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SUPREME COURT

OF THE

PHILIPPINES

FROM

FEBRUARY 10, 2009 TO FEBRUARY 13, 2009

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MANILA
2013

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.M. No. 08-12-357-MCTC. February 10, 2009]

RE: DROPPING FROM THE ROLLS OF MS. PACIENCIA E. AJANAB, Court Stenographer I, MCTC, Maluso, Basilan.

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; INCOMPETENCE AND GROSS INEFFICIENCY; DROPPING FROM THE ROLLS OF COURT EMPLOYEES, MADE PROPER IN CASE AT BAR.— This administrative matter concerns the letter of Hon. Juan Gabriel H. Alano, Presiding Judge, Municipal Circuit Trial Court (MCTC), Maluso, Basilan, requesting that Mrs. Paciencia E. Ajanab, Court Stenographer I in the said court, be dropped from the rolls for obtaining unsatisfactory performance ratings. On 20 November 2007, Judge Alano called Mrs. Ajanab's attention regarding the disarray of files, both soft and hard, relating to the election cases assigned to her. She explained that she is computer illiterate and requested that she be allowed to use the typewriter instead. Her caseload was then assigned to the two (2) other stenographers in order to avoid further delay in case flow. Despite this fact as well as constant reminders, Mrs. Ajanab's performance did not improve. She thus received an unsatisfactory performance rating for the semester July-December 2007. x x x As Mrs. Ajanab's performance deteriorated despite being allowed to handle a lesser caseload,

she was again given an unsatisfactory performance rating for the semester January-June 2008 for which Judge Alano gave her a second notice. Judge Alano even averred therein that he had done her job for her for the past four years but to no avail. He thus recommended her separation from service. Mrs. Ajanab admitted her limited knowledge in computer encoding. She pleaded for indulgence and benevolence for her situation, seeking that she be transferred to another position with duties that do not require the use of the computer. Although we empathize with Mrs. Ajanab's plight, we are compelled to give weighty considerations to the demands of public service. Court personnel should be examples of responsibility, competence and efficiency and must discharge their duties with due care and utmost diligence. To keep an employee found to be incompetent and grossly inefficient in the performance of her work would be a great disservice to the public. **WHEREFORE**, the recommendation of the OCA is APPROVED. Let Paciencia E. Ajanab, Court Stenographer I, MCTC, Maluso, Basilan be *DROPPED FROM THE ROLLS* and her position be declared *VACANT*. Her separation from service, being non-disciplinary in nature, shall not result in the forfeiture of any benefits she may be entitled to under existing laws nor in disqualifying her from reemployment in the government.

D E C I S I O N

TINGA, *J.*:

This administrative matter concerns the letter[1] dated 8 August 2008 of Hon. Juan Gabriel H. Alano, Presiding Judge, Municipal Circuit Trial Court (MCTC), Maluso, Basilan, requesting that Mrs. Paciencia E. Ajanab, Court Stenographer I in the said court, be dropped from the rolls for obtaining unsatisfactory performance ratings.

A perusal of the records shows that during a personnel meeting on 20 November 2007, Judge Alano called Mrs. Ajanab's attention regarding the disarray of files, both soft and hard, relating to the election cases assigned to her. She explained that she is computer illiterate and requested that she be allowed to use the

[1] *Rollo,* p. 5.

typewriter instead. Her caseload was then assigned to the two (2) other stenographers in order to avoid further delay in case flow. Despite this fact as well as constant reminders, Mrs. Ajanab's performance did not improve.[2] She thus received an unsatisfactory performance rating for the semester July-December 2007.[3] Judge Alano sent her a notice[4] of unsatisfactory performance rating dated 15 January 2008, explaining to her the basis for such rating and warning her that her failure to improve her performance within the remaining period of the semester shall warrant her separation from service. Mrs. Ajanab did not submit her written explanation or objections.

Mrs. Ajanab's performance deteriorated despite being allowed to handle a lesser caseload. According to Judge Alano, in order to decide two criminal cases, he had to rely on his own notes taken during the proceedings since the transcript of stenographic notes was inaccurate and transcription was made by some other person. The font was different from the official font and the page numbers had been tampered rendering its integrity dubious. Mrs. Ajanab was again given an unsatisfactory performance rating for the semester January-June 2008 for which Judge Alano gave her a second notice.[5] Judge Alano even averred therein that he had done her job for her for the past four years but to no avail. He thus recommended her separation from service.

In a letter[6] dated 7 August 2008, Mrs. Ajanab admitted her limited knowledge in computer encoding being one of the "old timers who was left behind by the rapid development of technology in the workplace."[7] She transcribed her stenographic notes with the aid of her son using their personal computer at home which explains the type of font used and why her output is not found in the office's database. She claimed that she could not be

[2] *Id.* at 7.

[3] *Id.* at 8.

[4] *Id.* at 9-10.

[5] *Id.* at 13, 15.

[6] *Id.* at 17-18.

[7] *Id.* at 17.

expected to be well-versed with the computer overnight as she was not given ample chance to learn as there was no program offered by the Supreme Court for computer literacy. She pleaded for indulgence and benevolence for her situation, seeking that she be transferred to another position with duties that do not require the use of the computer.[8]

In its Report[9] dated 11 November 2008, the Office of the Court Administrator (OCA) stated, to wit:

> x x x Section 2 (2.2{a&b}), Rule XII of the Omnibus Rules on Appointments and Personnel Action (CSC Memorandum Circular No. 40, series of 1998) provides, that an official or employee who is given two (2) consecutive "Unsatisfactory" ratings or who for one evaluation period is rated "Poor" in performance may be dropped from the rolls after due notice. Section 2 (2.6) of the same rule further provides that, dropping from the rolls for unsatisfactory or poor performance is non-disciplinary in nature and shall not result in the forfeiture of any benefits on the part of the official or employee nor in disqualifying him from reemployment in the government.
>
> x x x The documentary requirements before one can be dropped from the rolls for obtaining unsatisfactory performance ratings are set forth under Section 2 (2.2 {a}, Rule XII of the Omnibus Rules on Appointment and Personnel Actions (CSC Memo Circular No. 40, s. 1998).
>
> The Omnibus Rules require the following:
>
> 1. Notice in writing
>
> a. informing the officer or employee concerned of her unsatisfactory performance for a semester;
>
> b. warning that a succeeding unsatisfactory performance shall warrant her separation from the service;
>
> c. containing sufficient information which shall enable the employee to prepare an explanation.
>
> 2. Notice be given not later than 30 days from the end of the semester.

[8] *Id.*

[9] *Id.* at 1-4.

OCA Circular No. 172-2003 entitled "Notice Requirement in the Giving of Unsatisfactory and Poor Performance Rating" essentially contains the same requirements with the additional provision that the notice shall be issued by the supervisor/rater.

Records reveal that the documentary requirements have been met. Notices dated January 15, 2008 and July 30, 2008 were issued by Presiding Judge Alano within the 30-day period from the end of every semesters indicating that Mrs. Ajanab had incurred unsatisfactory performance. The notice contained sufficient information: (1) that Mrs. Ajanab obtained unsatisfactory performance ratings for two (2) consecutive semesters: July-December 2007 and January-June 2008; (2) warning that she may be separated from the service; and (3) opportunity for her to file comment within a reasonable period of time from receipt of the the [*sic*] notice.

x x x Respectfully submitted for the consideration of the Honorable Court our recommendation that Mrs. Paciencia E. Ajanab x x x be [1] DROPPED FROM THE ROLLS for obtaining two (2) consecutive "Unsatisfactory" ratings; and [2] her position be declared VACANT.

The separation from the service of Mrs. Ajanab, being non-disciplinary in nature, shall not result in the forfeiture of any benefits she may be entitled to under existing laws nor in disqualifying her from reemployment in the government.[10]

The OCA's recommendations are in accord with the law and the facts of the case and we are constrained to adopt and approve the same. Although we empathize with Mrs. Ajanab's plight, we are compelled to give weighty considerations to the demands of public service. Court personnel should be examples of responsibility, competence and efficiency and must discharge their duties with due care and utmost diligence. To keep an employee found to be incompetent and grossly inefficient in the performance of her work would be a great disservice to the public.

WHEREFORE, the recommendation of the OCA is APPROVED. Let Paciencia E. Ajanab, Court Stenographer I, MCTC, Maluso, Basilan be *DROPPED FROM THE ROLLS* and her position be declared *VACANT*. Her separation from service, being non-disciplinary in nature, shall not result in the forfeiture

[10] *Id.* at 3-4.

of any benefits she may be entitled to under existing laws nor in disqualifying her from reemployment in the government.

SO ORDERED.

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

EN BANC

[A.M. No. MTJ-07-1688. February 10, 2009]
(Formerly OCA I.P.I. No. 05-1763-MTJ)

DANILO DAVID S. MARIANO, *complainant, vs.* **JUDGE JOSE P. NACIONAL,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; REVISED RULES ON SUMMARY PROCEDURE (RRSP); UNLAWFUL DETAINER; PLEADINGS ALLOWED THEREIN.—** Civil Case No. 12334 was a case of unlawful detainer covered by the RRSP. Section 5 of the RRSP explicitly provides that only complaints, compulsory counterclaims and cross-claims pleaded in the answer, as well as the answers to these pleadings, are allowed. The RRSP also expressly prohibits the filing of a memorandum. The same prohibition is contained in Section 13, Rule 70 of the Rules of Court (ROC).

2. **ID.; ID.; RATIONALE FOR PROMPT RESOLUTION OF CASES.—** The urgency of restoring social order is the paramount consideration in settling unlawful detainer and forcible entry cases. To aid the judiciary in proceeding with these cases, the RRSP was promulgated with the following rationale: [T]he adoption of the Rule on Summary Procedure

is part of the commitment of the judiciary to enforce the constitutional right of litigants to a speedy disposition of their cases. It was promulgated [to] achiev[e] "an expeditious and inexpensive determination of cases." Any member of the judiciary who causes the delay sought to be prevented by the Rule is sanctionable.

