONS IN THE HOUSE WHERE THE RAPE TOOK PLACE.— There is no merit in Mahinay's contention that it is highly improbable for him to have committed the crime of rape because other persons were in the house where the alleged rape took place. According to Mahinay, AAA herself testified that there were other people present when the alleged rape took place. This is misleading. AAA clearly stated that the people referred to were outside the house during the incident. x x x Either way, this Court has observed in numerous cases that lust does not respect either time or place. The evil in man has no conscience — the beast in him bears no respect for time and place, driving him to commit rape anywhere, even in places where people congregate such as in parks, along the

roadside, within school premises, and inside a house where there are other occupants.

3. ID.; ID.; DELAY IN REVEALING THE COMMISSION OF RAPE IS NOT AN INDICATION OF A FABRICATED CHARGE.— Neither do we find merit in Mahinay's insistence that AAA's failure to report the incident immediately was tantamount to giving consent to the alleged act of Mahinay. Delay in revealing the commission of rape is not an indication of a fabricated charge. Many victims of rape never complain or file criminal charges against the rapist, for they prefer to silently bear the ignominy and pain, rather than reveal their shame to the world or risk the offender's making good his threats.

4. ID.; ID.; NOT NEGATED BY THE VICTIM'S FAILURE TO PUT UP RESISTANCE.— Mahinay counters that the offended party in rape cases must have put up resistance not only in the initial stage of the commission of rape, but during the entire time that the act was perpetuated upon her. Citing *People v. Tapao*, Mahinay claims that AAA should have resisted to the last ounce of her strength. Mahinay avers that AAA could have kicked Mahinay, or kept on pushing or struggling to prevent him from forcing her to enter the house. Also, Mahinay points out that, based on AAA's testimony, her mouth was not covered when he was allegedly on top of her, allowing her to shout for help if she had wanted to, and she would have been heard by persons who were nearby. As correctly argued by the appellee, the fact that AAA did not shout or make an outcry when there were nearby persons does not mean that she was not raped by Mahinay. The workings of the human mind under emotional stress are unpredictable; people react differently in such situations: some may shout; some may faint; some may be shocked into insensibility; others may openly welcome their intrusion.

5. REMEDIAL LAW; EVIDENCE; ALIBI; AN INHERENTLY WEAK DEFENSE.— All that Mahinay was able to offer against the positive identification and imputation by the prosecution was his alibi of being in his aunt's house at the time of the incident. In itself, the defense of alibi is already considered inherently weak since it is very easy to concoct. Mahinay's alibi is, however, rendered even weaker by the fact that the only witness to his allegedly being in his aunt's house at the time of the

rape, was himself. None of the occupants of the house, not even Mahinay's aunt, Remedios Lauron, was presented to testify that Mahinay was, indeed, there at the time of the alleged rape. Alibi must be supported by credible corroboration from disinterested witnesses; and where the defense of alibi is not corroborated, it is fatal to the accused.

6. ID.; ID.; PROOF OF GUILT; FLIGHT OF THE ACCUSED IS AN INDICATION OF HIS GUILT.— As furthermore testified to by Mahinay himself, he left his residence after he had been accused of raping AAA, and stayed in the house of his father in Tabunok. It is settled that the flight of an accused is an indication of his guilt or of a guilty mind.

7. ID.; ID.; MEDICAL FINDINGS CORROBORATED THE VICTIM'S TESTIMONY.— Finally, AAA's testimony is corroborated by the findings of the examining physician. It is settled that when the victim's testimony of her violation is corroborated by the physician's findings of penetration, there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge.

8. CRIMINAL LAW; RAPE; CIVIL INDEMNITY AUTOMATICALLY AWARDED IN A RAPE CONVICTION.— As regards the damages awarded by the Court of Appeals, we find the same to be proper. The award of civil indemnity is mandatory in rape convictions. A civil indemnity of ₱50,000.00 is automatically given to the offended party without need of further evidence other than the commission of rape. In accordance with prevailing jurisprudence, the amount of ₱50,000.00 for moral damages is likewise appropriate.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is an appeal from the Decision[1] of the Court of Appeals dated 26 October 2006 in CA-G.R. CR H.C. 00172, affirming with modification the Decision of the Regional Trial Court (RTC) of Cebu in Criminal Case No. CBU-48322 dated 14 January 2000, finding accused-appellant Alberto L. Mahinay (Mahinay) guilty beyond reasonable doubt of the crime of rape.

Mahinay was charged with rape in an Amended Information which reads:

> That on the 5th day of April, 1998, at around 8:00 o'clock in the evening, at Barangay Lawaan II, Municipality of Talisay, Province of Cebu, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie and succeed in having carnal knowledge of [AAA], a mentally retarded minor, fifteen (15) years of age, against her will and consent.[2]

Mahinay entered a plea of not guilty. Trial ensued.

The prosecution presented the testimonies of Dr. Susan Casinio of the Don Vicente Sotto Memorial Medical Center, the private complainant AAA,[3] and her mother BBB. The evidence of the prosecution tends to establish the following course of events:

On 5 April 1998, at around 8:00 p.m., AAA went to the cornfield near her residence in order to defecate. A neighbor, Sidra, approached her and told her that Mahinay wanted to talk to her. Sidra dragged AAA towards Sidra's house. Mahinay

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[1] Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Arsenio J. Magpale and Antonio L. Villamor, concurring; *rollo*, pp. 5-20.

[2] Records, p. 59.

[3] The real name of the victim is withheld per Republic Act No. 7610 and Republic Act No. 9262, as held in *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419.

met them just outside the house, and forced AAA inside the kitchen of Sidra's house. While in the kitchen, Mahinay told AAA that his cousin, Joseph, wanted to court her. While saying this, Mahinay started touching AAA's breast. Mahinay then forced AAA to lie down. He removed her shorts and underwear. AAA tried to break the hold of Mahinay, who responded by tightening his grip. Mahinay threatened to kill her, and this prevented her from shouting. Mahinay then raped her. AAA felt helpless, and all she was able to do was cry.

Thereafter, AAA went home. At 11:00 p.m., BBB arrived home. AAA did not tell BBB what happened, afraid that Mahinay would kill her. It was only five days later, or on 10 April 1998, that BBB learned about what happened to her daughter, when she was informed by a *barangay tanod* named Belbin.

On the same day, BBB brought AAA to the San Vicente Sotto Memorial Medical Center where the latter underwent physical examination. Dr. Nueva Tagalogin examined AAA and noted that there was an incomplete healed laceration at the 8 and 5 o'clock positions.

The defense, on the other hand, presented the testimonies of Mahinay; Sidra's neighbor, Rose Rabadon; and Sidra's daughter, Rosalina Aboyme. The evidence of the defense was intended to establish the following:

On 5 April 1998, at around 8:00 p.m., Mahinay was in the house of his aunt Remedios Lauron. He was not able to talk to AAA that night. On 10 April 1998, Mahinay's mother told him that he was being accused of impregnating AAA. He went to BBB to ask why he was being accused as such, but BBB attempted to strike him with a piece of wood. He went back to the house of Lauron, who advised him to stay in the house of his father in Tabunok, because BBB asked the intercession of her relatives. He found out about the rape charge when he was arrested on 11 March 1999 near the bridge of Tabunok.

In his defense, Mahinay alleged that BBB fabricated stories against him since the family of AAA and his family were not

in good terms due to an incident in which the latter family had called the former family *patay gutom*. BBB and Mahinay's mother also had a conflict with regard to the possession of a place for vending. AAA once told witness Rabadon that it was AAA's stepfather who raped her.

Mahinay further alleged that there was also a time when the family of AAA was not in good terms with the family of Sidra because of a certain stoning incident. The two families had since then reconciled.

On 14 January 2000, the RTC rendered its judgment convicting Mahinay of the crime of rape. The dispositive portion of the Decision is as follows:

> WHEREFORE, judgment is hereby rendered finding accused Alberto Mahinay guilty beyond reasonable doubt of the crime of rape and sentences him to *reclusion perpetua*. He is likewise directed to indemnify [AAA] the sum of ₱50,000.00 and another sum of ₱30,000.00 as and for moral damages.
>
> With cost against the accused.[4]

The records of the case were transmitted to this Court for automatic review. However, conformably with the ruling of this Court in *People v. Mateo*,[5] the case was referred to the Court of Appeals.

On 26 October 2006, the Court of Appeals rendered its Decision affirming the conviction of Mahinay, with modification as to the amount of damages. The dispositive portion of the Decision states:

> WHEREFORE, the appealed judgment of the court *a quo* is AFFIRMED, with the MODIFICATION that accused-appellant Alberto Mahinay is hereby ordered to pay the amount of ₱50,000.00 as moral damages.
>
> Costs *de oficio*.[6]

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[4] CA *rollo*, p. 27.

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

[6] CA *rollo*, p. 131.

Mahinay appealed to this Court, claiming that it is highly improbable for him to have committed the crime of rape because other persons were in the house where the alleged rape took place. Furthermore, Mahinay claims that AAA failed to put up sufficient resistance against the alleged acts of Mahinay. Finally, Mahinay also contends that AAA's delay in reporting the incident to her mother was tantamount to giving consent to the sexual act.

We are not persuaded.

Prevailing jurisprudence uniformly holds that findings of fact of the trial court, particularly when affirmed by the Court of Appeals, are binding upon this Court.[7] As a general rule, when the question is raised as to whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand and the manner in which they gave their testimonies, and therefore could better discern if such witnesses were telling the truth; the trial court is thus in the best position to weigh conflicting testimonies.[8] In the instant case, the trial court even categorically stated that Mahinay "was hesitant, uneasy and evasive in his answers to the questions propounded by the prosecutor."

There is no merit in Mahinay's contention that it is highly improbable for him to have committed the crime of rape because other persons were in the house where the alleged rape took place. According to Mahinay, AAA herself testified that there were other people present when the alleged rape took place. This is misleading. AAA clearly stated that the people referred to were outside the house during the incident:

ATTY. PORIO (cross examination)

Q: And there were no people around inside the house of Sidra at that time?

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[7] *Castillo v. Court of Appeals*, 329 Phil. 150, 159 (1996).

[8] *People v. Alimon*, 327 Phil. 447, 461-462 (1996).

A: The children were outside the house while both of us were inside the house.

Q: Inside the house at the kitchen, is that right?

A: Yes, Ma'am.[9]

Either way, this Court has observed in numerous cases that lust does not respect either time or place.[10] The evil in man has no conscience — the beast in him bears no respect for time and place, driving him to commit rape anywhere, even in places where people congregate such as in parks, along the roadside, within school premises, and inside a house where there are other occupants.[11]

Neither do we find merit in Mahinay's insistence that AAA's failure to report the incident immediately was tantamount to giving consent to the alleged act of Mahinay. Delay in revealing the commission of rape is not an indication of a fabricated charge. Many victims of rape never complain or file criminal charges against the rapist, for they prefer to silently bear the ignominy and pain, rather than reveal their shame to the world or risk the offender's making good his threats.[12]

Mahinay counters that the offended party in rape cases must have put up resistance not only in the initial stage of the commission of rape, but during the entire time that the act was perpetuated upon her. Citing *People v. Tapao*,[13] Mahinay claims that AAA should have resisted to the last ounce of her strength. Mahinay avers that AAA could have kicked Mahinay, or kept on pushing or struggling to prevent him from forcing her to enter the house. Also, Mahinay points out that, based on AAA's

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[9] TSN, 4 November 1999, p. 4.

[10] *People v. Ulili*, G.R. No. 103403, 24 August 1993, 225 SCRA 594, 604; *People v. Ramos*, G.R. No. 68209, 21 December 1993, 228 SCRA 648, 655; *People v. Segundo*, G.R. No. 88751, 27 December 1993, 228 SCRA 691, 695-696.

[11] *People v. Agbayani*, G.R. No. 122770, 16 January 1998, 284 SCRA 315, 340.

[12] *People v. Geromo*, 378 Phil. 972, 981 (1999).

[13] 195 Phil. 203 (1981).

testimony, her mouth was not covered when he was allegedly on top of her, allowing her to shout for help if she had wanted to, and she would have been heard by persons who were nearby.

As correctly argued by the appellee, the fact that AAA did not shout or make an outcry when there were nearby persons does not mean that she was not raped by Mahinay. The workings of the human mind under emotional stress are unpredictable; people react differently in such situations: some may shout; some may faint; some may be shocked into insensibility; others may openly welcome their intrusion.[14]

Furthermore, the testimony of AAA was bereft of any manifestation of consent on her part. On the contrary, AAA's repulsion for Mahinay's lewd advances was clearly demonstrated:

Q: Then after that, what did Berto Mahinay do, if any?
A: He kept on touching my breast.

Q: Then what was your reaction when Berto touched your breast?
A: **He kept on touching inspite of telling him no.**

Q: Then what happened next if any?
A: **He forced me to lie down, I don't want to but he still forced me.**

Q: Then when you are already lying down, what did Berto Mahinay do, if any?
A: He removed my short and panty.

x x x x x x x x x

Q: Then after Berto Mahinay removed your shortpants and panty, did you not shout?
A: I wanted to shout but he stopped me.

Q: How did he stop you from shouting?
A: He told me that if I will shout he will kill me.

Q: Then what happened next if any after that?

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[14] *People v. Matrimonio*, G.R. Nos. 82223-24, 13 November 1992, 215 SCRA 613, 632-633; *People v. Cabradilla*, 218 Phil. 382, 388 (1984).

A: **He inserted his private part unto my private part. I resisted but he forced me.**

Q: Did you not make any resistance?
A: I resisted but he hold (sic) me tight.

Q: Then once the penis of Berto Mahinay was already in your vagina, what did you do?
A: When he was finished, I wanted to get out ahead of him but he stopped me, he did not want me to get out.

COURT: By the way, what did you feel when his private organ was inside your private organ?
A: I felt pain.

COURT: Did you bleed?
A: A little.[15] (Emphasis supplied.)

All that Mahinay was able to offer against the positive identification and imputation by the prosecution was his alibi of being in his aunt's house at the time of the incident. In itself, the defense of alibi is already considered inherently weak since it is very easy to concoct.[16] Mahinay's alibi is, however, rendered even weaker by the fact that the only witness to his allegedly being in his aunt's house at the time of the rape, was himself. None of the occupants of the house, not even Mahinay's aunt, Remedios Lauron, was presented to testify that Mahinay was, indeed, there at the time of the alleged rape. Alibi must be supported by credible corroboration from disinterested witnesses; and where the defense of alibi is not corroborated, it is fatal to the accused.[17]

As furthermore testified to by Mahinay himself, he left his residence after he had been accused of raping AAA, and stayed in the house of his father in Tabunok. It is settled that the flight of an accused is an indication of his guilt or of a guilty mind.[18]

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[15] TSN, 14 October 1999, pp. 4-5.

[16] *People v. Bracamonte*, 327 Phil. 160, 166 (1996).

[17] *People v. Calope*, G.R. No. 97284, 21 January 1994, 229 SCRA 413, 420-421.

[18] *People v. Martinado*, G.R. No. 92020, 19 October 1992, 214 SCRA 712, 732.

Finally, AAA's testimony is corroborated by the findings of the examining physician. It is settled that when the victim's testimony of her violation is corroborated by the physician's findings of penetration, there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge.[19]

As regards the damages awarded by the Court of Appeals, we find the same to be proper. The award of civil indemnity is mandatory in rape convictions.[20] A civil indemnity of ₱50,000.00 is automatically given to the offended party without need of further evidence other than the commission of rape. In accordance with prevailing jurisprudence, the amount of ₱50,000.00 for moral damages is likewise appropriate.[21]

WHEREFORE, the Decision of the Court of Appeals dated 26 October 2006 in CA-G.R. CR H.C. 00172 affirming with modification the Decision of the Regional Trial Court of Cebu in Criminal Case No. CBU-48322 dated 14 January 2000 finding accused-appellant Alberto L. Mahinay guilty beyond reasonable doubt of the crime of rape, is hereby *AFFIRMED in toto*. No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Nachura, and *Leonardo-de Castro,*[*] *JJ.,* concur.

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[19] *People v. Castillo,* G.R. No. 84310, 29 May 1991, 197 SCRA 657, 662.