3. ID.; ID.; RULE WHEN JUDGMENT SHALL BE RENDERED. – The necessity of promptly resolving unlawful detainer and forcible entry cases is made more imperative by the express legal provisions on periods of rendition of judgments. Specifically, Section 11, Rule 70 of the ROC provides that the court shall render judgment within 30 days after receipt of the affidavits and position papers, or expiration of the period for filing the same. The RRSP provides for the same period.

4. POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; CODE OF JUDICIAL CONDUCT; DUTY OF JUDGES TO DISPOSE OF COURT'S BUSINESS PROMPTLY.— Rule 3.05, Canon 3 of the Code of Judicial Conduct admonishes all judges to dispose of the court's business promptly and decide cases within the period specified in Section 15 (1) and (2), Article VIII of the Constitution. This is supplemented by Section 5, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary requiring judges to perform all judicial duties efficiently, fairly and with reasonable promptness. We cannot accept the justifications advanced by respondent. Doing so will undermine the wisdom behind procedural rules and diminish respect for the law. We reiterate that a judge (by himself) cannot choose to prolong the period for deciding cases beyond that authorized by law. If a judge needs more time to decide a case, he should formally request this Court for an extension of the deadline.

5. ID.; ID.; ID.; DUTY TO APPLY ELEMENTARY RULES OF PROCEDURE.— The rules of procedure are clear and unambiguous, leaving no room for interpretation. We have held in numerous cases that the failure to apply elementary rules of procedure constitutes gross ignorance of the law and procedure. Neither good faith nor lack of malice will exonerate respondent because, as previously noted, the rules violated were basic procedural rules. All that was needed for respondent to do was to apply them. It is settled that one who accepts the exalted position of a judge owes the public and the court the

ability to be proficient in the law and the duty to maintain professional competence at all times. Competence and diligence are prerequisites to the due performance of judicial office.

6. ID.; ID.; ID.; GROSS IGNORANCE OF THE LAW AND PROCEDURE UNDER THE RULES OF COURT AND SIMPLE MISCONDUCT FOR VIOLATION OF THE CODE OF JUDICIAL CONDUCT.— As to the penalty that should be properly meted out to respondent, A.M. No. 01-8-10-SC governs. Gross ignorance of the law and procedure is classified as a serious charge. And for his violation of the Code of Judicial Conduct, the evidence shows that he only committed simple misconduct, a less serious charge.

7. ID.; ID.; ID.; ID.; ONLY PENALTY AND LENGTH OF SERVICE.— Respondent argues that his 24 years in the judiciary should be considered in his favor. We disagree. Length of service, as a factor in determining the imposable penalty in administrative cases, is a double-edged sword. While it can sometimes help mitigate the penalty, it can also justify a more serious sanction. Whatever it is, a judge's long years of service on the bench are no excuse for ignorance of procedural rules.

8. ID.; ID.; ID.; ID.; ADMINISTRATIVE CASE AGAINST A JUDGE ALSO CONSIDERED A DISCIPLINARY PROCEEDING AGAINST SAID JUDGE AS A MEMBER OF THE BAR.— Pursuant to A.M. No. 02-9-02-SC, this administrative case against respondent is also considered a disciplinary proceeding against him as a member of the bar. Violation of the basic tenets of judicial conduct embodied in the New Code of Judicial Conduct for the Philippine Judiciary and the Code of Judicial Conduct constitutes a breach of Canons 1 and 12 as well as Rules 1.03 and 12.04 of the Code of Professional Responsibility (CPR). Respondent also transgressed Rule 10.03 of the CPR when he violated the provisions of the RRSP and the ROC.

R E S O L U T I O N

CORONA, *J.*:

This concerns an administrative complaint stemming from an action for ejectment[1] docketed as Civil Case No. 12334.[2] In the course of the ejectment proceedings, respondent Judge Jose P. Nacional issued a pre-trial order dated September 3, 2004 requiring the parties to file their respective position papers and affidavits of witnesses on September 30, 2004. The parties complied with the September 3, 2004 order.

Subsequently, respondent issued an order dated December 28, 2004[3]requiring the parties to submit their respective "memorand[a] in the form of a court decision." The parties likewise complied with this order. The case was eventually decided by respondent on February 14, 2005.

Complainant avers that the issuance of the December 28, 2004 order violated the prohibition on memoranda by the Revised Rules on Summary Procedure (RRSP). Complainant likewise posits that respondent violated the Rules when he decided the case only on February 14, 2005 or 136 days from the date required by law.[4]

[1] *Rollo*, p. 7. Captioned as *Heirs of Jose Mariano, et al. v. City of Naga.* The land in question was co-owned by Macario Mariano and Jose Gimenez, predecessors-in-interest of therein plaintiffs. The complaint alleged that the City of Naga refused to vacate a parcel of land donated to it by Mariano and Gimenez. Said donation was allegedly voided due to the failure of the City of Naga to comply with certain conditions set forth in the deed of donation. In its Answer, the City of Naga averred that the said donation remained in force. Therefore, it cannot be ejected from the land in question.

[2] In other pleadings and orders, the docket number was written as Civil Case No. 12834.

[3] *Rollo*, p. 403. The Order stated in part: "Considering now the voluminous records under consideration by the Court, to expedite the resolution of the issue before it, both counsel[s] are given thirty (30) days from receipt of this order to submit their respective MEMORAND[A] IN THE FORM OF A COURT DECISION after which the case shall be deemed submitted for decision of the Court."

[4] Respondent should have decided the case on November 2, 2004 or 30 days after the date the parties submitted their position papers and affidavits of witnesses pursuant to the pre-trial order dated September 3, 2004.

In view of respondent's acts, complainant filed this administrative complaint for gross inefficiency, gross ignorance of the law, dereliction of duty and violation of judicial conduct.

In his comment, respondent admitted that he had exceeded the maximum period allowed under the RRSP. He offered the following excuses: (1) the quality of his decision had priority over compliance with the reglementary period; (2) his caseload was heavy and (3) the documents of the case were voluminous. He also justified his December 28, 2004 order by stating that the case was "not an ordinary one."[5]

Respondent added that this administrative complaint was filed only because the judgment was against complainant.

In its evaluation, the Office of the Court Administrator (OCA) found that respondent violated basic procedure and the code of judicial conduct.[6] It also found that respondent had been previously admonished for gross ignorance of the law, dereliction of duty, partiality, oppression and incompetence in *Prado v. Judge Nacional*.[7]

The OCA recommended that respondent be held liable for violation of judicial conduct and gross ignorance of the law or procedure. It proposed that respondent be fined ₱20,000 with a stern warning that a repetition of the same or similar act would be dealt with more severely.

The findings of the OCA are well-taken but we do not agree with the recommended penalty.

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[5] *Rollo*, p. 405. Respondent avers that the case was not ordinary because the City Hall of Naga City, the Hall of Justice and various local and national government offices were located on the lot in question. Moreover, the plaintiffs' memorandum contained new elements which "caught him by surprise, particularly whether a narration of facts contained in an affidavit not formally offered can be appreciated by the Court."

[6] *Rollo*, p. 408.

[7] A.M. No. MTJ-98-1170. On November 12, 2001, respondent was found guilty of the charges therein. He was admonished. The dispositive portion of the said case reads: "WHEREFORE, Judge Jose P. Nacional of the Municipal Circuit Trial Court of Camaligan-Gainza-Milaor, Camarines Sur is ADMONISHED to be more circumspect in the performance of his duties."

Without doubt, Civil Case No. 12334 was a case of unlawful detainer covered by the RRSP.[8] Section 5 of the RRSP explicitly provides that only complaints, compulsory counterclaims and cross-claims pleaded in the answer, as well as the answers to these pleadings, are allowed. The RRSP also expressly prohibits the filing of a memorandum.[9] The same prohibition is contained in Section 13, Rule 70 of the Rules of Court (ROC).

The urgency of restoring social order is the paramount consideration in settling unlawful detainer and forcible entry cases. To aid the judiciary in proceeding with these cases, the RRSP was promulgated with the following rationale:[10]

> [T]he adoption of the Rule on Summary Procedure is part of the commitment of the judiciary to enforce the constitutional right of litigants to a speedy disposition of their cases. It was promulgated [to] achiev[e] "an expeditious and inexpensive determination of cases." Any member of the judiciary who causes the delay sought to be prevented by the Rule is sanctionable.

The necessity of promptly resolving unlawful detainer and forcible entry cases is made more imperative by the express legal provisions on periods of rendition of judgments. Specifically, Section 11, Rule 70 of the ROC provides that the court shall render judgment within 30 days after receipt of the affidavits and position papers, or expiration of the period for filing the same. The RRSP provides for the same period.

Corollarily, Rule 3.05, Canon 3 of the Code of Judicial Conduct[11] admonishes all judges to dispose of the court's business

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[8] Revised Rules on Summary Procedure (1991), Section 1 (A) (1).

[9] Section 19 (f) of the Revised Rules on Summary Procedure provides: "Section 19. *Prohibited pleadings and motions.*— The following pleadings, motions, or petitions shall not be allowed in the cases covered by this Rule:

(a) xxx

(f) Memoranda;

(g) xxx."

[10] *Tugot v. Coliflores*, A.M. No. MTJ-00-1332, 16 February 2004, 423 SCRA 1, 8.

[11] The New Code of Judicial Conduct for the Philippine Judiciary (A.M. No. 03-05-01-SC) provides:

promptly and decide cases[12] within the period specified in Section 15 (1) and (2), Article VIII of the Constitution.[13] This is supplemented by Section 5, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary[14] requiring judges to perform all judicial duties efficiently, fairly and with reasonable promptness.

We cannot accept the justifications advanced by respondent. Doing so will undermine the wisdom behind procedural rules and diminish respect for the law. We reiterate that a judge (by himself) cannot choose to prolong the period for deciding cases beyond that authorized by law.[15] If a judge needs more time to decide a case, he should formally request this Court for an extension of the deadline.