[20] *People v. Glodo,* G.R. No. 136085, 7 July 2004, 433 SCRA 535, 549.

[21] *People v. Madia,* 411 Phil. 666, 675 (2001).

[*] Per Special Order No. 546, Associate Justice Teresita J. Leonardo-De Castro was designated to sit as additional member in view of the retirement of Associate Justice Ruben T. Reyes dated 5 January 2009.

EN BANC

[G.R. No. 180853. January 20, 2009]

MANICAM M. BACSASAR, *petitioner, vs.* **CIVIL SERVICE COMMISSION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; EFFECT OF A TARDY APPEAL; REVELANT RULING, CITED.— Admittedly, petitioner received CSC Resolution No. 062250 dated December 19, 2006 on January 8, 2007. However, she filed her appeal with the CA only on February 27, 2007. Clearly, her petition for review with the CA was tardily filed. The CSC resolutions, therefore, attained finality. As we explained in *Emerlinda S. Talento v. Hon. Remegio M. Escalada, Jr.*: The perfection of an appeal in the manner and within the period prescribed by law is mandatory. Failure to conform to the rules regarding appeal will render the judgment final and executory and beyond the power of the Court's review. Jurisprudence mandates that when a decision becomes final and executory, it becomes valid and binding upon the parties and their successors-in-interest. Such decision or order can no longer be disturbed or reopened no matter how erroneous it may have been. Accordingly, the CA correctly dismissed the petition as it no longer had any jurisdiction to alter or nullify the CSC resolutions.

2. ID.; ID.; ISSUES NOT RAISED BEFORE THE TRIAL COURT CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.— [R]ecords show that petitioner never raised this issue in the proceedings below. In the proceedings before the CSC and the CA, petitioner's defense zeroed in on her alleged lack of knowledge that her eligibility was spurious. It is too late in the day for petitioner to raise it for the first time in this petition. As a rule, no question will be entertained on appeal unless it has been raised in the court below. Points of law, theories, issues and arguments not brought to the attention of the lower court ordinarily will not be considered by a reviewing court, because they cannot be raised for the first time at that late stage. Basic considerations of due process underlie this rule.

3. ID.; COURTS; SUPREME COURT, NOT A TRIER OF FACTS.— The issue of whether petitioner's guilt for dishonesty is supported by substantial evidence is factual in nature, the determination of which is beyond the ambit of this Court. Our task in an appeal by petition for review on *certiorari* as a jurisdictional matter is limited to reviewing errors of law that might have been committed by the CA. The Supreme Court cannot be tasked to go over the proofs presented by the petitioner in the proceedings below and analyze, assess and weigh them to ascertain if the court *a quo* and the appellate court were correct in their appreciation of the evidence. More so, in the instant case, where the CA affirmed the factual findings of the CSC. Although the rule admits of several exceptions, none of them are in point in this case.

4. POLITICAL LAW; CONSTITUTIONAL LAW; DUE PROCESS; ADMINISTRATIVE PROCEEDINGS; DENIAL OF DUE PROCESS THEREIN, NOT A CASE OF.— [P]etitioner was given ample opportunity to defend her case, contrary to what she wants to portray. It must be remembered that the essence of due process does not necessarily require a hearing, but simply a reasonable opportunity or right to be heard or, as applied to administrative proceedings, an opportunity to explain one's side. Due process in the administrative context does not require trial-type proceedings similar to those in the courts of justice. A formal trial-type hearing is not at all times and in all instances essential to due process. What is simply required is that the party concerned is given due notice and is afforded an opportunity or right to be heard. It is enough that the parties are given a fair and reasonable opportunity to explain their respective sides of the controversy and to present evidence on which a fair decision can be made. *To be heard* does not only mean verbal arguments in court; one may also be heard through pleadings. Where opportunity to be heard, either through oral arguments or through pleadings, is accorded, there is no denial of procedural due process. In other words, it is not legally objectionable for an administrative agency to resolve a case based solely on position papers, affidavits or documentary evidence submitted by the parties, as affidavits of witnesses may take the place of their direct testimonies. Records show that petitioner answered the charges against her. She even interposed an appeal from the decision of the CSC-ARMM to

the CSC, and then to the CA. Clearly, she was afforded an opportunity to be heard through her pleadings; hence, her right to due process was not impaired.

5. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE CHARGE; DISHONESTY, DEFINED; APPLICATION.— Petitioner was charged with dishonesty which is defined as the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duty. Indisputably, when petitioner applied for the position of Municipal Assessor, she submitted a Certificate of Eligibility purportedly issued by the CSC certifying that she passed the Career Service Professional examination on November 28, 2000 with a rating of 87.54%. She also submitted a PDS dated February 21, 2001 stating that she passed the Career Service Professional examination on November 28, 2001 with a rating of 87.54%. Upon verification, it was found that her Certificate of Eligibility was spurious. Clearly, there is sufficient evidence on record to establish that petitioner is, indeed, guilty of dishonesty.

6. ID.; ID.; ID.; GOOD FAITH, AS A DEFENSE FOR THE CHARGE OF DISHONESTY, NOT GIVEN WEIGHT; CIRCUMSTANCES NEGATING GOOD FAITH.— We cannot accept petitioner's simplistic claim that she used the fake eligibility in good faith because she was not aware that the same was spurious. Good faith is ordinarily used to describe that state of mind denoting honesty of intention and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious. In short, good faith is actually a question of intention. Although this is something internal, we can ascertain a person's intention not from his own protestation of good faith, which is self-serving, but from evidence of his conduct and outward acts. [P]etitioner, from her actuations, cannot be considered to have acted in good faith when she stated in her Personal Data Sheet that she passed the Career Service Professional examination on the basis of a spurious document furnished her by a certain Tingcap Pandi. We carefully noted her acts which are inconsistent with her protestation of good faith, thus: *First*, she obviously knew that

Tingcap Pandi, if indeed, he was existing, was a fixer, because any aspirant for employment in the government service, such as petitioner, knows well that civil service eligibility cannot be obtained without taking and passing an appropriate civil service examination. *Second*, petitioner claims she relied on the assurance of Tingcap Pandi, who "approached xxx and convinced and persuaded her to file CSC eligibility through him xxx without an examination." x x x [A] person is considered in good faith not only when he has shown an honest intention but that he must also be *free* from *knowledge of circumstances which ought to put him on inquiry*. To be approached by a person offering an unusual "service" should have put petitioner on guard as to induce her to scrutinize the integrity of the offer. *Third*, petitioner did not take any step to determine from the CSC the authenticity of the document procured for her by the "fixer," which turned out to be spurious, before using it as basis for indicating in her PDS that she passed the civil service professional examination. This is (sic) aberrant behavior of the petitioner is contrary to good faith. *Fourth*, without verifying with the CSC the authority of Tingcap Pandi in offering the unusual "service", petitioner proceeded to use the spurious document in support of her appointment as Municipal Assessor.

APPEARANCES OF COUNSEL

Dimnatang T. Saro for petitioner.
The Solicitor General for respondent.

D E C I S I O N

NACHURA, *J.*:

Petitioner Manicam M. Bacsasar (petitioner) filed this Petition for *Certiorari* seeking to nullify the Resolutions dated June 26, 2007[1] and October 2, 2007[2] of the Court of Appeals (CA) in CA-G.R. SP No. 01508.

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[1] Penned by Associate Justice Teresita Dy-Liacco Flores, with Associate Justices Rodrigo F. Lim, Jr. and Michael P. Elbinias, concurring; *rollo*, pp. 45-56.

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

On May 7, 2003, petitioner was charged with dishonesty by the Civil Service Commission-Autonomous Region in Muslim Mindanao (CSC-ARMM), committed as follows:

1. That in your Personal Data Sheet (PDS), dated February 20, 2001, you indicated that you passed the Career Service Professional examination on November 28, 2000 with a rating of 87.54% conducted in Quezon City;

2. That the same eligibility was used to support the issuance of an appointment in your favor by Mayor Hadji Ali MB. Munder of Bubong, Lanao del Sur as Municipal Assessor under Permanent status; and

3. That a verification from Civil Service Regional Office – National Capital Region in Quezon City yielded a response that your name is not included in the Master List of passing and failing list of NCR-CSP dated November 28, 2000.[3]

In her answer, petitioner denied the charge. She averred that on October 15, 2002, a man with the name Tingcap Pandi, who is now deceased, approached her and convinced her to obtain her Civil Service eligibility from him without need of taking an examination. She admitted that she used the said eligibility to support the issuance of a permanent appointment, but averred that she was not aware that the eligibility issued to her was spurious. It was only after verification with the CSC-NCR that she learned the falsity of her eligibility.[4]

On October 6, 2003, petitioner informed the CSC-ARMM that she was waiving her right to a formal investigation. On February 9, 2004, CSC-ARMM rendered a decision[5] finding petitioner guilty of dishonesty and imposing upon her a penalty of dismissal from service with all its accessory penalties.

Petitioner appealed to the CSC. On December 14, 2005, the CSC issued Resolution No. 051885[6] dismissing the appeal. Sustaining the CSC-ARMM, the CSC held:

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[3] *Rollo*, p. 66.

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

[5] *Id.* at 69-70.

[6] *Id.* at 80-84.

[S]ubstantial evidence has been established that Bacsasar is guilty of dishonesty by misrepresenting in her PDS that she passed the Career Service Professional examination given on November 28, 2000 with a rating of 87.54% in Quezon City. Notably, the certification of CSC-NCR that Bacsasar's name is not included in the Master List of passing and failing examinees during the NCR-CSP examination conducted on November 28, 2000 is sufficient to prove the charge of dishonesty against Bacsasar. Hence, it cannot be denied that Bacsasar is guilty of dishonesty.

The CSC disposed, thus:

WHEREFORE, the appeal of Manicam M. Bacsasar is hereby **DISMISSED**. Accordingly, the Decision dated February 9, 2004 of the CSC-ARMM, finding her guilty of Dishonesty for which she was meted out a penalty of dismissal from service including the accessory penalties of forfeiture of retirement benefits, cancellation of eligibility, and perpetual disqualification from reemployment in the government service, is **AFFIRMED**.[7]

Petitioner filed a motion for reconsideration, but it was denied by the CSC in its Resolution No. 062250[8] dated December 19, 2006. Petitioner received CSC Resolution 062250 on January 8, 2007. On January 23, 2007, she requested a thirty day-extension of time, or until February 22, 2007, to file a petition for review. Petitioner, however, failed to file the intended petition within the extended period.[9]

On February 27, 2007, petitioner filed a Motion to Admit (the attached Petition).[10]

On June 26, 2007, the CA dismissed the petition for having been tardily filed and for lack of merit. It held that the failure of the petitioner to file the intended petition for review within the extended period rendered the CSC decision final and executory. Accordingly, it had been divested of jurisdiction to

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[7] *Id.* at 84.

[8] *Id.* at 90-95.

[9] See CA Resolution dated June 26, 2007, p. 7; *id.* at 51.

[10] *Id.*

entertain the petition. The CA also affirmed the CSC finding that there is substantial evidence on record to establish petitioner's culpability. A motion for reconsideration was filed, but the CA denied it on October 2, 2007.

Hence, this recourse by petitioner theorizing that:

1. THE ASSAILED RESOLUTIONS DATED JUNE 26, 2007 AND OCTOBER 2, 2007 WERE ISSUED IN VIOLATION OF LAW OR (sic) DUE PROCESS;

2. THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN AFFIRMING THE DECISION DATED FEBRUARY 9, 2004 OF THE CSC-ARMM REGIONAL DIRECTOR FINDING PETITIONER MANICAM M. BACSASAR GUILTY OF DISHONESTY;

3. THE HONORABLE COURT OF APPEALS ERRED IN NOT DISMISSING THE FORMAL CHARGE AGAINST THE PETITIONER.[11]

We deny the petition.

Admittedly, petitioner received CSC Resolution No. 062250 dated December 19, 2006 on January 8, 2007. However, she filed her appeal with the CA only on February 27, 2007.[12] Clearly, her petition for review with the CA was tardily filed. The CSC resolutions, therefore, attained finality.

As we explained in *Emerlinda S. Talento v. Hon. Remegio M. Escalada, Jr.*:[13]

> The perfection of an appeal in the manner and within the period prescribed by law is mandatory. Failure to conform to the rules regarding appeal will render the judgment final and executory and beyond the power of the Court's review. Jurisprudence mandates that when a decision becomes final and executory, it becomes valid and binding upon the parties and their successors-in-interest. Such decision or order can no longer be disturbed or reopened no matter how erroneous it may have been.

[11] *Rollo*, p. 37.

[12] See Petition, p. 5; *id.* at 36.

[13] G.R. No. 180884, June 27, 2008.

Accordingly, the CA correctly dismissed the petition as it no longer had any jurisdiction to alter or nullify the CSC resolutions.

But, if only to show that the petition is doomed to fail anyway, we will discuss the issues raised by the petitioner.

Petitioner asserts denial of due process because her case was decided without a formal investigation. She claims that she was denied opportunity to present evidence, to confront the witnesses against her, and to object to the evidence adduced against her.

We are not convinced.

To begin with, petitioner waived her right to a formal investigation on October 6, 2003.[14] Thus, she cannot decry that she was denied her right to a formal investigation.

Second, records show that petitioner never raised this issue in the proceedings below. In the proceedings before the CSC and the CA, petitioner's defense zeroed in on her alleged lack of knowledge that her eligibility was spurious. It is too late in the day for petitioner to raise it for the first time in this petition.

As a rule, no question will be entertained on appeal unless it has been raised in the court below. Points of law, theories, issues and arguments not brought to the attention of the lower court ordinarily will not be considered by a reviewing court, because they cannot be raised for the first time at that late stage. Basic considerations of due process underlie this rule.[15]

Thirdly, petitioner was given ample opportunity to defend her case, contrary to what she wants to portray.

It must be remembered that the essence of due process does not necessarily require a hearing, but simply a reasonable

[14] See CSC Resolution No. 051885, p. 3; *rollo*, p. 82.

[15] *Ulep v. Court of Appeals*, G.R. No. 125254, October 11, 2005, 472 SCRA 241, 257.

opportunity or right to be heard or, as applied to administrative proceedings, an opportunity to explain one's side.[16]

Due process in the administrative context does not require trial-type proceedings similar to those in the courts of justice. A formal trial-type hearing is not at all times and in all instances essential to due process. What is simply required is that the party concerned is given due notice and is afforded an opportunity or right to be heard. It is enough that the parties are given a fair and reasonable opportunity to explain their respective sides of the controversy and to present evidence on which a fair decision can be made.[17] *To be heard* does not only mean verbal arguments in court; one may also be heard through pleadings. Where opportunity to be heard, either through oral arguments or through pleadings, is accorded, there is no denial of procedural due process.[18] In other words, it is not legally objectionable for an administrative agency to resolve a case based solely on position papers, affidavits or documentary evidence submitted by the parties, as affidavits of witnesses may take the place of their direct testimonies.[19]

Records show that petitioner answered the charges against her. She even interposed an appeal from the decision of the CSC-ARMM to the CSC, and then to the CA. Clearly, she was afforded an opportunity to be heard through her pleadings; hence, her right to due process was not impaired.

Petitioner also ascribes reversible error on the part of the CA in not dismissing the case against her. Petitioner maintains that she was not aware that her eligibility was spurious. She was made to believe by Tingcap Pandi that the said eligibility was genuine. She insists that there is no substantial evidence to prove her guilt of dishonesty.

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[16] *Sarapat v. Salanga*, G.R. No. 154110, November 23, 2007, 538 SCRA 324, 332.

[17] *Lastimoso v. Asayo*, G.R. No. 154243, December 4, 2007, 539 SCRA 381, 384, citing *Samalio v. Court of Appeals*, 454 SCRA 462 (2005).

[18] *Liguid v. Judge Camano, Jr.*, 435 Phil. 695, 705 (2002).

[19] *Samalio v. Court of Appeals*, *supra* note 17, at 473.