The rules of procedure are clear and unambiguous, leaving no room for interpretation. We have held in numerous cases that the failure to apply elementary rules of procedure constitutes gross ignorance of the law and procedure.[16] Neither good faith

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"This Code, which shall hereafter be referred to as the *New Code of Judicial Conduct for the Philippine Judiciary*, supersedes the Canons of Judicial Ethics and the Code of Judicial Conduct heretofore applied in the Philippines **to the extent that the provisions or concepts therein are embodied in this Code: *Provided, however,* that in case of deficiency or absence of specific provisions in this New Code,** the Canons of Judicial Ethics and **the Code of Judicial Conduct shall be applicable in a suppletory character.**"

[12] Code of Judicial Conduct (1989).

[13] *Acuzar v. Ocampo*, A.M. No. MTJ-02-1396, 15 March 2004, 425 SCRA 464, 469. Section 15 (1) and (2) of the Constitution provides: "Section 15. (1) All cases or matters filed after the effectivity of this Constitution must be decided or resolved within twenty-four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all lower courts.

"(2) A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, memorandum required by the Rules of Court or by the court itself."

[14] A.M. No. 03-05-01-SC. Dated 27 April 2004.

[15] *Reyes-Garmsen v. Bello, Jr.*, A.M. No. RTJ-04-1877, 21 December 2004, 447 SCRA 377, 382.

[16] *Basilia v. Becanon*, A.M. No. MTJ-02-1438, 22 January 2004, 420 SCRA 608, 612.

nor lack of malice will exonerate respondent because, as previously noted, the rules violated were basic procedural rules. All that was needed for respondent to do was to apply them.[17] Unfortunately, he chose not to.

It is settled that one who accepts the exalted position of a judge owes the public and the court the ability to be proficient in the law and the duty to maintain professional competence at all times.[18] Competence and diligence are prerequisites to the due performance of judicial office.[19]

We note that aside from *Prado v. Judge Nacional*[20] for which respondent was admonished in 2001, he was also indicted for conduct unbecoming of a judge in *Abesa v. Judge Nacional*.[21]

Respondent argues that his 24 years in the judiciary should be considered in his favor. We disagree. Length of service, as a factor in determining the imposable penalty in administrative cases, is a double-edged sword. While it can sometimes help mitigate the penalty, it can also justify a more serious sanction.[22] Whatever it is, a judge's long years of service on the bench are no excuse for ignorance of procedural rules.[23]

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[17] *Victory Liner, Inc. v. Bellosillo*, A.M. No. MTJ00-1321, 10 March 2004, 425 SCRA 79, 91.

[18] *Lim v. Judge Dumlao*, A.M. No. MTJ-04-1556, 31 March 2005, 454 SCRA 196.

[19] Canon 6, New Code of Judicial Conduct, A.M. No. 03-05-01-SC.

[20] *Supra* note 7.

[21] A.M. No. MTJ-05-1605, 8 June 2006, 490 SCRA 74. In this case, Judge Nacional was accused of lawyering for the accused in a criminal case which was filed in his sala. Judge Nacional was found guilty of conduct prejudicial to the best interest of the service. He was reprimanded and sternly warned that a repetition of the same and similar acts shall be dealt with more severely.

[22] By express provision of Section 53 of the Revised Uniform Rules on Administrative Cases (1999) in the Civil Service, length of service may be considered as an extenuating, mitigating, aggravating or alternative circumstance.

[23] *Gutierrez, et al. v. Judge Hernandez, Sr.*, A.M. No. MTJ-06-1628, 8 June 2007, 524 SCRA 1.

As to the penalty that should be properly meted out to respondent, A.M. No. 01-8-10-SC governs.[24] Gross ignorance of the law and procedure is classified as a serious charge.[25] And for his violation of the Code of Judicial Conduct, the evidence shows that he only committed simple misconduct, a less serious charge.[26]

Pursuant to A.M. No. 02-9-02-SC,[27] this administrative case against respondent is also considered a disciplinary proceeding against him as a member of the bar.[28] Violation of the basic tenets of judicial conduct embodied in the New Code of Judicial Conduct for the Philippine Judiciary and the Code of Judicial Conduct constitutes a breach of Canons 1[29] and 12[30] as well as Rules 1.03[31] and 12.04[32] of the Code of Professional Responsibility

[24] Amendment to Rule 140 of the Rules of Court regarding the discipline of Justices and Judges. Dated September 11, 2001.

[25] A serious charge is punishable by either dismissal from the service, suspension from office without salary and other benefits for more than three months but not exceeding six months or a fine of not more than three months but not exceeding six months or a fine of not more than ₱20,000 but not exceeding ₱40,000.

[26] A less serious charge is punishable by either suspension from office without salary and other benefits for not less than one month nor more than three months or a fine of not more than ₱10,000 but not exceeding ₱20,000.

[27] Re: Automatic Conversion of Some Administrative Cases Against Justices of the Court of Appeals and the Sandiganbayan, Judges of Regular and Special Courts, and Court Officials Who Are Lawyers as Disciplinary Proceedings Against Them Both as Officials and as Members of the Philippine Bar. Dated September 17, 2002.

[28] *De la Cruz (A Concerned Citizen of Legazpi City) v. Judge Carretas*, A.M. No. RTJ-07-2043, 5 September 2007, 532 SCRA 218.

[29] CANON 1 — A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND FOR LEGAL PROCESSES.

[30] CANON 12 — A LAWYER SHALL EXERT EVERY EFFORT AND CONSIDER IT HIS DUTY TO ASSIST IN THE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE.

[31] Rule 1.03 — A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause.

[32] Rule 12.04 — A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse court processes.

(CPR). Respondent also transgressed Rule 10.03[33] of the CPR when he violated the provisions of the RRSP and the ROC.

WHEREFORE, respondent Judge Jose P. Nacional is hereby found *GUILTY* of gross ignorance of the law and procedure for which he is *FINED* ₱40,000. He is also found *GUILTY* of violation of Rule 3.05, Canon 3 of the Code of Judicial Conduct and Section 5, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary for which he is *FINED* ₱20,000. Respondent is furthermore found *GUILTY* of violation of Canons 1 and 12 as well as Rules 1.03, 10.03 and 12.04 of the Code of Professional Responsibility for which he is *FINED* ₱10,000.

He is hereby ordered to remit payment of the fines within ten (10) days from receipt of this resolution.

Respondent is *STERNLY WARNED* that a repetition of the same or similar offense shall warrant an even more severe penalty.

Let a copy of this resolution be attached to the personal records of respondent in the Office of Administrative Services, Office of the Court Administrator and the Office of the Bar Confidant.

SO ORDERED.

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

[33] Rule 10. 03 — A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

FIRST DIVISION

[A.M. No. RTJ-08-2137. February 10, 2009]
(Formerly OCA I.P.I. No. 06-2530-RTJ)

HEIRS OF SPOUSES JOSE and CONCEPCION OLORGA, represented by ILDA OLORGA-CAÑAL, *complainants, vs.* **Judge ROLINDO D. BELDIA, JR., and Branch Clerk of Court MARY EMILIE T. VILLANUEVA, Regional Trial Court, San Carlos City, Negros Occidental, Branch 57,** *respondents*.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; RULE ON CASES RAFFLED TO A BRANCH AND WHERE JUDGE THEREOF WAS TRANSFERRED. —** In *Re: Cases Left Undecided by Judge Sergio D. Mabunay, RTC, Branch 24, Manila*, we held that cases which are raffled to a branch belong to that branch unless re-raffled or otherwise transferred to another branch in accordance with established procedure. Judges who are transferred do not take with them cases substantially heard by them and submitted to them for decision unless they are requested to do so by any of the parties and such request is endorsed by the incumbent presiding judge through the OCA.

2. **ID.; ID.; ID.; INFIDELITY IN THE CUSTODY OF PUBLIC DOCUMENTS; NO SUBSTANTIAL EVIDENCE IN CASE AT BAR.—** Respondent judge could not be held liable for infidelity in the custody of public documents since there was no evidence that the records were lost while they were in his possession, that he took them with him to Bacolod City or that he destroyed or concealed them. There was only the self-serving affidavit of Juanito and Leticia de Guzman offered by complainants which was not corroborated by independent or more reliable evidence. This did not constitute substantial evidence that a reasonable mind would accept as adequate to support the conclusion that respondent judge was responsible for the loss of the case records. In administrative proceedings, the complainant bears the onus of establishing, by substantial evidence, the averments of his or her complaint.

3. ID.; ID.; ID.; REQUISITE CARE AND DILIGENCE IN THE PERFORMANCE OF DUTY AS PRESIDING JUDGE; VIOLATED IN CASE AT BAR WHERE ENTRIES IN THE DOCKET BOOK WERE DONE "HAPHAZARDLY." — While respondent judge should not be held liable for the loss of the records of Civil Case No. X-82, we agree that the former failed to demonstrate the requisite care and diligence necessary in the performance of his duty as presiding judge, specifically in ensuring that the entries in the court's docket book were updated. Respondent judge himself admitted that the docket book was filled up "haphazardly." Indeed, while it is not the presiding judge who makes the entries in the docket book, still . . . the trial judge is expected to adopt a system of record management and organize his docket in order to bolster the prompt and effective dispatch of business. Proper and efficient court management is the responsibility of the judge. It is incumbent upon judges to devise an efficient recording and filing system in their courts so that no disorderliness can affect the flow of cases and their speedy disposition. x x x it is incumbent on all trial court judges to duly apprise this Court or the OCA of problems they encounter in the day-to-day administration of their court dockets and records, so they may receive appropriate guidance and assistance. After all, the responsibility for an efficient administration of justice lies not only with the trial court judges, but with the judicial system as a whole. Respondent judge assumed office as the presiding judge of Branch 57 in May 1992. He issued orders in Civil Case No. X-82, the last being the order dated November 16, 1994, declaring the case submitted for decision. However, the last entry in the docket book pertaining to the case was dated March 5, 1982. From then on, several orders were issued by the respondent judge but these were never recorded in the docket book as they should have been.

4. ID.; ID.; ID.; ID.; ID.; SIMPLE MISCONDUCT, COMMITTED; PROPER PENALTY. — Respondent judge was negligent in the discharge of his duties. He failed to observe that degree of care, precaution and vigilance required of his position. Considering his administrative authority over the court's personnel, he should have directed them to be diligent in the performance of their functions. He neglected to properly supervise them, particularly those in charge of the docket books,

resulting in incomplete entries therein. These violated Rules 3.08 and 3.09 of the Code of Judicial Conduct: Rule 3.08. — A judge should diligently discharge his administrative responsibilities, maintain professional competence in court management, and facilitate the performance of the administrative functions of other judges and court personnel. Rule 3.09. — A judge should organize and supervise the court personnel to ensure the prompt and efficient dispatch of business, and require at all times the observance of high standards of public service and fidelity. This constituted simple misconduct, defined as a transgression of some established rule of action, an unlawful behavior or negligence committed by a public officer. It is a less serious offense punishable by suspension from office without salary and other benefits for not less than one month nor more than three months or a fine of more than ₱10,000 but not exceeding ₱20,000. Consequently, we fine respondent judge in the amount of ₱15,000. We find this amount reasonable, considering that respondent judge had already been administratively sanctioned twice before.

5. ID.; ID.; ID.; ID.; ID.; ID.; ID.; NOT AFFECTED BY RETIREMENT AS FINE OF ₱15,000 SHALL BE DEDUCTED FROM RETIREMENT BENEFITS.— Respondent judge's compulsory retirement on October 31, 2006 did not render the present administrative case moot and academic. It did not free him from liability. Complainant filed this case on April 5, 2006, before respondent judge retired from office. As such, the Court retained the authority to resolve the administrative complaint against him. Cessation from office because of retirement does not *per se* justify the dismissal of an administrative complaint against a judge while still in the service. The ₱15,000 fine can and shall be deducted from his retirement benefits.

6. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; DUTY TO PROMOTE RESPECT OF LAW, THE LEGAL PROCESSES, THE COURTS AND ITS OFFICERS; VIOLATED WHEN RESPONDENT JUDGE VIOLATED THE FUNDAMENTAL TENETS OF JUDICIAL CONDUCT.— Pursuant to A.M. No. 02-9-02-SC, this administrative case against respondent as a judge, based on grounds which are also grounds for the disciplinary action against members of the Bar, shall be considered as disciplinary proceedings against such judge as a member of the Bar. Violation

of the fundamental tenets of judicial conduct embodied in the Code of Judicial Conduct constitutes a breach of Canons 1 and 11 of the Code of Professional Responsibility (CPR): Canon 1 — A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes. Canon 11 — A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others. Certainly, a judge who falls short of the ethics of the judicial office tends to diminish the people's respect for the law and legal processes. He also fails to observe and maintain the esteem due to the courts and to judicial officers. Respondent judge's negligence also ran counter to Canon 12 of the CPR which provides: Canon 12 — A lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice. For such violation of Canons 1, 11 and 12 of the CPR, he is severely reprimanded.

7. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; CLERK OF COURT; DUTY IN SAFE-KEEPING OF COURT RECORDS, NOT BREACHED IN CASE AT BAR. — Section 7, Rule 136 of the Rules of Court specifically mandates the clerk of court to "safely keep all **records**, papers, files, exhibits and public property **committed to his [or her] charge.**" Considering that the records of Civil Case No. X-82 could no longer be located in Branch 57 since 1995 and respondent clerk of court assumed her post only on January 10, 2000, these records were obviously never committed to her charge. In addition, in the docket inventory of cases dated July 11, 2000 prepared and submitted by Judge Javellana, Civil Case No. X-82 was not included. Likewise, in our resolution dated August 28, 2000, Civil Case No. X-82 was not in the list of cases still left undecided beyond the mandated period. For the same reason, respondent clerk of court cannot be held accountable for the incomplete entries in the docket book with respect to Civil Case No. X-82. Moreover, when complainants followed up the case with respondent clerk of court, the latter conducted an investigation. When the records could not be found, she informed the complainants and assured them that the court could assist them in reconstituting such records. Under the circumstances, she did all that she could. It was not shown that she was remiss in her duties.

D E C I S I O N

CORONA, *J.*:

In a verified complaint dated April 5, 2006, complainant Ilda Olorga-Cañal, by herself and as representative of the other heirs of spouses Jose and Concepcion Olorga, charged respondents Judge Rolindo D. Beldia, Jr. and Atty. Mary Emilie T. Villanueva, former presiding judge and branch clerk of court, respectively, of the Regional Trial Court (RTC), San Carlos City, Negros Occidental, Branch 57, with infidelity in the custody of records in connection with Civil Case No. X-82 entitled "*Concepcion Olorga, et al. v. Cesar Lopez*" for specific performance and damages.

The complainants made the following allegations:

(1) The records of Civil Case No. X-82, which was filed way back in 1982 by their mother, Concepcion Olorga, were lost while in the custody of respondents and could not be found. They found out that the only entry was the name of [Atty. Rudy B. Cañal][1] who filed the case, the date of the filing, the title of the complaint and nothing else, up to the present year 2006 or precisely a span of 24 years.

(2) As a result of said complete loss of the records, they found it extremely difficult, if not impossible, to prove that the property or lot, subject matter of the civil case, had been fully and completely paid for by the spouses. All the documentary evidence had already been submitted to the RTC, Branch 57 in 1993 as supported by the xerox copy of the order of respondent judge. Unfortunately, complainants could not secure a certified true copy of this order but would be able to present the original carbon copy duly signed by the Clerk of Court at that time.[2]

(3) Their late father, notwithstanding the distance of their home from the court, the two-hour bus ride and the long hours of waiting in the court, followed up the case after the death of their mother, for almost 10 years, *i.e.* from 1982 to 1991.

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[1] Husband of complainant Ilda Olorga-Cañal.

[2] Report on Investigation and Recommendation, p. 2.

On April 19, 1993, they had already rested their case and the lawyer for the defendant had manifested in open court that if the last defense witness could not be presented on the next scheduled hearing, he, too, would be resting his case. Despite this, respondent judge failed to resolve the case within the mandated time of 90 days, from 1994 to 2006.[3]

(4) Respondents were trying to cover-up their negligence by blaming the termites for the loss of the records. Complainants had in their possession copies of the orders issued by respondent judge himself indicating that the same had long been submitted for decision.[4]

Respondent judge denied the charges against him. He offered these defenses:

(1) He was appointed as judge of RTC, San Carlos City, Negros Occidental, Branch 57 only on March 19, 1992 and assumed office in May 1992. Thereafter, he was designated as the acting presiding judge of the RTC, Bacolod City, Branch 45 on June 30, 1993.[5] He went back to Branch 57 only in April 2002.[6] During the interim period or before his return to Branch 57, he was designated as the acting presiding judge in RTC, Bacolod City, Branch 41, Mambusao, Capiz and Marikina.[7]

(2) Upon inquiry from the court personnel who had been and still assigned in Branch 57, the records of Civil Case No. X-82 could not be traced or located and that the entry in the docket book did not indicate the status of the case and was haphazardly done. If it would still be possible, reconstruction of the

[3] *Id.*, p. 3.

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

[5] Pursuant to Administrative Order No. 104-93 of even date. In the same administrative order, Judge Roberto S. A. Javellana was designated as the acting presiding judge of RTC, Branch 57, San Carlos City, Negros Occidental in addition to his regular duties in his own court, effective immediately and to continue until the return of respondent judge, or until further orders from the Supreme Court; *id.*, p. 3.

[6] Per Administrative Order No. 18-2002 dated February 7, 2002; *id.*

[7] *Id.* and *rollo*, p. 3.

records of the case was the only and best way by which complainants could be apprised of the actual status of the case. The Branch 57 personnel under his watch had nothing to do with the loss of the records of Civil Case No. X-82.

(3) The case records of Civil Case No. X-82 remained with Branch 57 when he was transferred to RTC, Bacolod City, Branch 45 since the records of the cases assigned to him in Branch 57 did not follow him wherever he was assigned. Furthermore, these records could and should not be brought outside of the court's premises without any court order.

(4) The audit team sent by the Supreme Court on March 21, 2000 found that Civil Case No. X-82 was not among the civil cases that remained not acted upon for a long time.[8] When another audit team came on June 16, 2005, the case was never brought up. This team perused the docket books and found everything in order.

(5) When he was ordered to return to Branch 57 in 2002, Civil Case No. X-82 was not among the cases in the inventory he signed when he resumed his post.[9]

On the other hand, respondent Atty. Mary Emilie T. Villanueva averred that:

(1) She assumed as branch clerk of court of Branch 57, on January 10, 2000. When she assumed her position, there was no existing list of cases submitted for decision and she had to conduct and prepare a physical and actual inventory of all the pending cases assigned to Branch 57. Civil Case No. X-82 was not included in the inventory she prepared and signed by former presiding judge Roberto S.A. Javellana. Also, it was not among those civil cases found by the audit team sent by the Supreme Court on March 21, 2000 as not having been resolved within the required period.[10]

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[8] Per Resolution of the Supreme Court dated August 28, 2000 in Administrative Matter No. 00-8-354-RTC (*Re: Report on the Spot Judicial Audit conducted in the Regional Trial Court, San Carlos City [Negros Occidental], Branches 57, 58 and 59*); *id.*, p. 4 and *rollo*, p. 3.

[9] *Rollo*, p. 3.

[10] *Id.* and Report on Investigation and Recommendation, pp. 4-5.

(2) When she assumed office, she realized that the former clerks of court and officers-in-charge of Branch 57 did not keep a proper recording/docketing of the cases assigned to and decided by the said court. So she instructed the clerks-in-charge to properly fill in the docket books the dispositive portions of the court's decisions or final orders before endorsing the records of these cases to the office of the clerk of court.

(3) Sometime in March 2006, the complainants (spouses Cañal) went to her office to follow-up the status of Civil Case No. X-82 after inquiring by phone. She informed them she had the records of the case searched prior to their arrival but they were not found. In the course of her investigation, she came to know that the records of the case were lost long ago. Even the former clerk of court, Atty. Riah Debulgado, tried to look for them during the latter months of 1995 and early months of 1996 but failed to find them. She showed them the page in the docket book showing the entry relevant to the case. She assured complainants that their office will help them with the reconstruction of the records. Her averments found support in the affidavits of the court's stenographer, sheriff IV, and clerk III (in-charge of the records of all the civil cases).[11]

In a resolution dated February 12, 2007, upon the recommendation of the Office of the Court Administrator (OCA), we referred the administrative case to the Court of Appeals, Cebu City, for investigation, report and recommendation.[12] It was assigned to Justice Francisco P. Acosta who conducted a hearing on the matter.