The issue of whether petitioner's guilt for dishonesty is supported by substantial evidence is factual in nature, the determination of which is beyond the ambit of this Court. Our task in an appeal by petition for review on *certiorari* as a jurisdictional matter is limited to reviewing errors of law that might have been committed by the CA.[20] The Supreme Court cannot be tasked to go over the proofs presented by the petitioner in the proceedings below and analyze, assess and weigh them to ascertain if the court *a quo* and the appellate court were correct in their appreciation of the evidence.[21] More so, in the instant case, where the CA affirmed the factual findings of the CSC. Although the rule admits of several exceptions, none of them are in point in this case.

Petitioner was charged with dishonesty which is defined as the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duty.[22]

Indisputably, when petitioner applied for the position of Municipal Assessor, she submitted a Certificate of Eligibility purportedly issued by the CSC certifying that she passed the Career Service Professional examination on November 28, 2000 with a rating of 87.54%. She also submitted a PDS dated February 21, 2001 stating that she passed the Career Service Professional examination on November 28, 2001 with a rating of 87.54%. Upon verification, it was found that her Certificate of Eligibility was spurious. Clearly, there is sufficient evidence on record to establish that petitioner is, indeed, guilty of dishonesty.

We cannot accept petitioner's simplistic claim that she used the fake eligibility in good faith because she was not aware that the same was spurious.

Good faith is ordinarily used to describe that state of mind denoting honesty of intention and freedom from knowledge of

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[20] *Rash C. Roque v. Court of Appeals*, G.R. No. 179245, July 23, 2008.

[21] *Medina v. Commission on Audit*, G.R. No. 176478, February 4, 2008, 543 SCRA 684, 698.

[22] See *Civil Service Commission v. Cayobit*, 475 Phil. 452, 460 (2003).

circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious. In short, good faith is actually a question of intention. Although this is something internal, we can ascertain a person's intention not from his own protestation of good faith, which is self-serving, but from evidence of his conduct and outward acts.[23]

In this light, we quote with approval the following disquisition of the CA rejecting petitioner's protestation of good faith:

> [P]etitioner, from her actuations, cannot be considered to have acted in good faith when she stated in her Personal Data Sheet that she passed the Career Service Professional examination on the basis of a spurious document furnished her by a certain Tingcap Pandi. We carefully noted her acts which are inconsistent with her protestation of good faith, thus:
>
> *First*, she obviously knew that Tingcap Pandi, if indeed, he was existing, was a fixer, because any aspirant for employment in the government service, such as petitioner, knows well that civil service eligibility cannot be obtained without taking and passing an appropriate civil service examination.
>
> *Second*, petitioner claims she relied on the assurance of Tingcap Pandi, who "approached xxx and convinced and persuaded her to file CSC eligibility through him xxx without an examination." Amazingly, petitioner believed an unbelievable tale. Anyone who wants to be appointed a[s] Municipal Assessor, a position of grave responsibility, cannot be recklessly credulous or downright gullible. As we stressed earlier, a person is considered in good faith not only when he has shown an honest intention but that he must also be *free* from *knowledge of circumstances which ought to put him on inquiry*. To be approached by a person offering an unusual "service" should have put petitioner on guard as to induce her to scrutinize the integrity of the offer.
>
> *Third*, petitioner did not take any step to determine from the CSC the authenticity of the document procured for her by the "fixer," which

[23] *Civil Service Commission v. Maala*, G.R. No. 165253, August 18, 2005, 467 SCRA 390, 399.

turned out to be spurious, before using it as basis for indicating in her PDS that she passed the civil service professional examination. This is (sic) aberrant behavior of the petitioner is contrary to good faith.

Fourth, without verifying with the CSC the authority of Tingcap Pandi in offering the unusual "service", petitioner proceeded to use the spurious document in support of her appointment as Municipal Assessor.[24]

It must be stressed that dishonesty is a serious offense, which reflects on the person's character and exposes the moral decay which virtually destroys his honor, virtue and integrity. Its immense debilitating effect on the government service cannot be over-emphasized. Under Civil Service regulations, the use of fake or spurious civil service eligibility is regarded as dishonesty and grave misconduct, punishable by dismissal from the service.[25] The CA therefore committed no reversible error in upholding petitioner's dismissal.

WHEREFORE, the petition is *DENIED*. The assailed Resolutions of the Court of Appeals in CA-G.R. SP No. 01508 are *AFFIRMED*.

SO ORDERED.

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

Carpio, J., on official leave.

Brion, J., on sick leave.

Peralta, J., on leave.

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[24] *Rollo,* pp. 53-54.

[25] See *Civil Service Commission v. Cayobit, supra* note 22.

THIRD DIVISION

[G.R. No. 182518. January 20, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **MUHAMMAD ABDULAH, *alias* "BONG ABDULAH," *alias* "BONG HASAN ZAMAN",** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; CIRCUMSTANTIAL EVIDENCE, WHEN SUFFICIENT; EXPLAINED.— x x x Section 4, Rule 133 of the Rules of Court provides that, for the same to be sufficient for conviction, there must be more than one circumstance; the facts from which the inferences are derived are proven; and the combination of all circumstances is such as to produce a conviction beyond reasonable doubt. A judgment of conviction based on circumstantial evidence can be upheld only if the circumstances proven constitute an unbroken chain leading to one fair and reasonable conclusion that the defendants are guilty, to the exclusion of any other conclusion. The circumstances proved must be concordant with each other, consistent with the hypothesis that the accused is guilty and, at the same time, inconsistent with any hypothesis other than that of guilt. 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.; DENIAL AND ALIBI; IF NOT SUBSTANTIATED BY CLEAR AND CONVINCING PROOF, DENIAL AND ALIBI ARE NEGATIVE AND SELF-SERVING EVIDENCE UNDESERVING OF WEIGHT IN LAW.— Appellant's defenses of denial and alibi in this case are not worthy of belief, given that he failed to show that it was physically impossible for him to be present at the time and place of the crime. Established is the rule that denial and alibi, if not substantiated by clear and convincing proof, are negative and self-serving evidence undeserving of weight in law.

3. CRIMINAL LAW; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; QUALIFYING AND AGGRAVATING CIRCUMSTANCES; TREACHERY AND EVIDENT PREMEDITATION; CANNOT BE APPRECIATED TO QUALIFY THE KILLING TO MURDER, EVEN IF ALLEGED IN THE INFORMATION, WHEN NOT PROVEN DURING THE TRIAL.— x x x Treachery and evident premeditation, the circumstances alleged in the informations, cannot be appreciated to qualify the killing to murder, considering that these were not proven during the trial. It is an ancient but revered doctrine that qualifying and aggravating circumstances before being taken into consideration, for the purpose of increasing the penalty to be imposed, must be proved with equal certainty as those which establish the commission of the criminal offense. It is not only the central fact of a killing that must be shown beyond reasonable doubt; every qualifying or aggravating circumstance alleged to have been present and to have attended such killing must similarly be shown by the same degree of proof.

APPEARANCES OF COUNSEL

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

D E C I S I O N

NACHURA, *J.*:

For final review by the Court is the trial court's conviction of appellant Abdulah for murder. In the July 17, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00023, the appellate court, on intermediate review, affirmed *in toto* the August 24, 2000 Decision[2] of the Regional Trial Court (RTC), Branch 158 of Pasig City in Criminal Cases Nos. 98124, 98125 and 98126.

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[1] Penned by Associate Justice Enrico A. Lanzanas, with Associate Justices Remedios Salazar-Fernando and Rosalinda Asuncion-Vicente concurring; CA *rollo*, pp. 140-162.

[2] Records, pp. 251-260.

It was six in the evening more than a decade and a half ago, or on November 6, 1992, when the events leading to this case began to unfold. One of the victims, Evelyn Aguirre, was then visiting in the house of the other victim, her daughter Romelyn Diolago, at Victoria St., Intramuros, Manila. With her in the house were her other daughters, Leny and Jovy Aguirre (another victim), and her granddaughter, Cristy-Lyn. At that time, Romelyn was at a night club working. Appellant Mohamad "Bong" Abdulah, Romelyn's brother-in-law**,** and a companion, entered the house and asked for the latter.[3]

Informed of Romelyn's whereabouts, Bong decided to fetch Romelyn at the club. He dragged Evelyn from the house, out of the alley leading to the house, and to a black car. His companion, Latip Mangsungayan, poked a .38 caliber gun at Jovy, dragged her and pushed her inside the car. Three other companions of Bong were already in the car, a certain Racid *alias* Lumang Kulog, Bagyo *alias* Muhammad, and Dhats Kamama. Bong then belted out to the neighbors who got curious over the commotion, "*Kung ano'ng nakikita ninyo, walang magsasalita, totodasin ko lahat, walang makikialam, totodasin ko kayong lahat!*" (You must not interfere with us, and keep silent over what you are witnessing right now; otherwise, I will kill all of you!). Bong then drove the car and sped off.[4] Evelyn and Jovy never returned to the house. That was the last time they were seen alive.[5]

The following day, November 7, 1992, three female dead bodies were found by the police at the grassy area of the apartment road in Maharlika Village, Taguig, Metro Manila [now, the City of Taguig]. The bodies had stab wounds, and the necks had ligature marks. The cadavers were then brought to the Philippine National Police (PNP) Crime Laboratory for autopsy.[6] On November 15, 1992, prompted by a news report,

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[3] TSN, July 30, 1998, pp. 2-7, 10-12.

[4] TSN, July 20, 1999, pp. 3-4.

[5] TSN, July 30, 1998, p. 4; TSN, July 20, 1999, p. 5.

[6] TSN, February 1, 1999, pp. 4-6.

the relatives of the victims went to Taguig, and there identified the dead bodies as those of Evelyn, Romelyn and Jovy.[7]

The police theorized that appellant killed the victims to avenge the death of his brother Rex, Romelyn's live-in partner. The police further believed that appellant must have been convinced of the family's involvement in the death of Rex, considering that Rex's killer was the former boyfriend of Romelyn and hailed from the same hometown as the family.[8]

On March 24, 1993, three separate Informations[9] for murder were filed against appellant with the RTC of Pasig City. The accusatory portions thereof read:

Criminal Case No. 98124

The undersigned Assistant Prosecutor accuses BONG ABDULAH @ BONG HASAN ZAMAN of the crime of Murder, committed as follows:

That on or about the 6th day of November 1992, in the Municipality of Tagig (sic), Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a deadly weapon, with intent to kill, by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab Jovy Aguirre on her body, thereby inflicting upon the latter stab wounds which directly caused her death.

CONTRARY TO LAW.

Criminal Case No. 98125

The undersigned Assistant Prosecutor accuses BONG ABDULAH @ BONG HASAN ZAMAN of the crime of Murder, committed as follows:

That on or about the 6th day of November 1992, in the Municipality of Tagig (sic), Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a

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[7] TSN, June 9, 1998, p. 6; TSN, July 30, 1998, p. 4; TSN, February 9, 1999, p. 5.

[8] Records, pp. 13-14.

[9] *Id.* at 1, 18 and 22.

deadly weapon, with intent to kill, by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab Romelyn D. Diolago on her body, thereby inflicting upon the latter stab wounds which directly caused her death.

CONTRARY TO LAW.

Criminal Case No. 98126

The undersigned Assistant Prosecutor accuses BONG ABDULAH @ BONG HASAN ZAMAN of the crime of Murder, committed as follows:

That on or about the 6th day of November 1992, in the Municipality of Tagig (sic), Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a deadly weapon, with intent to kill, by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab Evelyn Aguirre on her body, thereby inflicting upon the latter stab wounds which directly caused her death.

CONTRARY TO LAW.[10]

Appellant and his cohorts remained at large for several years.[11] In 1998, appellant was finally brought to trial in these murder cases, following his apprehension and detention for violation of Presidential Decree (P.D.) No. 1866, of the elections gun ban, and of Republic Act (R.A.) No. 6425.[12] On arraignment, he pleaded not guilty to the murder charges.[13]

In his defense, appellant asserted that he was mistakenly identified as "Muhammad Abdulah," because he is "Musa Dalamban." He was arrested not for the murder of the victims but for violation of special laws. He further denied knowing any of the victims,[14] claiming that, at the time the murder happened, he was in Cotabato City working as a helper of Guapal Saliling in the latter's wood business.[15]

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[10] *Id.*

[11] *Id.* at 29.

[12] *Id.* at 31.

[13] *Id.* at 41.

[14] TSN, March 13, 2000, pp. 1-6; TSN, June 26, 2000, pp. 1-3.

[15] TSN, July 10, 2000, pp. 3-8.

On August 24, 2000, the trial court rendered its Decision[16] finding the appellant guilty beyond reasonable doubt of three counts of murder. The dispositive portion thereof reads:

> WHEREFORE, accused Muhammad Abdulah, also known as "Bong Abdullah," "Bong Hasan Zaman" is found guilty beyond reasonable doubt of having committed three (3) counts of Murder under Article 248 of the Revised Penal Code in Criminal Cases Nos. 98124, 98125 and 98126 and is sentence (sic) to suffer in prison the penalty of *Reclusion Perpetua* for each count.
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> He is also ordered to indemnify the private complainant Romeo Dindero the amount of (sic) ₱150,000.00 and to pay another ₱150,000.00 as moral damages plus the cost of suit.
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> SO ORDERED.[17]

On direct appeal to this Court in G.R. Nos. 145306-08, we referred the cases to the appellate court for intermediate review following the doctrine in *People v. Mateo*.[18] In its July 17, 2007 Decision,[19] the CA, as aforesaid, affirmed *in toto* the decision of the trial court. Thus, we now finally review the trial and the appellate courts' uniform findings.

We affirm with modifications. The Court notes that the basis of the trial and the appellate courts in convicting the appellant of three counts of murder is circumstantial evidence, given the absence of any direct evidence as to who actually killed the victims. Section 4, Rule 133 of the Rules of Court provides that, for the same to be sufficient for conviction, there must be more than one circumstance; the facts from which the inferences are derived are proven; and the combination of all circumstances is such as to produce a conviction beyond reasonable doubt.[20]

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[16] *Supra* note 2.

[17] Records, p. 260.

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

[19] *Supra* note 1.

[20] *People v. Oliva*, 402 Phil. 482, 493 (2001); *People v. Casingal*, 391 Phil. 780, 794 (2000); Section 4, Rule 133 of the Rules of Court provides in full:

A judgment of conviction based on circumstantial evidence can be upheld only if the circumstances proven constitute an unbroken chain leading to one fair and reasonable conclusion that the defendants are guilty, to the exclusion of any other conclusion.[21] The circumstances proved must be concordant with each other, consistent with the hypothesis that the accused is guilty and, at the same time, inconsistent with any hypothesis other than that of guilt. 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.[22]

Here, the circumstances proven during the trial are that (1) appellant and several companions went to the house of Romelyn in Intramuros, Manila; (2) on arrival, appellant asked for the whereabouts of Romelyn; (3) appellant then forcibly dragged the victims Evelyn and Jovy from Romelyn's house to the alley leading to the house and pushed them inside a parked black car; (4) one of appellant's companions poked a gun at Jovy; (5) appellant then warned the onlookers to not interfere with them and to be silent over what was happening; (6) appellant drove the car and sped off; (7) the day after Evelyn and Jovy were taken, their dead bodies, together with that of Romelyn, were recovered in Taguig, Metro Manila; and (8) their bodies had stab wounds, and the necks had ligature marks.

Appellant was also positively identified by the prosecution witnesses, Leny Aguirre, Evelyn's daughter, who was in the

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Sec. 4. *Circumstantial evidence, when sufficient*.—Circumstantial evidence is sufficient for conviction if:

(a) There is more than one circumstance;

(b) The facts from which the inferences are derived are proven; and

(c) The combination of all circumstances is such as to produce a conviction beyond reasonable doubt.

[21] *People v. Geron*, 346 Phil. 14, 24 (1997).

[22] *People v. Calica*, G.R. No. 139178, April 14, 2004, 427 SCRA 336, 349-350.

house when appellant arrived, and Sabina Badilla, a neighbor, who saw the commotion. Thus, Leny, on direct examination, related:

Q: Now, when you, together with your sister Juliet, mother and niece were at the house of Ate Romelyn in Intramuros, was there any person who arrived in the said house?
A: Yes, Sir.

Q: Who was that person who arrived?
A: Bong and one companion.

Q: And do you know why Bong and his companion arrived at the house of your Ate Romelyn?
A: Yes, Sir.

Q: Why?
A: They are looking for Ate Cristy.

Q: When you said Ate Cristy, are you also referring to your Ate Romelyn?
A: Yes, Sir.

Q: By the way, who was able to talk to Bong Abdulah in your house?
A: My mother.

Q: At that time, what time did Bong Abdulah was able to talk to your mother looking for your Ate Romelyn?
A: 6:00 in the afternoon.

Q: Now, what was the reply of your mother, if any, when Bong was looking for your Ate Romelyn?
A: She said that she is going to fetch my sister Romelyn at the club.

Q: And what happened next when you (sic) mother told Bong that she will just pick up your Ate Romelyn at the club?
A: My mother Evelyn accompanied Bong at the club to fetch my sister Romelyn or Cristy.

Q: Aside from your mother Evelyn, who else went with Bong Abdulah to fetch your Ate Romelyn?
A: Ate Jovy.

Q: And when you said Jovy, are you referring to Jovy Aguirre?
A: Aguirre-Bolandos.

Q: Now when your mother Evelyn Bolandos and your sister Jovy Aguirre-Bolandos went out with Bong Abdulah to fetch your Ate Romelyn, were they able to return?
A: No more.

Q: What happened to your mother and sister?
A: From that time, we did not hear anything about them.

Q: And when for the first time did you come to know that something tragic happened to your mother and sisters?
A: On November 8, 1992.

Q: And what happened to your mother and sisters?
A: We have heard that there was a massacre and they are the victims.

Q: Now, by the way, when you learned that your mother and sisters were killed, where did you and your other sister and niece went?
A: In Taguig.

Q: And where in Taguig?
A: In (sic) the Municipal Hall of Taguig.

Q: And what happened when you arrived at the Municipal Hall of Taguig?
A: I got afraid when I learned about it.

Q: Why?
A: I got afraid when the pictures were shown to me and it was true that my mother and my sisters were massacred.

Q: Now, you said that it was Bong Abdulah who fetched your mother and sisters. Will you be able to identify Bong Abdulah if you will see him again?
A: Yes, sir.

Q: If he is inside this courtroom, please point out to him?

(Witness pointing to the man in yellow T-shirt with RPJ leverage who identified himself as Musa Ed Dalamban).[23]

[23] TSN, July 30, 1998, pp. 3-5.

Sabina Badilla further testified as follows:

Q Now, when you were then infront (sic) of your house in Victoria St., Intramuros, Manila on November 6, 1992 at around 6:00 in the evening, will you please tell us if there was any unusual incident if any that you noticed?

A Yes, Sir.

Q Will you please tell this Hon. Court, what was that unusual incident?

A What I saw at that time when I was infront of my house was that Muhammad Bong Abdulah Mangsungayan was dragging Evelyn Bolandos and also they were poking a .38 caliber gun then this Latip Mangsungayan was the one whose (sic) holding Jovy then, they dragged them. Muhammad told us that "*kung anong nakikita ninyo walang magsasalita, totodasin ko lahat walang makikialam totodasin ko kayong lahat*."

Q Now, when you saw Bong Abdulah alias Muhammad Mangsungayan and Latip Mangsungayan forcibly dragging Evelyn Aguirre and Jovy, what did you do, if any?

A I was not able to do anything because they were threatening us, then what Bong and Latip did they dragged Evelyn and Jovy out from the alley, I can see the black car outside and that is where they're riding and also there were three other persons there waiting at the car.

Q What happened next, if any, after Bong Abdulah and Latip Mangsungayan dragged Evelyn and Jovy towards that parked black car?

A The next thing that happened was that the door of the black car was opened and Jovy and Evelyn were forcibly pushed inside the car and I saw Racid *alias* Lumang Kulog and Bagyo alias Muhammad twin brother of the accused Muhammad and also Dhats Kamama, they were five all in all *siksikan na sila sa kotse* because they pushed Evelyn and Jovy inside. That makes them seven all in all inside the car.

Q What happened next when you saw Evelyn and Jovy pushed inside that car?

A After I saw Evelyn and Jovy pushed inside the car and all of them were already inside then the one who drove the car

was Muhammad *alias* Bong Abdulah then they sped off then I did not know anymore what else happened.

Q: By the way, if you will see again this Bong Abdulah *alias* Muhammad Mangsungayan, will you be able to identify him?

A: Yes sir, I can identify him because before I used to talk to him but now it seems he doesn't know me anymore because my hair was long before and also I wore a Bombay dress because my husband is a Bombay.

Q: If he is present inside this courtroom please point to him?

A: Him beside the woman wearing Turban.

Interpreter:

Witness pointed to a man wearing yellow T-shirt and when asked what's his name identified himself as Musa Dalamdam.

A: No, it's not his true name he's telling a lie.[24]

The circumstantial evidence presented in this case and the positive identification of appellant as the person who abducted the victims, Evelyn and Jovy, are sufficient to render the conviction of the former for the killing of the latter. In the two cases of *People v. Delim*,[25] with similar factual milieu as the one at bar, where the victim was abducted and was consequently found dead, we held the accused liable for the killing.

Appellant's defenses of denial and alibi in this case are not worthy of belief, given that he failed to show that it was physically impossible for him to be present at the time and place of the crime.[26] Established is the rule that denial and alibi, if not substantiated by clear and convincing proof, are negative and self-serving evidence undeserving of weight in law.[27]

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[24] TSN, July 20, 1999, p. 3-4.

[25] 444 Phil. 430 (2003); G.R. No. 175942, September 13, 2007, 533 SCRA 366.

[26] *People v. Delmo*, 439 Phil. 212, 259 (2002).

[27] *People v. Baltazar*, 455 Phil. 320, 331 (2003); *People v. Berdin*, 462 Phil. 290, 304 (2003).

In this case, nevertheless, we find appellant liable only for the death of Evelyn and Jovy, there being no evidence to show that he also abducted Romelyn. While the prosecution witnesses testified that appellant intended to proceed to the club where Romelyn worked, no evidence was produced that he, in fact, reached the club and fetched Romelyn from there.

As in *Delim*,[28] we also find, in this case, appellant guilty only of homicide defined and penalized by Article 249[29] of the Revised Penal Code (RPC). Treachery and evident premeditation, the circumstances alleged in the informations, cannot be appreciated to qualify the killing to murder, considering that these were not proven during the trial. It is an ancient but revered doctrine that qualifying and aggravating circumstances before being taken into consideration, for the purpose of increasing the penalty to be imposed, must be proved with equal certainty as those which establish the commission of the criminal offense. It is not only the central fact of a killing that must be shown beyond reasonable doubt; every qualifying or aggravating circumstance alleged to have been present and to have attended such killing must similarly be shown by the same degree of proof.[30]

Considering the absence of any modifying circumstance in the commission of homicide, the indeterminate penalty to be imposed for each of the two counts should be within the range of *prisión mayor*, as minimum, to *reclusión temporal* in its medium period, as maximum.

Following current jurisprudence, appellant is ordered to pay the heirs of the victims, for each of the two counts of

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[28] *Supra*.

[29] Article 249 of the RPC provides:

Art. 249. *Homicide*.—Any person who, not falling within the provisions of Article 246, shall kill another, without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusion temporal*.

[30] *People v. Derilo*, 338 Phil. 350, 364 (1997).

homicide, civil indemnity of ₱50,000.00 and moral damages of ₱50,000.00.[31]

WHEREFORE, premises considered, the appeal is *PARTIALLY GRANTED*. The July 17, 2007 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00023, and the August 24, 2000 Decision of the Regional Trial Court, Branch 158 of Pasig City in Criminal Cases Nos. 98124, 98125 and 98126 are *AFFIRMED WITH THE FOLLOWING MODIFICATIONS*:

(1) appellant is found guilty beyond reasonable doubt of two (2) counts of homicide defined and penalized under Article 249 of the Revised Penal Code;

(2) for each count, he is sentenced to suffer the indeterminate penalty of ten (10) years and one (1) day of *prisión mayor* in its maximum period, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusión temporal* in its medium period, as maximum.

(3) for each count, appellant is ordered to pay the heirs of the victims civil indemnity of ₱50,000.00 and moral damages of ₱50,000.00.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Chico-Nazario, and *Leonardo-de Castro,*[*] *JJ.,* concur.

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[31] *People v. Sorila*, G.R. No. 178540, June 27, 2008 SCRA; *People v. Bajar*, 460 Phil. 683 (2003).

[*] Additional member per Special Order No. 546 dated January 5, 2009.

SECOND DIVISION

[G.R. No. 182549. January 20, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SERGIO LAGARDE,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; PRINCIPLES GOVERNING THE COURTS IN RAPE CASES.— In rape cases, courts are governed by the following principles: (1) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) due to the nature of the crime of rape in which only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense. Due to the nature of this crime, only the complainant can testify against the assailant. Accordingly, conviction for rape may be solely based on the complainant's testimony provided it is credible, natural, convincing, and consistent with human nature and the normal course of things.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONIES OF CHILD-VICTIMS ARE NORMALLY GIVEN FULL WEIGHT AND CREDENCE, SINCE WHEN MINORS SAY THEY WERE RAPED, THEY SAY IN EFFECT ALL THAT IS NECESSARY TO SHOW THAT RAPE WAS COMMITTED.— The trial court observed that AAA's testimony was credible, straightforward, clear, and convincing. She ably identified accused-appellant as her attacker and described in detail how she was sexually assaulted. There is no reason a child would fabricate such a serious accusation such as rape and risk public humiliation if not to seek justice. It is for this reason that testimonies of child-victims are normally given full weight and credence, since when minors say they were raped, they say in effect all that is necessary to show that rape was committed. x x x

3. ID.; ID.; ALIBI; WHEN TO PROSPER AS A DEFENSE.— x x x For alibi to prosper, the accused persons must establish, by clear and convincing evidence, (1) their presence at another place at the time of the perpetration of the offense and (2) the physical impossibility of their presence at the scene of the crime. It should also be supported by the most convincing evidence since it is an inherently weak defense which can easily be fabricated. x x x

4. ID.; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; DESIGNATION OF THE OFFENSE; QUALIFYING AND AGGRAVATING CIRCUMSTANCES MUST BE SPECIFICALLY ALLEGED IN THE INFORMATION TO BE APPRECIATED.— x x x [T]he use of a bladed weapon and uninhibited place cannot be appreciated here because these were not specifically alleged in the information. Section 8, Rule 110 of the Revised Rules of Criminal Procedure provides: Sec. 8. *Designation of the offense*.— The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it. It is a basic constitutional right of the accused persons to be informed of the nature and cause of accusation against them. It would be a denial of accused-appellant's basic right to due process if he is charged with simple rape and consequently convicted with certain qualifying circumstances which were not alleged in the information.

5. CRIMINAL LAW; RAPE; WHEN DEATH PENALTY SHALL BE IMPOSED.— x x x Sec. 2 of RA 8353 or the *Anti-Rape Law of 1997*, incorporating Article 266-B into the Revised Penal Code, provides: The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/ qualifying circumstances: 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. 2) When the victim is under the custody of the police or military authorities or any law enforcement or penal institution. 3) When the rape is committed in full view of the spouse, parent, any of the children or other relatives within

the third civil degree of consanguinity. 4) When the victim is a religious engaged in legitimate vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime. 5) When the victim is a child below seven (7) years old. 6) When the offender knows that he is afflicted with Human Immuno-Deficiency Virus (HIV)/ Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and virus or disease is transmitted to the victim. 7) When committed by any member of the Armed Forces of the Philippines or para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime. 8) When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation or disability. 9) When the offender knew of the pregnancy of the offended party at the time of the commission of the crime. 10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

6. ID.; ID.; APPLICABLE PENALTY WHEN THE VICTIM IS UNDER TWELVE (12) YEARS OLD BUT NOT BELOW SEVEN (7) YEARS OLD IS *RECLUSION PERPETUA*.— In the case at bar, the trial court found that accused-appellant, with the use of force, did have sexual intercourse with the victim who was then under 12 years old. His guilt was established beyond reasonable doubt. Thus, the applicable penalty is only *reclusion perpetua* and not death, the imposition of which has been abolished. Without the qualifying circumstances, the indemnity should also be reduced from Php 75,000 to Php 50,000 only. The award of Php 50,000 as moral damages is retained.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

In this appeal, accused-appellant Sergio Lagarde seeks to reverse the Decision of the Court of Appeals (CA) dated March 7, 2007[1] in CA-G.R. CR-H.C. No. 00069, affirming the judgment of conviction for rape handed down by the Regional Trial Court (RTC), Branch 13 in Carigara, Leyte on April 24, 2003[2] in Criminal Case No. 4132.

The Facts

Accused-appellant was charged with rape in an information dated March 1, 2002 which reads:

> That on or about the 27th day of December, 2001, in the municipality of San Miguel, Province of Leyte, Philippines and within the jurisdiction of this Honorable court, the above-named accused, with deliberate intent with lewd designs and by use of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with [AAA], 11 years old, against her will to her damage and prejudice.
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> CONTRARY TO LAW.[3]

Upon arraignment on August 5, 2002, accused-appellant pleaded not guilty.

During trial, the prosecution presented the victim, AAA,[4] and Drs. Felix P. Oyzon and Karen Palencia-Jadloc as witnesses.

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[1] *Rollo*, pp. 4-24. Penned by Associate Justice Priscilla Baltazar-Padilla and concurred in by Associate Justices Pampio A. Abarintos and Stephen C. Cruz.

[2] CA *rollo*, pp. 15-26. Penned by Judge Crisostomo L. Garrido.

[3] *Id.* at 7.

[4] The Court shall use fictitious initials in lieu of the real names of the victim and the latter's immediate family members other than accused-appellant. See *People v. Gloria*, G.R. No. 168476, September 27, 2006, 503 SCRA 742; citing Sec. 29 of Republic Act No. (RA) 7610, Sec. 44 of RA 9262, and Sec. 40 of the *Rule on Violence against Women and their Children*; and *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

According to the prosecution, on December 27, 2001, around 12 noon, AAA and her mother were at the house of Lolita Lagarde-Sarsosa, which was about 500 to 600 meters away from the victim's house, to attend the death anniversary celebration of Lolita's mother. Accused-appellant was also present in that occasion, being the nephew of Lolita. Accused-appellant is a neighbor of AAA and the father of her classmate.

After lunch, AAA's mother, accused-appellant, and the other visitors started drinking *tuba* (coconut wine). AAA remained inside the house until her mother ordered her to pick a jackfruit at around 4:00 p.m. AAA obliged and went outside towards the jackfruit tree which was about 150 meters away from the house. When she was near the tree, she sensed the presence of somebody behind her who suddenly placed his hand over her mouth and dragged her to the *loonan* or copra dryer which was about eight meters away from the jackfruit tree. There, AAA recognized the attacker as accused-appellant.

In the copra dryer, accused-appellant undressed AAA while keeping one of his hands on her mouth. He then took off his clothes and told AAA to lie on the *papag* or bamboo bench. Accused-appellant then mounted AAA, poked a seven-inch knife on her face, and told her to be silent. Thereafter, he inserted his penis into her vagina and made a pumping motion, which hurt AAA's chest and vagina. After the sexual assault, accused-appellant stood up, put on his shirt and pants, and then left the place. Not long after, AAA dressed herself up, and returned to the house and told her ordeal to her mother. AAA and her mother subsequently reported the incident to the officials of Barangay Lukay, San Miguel, Leyte. Accused-appellant was immediately arrested.[5]

On December 28, 2001, AAA was brought to the Eastern Visayas Regional Medical Center, Tacloban City for physical examination. Drs. Oyzon and Palencia-Jadloc, the attending medical examiners, submitted a report with the following relevant findings:

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

Pelvic Exam –

External genitalia: grossly normal

Intoitus: (+) healed incomplete laceration of the hymen at 3, 9 & 10 o'clock

S/E: speculum inserted with ease

Cervix pinkish, small, smooth (+) whitish mucoid discharge

I/E: cervix firm, closed, nontender on motion

U: small

A: no mass/tenderness

D: whitish mucoid discharge

LABORATORY RESULT:

Vaginal smear for presence of spermatozoa = Negative for spermatozoa[6]

The pertinent testimony of Dr. Oyzon tended to prove that there was apparently no struggle on the part of the victim because there was no hematoma on her body, although it is possible for injuries to be concealed. Dr. Palencia-Jadloc, on the other hand, established the fact that the victim had sexual intercourse.[7]

For the defense, Lolita testified that on December 27, 2001, during the celebration of her mother's death anniversary, accused-appellant was drinking *tuba* with other visitors on the ground floor of her house. Most of the time, AAA played with Lolita's niece, Jennilyn, around 10 meters away from the house. AAA went to see her mother a few times on the second floor of the house until they left around 7:00 p.m. Lolita asserted that at no time did accused-appellant leave his seat until he left around 5:00 p.m. On cross-examination, Lolita stated that prior to the incident, there was no altercation between AAA's mother and accused-appellant, and she did not know why they would file a case against her nephew.[8]

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[6] *Id.* at 17-18.