From the testimonies and documentary evidence, Justice Acosta ferreted out the following sequence of events:

(1) Civil Case No. X-82 was **filed in 1982** in RTC, San Carlos City, Negros Occidental, Branch 57, then presided by Judge Macandog, by Atty. Cañal against Cesar Lopez.

(2) There were photocopies of the orders issued by then Judge Cesar D. Estampador in Civil Case No. X-82, where one Order stated –

[11] *Id.*, p. 4 and Report on Investigation and Recommendation, p. 5.

[12] *Id.*, p. 292.

> As agreed by counsel for both parties, let the continuance of the hearing of this case be set on October 29, 1987, at 8:30 in the morning, for counsel for the plaintiff to cross-examine witness Cesar Lopez.
>
> SO ORDERED.

(3) The other orders issued by Judge Estampador were all postponements/resetting of hearing dates.

(4) In a Motion dated May 21, 1084, (sic) Atty. Cañal withdrew as counsel.

(5) Atty. Raymundo Ponteras took over the case from Atty. Cañal, and thereafter, Atty. Vic Agravante took over from Atty. Ponteras;

(6) Respondent judge was appointed as the presiding judge of Branch 57 on **March 19, 1992 and assumed office in May 1992**.

(7) Respondent judge was designated as acting presiding judge of Branch RTC, Bacolod City, Branch 45, pursuant to Administrative Order No. 104-93 dated June 30, 1993, in lieu of Judge Medina who retired, but at the same time he continued to hear cases in Branch 57 since Judge Roberto S.A. Javellana fully assumed the position of presiding judge of Branch 57 only in January of 1995.

(8) The last **orde**r issued by the respondent judge in Civil Case No. X-82 was dated **November 16, 1994**, which read as follows:

> All exhibits marked, Exhibit "I" with its sub-markings; Exhibit "5" sub-markings; Exhibits "6", "7", "8", and "8-A"; Exhibit "9" and "10" are all admitted as part of the testimony of the witnesses for the defendants, for whatever worth it may be and thereafter submitted for DECISION.
>
> SO ORDERED.

(9) Respondent judge was designated as the presiding judge of RTC, Bacolod City, Branch 41 on **December 21, 1994**, by virtue of Administrative Order No. 225-93, but **assumed** office only in **January of 1995**.

(10) Based on their joint-affidavit dated June 2, 2006, spouses Juanito and Leticia de Guzman[13] averred that sometime in 1994, they went to Branch 57 to follow-up on the case. They were shown the records thereof and someone from the office asked them for ₱300 as traveling expenses of the court's messenger who would deliver the case records to respondent judge in Bacolod City since the latter was the one to decide the said case.

(11) Based on the affidavit of Rudy L. Olorga, he delivered the amount of ₱300 to the court messenger at his residence and could even recall where the latter lives.

(12) The complainants, however, did not present the court messenger or any person who could corroborate the foregoing allegations.

(13) Branch 57 clerk-in-charge of civil cases Lilibeth Libutan assumed her duty as such in July 1996. Per her sworn statement, she had no knowledge of Civil Case No. X-82, until she heard the former clerk of court, the late Atty. Riah Debulgado say that she (Atty. Debulgado) had been looking for the said records but could not locate them.

(14) Respondent clerk of court assumed office only on **January 10, 2000**. There was no formal turn-over of all the court's case records since at that time, only the judges were required to make and submit a bi-annual docket inventories and to conduct an inventory upon their assumption of office.

(15) On March 21, 2000, the Supreme Court sent an audit team to Branch 57 and found out that there were several cases not acted upon for a long period of time but Civil Case No. X-82 was not one of them as revealed in the resolution of the First Division of the Supreme Court dated August 28, 2000.

(16) Per the docket Inventory dated July 11, 2000, for the period January to June 2000, submitted by Judge Javellana, Civil Case No. X-82 was not included in said inventory.

(17) Respondent judge returned to Branch 57 in 2002, pursuant to Administrative Order No. 18-2002 dated February 7, 2002.

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[13] They stated that Rudy Cañal, husband of complainant Ilda Olorga-Cañal, is their brother-in-law; *id.*, p. 118.

(18) The Supreme Court sent another audit team on June 16, 2005 and found that no active records had been lost and after going over the court's docket books, said team found everything to be in order.

(19) Sometime in March of 2006, someone inquired about the status of the case, and thereafter, the respondent clerk of court instructed the clerk in charge to look for the records of Civil Case No. X-82 in all possible places where it may be found, including in the disposed and archived cases section, but the search yielded nothing.

(20) In the last week of March 2006, complainant Ilda Olorga-Cañal, together with Atty. Rudy Cañal and some other companions, went to Branch 57 and asked for the records of Civil Case No. X-82. They were shown the docket book and were informed that neither the respondent clerk of court nor the clerk in charge had seen said records.

(21) The Supreme Court directed respondent judge to conduct an investigation/inquiry regarding Civil Case No. X-82.

(22) The last entry in the docket book pertaining to Civil Case No. X-82 is the order dated March 5, 1982, terminating the pre-trial. From then on, nothing was entered therein.[14]

Based on these findings, Justice Acosta recommended that the complaint for infidelity in the custody of records be dismissed against both respondents because these records were not in their custody when they were lost. However, he recommended that respondent judge be held liable for his negligence in maintaining his court's docket book and fined ₱5,000.[15]

ON THE LIABILITY OF RESPONDENT JUDGE

Civil Case No. X-82 was submitted for decision in an order issued by respondent judge on November 16, 1994. Judges of lower courts have 90 days from the time a case is submitted for decision to decide the same.[16] Respondent judge was designated as presiding judge of RTC, Bacolod City, Branch 41 on

[14] Report on Investigation and Recommendation, pp. 6-11.

[15] *Id.*, p. 16.

[16] CONSTITUTION, Article VIII, Sec. 15.

December 21, 1994 but assumed office in January 1995. The time for rendering a decision had not lapsed at the time of his transfer and he did not render one before he was transferred and replaced by Judge Javellana.

The question now is: who had custody of the records of Civil Case No. X-82 when they were lost?

According to affiants Juanito and Leticia de Guzman, the records were still with Branch 57 when they followed up on the case sometime in 1994 after the same was submitted for decision. They were told that they had to give ₱300 to the court's messenger for the latter to bring the records to Bacolod City so that the respondent judge could decide the case. From this statement, it is safe to assume that when the respondent judge left Branch 57, the records were still there.[17]

However, from the sworn affidavit of Lilibeth L. Libutan, clerk in charge of civil cases of Branch 57, the records of Civil Case No. X-82 could not be found when she assumed office in July 1996. She stated that Atty. Riah Debulgado, former branch clerk of court, also looked for the missing records during the latter months of 1995 and early months of 1996 but failed to locate them.[18]

In *Re: Cases Left Undecided by Judge Sergio D. Mabunay, RTC, Branch 24, Manila*,[19] we held that cases which are raffled to a branch belong to that branch unless re-raffled or otherwise transferred to another branch in accordance with established procedure. Judges who are transferred do not take with them cases substantially heard by them and submitted to them for decision unless they are requested to do so by any of the parties and such request is endorsed by the incumbent presiding judge through the OCA:

Basically, a case once raffled to a branch belongs to that branch unless reraffled or otherwise transferred to another branch in

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[17] Report on Investigation and Recommendation, p. 11; *rollo*, p. 35.

[18] *Id.*, p. 11; *rollo*, pp. 4, 188.

[19] A.M. No. 98-3-114-RTC, 22 July 1998, 292 SCRA 694.

accordance with established procedure. When the Presiding Judge of that branch to which a case has been raffled or assigned is transferred to another station, he leaves behind all the cases he tried with the branch to which they belong. He does not take these cases with him even if he tried them and the same were submitted to him for decision. The judge who takes over this branch inherits all these cases and assumes full responsibility for them. He may decide them as they are his cases, unless any of the parties moves that his case be decided by the judge who substantially heard the evidence and before whom the case was submitted for decision. If a party therefore so desires, he may simply address his request or motion to the incumbent Presiding Judge who shall then endorse the request to the [OCA] so that the latter may in turn endorse the matter to the judge who substantially heard the evidence and before whom the case was submitted for decision. This will avoid the "*renvoir*" of records and the possibility of an irritant between the judges concerned, as one may question the authority of the other to transfer the case to the former. If coursed through the [OCA], the judge who is asked to decide the case is not expected to complain, otherwise, he may be liable for insubordination and his judicial profile may be adversely affected. Upon direction of the Court Administrator, or any of his Deputy Court Administrators acting in his behalf, the judge before whom a particular case was earlier submitted for decision may be compelled to decide the case accordingly.

We take this opportunity to remind trial judges that once they act as presiding judges or otherwise designated as acting/assisting judges in branches other than their own, cases substantially heard by them and submitted to them for decision, unless they are promoted to higher positions in the judicial ladder, may be decided by them wherever they may be if so requested by any of the parties and endorsed by the incumbent Presiding Judges through the [OCA]. The following procedure may be followed: First, the Judge who takes over the branch must immediately make an inventory of the cases submitted for decision left behind by the previous judge (unless the latter has in the meantime been promoted to a higher court). Second, the succeeding judge must then inform the parties that the previous judge who heard the case, at least substantially, and before whom it was submitted for decision, may be required to decide the case. In this event, and upon request of any of the parties, the succeeding judge may request the Court Administrator to formally endorse the case for decision to the judge before whom it was previously submitted for decision. Third, after the judge who previously heard the case

is through with his decision, he should send back the records together with his decision to the branch to which the case properly belongs, by registered mail or by personal delivery, whichever is more feasible, for recording and promulgation, with notice of such fact to the Court Administrator.

Since the primary responsibility over a case belongs to the presiding judge of the branch to which it has been raffled or assigned, he may also decide the case to the exclusion of any other judge provided that all the parties agree in writing that the incumbent presiding judge should decide the same, or unless the judge who substantially heard the case and before whom it was submitted for decision has in the meantime died, retired or for any reason has left the service, or has become disabled, disqualified, or otherwise incapacitated to decide the case.

The Presiding Judge who has been transferred to another station cannot, on his own, take with him to his new station any case submitted for decision without first securing formal authority from the Court Administrator. This is to minimize, if not totally avoid, a situation of "case-grabbing." In the same vein, when the Presiding Judge before whom a case was submitted for decision has already retired from the service, the judge assigned to the branch to take over the case submitted for decision must automatically assume the responsibility of deciding the case.[20]

There is no showing that respondent judge was ever ordered by this Court, through the OCA, to decide Civil Case No. X-82. Although there was an allegation that the records of the case were delivered to respondent judge in Bacolod City, there was no proof whatsoever that he indeed instructed someone from Branch 57 to bring the records to him. Much less was there proof that the records were in fact brought to the respondent judge in Bacolod City so that he could decide the case.

Thus, we agree with Justice Acosta that respondent judge could be held liable for infidelity in the custody of public documents since there was no evidence that the records were lost while they were in his possession, that he took them with him to Bacolod City or that he destroyed or concealed them. There was only the self-serving affidavit of Juanito and Leticia

[20] *Id.*, pp. 699-701.

de Guzman offered by complainants which was not corroborated by independent or more reliable evidence. This did not constitute substantial evidence that a reasonable mind would accept as adequate to support the conclusion[21] that respondent judge was responsible for the loss of the case records. In administrative proceedings, the complainant bears the onus of establishing, by substantial evidence, the averments of his or her complaint.[22] Furthermore,

> [any] administrative complaint leveled against a judge must always be examined with a discriminating eye, for its consequential effects are by their nature highly penal, such that the respondent judge stands to face the sanction of dismissal or disbarment. Mere imputation of judicial misconduct in the absence of sufficient proof to sustain the same will never be countenanced. If a judge should be disciplined for misconduct, the evidence against him should be competent.[23]

Be that as it may, while respondent judge should not be held liable for the loss of the records of Civil Case No. X-82, we agree with Justice Acosta that the former failed to demonstrate the requisite care and diligence necessary in the performance of his duty as presiding judge, specifically in ensuring that the entries in the court's docket book were updated. Respondent judge himself admitted that the docket book was filled up "haphazardly."[24]

Indeed, while it is not the presiding judge who makes the entries in the docket book, still

> … the trial judge is expected to adopt a system of record management and organize his docket in order to bolster the prompt and effective dispatch of business. Proper and efficient court management is the responsibility of the judge. It is incumbent upon judges to devise an efficient recording and filing system in their

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[21] *Judge Español v. Judge Mupas*, 484 Phil. 636, 657 (2004).

[22] *Mamerto Maniquiz Foundation, Inc. v. Pizarro,* A.M. No. RTJ-03-1750, 14 January 2005, 448 SCRA 140, 155-156.

[23] *Mataga v. Rosete,* A.M. No. MTJ-03-1488, 13 October 2004, 440 SCRA 217, 221, citing *Atty. Cea v. Judge Paguio,* A.M. No. MTJ-03-1479, 17 February 2003, 397 SCRA 494.

[24] *Rollo,* p. 121.

courts so that no disorderliness can affect the flow of cases and their speedy disposition.

xxx xxx xxx

Further evidence of Judge Legaspi's inability to implement an efficient recording and filing system is her **failure to maintain her court's civil and criminal docket books** since 1983. While it may be so that her predecessors had similarly failed to maintain these books, Judge Legaspi has presided over her sala since 1991. Yet, the entries of her docket book are complete only "from 2000 up." In her defense, it appears that her clerks-in-charge have "confessed to the impossibility of completing the docket book and attending to their current work at the same time." Still, it is incumbent on all trial court judges to duly apprise this Court or the OCA of problems they encounter in the day-to-day administration of their court dockets and records, so they may receive appropriate guidance and assistance. After all, the responsibility for an efficient administration of justice lies not only with the trial court judges, but with the judicial system as a whole.[25] (Emphasis supplied)

Respondent judge assumed office as the presiding judge of Branch 57 in May 1992. He issued orders in Civil Case No. X-82, the last being the order dated November 16, 1994, declaring the case submitted for decision. However, the last entry in the docket book pertaining to the case was dated March 5, 1982. From then on, several orders were issued by the respondent judge but these were never recorded in the docket book as they should have been.

Respondent judge was therefore negligent in the discharge of his duties. He failed to observe that degree of care, precaution and vigilance required of his position. Considering his administrative authority over the court's personnel, he should have directed them to be diligent in the performance of their functions. He neglected to properly supervise them, particularly those in charge of the docket books, resulting in incomplete entries therein. These violated Rules 3.08 and 3.09 of the Code of Judicial Conduct:

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[25] *Office of the Court Administrator v. Legaspi*, A.M. No. RTJ-05-1893, 14 March 2006, 484 SCRA 584, 608-609.

Rule 3.08. — A judge should diligently discharge his administrative responsibilities, maintain professional competence in court management, and facilitate the performance of the administrative functions of other judges and court personnel.

Rule 3.09. — A judge should organize and supervise the court personnel to ensure the prompt and efficient dispatch of business, and require at all times the observance of high standards of public service and fidelity.

This constituted simple misconduct,[26] defined as a transgression of some established rule of action, an unlawful behavior or negligence committed by a public officer.[27] It is a less serious offense[28] punishable by suspension from office without salary and other benefits for not less than one month nor more than three months or a fine of more than ₱10,000 but not exceeding ₱20,000.[29]

Consequently, we fine respondent judge in the amount of ₱15,000 which is a stiffer penalty than the ₱5,000 fine recommended by Justice Acosta. We find this amount reasonable, considering that respondent judge had already been administratively sanctioned twice before.[30]

Respondent judge's compulsory retirement on October 31, 2006[31] did not render the present administrative case moot and academic. It did not free him from liability. Complainant filed

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[26] See *J. King & Sons Company, Inc. v. Hontanosas, Jr.*, A.M. No. RTJ-03-1802, 21 September 2004, 438 SCRA 525.

[27] *China Banking Corporation v. Janolo, Jr.*, A.M. No. RTJ-07-2035, 12 June 2008, citing *Jacinto v. Layosa*, A.M. No. RTJ-02-1743, 11 July 2006, 494 SCRA 456, 464.

[28] Section 9(7), Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC.

[29] *Id.*, Section 11(B).

[30] In *Ruiz v. Beldia, Jr.* (A.M. No. RTJ-02-1731, 16 February 2005, 451 SCRA 402), we fined respondent judge ₱5,000 for gross ignorance of the law. In *Macachor v. Beldia, Jr.* (A.M. No. RTJ-02-1724, 12 June 2003, 403 SCRA 707), we fined him ₱11,000 for his failure to act upon a motion with reasonable dispatch which constitutes gross inefficiency.

[31] *Rollo*, p. 4.

this case on April 5, 2006, before respondent judge retired from office. As such, the Court retained the authority to resolve the administrative complaint against him. Cessation from office because of retirement does not *per se* justify the dismissal of an administrative complaint against a judge while still in the service.[32] The ₱15,000 fine can and shall be deducted from his retirement benefits.

Pursuant to A.M. No. 02-9-02-SC,[33] this administrative case against respondent as a judge, based on grounds which are also grounds for the disciplinary action against members of the Bar, shall be considered as disciplinary proceedings against such judge as a member of the Bar.[34]

Violation of the fundamental tenets of judicial conduct embodied in the Code of Judicial Conduct constitutes a breach of Canons 1 and 11 of the Code of Professional Responsibility (CPR):

Canon 1 — A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes.

Canon 11 — A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others.

Certainly, a judge who falls short of the ethics of the judicial office tends to diminish the people's respect for the law and legal processes. He also fails to observe and maintain the esteem due to the courts and to judicial officers.[35] Respondent judge's negligence also ran counter to Canon 12 of the CPR which provides:

Canon 12 — A lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice.

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[32] *Rivera v. Mirasol*, A.M. No. RTJ-04-1885, 14 July 2004, 434 SCRA 315, 321, citing *Cabarloc v. Cabusora*, A.M. No. MTJ-00-1256, 15 December 2000, 348 SCRA 217, 226.

[33] Dated September 17, 2002 and took effect on October 1, 2002.

[34] *Maddela v. Dallong-Galicinao*, A.C. No. 6491, 31 January 2005, 450 SCRA 19, 25.

[35] *Juan de la Cruz (Concerned Citizen of Legazpi City) v. Carretas*, A.M. No. RTJ-07-2043, 5 September 2007, 532 SCRA 218, 232.

For such violation of Canons 1, 11 and 12 of the CPR, he is severely reprimanded.

ON THE LIABILITY OF RESPONDENT CLERK OF COURT

Justice Acosta recommended that respondent clerk of court be absolved of the charge filed against her. We agree.

Section 7, Rule 136 of the Rules of Court specifically mandates the clerk of court to "safely keep all **records**, papers, files, exhibits and public property **committed to his [or her] charge**."

Considering that the records of Civil Case No. X-82 could no longer be located in Branch 57 since 1995 and respondent clerk of court assumed her post only on January 10, 2000, these records were obviously never committed to her charge.

In addition, in the docket inventory of cases dated July 11, 2000 prepared and submitted by Judge Javellana, Civil Case No. X-82 was not included. Likewise, in our resolution dated August 28, 2000, Civil Case No. X-82 was not in the list of cases still left undecided beyond the mandated period.

For the same reason, respondent clerk of court cannot be held accountable for the incomplete entries in the docket book with respect to Civil Case No. X-82.