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

[8] *Id.* at 20.

Accused-appellant denied raping AAA. He testified that on the day the alleged offense occurred, he never left the house of Lolita from the time he arrived at 12 noon until he went home at about 9:00 p.m. He admitted having a drinking spree with other visitors, but disclaimed never talking to AAA who left with her mother at 4:30 p.m. He stated that there was no *loonan* or copra/kiln dryer near the house of Lolita.[9]

The RTC found AAA's testimony credible, noting that at her age, it is inconceivable for her to concoct a tale of having been raped. Her accusation, according to the RTC, was supported by medical findings that she was indeed sexually abused. The lower court dismissed accused-appellant's denial and alibi. Lolita's testimony was likewise disbelieved not only because she was related to accused-appellant but also because she herself was busy drinking *tuba* in another part of the house. She could not categorically say, the RTC added, that accused-appellant did not leave his seat and molest AAA. Thus, the trial court convicted accused-appellant of rape aggravated by minority of the victim, use of bladed weapon and force, and uninhabited place in view of the location of the offense. The dispositive portion of the RTC's decision states:

> WHEREFORE, premises considered, pursuant to Article 266-A and 266-B of the Revised Penal Code as Amended, and further amended by R.A. No. 8353 (The Anti Rape law of 1997) and the amendatory provision of R.A. No. 7659 (Death Penalty Law), the Court found SERGIO LAGARDE, **GUILTY,** beyond reasonable doubt for the crime of Rape charged under the information and sentenced to suffer a maximum penalty of **DEATH** and pay civil indemnity to [AAA], the sum of seventy Five Thousand (₱75,000.00) Pesos and pay moral damages in the amount of Fifty Thousand (₱50,000.00) Pesos, and
>
> Pay the cost.
>
> SO ORDERED.[10]

In view of the imposition of the death penalty, the case was automatically elevated to the Court. In accordance with

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[9] *Id.* at 21.

[10] *Supra* note 2, at 25-26.

the ruling in *People v. Mateo*,[11] however, the case was transferred to the CA for review per this Court's August 24, 2004 Resolution.

The Ruling of the CA

The appellate court upheld the trial court's findings of fact and judgment of conviction. With regard to the penalty, however, the CA ruled that the trial court erred when it imposed the death sentence on the basis of the following aggravating circumstances: minority, use of bladed weapon, and uninhabited place. Aside from the abolition of the death penalty, the CA held that:

> It is basic in criminal procedure that the purpose of the information is to inform the accused of the nature and cause of the accusation against him or the charge against him so as to enable him to prepare a suitable defense. It would be a denial of the right of the accused to be informed of the charges against him, and consequently, a denial of due process, if he is charged with simple rape and convicted of its qualified form punishable by death although the attendant circumstances qualifying the offense and resulting in capital punishment were not set forth in the indictment on which he was arraigned. More importantly, they are not the circumstances that would call for the application of death penalty. Article 266-B of Republic Act 8353 provides, *viz*-
>
> x x x x x x x x x
>
> Anent the victim's minority, the allegation in the Information that she was a minor and only eleven (11) years old at the time she was raped by accused-appellant was but an assertion of fact to establish that the crime committed by accused-appellant fall under Article 266-A in relation to Article 266-B of the Revised Penal Code which provides:
>
> Art. 266-A. Rape; when and how 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

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

d) when the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mention above be present.

Art. 266-B. *Penalties*. Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

To warrant sentencing the accused to death, the child must be under seven (7) years of age.

x x x x x x x x x

Consequently, the amount of Seventy Five Thousand Pesos (₱75,000.00) as indemnity awarded by the trial court to the victim must be reduced to Fifty Thousand Pesos (₱50,000.00) for the crime of rape committed in this case was in its simple form in the absence of any qualifying circumstance under which the imposition of death penalty is unauthorized.[12]

The dispositive portion of the CA's judgment reads:

WHEREFORE, the Decision of the Regional Trial Court of Carigara, Leyte, Branch 13, dated 24 April 2003, in Criminal Case No. 4132 is UPHELD with modification as to the penalty and award of civil damages. Accordingly, accused-appellant Sergio Lagarde is hereby sentenced to suffer *Reclusion Perpetua* in lieu of death penalty and is further ordered to pay the private complainant the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity and another Fifty Thousand Pesos (₱50,000.00) as moral damages.[13]

Hence, before us is this appeal.

Assignment of Errors

THE COURT *A QUO* GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

THE COURT *A QUO* GRAVELY ERRED IN IMPOSING UPON THE ACCUSED-APPELLANT THE PENALTY OF [*RECLUSION PERPETUA*][14]

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[12] *Supra* note 1, at 19-22.

[13] *Supra* note 1, at 23.

[14] CA *rollo*, p. 36. Appellant's Brief originally states: The court *a quo* gravely erred in imposing upon the accused-appellant the supreme penalty of death.

Accused-appellant asserts that the trial court should not have easily dismissed his denial and alibi, *i.e.*, that he was at the party drinking *tuba* with the other visitors and he neither left his seat nor talked to the victim that day. He stresses that his testimony was corroborated by Lolita. Considering that the crime involves capital punishment, conviction should, according to accused-appellant, rest on moral certainty of guilt.

Accused-appellant also questions the death penalty imposed on him, arguing that the aggravating circumstances of minority, use of a bladed weapon, and uninhabited place were not specifically alleged in the information. Since the crime was not qualified, the award of Ph₱75,000 was likewise erroneous.

The Office of the Solicitor General, on the other hand, agrees with the judgment of conviction but not with the death penalty for the same reasons submitted by accused-appellant.

The Court's Ruling

The appeal has no merit.

In rape cases, courts are governed by the following principles: (1) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) due to the nature of the crime of rape in which only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense. Due to the nature of this crime, only the complainant can testify against the assailant. Accordingly, conviction for rape may be solely based on the complainant's testimony provided it is credible, natural, convincing, and consistent with human nature and the normal course of things.[15]

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[15] *People v. Nazareno*, G.R. No. 167756, April 9, 2008, 551 SCRA 16, 31.

In this case, AAA testified as follows:

PROS. MERIN:

Q: Do you know Sergio Lagarde?
A: Yes, sir.

Q: Is he inside the courtroom?
A: Yes, sir.

Q: Where is he?
A: There. [Witness pointing to a person inside of the courtroom who when asked of his name identified himself as Sergio Lagarde.]

Q: Why do you know the accused in this case Sergio Lagarde?
A: Because his residence is near our house.

x x x x x x x x x

Q: On December 27, 2001, about 4:30 o'clock in the afternoon, where were you?
A: Yes, sir.

Q: Where were you?
A: I was in a celebration of the death anniversary.

Q: And who was celebrating then?
A: A certain Lolita friend of my mother.

Q: How far is that house to that of your house?
A: From here to the public market.

[Witness indicating a distance of five hundred (500) meters to six hundred (600) meters distance.]

Q: Now, were you alone in attending that particular death anniversary or '*tapos*'?
A: No, I was a companion of my mother.

x x x x x x x x x

Q: What time when you arrived at the place where there was a celebration?
A: About 12:00 o'clock noon.

Q: You mean, you and your mother took lunch in that particular place of Lolita?

A: Yes, sir we ate our lunch in that place.

Q: And after you ate lunch at that place what did you do next?
A: My mother together with some other people had a drinking spree.

x x x x x x x x x

Q: And during that time when your mother having that drinking spree where did you go, tell this Court?
A: I stayed inside their house.

Q: And up to when did you stay?
A: Until about 4:00 o'clock in the afternoon.

Q: And after 4:00 o'clock where did you go?
A: My mother ordered me to pick a jackfruit for me to cook as a viand.

x x x x x x x x x

Q: And did you accede to that order of your mother?
A: Yes, sir.

Q: Now, you in fact reached that jackfruit tree?
A: Yes, sir.

Q: Were you successful in taking a jackfruit?
A: Yes, sir.

Q: Were you successful in taking a jackfruit?
A: No sir, I was not.

Q: Were you alone in going there?
A: Yes, sir.

Q: Why were you not able to get a jackfruit?
A: Because that person was there.

Q: Who was that person?
A: Sergio Lagarde.

Q: And where was he located in reference to that jackfruit tree?
A: He was already at my back.

Q: Now, were there houses nearby that jackfruit tree?
A: None, sir.

Q: And when you noticed the presence of Sergio Lagarde what happened next, if any?
A: He placed his hand on my mouth to keep me from not making any noise.

Q: Was he in front of you? What was his relative position when he put his hand at your mouth?
A: He was at my back.

Q: And after your mouth was covered by his hand what did Sergio Lagarde do next, if any?
A: He brought me to the copra dryer.

x x x x x x x x x

Q: Now, how were you brought by this accused to that "*loonan*" or kiln dryer?
A: He dragged me.

Q: How were you able to know his person as he was situated at your back?
A: I learned his identity when we were already at the kiln dryer.

Q: When you reached the kiln dryer, what happened next, tell the Court?
A: He placed himself on top of me.

Q: And what was your relative position when he placed himself on top of you? Were you on a bed or were you on the ground?
A: I was lying down face up in [the] bamboo bench.

x x x x x x x x x

Q: When you were placed by this accused on this "*papag*" and you were laid upon on that "*papag*" while he placed himself on top of you, what did this accused do upon your person?
A: He poked a knife on me and told me not to tell our neighbors.

x x x x x x x x x

Q: Now, when this knife was poked upon your face which is about seven (7) inches long what did you feel?
A: I was afraid.

Q: Were you able to shout for help?
A: No, I was not able to shout and he placed his hand on my mouth.

x x x x x x x x x

Q: Now, how did he rape you?
A: He placed himself on top of me.

Q: And were you still with your clothes?
A: No, he has none.

Q: How about you?
A: None also.

Q: Who took off your clothes?
A: He.

Q: When did he take your clothes?
A: At the time when he placed his hand on my mouth.[16]

The trial court observed that AAA's testimony was credible, straightforward, clear, and convincing. She ably identified accused-appellant as her attacker and described in detail how she was sexually assaulted. There is no reason a child would fabricate such a serious accusation such as rape and risk public humiliation if not to seek justice. It is for this reason that testimonies of child-victims are normally given full weight and credence, since when minors say they were raped, they say in effect all that is necessary to show that rape was committed.[17] According to the trial court:

> No woman, especially one who is of tender age would concoct a tale of defloration, allow the examination of her private parts, and undergo the expense, trouble, inconvenience, not to mention the trauma of a public trial, if she is not motivated solely by the desire to have the culprit apprehended and punished. (*People v. Segui*, 346 SCRA 178)
>
> The young rape victim, [AAA], when she testified, was frank and straightforward in vividly describing her horrible and harrowing sexual molestation in the hands of the accused at the copra kiln.
>
> Time-tested is the principle that when a woman says she has been raped, she says in effect all that is necessary to show that she has

[16] TSN, October 2, 2002, pp. 3-8.

[17] *People v. Tejada*, G.R. No. 126166, July 10, 2001, 360 SCRA 658, 670.

been so raped. A woman will not expose herself to the humiliation of a trial with its attendant publicity and the morbid curiosity it would arouse, unless she has been truly wronged and seek atonement for her abuse. (*People v. Boy Domingo, et al.*, G.R. No. 143660, June 5, 2002.)

x x x x x x x x x

It is inconceivable that [AAA], a very young woman, 11 years of age would concoct a story that she had been raped by her neighbor, if indeed she was not sexually molested and that her only intention is to seek justice from the bestial and harrowing experience she suffered from the hands of the accused, Sergio Lagarde. In fact, her family and family of the accused, Sergio Lagarde, has no misunderstanding that would propel her to file such a heinous crime against the accused.[18]

Accused-appellant admitted in court that he is not aware of any cause for the accusation against him:

PROS. MERIN:

Q: Did I hear you correctly from the question of your counsel that in so far as the family of [AAA], there is no untoward relationship between you and [her] family x x x?

A: No, we do not have any misunderstanding and I am no a troublesome person and also [AAA and her siblings] are friends of my children.

Q: And in fact [AAA] is a close friend of your daughter?

A: Yes, because they are classmates.

Q: So, you do not know of any reason or reasons why [AAA] a classmate of your daughter would file a case against you of raping her?

A: I do not know of her, sir.[19]

The victim's credibility is further bolstered by the immediate reporting of the incident to her mother and subsequently to the

[18] *Supra* note 2, at 22-24.

[19] TSN, February 6, 2003, pp. 10-11.

authorities. Moreover, the medical findings of Drs. Oyzon and Palencia-Jadloc established the fact that complainant had sexual intercourse.

Accused-appellant, on the other hand, could only offer denial and alibi as defenses. His alibi that he spent the afternoon drinking with other visitors does not deserve merit since he was present in the same house where the victim was. The copra dryer was only 150 meters away from the house. For alibi to prosper, the accused persons must establish, by clear and convincing evidence, (1) their presence at another place at the time of the perpetration of the offense and (2) the physical impossibility of their presence at the scene of the crime.[20] It should also be supported by the most convincing evidence since it is an inherently weak defense which can easily be fabricated.[21] Accused-appellant's alibi miserably fails the foregoing test. His only defense witness, his relative, Lolita, cannot consistently and convincingly assert that accused-appellant stayed in one place the whole afternoon. Lolita herself was busy entertaining other visitors while accused-appellant was outside the house. As found by the trial court:

> The testimony of Lolita Lagarde, aunt of the accused, Sergio Lagarde, claiming among others that since Sergio Lagarde arrived in her house, took his lunch at noontime and started drinking tuba at 1:00 x x x in the afternoon up to 8:00 x x x in the evening, and that, during that period, Sergio Lagarde did not leave the place, is of dubious veracity. Sergio Lagarde claimed that her auntie Lolita was drinking *tuba* at the upstairs of the house, together with Minggay Guipon, Esing Lagarde, Bandang Lar, June Biako, Lukas, Olay, Silay, including the accused and some others, however at about 1:00 o'clock in the afternoon, because of the number of people who kept on coming upstairs, Lolita Lagarde requested the accused and his male drinking partners to transfer to the yard of her house, where they continued their drinking spree. Lolita Lagarde and her drinking partners remained drinking upstairs. She could not categorically say that the accused, Sergio Lagarde did

[20] *People v. Obrique*, G.R. No. 146859, January 20, 2004, 420 SCRA 304, 321.

[21] *People v. Makilang*, G.R. No. 139329, October 23, 2001, 368 SCRA 155, 167.

not leave her place nor molested Mary Ann Guipon at around 4:30 o'clock in the afternoon, when she, herself, was also busy drinking inside their house upstairs, separated by walls, from the place where Sergio Lagarde and his companions were drinking at the yard. It could only be surmised that Lolita Lagarde only concocted her testimony in favor of her nephew, Sergio Lagarde.[22]

As regards the second assigned error, we agree with the appellate court that the death penalty is not warranted by the alleged aggravating circumstances, *i.e.*, victim's minority, use of bladed weapon, and uninhabited place. *First*, the death penalty was abolished under Republic Act No. (RA) 9346. *Second*, the use of a bladed weapon and uninhibited place cannot be appreciated here because these were not specifically alleged in the information. Section 8, Rule 110 of the Revised Rules of Criminal Procedure provides:

> Sec. 8. *Designation of the offense*.—The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

It is a basic constitutional right of the accused persons to be informed of the nature and cause of accusation against them. It would be a denial of accused-appellant's basic right to due process if he is charged with simple rape and consequently convicted with certain qualifying circumstances which were not alleged in the information.