Moreover, when complainants followed up the case with respondent clerk of court, the latter conducted an investigation. When the records could not be found, she informed the complainants and assured them that the court could assist them in reconstituting such records. Under the circumstances, she did all that she could. It was not shown that she was remiss in her duties.[36]

To conclude, while we sympathize with the plight of complainants for the inconvenience caused by the loss of the records of Civil Case No. X-82, we cannot pin the blame on respondents who did not have custody of such records when they were lost.

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[36] Per the Office of Administrative Services, respondent clerk of court had been transferred to RTC, Bago City, Negros Occidental as of November 2007.

WHEREFORE, retired Judge Rolindo D. Beldia, Jr. of the Regional Trial Court, San Carlos City, Negros Occidental, Branch 57, is hereby found *GUILTY* of simple misconduct. He is ordered to pay a *FINE* in the amount of Fifteen Thousand Pesos (₱15,000), to be deducted from his retirement benefits.

Respondent judge is further hereby *SEVERELY REPRIMANDED* for his violation of Canons 1, 11 and 12 of the Code of Professional Responsibility.

The complaint against Atty. Mary Emilie T. Villanueva, clerk of court of the Regional Trial Court, San Carlos City, Negros Occidental, Branch 57, is *DISMISSED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 150873. February 10, 2009]

ZENAIDA V. SAZON, *petitioner, vs.* **SANDIGANBAYAN (Fourth Division),** *respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL FROM THE SANDIGANBAYAN; ONLY QUESTIONS OF LAW MAY BE RAISED; EXCEPTIONS. — In appeals to this Court from the Sandiganbayan, only questions of law may be raised, not issues of fact. The factual findings of the Sandiganbayan are binding upon this Court. The Supreme Court should not be burdened with the task of re-examining the evidence presented during the trial of the case. This rule, however, admits of

exceptions, to wit: 1) when the conclusion is a finding grounded entirely on speculation, surmise or conjectures; 2) the inference made is manifestly mistaken; 3) there is grave abuse of discretion on the part of the lower court or agency; 4) the judgment is based on a misapprehension of facts; 5) said findings of fact are conclusions without citation of specific evidence on which they are based; and 6) the findings of fact of the Sandiganbayan are premised on an absence of evidence on record. However, we find no reason to disturb the factual findings of the Sandiganbayan, as none of these exceptions is present in this case.

2. CRIMINAL LAW; SIMPLE ROBBERY; ELUCIDATED. — Petitioner was charged with robbery defined and penalized under Articles 293 and 294(5) of the Revised Penal Code (RPC), otherwise known as simple robbery. Simple robbery is committed by means of violence against or intimidation of persons. The elements of robbery as defined in Article 293 of the RPC are the following: a) that there is personal property belonging to another; b) that there is unlawful taking of that property; c) that the taking is with intent to gain; and d) that there is violence against or intimidation of persons or force upon things.

3. ID.; ID.; ELEMENTS; PERSONAL PROPERTY BELONGING TO ANOTHER. — As to what was taken, it is undisputed that petitioner demanded and eventually received from R&R ₱100,000.00, a *personal property belonging to the latter*. The amount was placed inside a brown envelope and was given to petitioner while inside Max's Restaurant in EDSA, Caloocan City.

4. ID.; ID.; ID.; UNLAWFUL TAKING; PRESENCE THEREOF IN CASE AT BAR. — As to how the money was taken, it was proven that ₱100,000.00 was *unlawfully taken* by the petitioner from R&R, with *intent to gain* and through *intimidation*. In robbery, there must be an unlawful taking or *apoderamiento*, which is defined as the taking of items without the consent of the owner, or by means of violence against or intimidation of persons, or by using force upon things. Taking is considered complete from the moment the offender gains possession of the thing, even if he has no opportunity to dispose of the same. In the instant case, it was adequately proven that petitioner received and took possession of the brown envelope containing the money; she even placed her wallet and handkerchief inside

the envelope. At that point, there was already "taking." As a public officer employed with the DENR, petitioner was tasked to implement forestry laws, rules and regulations. Specifically, she had the power to make reports on forestry violations which could result in the eventual confiscation of logs if the possession thereof could not be justified by the required documents; and the prosecution of violators thereof. Undoubtedly, petitioner could not demand and eventually receive any amount from private persons as a consideration for the former's non-performance of her lawful task. More so, in the instant case where the petitioner threatened the complainants with possible confiscation of the logs and prosecution if they would not accede to her demand for ₱100,000.00. Under such circumstances, the eventual receipt of the said amount by the petitioner makes the taking "unlawful."

5. ID.; ID.; ID.; INTENT TO GAIN; PRESENT IN CASE AT BAR. —To constitute robbery, the taking should be accompanied by intent to gain. Intent to gain, or *animus lucrandi*, as an element of the crime of robbery, is an internal act; hence, presumed from the unlawful taking of things. Actual gain is irrelevant as the important consideration is the intent to gain. Having established that the amount of ₱100,000.00 was unlawfully taken by the petitioner from R&R for her personal benefit, intent to gain was likewise proven.

6. ID.; ID.; ID.; INTIMIDATION; ELUCIDATED. — Intimidation is defined in Black's Law Dictionary as unlawful coercion; extortion; duress; putting in fear. In robbery with intimidation of persons, the intimidation consists in causing or creating fear in the mind of a person or in bringing in a sense of mental distress in view of a risk or evil that may be impending, real or imagined. Such fear of injury to person or property must continue to operate in the mind of the victim at the time of the delivery of the money. In light of the concept of intimidation as defined in various jurisprudence, we find and so hold that the ₱100,000.00 "grease money" was taken by the petitioner from R&R's representatives through intimidation. By using her position as Senior Management Specialist of the DENR, petitioner succeeded in coercing the complainants to choose between two alternatives: to part with their money, or suffer the burden and humiliation of prosecution and confiscation of the logs.

7. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; PROOF BEYOND REASONABLE DOUBT. — We would like to stress that the Constitution guarantees that in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved. This means proving the guilt of the accused beyond reasonable doubt. Reasonable doubt is present when, after the comparison and consideration of all the evidence adduced, the minds of the judges are left in a condition that they cannot say they feel an abiding conviction, a moral certainty, of the truth of the charge, a certainty that convinces and directs the understanding, and satisfies the reason and judgment of those who are bound to act conscientiously upon it. To be sure, proof beyond reasonable doubt does not demand absolute certainty and the exclusion of all possibility of error.

8. CRIMINAL LAW; SIMPLE ROBBERY; PENALTY; PROPER PENALTY CONSIDERING THE AGGRAVATING CIRCUMSTANCE OF ABUSE OF PUBLIC POSITION AND APPLYING THE INDETERMINATE SENTENCE LAW. — Article 294(5) of the RPC fixes the penalty for simple robbery at *prision correccional* in its maximum period to *prision mayor* in its medium period, the range of which is from four (4) years, two (2) months and one (1) day to ten (10) years. Considering the aggravating circumstance of abuse of public position, the penalty should be imposed in its maximum period; and applying the Indeterminate Sentence Law, the same should likewise be the maximum term of the indeterminate penalty. The minimum term, on the other hand, shall be taken from the penalty next lower in degree which is *arresto mayor* maximum to *prision correccional* medium in any of its periods, the range of which is four (4) months and one (1) day to four (4) years and two (2) months.

APPEARANCES OF COUNSEL

Lourdes T. Pagayatan and *Nicolas C. Alvaran* for petitioner.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to nullify the Decision[1] of the Sandiganbayan, dated July 26, 2001, in Criminal Case No. 18257, finding the petitioner Zenaida V. Sazon guilty beyond reasonable doubt of *Robbery Extortion*.[2] Likewise assailed is the Sandiganbayan's Resolution[3] dated November 16, 2001 denying petitioner's motion for reconsideration.

The facts, as established by the evidence presented, are as follows:

Petitioner was a Senior Forest Management Specialist of the Department of Environment and Natural Resources (DENR), National Capital Region (NCR).[4] On September 24, 1992, the DENR-NCR issued Travel Order No. 09-92-409 directing the petitioner and a certain Carlos Gubat I (Gubat) to proceed to Karuhatan and Navotas, both in Metro Manila, to perform the following:

1. To investigate [an] intelligence report on the alleged arrival of illegal shipment of poles and piles to Navotas, Metro Manila; and

2. [To] verify illegal resaw operation of Honway Lumber, Karuhatan, Metro Manila.[5]

On September 25, 1992, petitioner and her team, composed of Gubat and Forester Nemesio Ricohermoso, conducted a surveillance in Karuhatan and Navotas. While looking for the office of Vifel Shipyard, subject of the travel order, the team

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[1] Penned by Associate Justice Nicodemo T. Ferrer, with Associate Justices Narciso S. Nario and Rodolfo G. Palattao, concurring; *rollo*, pp. 33-60.

[2] Also referred to herein as Robbery with Intimidation and Simple Robbery.

[3] *Rollo*, pp. 61-71.

[4] *Id.* at 36.

[5] *Id.* at 36-37.

chanced upon the R&R Shipyard (R&R) and asked from the lady guard for Mr. Rodrigo Opena (Mr. Opena), the Operations Manager.[6] As the petitioner knew Mr. Opena, the former wanted to inquire from the latter where Vifel Shipyard was.[7] In the course of their conversation with the lady guard, the team spotted squared logs, which they claimed to be "*dungon*" logs piled at the R&R compound. Upon a closer look, the team noticed that the squared logs were mill-sawn and bore hatchet marks with a number indicating inspection by the DENR. Since "*dungon*" logs were banned species, the team asked for the pertinent documents relative thereto. However, the same could not be produced at that time; hence, they decided to return on October 1.[8]

On October 1, 1992, petitioner and her team returned to R&R to check the necessary documents they were looking for. Yet again, Mr. Opena could not produce the documents as they were then allegedly in the possession of the auditing section of their main office. Petitioner insisted that the subject logs were banned species and, thus, threatened Mr. Opena that he could be arrested and that the logs could be confiscated. Mr. Opena, however, claimed that the logs that were seen by the petitioner were "*yakal*" and "*tangile*" and not "*dungon*."[9]

On October 7, 1992, Atty. Teresita Agbi, the lawyer of R&R, met with the petitioner to talk about the subject logs. Petitioner instructed Atty. Agbi to proceed to the bakeshop at the ground floor of the former's office.[10] There, Atty. Agbi informed the petitioner that she had in her possession the receipts covering the subject logs; but the latter averred that the receipts were not sufficient as there were additional requirements[11] to be

[6] The latter was also the Assistant Manager of Irma Fishing and Trading Company, a sister company of R&R Shipyard.