The appellate court correctly ruled that the use of a bladed weapon and uninhabited place are not circumstances that would call for the imposition of the death penalty. Sec. 2 of RA 8353 or the *Anti-Rape Law of 1997*, incorporating Article 266-B into the Revised Penal Code, provides:

> 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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[22] *Supra* note 2, at 24-25.

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.

2) When the victim is under the custody of the police or military authorities or any law enforcement or penal institution.

3) When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity.

4) When the victim is a religious engaged in legitimate vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime.

5) When the victim is a child below seven (7) years old.

6) When the offender knows that he is afflicted with Human Immuno-Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and virus or disease is transmitted to the victim.

7) When committed by any member of the Armed Forces of the Philippines or para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime.

8) When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation or disability.

9) When the offender knew of the pregnancy of the offended party at the time of the commission of the crime.

10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

The victim's minority does not also qualify the offense to merit the death penalty. To warrant a death sentence, the victim must be under seven (7) years of age. The applicable provisions, therefore, are the following:

Art. 266-A. *Rape; when and how committed.*—

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mention above is present.

x x x x x x x x x

Art. 266-B. *Penalties*.—Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

In the case at bar, the trial court found that accused-appellant, with the use of force, did have sexual intercourse with the victim who was then under 12 years old. His guilt was established beyond reasonable doubt. Thus, the applicable penalty is only *reclusion perpetua* and not death, the imposition of which has been abolished. Without the qualifying circumstances, the indemnity should also be reduced from Php75,000 to Php50,000 only. The award of Php50,000 as moral damages is retained.[23]

WHEREFORE, the CA's March 7, 2007 Decision in CA-G.R. CR-H.C. No. 00069 is *AFFIRMED IN TOTO*. No costs.

SO ORDERED.

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

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[23] *People v. Nava, Jr.*, G.R. Nos. 130509-12, June 19, 2000, 333 SCRA 749, 764.

SECOND DIVISION

[G.R. No. 182750. January 20, 2009]

RODEL URBANO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; MITIGATING CIRCUMSTANCES; PRESENT IN CASE AT BAR.— Petitioner next contends that the mitigating circumstances of no intention to commit so grave a wrong and sufficient provocation on the part of the victim ought to be appreciated in petitioner's favor. On this score, we agree with petitioner. Paragraphs 3 and 4 of Art. 13, RPC provide as follows: Art. 13. Mitigating circumstances.—The following are mitigating circumstances: x x x 3. That the offender had no intention to commit so grave a wrong as that committed. 4. That sufficient provocation or threat on the part of the offended party immediately preceded the act.

2. ID.; ID.; ID.; PROVOCATION; ELUCIDATED.— When the law speaks of provocation either as a mitigating circumstance or as an essential element of self-defense, the reference is to an unjust or improper conduct of the offended party capable of exciting, inciting, or irritating anyone; it is not enough that the provocative act be unreasonable or annoying; the provocation must be sufficient to excite one to commit the wrongful act and should immediately precede the act. This third requisite of self-defense is present: (1) when no provocation at all was given to the aggressor; (2) when, even if provocation was given, it was not sufficient; (3) when even if the provocation was sufficient, it was not given by the person defending himself; or (4) when even if a provocation was given by the person defending himself, it was not proximate and immediate to the act of aggression. In the instant case, Tomelden's insulting remarks directed at petitioner and uttered immediately before the fist fight constituted sufficient provocation. This is not to mention other irritating statements made by the deceased while they were having beer in Bugallon. Petitioner was the one provoked and challenged to a fist fight.

3. ID.; PENALTIES; APPLICABLE RULES WHEN THE OFFENSE WAS ATTENDED BY TWO MITIGATING CIRCUMSTANCES AND NONE OF THE AGGRAVATING CIRCUMSTANCES; EXPLAINED.— [W]ith no aggravating circumstance and two mitigating circumstances appreciable in favor of petitioner, we apply par. 5 of Art. 64, RPC, which pertinently provides: Art. 64. *Rules for the application of penalties which contain three periods*.—In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances: x x x 5. When there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances. The prescribed penalty for homicide under Art. 249 of the RPC is *reclusion temporal* or from 12 years and one day to 20 years. With the appreciation of two mitigating circumstances of no intention to commit so grave a wrong as that committed and of sufficient provocation from the victim, and the application of par. 5 of Art. 64, RPC, the imposable penalty would, thus, be the next lower penalty prescribed for homicide and this should be *prision mayor* or from six years and one day to 12 years. Consequently, with the application of the Indeterminate Sentence Law, petitioner ought to be incarcerated from *prision correccional* as minimum and *prision mayor* as maximum. In view of the circumstances of the case, considering that the petitioner never meant or intended to kill the victim, a prison term of eight (8) years and one (1) day of *prision mayor* as maximum period is proper while the period of two (2) years and four (4) months of *prision correccional* as minimum period is reasonable.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

This petition for review under Rule 45 seeks to reverse and set aside the Decision[1] dated January 25, 2008 of the Court of Appeals (CA) in CA-G.R. CR No. 25371 which affirmed with modification the April 30, 2001 Decision[2] of the Regional Trial Court (RTC), Branch 39 in Lingayen, Pangasinan in Criminal Case No. L-5028. The RTC found petitioner Rodel Urbano guilty beyond reasonable doubt of the crime of Homicide.

The Facts

In an Information filed before the RTC, petitioner was charged with Homicide, committed as follows:

> That on or about the 28th of September 1993 in the evening, in Barangay Poblacion, Municipality of Lingayen, Province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault, hit and maul Brigido Tomelden, inflicting upon him mortal injuries and as borne out from the autopsy report the following findings:
>
> EXTERNAL FINDINGS:
>
> A- Softened portion of the scalp over (R) occipito-temporal area about 5 inches above and posterior to the (R) ear.
>
> B- Clotted blood over the (R) occipito-temporal area.
>
> C- No lacerations noted.
>
> INTERNAL FINDINGS:
>
> A- On opening the skull there is oozing of dark colored blood from the brain substances.

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[1] *Rollo*, pp. 86-101. Penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Bienvenido L. Reyes and Monina Arevalo Zenarosa.

[2] *Id.* at 51-60. Penned by Judge Dionisio C. Sison.

B- More darked blood vessels at the (L) side of the brain.

CAUSE OF DEATH:

Cardio-respiratory arrest secondary to cerebral concussion with resultant cerebral hemorrhage due to mauling incident.

Which directly caused his death, to the damage and prejudice of the heirs of the said Brigido Tomelden.

CONTRARY to Article 249 of the Revised Penal Code.

Petitioner, when arraigned, pleaded not guilty to the charge. Following the parties' waiver of pre-trial, trial on the merits then ensued.

As summarized in the decision subject of review, the prosecution's evidence established the following facts:

On September 28, 1993, at around 8:00 p.m., the victim Brigido Tomelden and petitioner were at the compound of the Lingayen Water District (LIWAD) in Lingayen, Pangasinan, having just arrived from a picnic in the nearby town of Bugallon, Pangasinan, where, with some other co-workers, they drunk beer in a restaurant. While inside the compound, the two had a heated altercation in the course of which Tomelden hurled insulting remarks at petitioner. Reacting, petitioner asked why Tomelden, when drunk, has the penchant of insulting petitioner.

The exchange of words led to an exchange of blows. Cooler heads succeeded in breaking up the fight, but only for a brief moment as the protagonists refused to be pacified and continued throwing fist blows at each other. Then petitioner delivered a "lucky punch," as described by eyewitness Orje Salazar, on Tomelden's face, which made Tomelden topple down. Tomelden was on the verge of hitting his head on the ground had their companions not caught him and prevented the fall. The blow, however, caused Tomelden's nose to bleed and rendered him unconscious.

Petitioner and his other co-workers brought Tomelden to the office of the LIWAD general manager where he spent the night. He remained in the compound the following day, September

29, 1993. Upon arriving home at around 6:00 p.m. of that day, Tomelden informed his wife, Rosario, of the fight the previous night and of his having been rendered unconscious. He complained of pain in his nape, head, and ear which impelled Rosario to immediately bring him to the Lingayen Community Hospital where Dr. Daisy Arellano examined him and treated his lacerated left index finger, contusions, and hematoma at the right cerebrum.

On October 2 and 7, 1993, Tomelden went back to the hospital complaining of dizziness, headache, and other pains. The attending doctors observed the patient to be in a state of drowsiness and frequent vomiting. On October 8, 1993, Rosario brought Tomelden to the Sison Memorial Provincial Hospital in Dagupan City, where the attending physician, Dr. Ramon Ramos, diagnosed Tomelden suffering from "brain injury, secondary to mauling to consider cerebral hemorrhage."[3]

Tomelden was confined in the provincial hospital until 3:00 p.m. of October 10, 1993, and, due to financial constraints, was thereafter discharged despite signs negating physical condition improvement. Upon reaching their house, however, Tomelden again complained of extreme head pain, prompting his wife to bring him back to the Lingayen Community Hospital where Dr. Arellano again attended to him. This time, things turned for the worst, the doctor noting that Tomelden appeared to be semi-conscious, sleepy, uncooperative, and not responding to any stimulant. Tomelden died at 9:00 p.m. of that day due, per Dr. Arellano, to "cardio-respiratory arrest secondary to cerebral concussion with resultant cerebral hemorrhage due to mauling incident."

The defense presented petitioner who denied having any intention to kill, asserting that hypertension, for which Tomelden was receiving treatment, was the cause of the latter's death.

The Ruling of the RTC

On April 30, 2001, the RTC rendered judgment finding petitioner guilty as charged. The *fallo* of the RTC's decision reads:

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[3] *Id.* at 89.

WHEREFORE, the prosecution having established beyond reasonable doubt the guilt of the accused of the crime of HOMICIDE as defined and penalized under Art. 249 of the Revised Penal Code, this Court in the absence of any modifying circumstances, hereby sentences said accused to suffer the indeterminate prison term of eight (8) years and one (1) day of *Prision Mayor* as minimum to seventeen (17) years and four (4) months of *Reclusion Temporal* as maximum and to indemnify the legal heirs of the victim in the amount of PHp50,000.00, plus cost of the suit.

The period of preventive imprisonment suffered by the accused shall be credited in full in the service of his sentence in accordance with Art. 29 of the Revised Penal Code.[4]

Therefrom, petitioner appealed to the CA, his recourse docketed as CA-G.R. CR No. 25371.

The Ruling of the CA

On January 25, 2008, the CA rendered a decision, affirming the conviction of petitioner, but awarding moral damages to the heirs of Tomelden, disposing as follows:

WHEREFORE, in the light of the foregoing, the appeal of the accused-appellant is DISMISSED. The decision appealed from is AFFIRMED with MODIFICATION that an award of ₱50,000.00 moral damages is GRANTED.

Remand of the records should immediately follow finality for the consequent execution of the decision.[5]

The appellate court held that the commission by petitioner of the crime of homicide, as defined and penalized under Article 249[6] of the Revised Penal Code (RPC), had been proved beyond moral certainty of doubt, pointing to the lucky punch as the proximate cause of Tomelden's hospitalization and ultimately

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[4] *Supra* note 2, at 59-60.

[5] *Supra* note 1, at 100.

[6] Art. 249. Homicide.––Any person who, not falling within the provisions of Art. 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusion temporal*.

his death. And like the RTC, the CA found no qualifying circumstance to increase or lower the penalty.

Following the denial of petitioner's motion for reconsideration, per the CA Resolution[7] of April 24, 2008, he interposed this petition.

The Issues

On essentially the same issues raised before the CA, petitioner now urges the Court to set aside the appealed decision, or at least modify it, maintaining that the appellate court:

I. x x x erred in affirming the decision of the [RTC] finding [him] guilty beyond reasonable doubt of the crime charged.

II. x x x erred in not appreciating the mitigating circumstances of sufficient provocation on the part of the victim and lack of intent to commit so grave a wrong in favor of the petitioner.[8]

The Court's Ruling

The petition is partly meritorious.

Homicide Duly Proved

It is petitioner's threshold posture that the fistic injury Tomelden sustained was not "the main underlying cause of his death."[9] In this regard, petitioner draws attention to the fact that the fist fight in question happened on September 28, 1993. Tomelden, however, died only on October 10, 1993 or 12 days thereafter and that, during the intervening days, particularly September 29, 1993, the deceased regularly reported for work. Moreover, petitioner avers that days prior to the fateful incident of September 28, 1993, Tomelden failed to come to work as he was suffering from malignant hypertension and that this circumstance greatly engenders doubt as to the proximate cause of the victim's death. Petitioner, thus, contends that he could only be adjudged guilty of physical injuries.[10]

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[7] *Rollo*, p. 110.

[8] *Id.* at 17.

[9] *Id.* at 18.

[10] *Id.* at 19.

We are not persuaded.

The prosecution witness, Salazar, testified about petitioner's lucky punch hitting Tomelden right smack on the face. And even if Tomelden's head did not hit the ground as his co-workers averted that actuality, that punch gave him a bleeding nose and rendered him unconscious right after the September 28, 1993 fight. From then on, Tomelden was in and out of the hospital complaining of headache, among other pains, until his demise on October 10, 1993, or 12 days after the blow that made Tomelden unconscious.

Significantly, Dr. Arellano testified conducting an autopsy on the body of Tomelden and stressed that the "softened portion of the scalp over (R) occipito-temporal area about 5 inches above and posterior to the (R) ear" of the victim could have been caused by a fist blow. She also opined that the fist blow which landed on Tomelden's head could have shaken his brain which caused the cerebral concussion; and that the cause of the victim's death was "cardio-respiratory arrest secondary to cerebral concussion with resultant cerebral hemorrhage due to mauling incident."

The combined effects of the testimonies of Salazar and Dr. Arellano, buttressed by that of Rosario who related about her husband's post September 28, 1993 severe head pain, clearly establish beyond cavil the cause of Tomelden's death and who was liable for it.

The CA observed aptly:

> It was through the direct accounts of the prosecution witnesses of the events that transpired during the fisticuff incident x x x more specifically the landing of the "lucky punch" on the face of [Tomelden], taken together with the result of the medical examinations and autopsy report which described the death of the victim as "cardio-respiratory arrest secondary to cerebral concussion with resultant cerebral hemorrhage due to mauling incident" that we are convinced that the "lucky punch" was the proximate cause of [Tomelden's] death. The prosecution had satisfactorily proven that it was only after the incident that transpired on September 28, 1993 that the victim was hospitalized on several occasions until he expired,

twelve days later x x x. It is moreover of no consequence whether the victim was able to report for work during the intervening days x x x.

We find no reason to depart from the doctrinal rule that great weight is accorded the factual findings of the trial court, particularly with respect to the ascertainment of the credibility of witnesses. There was absence of any ill motive on the part of x x x Salazar who in fact testified that he was a friend of both [petitioner] and [Tomelden]; more so on the part of the attending physicians.[11] x x x

Petitioner's suggestion that Tomelden succumbed to heart ailment and/or that his death was the result of his malignant hypertension is untenable, given that the *post-mortem* report yields no positive indication that he died from such malady.

Mitigating Circumstances Present

Petitioner next contends that the mitigating circumstances of no intention to commit so grave a wrong and sufficient provocation on the part of the victim ought to be appreciated in petitioner's favor.

On this score, we agree with petitioner.

Paragraphs 3 and 4 of Art. 13, RPC provide as follows:

Art. 13. Mitigating circumstances.—The following are mitigating circumstances:

x x x x x x x x x

3. That the offender had no intention to commit so grave a wrong as that committed.

4. That sufficient provocation or threat on the part of the offended party immediately preceded the act.

When the law speaks of provocation either as a mitigating circumstance or as an essential element of self-defense, the reference is to an unjust or improper conduct of the offended party capable of exciting, inciting, or irritating anyone;[12] it is

[11] *Supra* note 1, at 96-97.

[12] *Navarro v. Court of Appeals*, G.R. No. 121087, August 26, 1999, 313 SCRA 153, 166; citing *Pepito v. CA*, G.R. No. 119942, July 8, 1999, 310 SCRA 128.

not enough that the provocative act be unreasonable or annoying;[13] the provocation must be sufficient to excite one to commit the wrongful act[14] and should immediately precede the act.[15] This third requisite of self-defense is present: (1) when no provocation at all was given to the aggressor; (2) when, even if provocation was given, it was not sufficient; (3) when even if the provocation was sufficient, it was not given by the person defending himself; or (4) when even if a provocation was given by the person defending himself, it was not proximate and immediate to the act of aggression.[16]

In the instant case, Tomelden's insulting remarks directed at petitioner and uttered immediately before the fist fight constituted sufficient provocation. This is not to mention other irritating statements made by the deceased while they were having beer in Bugallon. Petitioner was the one provoked and challenged to a fist fight.

Petitioner's unrebutted testimony on the events immediately preceding the fisticuff and earlier dovetails with the testimony of Salazar.

In gist, petitioner testified being, in the afternoon of September 28, 1993, in the nearby town of Bugallon for a picnic. He was with Tomelden and several others, including Dominador Navarro, Chairperson of LIWAD. At a restaurant in Bugallon, the group ordered goat's meat and drank beer. When it was time to depart, Navarro asked petitioner to inform Tomelden, then seated in another table, to prepare to leave.

When so informed, Tomelden insulted petitioner, telling the latter he had no business stopping him from further drinking as he was paying for his share of the bill. Chastised, petitioner

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[13] *Cano v. People*, G.R. No. 155258, October 7, 2003, 413 SCRA 92, 105; citing 1 Aquino, *REVISED PENAL CODE* 116 (1997).

[14] *Navarro, supra*; citing *People v. Nabora*, 73 Phil. 434 (1941).

[15] *Id.*; citing *People v. Paga*, No. L-32040, October 25, 1977, 79 SCRA 570.

[16] *Cano, supra* note 13; citing 1 L.B. Reyes, *THE REVISED PENAL CODE* 179-180 (14th revised ed., 1998).

returned to his table to report to Navarro. At that time, petitioner saw that Tomelden had already consumed 17 bottles of beer. In all, the group stayed at the picnic place for three and a half hours before returning to the LIWAD.

Upon reaching the LIWAD compound, Tomelden allegedly slapped and hurled insults at him, calling him "*sipsip*" just to maintain his employment as Navarro's tricycle driver. Tomelden allegedly then delivered several fist and kick blows at petitioner, a couple of which hit him despite his evasive actions. Petitioner maintained that he only boxed the victim in retaliation, landing that lucky punch in the course of parrying the latter's blows.

The following testimony of Salazar attests to the provocative acts of Tomelden and to his being the aggressor:

PROSECUTOR CHIONG

Q After you heard from the accused those remarks, what if any did the victim replied if any?

WITNESS

A They exchanged angry words, sir.

Q What were these words?
A Rodel Urbano said, "**When you're already drunk, you keep on insulting me**."

Q And what was the reply if any?
A "*Akina tua lanti*."

PROS. CHIONG

Q Who said that?

WITNESS

A It was Brigido Tomelden, sir.

Q And what transpired next?
A After that they exchange words, sir. "If you like we will have a fist fight" he said.

Q Who said that?
A Brigido Tomelden said.

Q At that time, were you already inside the compound of the LIWAD?

A Yes, sir.

Q After the victim allegedly told the accused, "If you want a fist fight," what transpired next?

A Rodel Urbano said, "if it is a fist fight we fight."[17]

Q And when you were already in the compound of LIWAD Office, **Brigido Tomelden was challenging the accused for a fist fight**?

A Yes, sir.

Q And the **accused refused to accept the challenge**?

A Yes **because Mr. Brigido Tomelden is very much bigger than Mr. Rodel Urbano. He is stouter than the accused**.

Q But finally the fist fight took place?

A Yes, sir.[18]

PROS. CHIONG

Q When the victim and this accused had this fight, fist fight, they exchanged blows, but there was this lucky punch that hit the victim because the victim fall down, is that correct?

A When I stop pacifying them x x x, I saw Biring the late **Brigido Tomelden, he was much aggressive than the accused**, sir.

Q You mean that although it was the victim who was more aggressive than the accused here, he also [threw] punches but sometime some of his punches most of which did not hit the victim?

A He tried to parry the blows of the late Brigido Tomelden, sir.

Q Because he tried to parry the blow of the Brigido Tomelden, when the accused throw punches, the punch was directed to the victim but most of them did not hit the victim, is that what you saw?

A Yes, sir.[19] (Emphasis added.)

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[17] TSN, November 25, 1998, pp. 6-7.

[18] TSN, December 1, 1998, p. 4.

[19] TSN, January 31, 2000, pp. 21-22.

It is abundantly clear from the above transcript that the provocation came from Tomelden. In fact, petitioner, being very much smaller in height and heft, had the good sense of trying to avoid a fight. But as events turned out, a fisticuff still ensued, suddenly ending when petitioner's lucky punch found its mark. In *People v. Macaso*,[20] a case where the accused police officer shot and killed a motorist for repeatedly taunting him with defiant words, the Court appreciated the mitigating circumstance of sufficient provocation or threat on the part of the offended party immediately preceding the shooting. The Court had the same attitude in *Navarro v. Court of Appeals*,[21] a case also involving a policeman who killed a man after the latter challenged him to a fight. Hence, there is no rhyme or reason why the same mitigating circumstance should not be considered in favor of petitioner.

Moreover, the mitigating circumstance that petitioner had no intention to commit so grave a wrong as that committed should also be appreciated in his favor. While intent to kill may be presumed from the fact of the death of the victim, this mitigating factor may still be considered when attendant facts and circumstances so warrant, as in the instant case. Consider: Petitioner tried to avoid the fight, being very much smaller than Tomelden. He tried to parry the blows of Tomelden, albeit he was able, during the scuffle, to connect a lucky punch that ended the fight. And lest it be overlooked, petitioner helped carry his unconscious co-worker to the office of the LIWAD's general manager. Surely, such gesture cannot reasonably be expected from, and would be unbecoming of, one intending to commit so grave a wrong as killing the victim. A bare-knuckle fight as a means to parry the challenge issued by Tomelden was commensurate to the potential violence petitioner was facing. It was just unfortunate that Tomelden died from that lucky punch, an eventuality that could have possibly been averted had he had the financial means to get the proper medical attention. Thus, it is clear that the mitigating circumstance of "no intention

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[20] No. L-30489, June 30, 1975, 64 SCRA 659.

[21] *Supra* note 12.

to commit so grave a wrong as that committed" must also be appreciated in favor of petitioner while finding him guilty of homicide. That petitioner landed a lucky punch at Tomelden's face while their co-workers were trying to separate them is a compelling indicium that he never intended so grave a wrong as to kill the victim.

Withal, with no aggravating circumstance and two mitigating circumstances appreciable in favor of petitioner, we apply par. 5 of Art. 64, RPC, which pertinently provides:

> Art. 64. *Rules for the application of penalties which contain three periods.*—In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances:
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> x x x x x x x x x
>
> 5. When there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances.

The prescribed penalty for homicide under Art. 249 of the RPC is *reclusion temporal* or from 12 years and one day to 20 years. With the appreciation of two mitigating circumstances of no intention to commit so grave a wrong as that committed and of sufficient provocation from the victim, and the application of par. 5 of Art. 64, RPC, the imposable penalty would, thus, be the next lower penalty prescribed for homicide and this should be *prision mayor* or from six years and one day to 12 years. Consequently, with the application of the Indeterminate Sentence Law, petitioner ought to be incarcerated from *prision correccional* as minimum and *prision mayor* as maximum. In view of the circumstances of the case, considering that the petitioner never meant or intended to kill the victim, a prison term of eight (8) years and one (1) day of *prision mayor* as

maximum period is proper while the period of two (2) years and four (4) months of *prision correccional* as minimum period is reasonable.

We find no reason to modify the award of civil indemnity and moral damages.

WHEREFORE, the CA Decision dated January 25, 2008 in CA-G.R. CR No. 25371 is, in the light of the presence and the appreciation of two mitigating circumstances in favor of petitioner, hereby *MODIFIED* by decreasing the term of imprisonment. As thus modified, petitioner Rodel Urbano is hereby sentenced to serve an indeterminate prison term of from *two (2) years and four (4) months of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum, with whatever imprisonment he has already served fully credited in the service of this sentence.* The rest of the judgment is hereby *AFFIRMED*.

No pronouncement as to costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 183703. January 20, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FERNANDO SAMENIANO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; CREDIBLE AND POSITIVE TESTIMONY OF THE SINGLE EYEWITNESS IS SUFFICIENT TO SUPPORT A

CONVICTION, EVEN IN A CHARGE OF MURDER.— The testimony of the eyewitness was direct, clear, and candid. He was able to identify the three accused, including accused-appellant, as the assailants. He was familiar with accused-appellant even before the incident, and on the night in question, he was only at arm's length from the three attackers. Furthermore, his testimony was consistent with the medico-legal report that showed the location and nature of the wounds in Roberto's face. A detailed testimony, like Norming's, acquires greater weight and credibility when confirmed by autopsy findings. Lastly, no ill motive was shown that could impeach his credibility. Where there is no evidence showing devious reasons or improper motives why a prosecution witness would falsely testify against or implicate an accused in a heinous crime, the testimony is worthy of full faith and credit. Well-settled is the rule that the testimony of a single eyewitness, if credible and positive, is sufficient to support a conviction, even in a charge of murder.

2. ID.; ID.; ID.; BLOOD RELATIONSHIP DOES NOT NECESSARILY IMPAIR CREDIBILITY; RATIONALE.— The fact that Norming and the victim were cousins does not necessarily impair the former's credibility. On the contrary, blood relationship may even fortify credibility, for it is unnatural for an aggrieved relative to falsely point an accusing finger at someone other than the real culprit. The inherent desire to seek justice for a dead kin is not served should the witness abandon his conscience and blame one who is innocent of the crime.

3. CRIMINAL LAW; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; CONSPIRACY; NOT NEGATED BY THE FACT THAT THE ACCUSED DID NOT INFLICT THE FATAL BLOWS; WHERE THE ACTS OF THE ACCUSED COLLECTIVELY AND INDIVIDUALLY DEMONSTRATE THE EXISTENCE OF A COMMON DESIGN TOWARDS THE ACCOMPLISHMENT OF THE SAME UNLAWFUL PURPOSE, CONSPIRACY IS EVIDENT.— x x x The appellate court observed that while accused-appellant did not have a direct hand in hacking the victim, his inaction or failure to prevent his companions from killing reveals his complicity to the crime. Also, when Norming rushed out of the hut, accused-appellant chased him. These

actions reveal a unity of purpose present in conspiracy. The fact that accused-appellant did not inflict the fatal blows does not negate conspiracy nor exculpate him from any liability. Where the acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of the same unlawful purpose, conspiracy is evident.

4. REMEDIAL LAW; EVIDENCE; ALIBI; WHEN TO PROSPER AS A DEFENSE.— x x x For alibi to prosper, accused-appellant must prove (1) that he was somewhere else when the crime was committed and (2) that he was so far away that he could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission. In this case, accused-appellant failed to offer any evidence that could support his alibi. Assuming that his alibi is true, his residence was a mere three hours away from the victim's hut. It was not physically impossible for him to be present at the crime scene since he could easily board a tricycle to the victim's abaca plantation. Hence, the requisites of alibi were not met.

5. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; PROVEN IN CASE AT BAR.— [A]s the CA did, [the Court] agree[s] with the trial court's finding of treachery. The trial court noted the suddenness of the attack and the fact that the victim was blinded by flashlights before being hacked to death.

6. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF FACTS OF THE TRIAL COURT ARE GENERALLY RESPECTED ON APPEAL.— The Court affirm[s] the foregoing findings of the trial and appellate courts. We find no reason to disturb their findings regarding the credibility of the lone eyewitness, the findings of conspiracy and treachery, and the dismissal of accused-appellant's alibi. As a general rule, findings of facts of these court are not disturbed on appeal.

7. CRIMINAL LAW; MURDER; ELEMENTS; PRESENT IN CASE AT BAR.— In sum, the elements of murder were successfully proved: (1) that a person was killed; (2) that the accused killed that person; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and (4) that the killing is not parricide or infanticide. The prosecution was able to prove beyond reasonable doubt

accused-appellant's guilt for the killing of Roberto. A witness saw accused-appellant arrive with the two other accused and it was accused-appellant who chased the witness across the abaca plantation. As part of the conspiracy, accused-appellant should be held liable as a principal. The killing was attended by treachery, a circumstance that qualifies the crime as murder. Lastly, the killing is not obviously parricide or infanticide. Hence, all the elements for murder are present in this case.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal from the February 26, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02525, which affirmed the August 1, 2006 judgment[2] of the Regional Trial Court (RTC), Branch 32 in Pili, Camarines Sur in Criminal Case No. P-2924. The RTC convicted accused-appellant Fernando Sameniano of murder and sentenced him to *reclusion perpetua*.

The Facts

On August 24, 1999 at around 10:00 p.m., Norming de los Santos and his cousin, Roberto de los Santos, were asleep in a nipa hut at an abaca plantation in *Sitio* Kaunlong, Brgy. Gatbo, Ocampo, Camarines Sur when three men suddenly pelted their nipa hut with stones. Not long after, the men barged inside the nipa hut and directed their flashlights on Roberto's face. Norming recognized one of the assailants

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[1] *Rollo*, pp. 2-13. Penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justices Arcangelita Romilla-Lontok and Apolinario D. Bruselas, Jr.

[2] CA *rollo*, pp. 16-17. Penned by Judge Nilo A. Malanyaon.

as accused-appellant. The three intruders surrounded Roberto and then one of them, later identified as Jose Aguilar, hacked Roberto with a bolo. Another man with a bolo, later identified as Benedicto Felicidario, Jr., held Roberto's hands. While the assailants were wrestling with Roberto, Norming rushed out to the abaca plantation. Accused-appellant chased Norming but failed to catch up with him.

Roberto was unable to flee as he was hacked and stabbed, causing irreversible shock secondary to massive brain and lung hemorrhage and resulting in his instantaneous death.[3]

Norming reached Roberto's house and narrated to the latter's wife what happened in the plantation. Thereafter, Roberto's wife went to Brgy. Gatbo to ask for help from *barangay* officials. A *barangay* official went to the place of the incident, but Norming failed to accompany him due to a knee injury caused by a stone thrown at him. Norming also reported the incident to the police.

According to the autopsy report prepared by Dr. Angelina Celso, Municipal Health Officer of Ocampo, Camarines Sur, the following were found on the cadaver of Roberto:

1. Wound hacked 12.0 cm in length located in the face cutting right and left maxillary and zygomatic bones and the nasal bone affecting brain substance.
2. Wound stabbed 6.0 cm in length located at the left lateral chest at the level of the 5th and 6th intercostals space penetrating chest cavity involving left lung.
3. Wound incised, posterior portion, right middle finger involving phalanges.[4]

Consequently, the following information was filed against accused-appellant, Aguilar, and Felicidario:

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[3] *Id.* at 16.

[4] *Rollo*, p. 3.

CRIMINAL CASE NO. P-2924

That on the 24th of August, 1999 at around 10:00 o'clock in the evening, at Zone 6, Barangay Gatbo, Municipality of Ocampo, Province of Camarines Sur, and within the Jurisdiction of this Honorable Court, the said accused, conspiring and confederating together, with intent to kill and while armed with bolos, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault, and hack to death one Roberto delos Santos, inflicting upon him several mortal wounds in the different parts of his body, thereby causing his instantaneous death, to the damage and prejudice of the heirs of the said Roberto delos Santos.

Further, the generic aggravating circumstances that the crime was committed during nighttime and in an uninhabited place are present in this case.

ACTS CONTRARY TO LAW.[5]

Upon arraignment, all the accused pleaded not guilty. During trial, Aguilar died. The defense of accused-appellant consisted of denial and alibi. He claimed that on the fateful night in question, he was at home in Brgy. Villaflorida, Ocampo, Camarines Sur tending to his sick daughter with his brother Jaime. He admitted knowing where Zone 6, Brgy. Gatbo, Ocampo is as he used to play volleyball there. Brgy. Gatbo is three *barangays* away from where he lives and can be reached by three tricycle rides that take at least three hours. The last trip to Brgy. Gatbo is at 9:00 p.m. According to accused-appellant, on September 1, 1999, a police officer came to his house and invited him for questioning. He voluntarily went to the police station where he was detained for two days, together with Aguilar, his volleyball playmate, and Felicidario, whom he claimed meeting there for the first time.

After trial, the court *a quo* found both Felicidario and accused-appellant guilty. The *fallo* of the decision reads:

WHEREFORE, judgment is hereby rendered, finding both Benedicto Felecidario, Jr. and Fernando Sameniano guilty beyond reasonable doubt of murder as charged in the information, hereby sentencing

[5] CA *rollo*, p. 15.

them to suffer the penalty of *reclusion perpetua*; to indemnify the heirs of Roberto delos Santos the sum of ₱50,000.00 as moral damages.[6]

Only accused-appellant interposed an appeal.

The Ruling of the CA

Before the CA, accused-appellant contended that the testimony of the lone witness, Norming, is not credible. It was accused-appellant's posture that Norming could not have witnessed the incident or identified the attackers since he testified that he turned his back while Aguilar hacked Roberto. It was, accused-appellant added, also very dark at that time; the incident allegedly happened around 10:00 p.m. and the attackers had flashlights. Accused-appellant further pointed out that there was no proof of his participation in the killing of the victim since Norming testified that he only saw Felicidario wrestled with Roberto while Aguilar hacked Roberto with a bolo. He argued that the prosecution failed to prove the existence of conspiracy. Lastly, accused-appellant insisted that while alibi is generally a weak defense, his alibi should have been given weight by the trial court because of the doubtful nature of the testimony of the lone eyewitness.[7]

On the other hand, the People, represented by the Solicitor General, prayed for the conviction of accused-appellant and for the additional award of Php 50,000 as civil indemnity and Php 25,000 as exemplary damages.

The appellate court affirmed the conviction with modification as follows:

WHEREFORE, the decision subject of the instant appeal is hereby **AFFIRMED with a modification** as to the civil liability. Thus, in conformity with recent jurisprudence, the accused-appellant is hereby ordered to pay the heirs of the victim an additional ₱50,000 by way of civil indemnity.[8]

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[6] *Supra* note 2, at 17.

[7] CA *rollo*, pp. 26-37.

[8] *Supra* note 1, at 11.

Accused-Appellant's Assignment of Error Presented Before Us

THE COURT GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT

The Court's Ruling

The appeal lacks merit.

In his plea to be acquitted of the crime, accused-appellant attempts to cast doubt on the testimony of the lone prosecution eyewitness. Upon review of the records, however, we find eyewitness Norming's following account of how his cousin was killed convincing:

PROS. CONTRERAS:

Q: Mr. delos Santos, do you know the victim in this case Roberto de los Santos?
A: Yes sir.

Q: How are you related to him?
A: We are first cousins.

x x x x x x x x x

Q: What about the accused Fernando Sameniano, do you know him?
A: Yes sir.

Q: Would you kindly point him to us, if he is inside the courtroom today?

(The witness pointed to a man who, when asked of his name, answered Fernando Sameniano.)

Q: Tell us why do you know all these three accused?
A: Because we are residing in one *barangay*.

x x x x x x x x x

Q: Tell us where you were on August 24, 1999 at around 10:00 o'clock in the evening?
A: We were at the abaca plantation.

Q: Abaca plantation of what barangay and municipality?
A: At Sitio Kaunlong, Bgy. Gatbo, Ocampo, Camarines Sur.

Q: Who was with you at that time?
A: Only the two of us.

Q: When you said only the two of you, to whom are you referring?
A: Roberto delos Santos.

x x x x x x x x x

Q: Would you kindly tell us what happened while you were there at the abaca plantation on that particular date and time?
A: They forcibly entered our small hut.

COURT:

Q: How many entered that small hut?
A: The three of them.

PROS. CONTRERAS:

Q: Can you tell us who were these three persons whom you are referring to?
A: These Jose Aguilar, Benedicto Felicidario, Jr. and Fernando Sameniano.

Q: How were you able to recognize these three people considering that it was nighttime?
A: I was able to recognize him because I was one armlength away from them.

Q: When you said, you are at a distance of one armlength away from him, to who are you referring?
A: These Jose Aguilar, Fernando Sameniano and Benedicto Felicidario, Jr.

Q: What did these three people do?

ATTY. BRAZIL:

That is vague, your honor, from what point of reference.

COURT:
Overruled.

WITNESS:

A: They hacked my cousin.

PROS. CONTRERAS:

Q: What kind of instrument was used in hacking your cousin?
A: A bolo.

Q: Who, among them, hacked your cousin?
A: Jose Aguilar.

Q: Where?
A: At his face.

Q: When Jose Aguilar hacked your cousin, hitting your cousin at his face, what is your distance from them?
A: About one armlength.

Q: And where was Benedicto [Felicidario, Jr.] at the time when Jose Aguilar hacked your cousin?
A: He was there present.

Q: What was he doing?
A: They were jamming up.

Q: When you said jamming up; what was done to your cousin by this Benedicto [Felicidario, Jr.]?
A: He wrestled (gumol) my cousin.

x x x x x x x x x

Q: Was Benedicto [Felicidario, Jr.] armed with any weapon at that time?
A: Yes, sir, he was armed.

Q: With what kind of instrument?
A: A bolo.

Q: What about Fernando Sameniano, what did you observe from him?
A: This Fernando Sameniano was the one who chased me.

Q: Tell us, what did you do when these people attacked your cousin?
A: I [ran] away because they were able to take our bolo.

Q: You said, you [ran] away and you were chased by Fernando Sameniano, where did you go in running away?
A: I [ran] towards the abaca plantation.

Q: Was Fernando Sameniano able to catch up with you?
A: No, sir.

Q: And when Fernando Sameniano was not able to catch up with you, where did you go?
A: I went home.

Q: And you were able to finally arrive home that evening?
A: Yes, sir.

Q: And when you arrived home, what did you do?
A: I told the wife of Roberto delos Santos that we were attacked in our hut.[9]

The testimony of the eyewitness was direct, clear, and candid. He was able to identify the three accused, including accused-appellant, as the assailants. He was familiar with accused-appellant even before the incident, and on the night in question, he was only at arm's length from the three attackers. Furthermore, his testimony was consistent with the medico-legal report that showed the location and nature of the wounds in Roberto's face. A detailed testimony, like Norming's, acquires greater weight and credibility when confirmed by autopsy findings.[10] Lastly, no ill motive was shown that could impeach his credibility. Where there is no evidence showing devious reasons or improper motives why a prosecution witness would falsely testify against or implicate an accused in a heinous crime, the testimony is worthy of full faith and credit.[11] Well-settled is the rule that the testimony of a single eyewitness, if credible and positive, is sufficient to support a conviction, even in a charge of murder.[12]

The fact that Norming and the victim were cousins does not necessarily impair the former's credibility. On the contratry, blood relationship may even fortify credibility, for it is unnatural

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[9] TSN, February 14, 2001, pp. 2-7.

[10] *People v. Hinaut*, G.R. No. 143764, February 15, 2002, 377 SCRA 241, 252.

[11] *People v. Gayomma*, G.R. No. 128129, September 30, 1999, 315 SCRA 639, 648.

[12] *Hinaut, supra* note 10, at 253.

for an aggrieved relative to falsely point an accusing finger at someone other than the real culprit. The inherent desire to seek justice for a dead kin is not served should the witness abandon his conscience and blame one who is innocent of the crime.[13]

We likewise affirm the trial and appellate courts' finding that conspiracy attended the crime. The trial court noted the fact that the assailants came and left the crime scene together. Accused-appellant and the two other accused arrived with flashlights and bolos. The appellate court observed that while accused-appellant did not have a direct hand in hacking the victim, his inaction or failure to prevent his companions from killing reveals his complicity to the crime. Also, when Norming rushed out of the hut, accused-appellant chased him. These actions reveal a unity of purpose present in conspiracy. The fact that accused-appellant did not inflict the fatal blows does not negate conspiracy nor exculpate him from any liability. Where the acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of the same unlawful purpose, conspiracy is evident.[14]

Accused-appellant's denial and alibi cannot prevail over the positive identification of him as the perpetrator of the crime.[15] For alibi to prosper, accused-appellant must prove (1) that he was somewhere else when the crime was committed and (2) that he was so far away that he could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission.[16] In this case, accused-appellant failed to offer any evidence that could support his alibi. Assuming that his alibi is true, his residence was a mere three hours away from the victim's hut. It was not physically impossible for him to be present at the crime scene since he could easily board a

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[13] *People v. Realin*, G.R. No. 126051, January 21, 1999, 301 SCRA 495, 510.

[14] *Hinaut*, *supra* at 255.

[15] *People v. Paraiso*, G.R. No. 131823, January 17, 2001, 349 SCRA 335, 350.

[16] *People v. Valdez*, G.R. No. 128105, January 24, 2001, 350 SCRA 189, 195.

tricycle to the victim's abaca plantation. Hence, the requisites of alibi were not met.

Lastly, as the CA did, we agree with the trial court's finding of treachery. The trial court noted the suddenness of the attack and the fact that the victim was blinded by flashlights before being hacked to death.

In all, we affirm the foregoing findings of the trial and appellate courts. We find no reason to disturb their findings regarding the credibility of the lone eyewitness, the findings of conspiracy and treachery, and the dismissal of accused-appellant's alibi. As a general rule, findings of facts of these court are not disturbed on appeal.

In sum, the elements of murder were successfully proved: (1) that a person was killed; (2) that the accused killed that person; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and (4) that the killing is not parricide or infanticide.[17]

The prosecution was able to prove beyond reasonable doubt accused-appellant's guilt for the killing of Roberto. A witness saw accused-appellant arrive with the two other accused and it was accused-appellant who chased the witness across the abaca plantation. As part of the conspiracy, accused-appellant should be held liable as a principal. The killing was attended by treachery, a circumstance that qualifies the crime as murder. Lastly, the killing is not obviously parricide or infanticide. Hence, all the elements for murder are present in this case.

WHEREFORE, the Decision dated February 26, 2008 of the CA in CA-G.R. CR-H.C. No. 02525 is *AFFIRMED IN TOTO*. The CA's award of civil indemnity in the amount of Php 50,000 and the trial court's award of moral damages of Php 50,000 to the heirs of the victim in accordance with prevailing jurisprudence[18] are accordingly *AFFIRMED*. No costs.

[17] L.B. Reyes, *THE REVISED PENAL CODE: CRIMINAL LAW BOOK ONE* 463 (2001).

[18] *People v. Deang*, G.R. No. 128045, August 24, 2000, 338 SCRA 657; citing *People v. Verde*, G.R. No. 119077, February 10, 1999, 302 SCRA 690.

SO ORDERED.

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

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— Guidelines where petitioner is a corporation and/or there are several petitioners. (Northeastern College Teachers and Employees Assn. *vs*. Northeastern College, G.R. No. 152923, Jan. 19, 2009) p. 163

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— Employee loses the right thereto when the same failed to have the writ implemented and the decision of the Labor Arbiter is eventually overturned by a higher body. *(Id.; Id.)*

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(Id.; Quisumbing, J., separate opinion)

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Commission of — Not negated by the presence of other persons in the house where rape took place. (People *vs*. Mahinay, G.R. No. 179190, Jan. 20, 2009) p. 847

— Not negated by the victim's failure to put up resistance. *(Id.)*

— Strengthened when the testimony of the victim is corroborated by the medical report. *(Id.)*

Imposable penalty — Applicable penalty when the victim is under twelve (12) years old but not below seven (7) years old. (People *vs*. Lagarde, G.R. No. 182549, Jan. 20, 2009) p. 883

— When death penalty shall be imposed. *(Id.)*

Prosecution for — Delay in revealing the commission of rape is not an indication of a fabricated charge. (People *vs*. Mahinay, G.R. No. 179190, Jan. 20, 2009) p. 847

— Guiding principles in the prosecution of rape cases. (People *vs*. Lagarde, G.R. No. 182549, Jan. 20, 2009) p. 883

— Testimonies of child-victims are normally given full weight and credence, since when minors say they were raped, they say in effect all that is necessary to show that rape was committed. *(Id.)*

RAPE WITH HOMICIDE

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— May be proved by circumstantial evidence *(Id.)*

— Proper amount for the award of civil indemnity and other damages. *(Id.)*

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— Bars the relitigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action. (Chris Garments Corp. *vs*. Sto. Tomas, G.R. No. 167426, Jan. 12, 2009) p. 14

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— Distinguished from civil actions. *(Id.)*

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Power to issue injunctive relief — Not interfered by the court absent unreasonable or unlawful exercise of the power. (PNB *vs*. CA, G.R. No. 165571, Jan. 20, 2009) p. 586

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Jurisdiction — Includes the authority to hear and receive evidence to determine whether deceased person is a Muslim or not. (Montañer *vs*. Shari'a District Court, 4th Judicial District, Marawi City, G.R. No. 174975, Jan. 20, 2009) p. 815

SPECIAL BIDS AND AWARDS COMMITTEE

Presumption of regularity — Upheld. (First United Constructors Corp. *vs*. Poro Point Management Corp., G.R. No. 178799, Jan. 19, 2009) p. 334

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Police power — Scope. (White Light Corporation *vs*. City of Manila, G.R. No. 122846, Jan. 20, 2009) p. 444

— The promotion of public welfare and a sense of morality among citizens deserves the full endorsement of the judiciary provided that such measure does not trample rights. *(Id.)*

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Illegal strike — The declaration of illegality of strike will not affect the grant of backwages and separation pay on

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As a mitigating circumstance — "Provocation," defined. (Urbano *vs*. People, G.R. No. 182750, Jan. 20, 2009) p. 902

— When appreciated. *(Id.)*

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Jurisdiction — Difference between the findings of the trial and appellate courts, leading to entirely disparate dispositions is reason enough for the Supreme Court to review the evidence on record. (Dutch Boy Phils., Inc. *vs*. Seniel, G.R. No. 170008, Jan. 19, 2009) p. 249

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— Liability of surety. *(Id.)*

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— The taxpayer must be informed not only of the law but also of the facts on which the assessment is made. *(Id.)*

— There is no mandate that the legal and factual bases of the assessment be stated in writing in the formal letter of demand accompanying the assessment notice. *(Id.)*

Tax exemption — Fiscal Incentive Review Board Resolution No. 24-87 restoring the tax exemption of all electric cooperatives has no retroactive application. (Davao Oriental Electric Cooperative, Inc. *vs*. Province of Davao Oriental, G.R. No. 170901, Jan. 20, 2009) p. 705

— Strictly construed against the claimant. *(Id.)*

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Just compensation — Values of the properties at the time of payment may be sustained. (LBP *vs*. Pacita Agricultural Multi-Purpose Cooperative, Inc., G.R. No. 177607, Jan. 19, 2009) p. 315

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— Elements. *(Id.)*

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— Defined. *(Id.)*

Word "take" — Elucidated. (Laurel *vs*. Judge Abrogar, G.R. No. 155076, Jan. 13, 2009) p. 45

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As a qualifying circumstance — Appreciated when the attack was sudden and the victim was blinded by flashlights before being hacked to death. (People *vs*. Sameniano, G.R. No. 183703, Jan. 20, 2009) p. 916

— Appreciated when the victim was unarmed, and was attacked from behind and at close range and the assailant

further hid behind the window to mask his presence and identity. (People *vs*. Peña, Jr., G.R. No. 183567, Jan. 19, 2009) p. 394

— Cannot be appreciated to qualify a crime, even if alleged in the information but not proven during the trial. (People *vs*. Abdulah, G.R. No. 182518, Jan. 20, 2009) p. 870

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— Contradictory statements on important details erode the integrity of the witness' testimony. (Eulogio *vs*. Sps. Apeles, G.R. No. 167884, Jan. 20, 2009) p. 613

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— Testimony of a single witness may suffice for conviction if found trustworthy and reliable. (People *vs*. Sameniano, G.R. No. 183703, Jan. 20, 2009) p. 916

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