[7] *Rollo*, pp. 37-38.

[8] *Id.* at 38.

[9] *Id.* at 41.

[10] *Id.*

[11] These alleged additional requirements were as follows:

1. Certificate of Lumber Origin;

2. Certificate of Transport Agreement;

submitted. Believing that Atty. Agbi could not produce the required documents, petitioner initially demanded the payment of ₱300,000.00 if no papers would be submitted; ₱200,000.00 if incomplete; and ₱100,000.00 if the papers were complete.[12]

On October 13, 1992, petitioner made a final demand of ₱100,000.00 in exchange for the favor of "fixing" the papers of the alleged "hot logs." She even offered Atty. Agbi ₱25,000.00 as her share in the amount.[13] Atty. Agbi reported the matter to the police. Consequently, an entrapment operation against the petitioner was planned wherein Atty. Agbi would agree to pay ₱100,000.00 to settle the issue with the petitioner.[14]

On October 14, 1992, the day of the scheduled entrapment operation, Atty. Agbi, together with Senior Police Officer 1 Edwin Anaviso (SPO1 Anaviso), SPO1 Pablo Temena (SPO1 Temena) and SPO2 Renato Dizon (SPO2 Dizon) went to the Max's Restaurant in EDSA, Caloocan City, where they would meet the petitioner.[15] Upon seeing Atty. Agbi, petitioner instructed the former to drop the envelope containing the money in the taxicab parked outside. Atty. Agbi, however, could not comply since her ₱25,000.00 commission had not yet been segregated from the ₱100,000.00. Petitioner thus offered to segregate it at the ladies' room.[16] As soon as Atty. Agbi handed over the envelope containing the money, petitioner placed her wallet and handkerchief inside the envelope;[17] then SPO2 Dizon immediately accosted and handcuffed the petitioner while SPO1 Temena took pictures of the incident.[18]

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3. Auxiliary Invoice;
4. Special Permit issued by the DENR Secretary;
5. Tally Sheets; and
6. Inspection Report from the DENR Field Personnel; *id.* at 42.

[12] *Rollo*, p. 43.

[13] *Id.*

[14] *Id.* at 44.

[15] *Id.* at 44-45.

[16] *Id.* at 45.

[17] *Id.* at 56.

[18] *Id.* at 45.

Petitioner, for her part, denied the above accusation. She averred that it was in fact Atty. Agbi who proposed the settlement which she, however, rejected. When offered a brown envelope containing money, petitioner allegedly stood up and prepared to leave, but a man came from nowhere and immediately handcuffed her while another man took pictures.[19]

At about 11 o'clock in the evening, petitioner was brought to the assistant prosecutor for inquest.[20] Thereafter, an Information for Robbery Extortion was filed against the petitioner, the accusatory portion of which reads:

> That on or about October 14, 1992, in Kalookan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then the supervisor of the Department of Environment and Natural Resources (D[E]NR), taking advantage of her public position and which offensed (sic) was committed in relation to her office, by means of intimidation and with intent to gain, did then and there willfully, unlawfully and feloniously demand, take and extort from the IRMA FISHING & TRADING COMPANY as represented herein by ATTY. TERESITA A. AGBI, the amount of ₱100,000.00 to prevent the confiscation of more or less thirty (30) pcs. of logs, which are found in the compound of RNR Marine Inc., purportedly for unauthorize[d] possession of the said logs, and belonging to the said Irma Fishing & Trading Company, to the damage and prejudice of the said owner in the aforementioned amount of ₱100,000.00.
>
> CONTRARY TO LAW.[21]

Upon arraignment, petitioner entered a plea of "Not Guilty."[22]

After trial on the merits, the Sandiganbayan rendered a Decision[23] convicting the petitioner of the crime of robbery extortion. The dispositive portion of the assailed decision is quoted hereunder:

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

[20] *Id.* at 50.

[21] Records, p. 1.

[22] *Id.* at 28.

[23] *Supra* note 1.

WHEREFORE, the accused, ZENAIDA SAZON *y* VENTURA, is hereby found GUILTY beyond reasonable doubt of the crime of ROBBERY EXTORTION, defined under Article 293, and penalized under paragraph 5, Article 294 (as amended by Section 9, Republic Act No. 7659) both of the Revised Penal Code, and, there being no aggravating or mitigating circumstance that attended the commission of the crime, she is hereby sentenced, under the Indeterminate Sentence Law, to suffer the penalty of imprisonment of from Two (2) Years and Three (3) Months of *prision correccional*, as minimum, to Seven (7) Years of *prision mayor,* as maximum, and to pay the costs.

SO ORDERED.[24]

The court found that the elements of robbery with intimidation were established by the prosecution.[25] It was pointed out that if the interest of petitioner was merely the submission by R&R of the required documents, she should have required that they meet at her office and not at a restaurant.[26] Her liability, said the court, was not negated by the eventual admission of Irma Fishing and Trading Co. that the required documents could not be produced.[27]

Hence, the instant petition on the following grounds:

I. WITH DUE RESPECT, THE RESPONDENT COURT GRAVELY ERRED IN CONCLUDING THAT THE VERSION OF THE PROSECUTION TENDS TO SHOW THAT ALL THE ELEMENTS OF THE CRIME OF ROBBERY WITH INTIMIDATION ARE PRESENT.

II. WITH DUE RESPECT, THE RESPONDENT COURT GRAVELY ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.[28]

Apart from the instant criminal case, the DENR filed an administrative complaint against the petitioner for grave

[24] *Rollo*, pp. 58-59.

[25] *Id.* at 51-56.

[26] *Id.* at 57.

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

[28] *Id.* at 17-18.

misconduct in the performance of official duty, but the same was dismissed for lack of interest on the part of the complainant. Another administrative case was filed before the Office of the Ombudsman, but the same was likewise dismissed.[29]

Petitioner's insistence on her acquittal of the crime of robbery with intimidation hinges on the alleged absence of the elements of the crime. She specifically questions the Sandiganbayan's conclusion that she employed intimidation in order to extort ₱100,000.00 from R&R. Petitioner strongly doubts that the threat of confiscation of the subject logs created fear in the mind of R&R or its employees. Absent such element, says the petitioner, her exoneration is clearly indicated.[30]

We do not agree with the petitioner.

In appeals to this Court from the Sandiganbayan, only questions of law may be raised, not issues of fact. The factual findings of the Sandiganbayan are binding upon this Court.[31] The Supreme Court should not be burdened with the task of re-examining the evidence presented during the trial of the case. This rule, however, admits of exceptions, to wit: 1) when the conclusion is a finding grounded entirely on speculation, surmise or conjectures; 2) the inference made is manifestly mistaken; 3) there is grave abuse of discretion on the part of the lower court or agency; 4) the judgment is based on a misapprehension of facts; 5) said findings of fact are conclusions without citation of specific evidence on which they are based; and 6) the findings of fact of the Sandiganbayan are premised on an absence of evidence on record.[32] However, we find no reason to disturb the factual findings of the Sandiganbayan, as none of these exceptions is present in this case.

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

[30] *Id.* at 284-289.

[31] *Baldebrin v. Sandiganbayan*, G.R. Nos. 144950-71, March 22, 2007, 518 SCRA 627, 638.

[32] *Id.*; see *People v. Sandiganbayan*, 456 Phil. 136, 142 (2003).

Petitioner was charged with robbery defined and penalized under Articles 293[33] and 294(5)[34] of the Revised Penal Code (RPC), otherwise known as simple robbery. Simple robbery is committed by means of violence against or intimidation of persons.[35] The elements of robbery as defined in Article 293 of the RPC are the following: a) that there is personal property belonging to another; b) that there is unlawful taking of that property; c) that the taking is with intent to gain; and d) that there is violence against or intimidation of persons or force upon things.[36]

Indeed, the prosecution adequately established the above elements.

As to what was taken, it is undisputed that petitioner demanded and eventually received from R&R ₱100,000.00, a *personal property belonging to the latter*. The amount was placed inside a brown envelope and was given to petitioner while inside Max's Restaurant in EDSA, Caloocan City.

As to how the money was taken, it was proven that ₱100,000.00 was *unlawfully taken* by the petitioner from R&R, with *intent to gain* and through *intimidation*. In robbery, there must be an unlawful taking or *apoderamiento*, which is defined as the taking of items without the consent of the owner, or by means of violence against or intimidation of persons, or by using force upon things.[37] Taking is considered complete from the moment

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[33] Art. 293. *Who are guilty of robbery.* — Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything, shall be guilty of robbery.

[34] Art. 294. *Robbery with violence against or intimidation of persons – penalties* — Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

xxx xxx xxx

5. The penalty of *prision correccional* in its maximum period to *prision mayor* in its medium period in other cases.

[35] *People v. Suela*, 424 Phil. 196, 232 (2002).

[36] *People v. Pat*, 324 Phil. 723, 741-742 (1996).

[37] *People v. Hernandez*, G.R. No. 139697, June 15, 2004, 432 SCRA 104, 119.

the offender gains possession of the thing, even if he has no opportunity to dispose of the same. In the instant case, it was adequately proven that petitioner received and took possession of the brown envelope containing the money; she even placed her wallet and handkerchief inside the envelope. At that point, there was already "taking."

As a public officer employed with the DENR, petitioner was tasked to implement forestry laws, rules and regulations. Specifically, she had the power to make reports on forestry violations which could result in the eventual confiscation of logs if the possession thereof could not be justified by the required documents; and the prosecution of violators thereof. Undoubtedly, petitioner could not demand and eventually receive any amount from private persons as a consideration for the former's non-performance of her lawful task. More so, in the instant case where the petitioner threatened the complainants with possible confiscation of the logs and prosecution if they would not accede to her demand for ₱100,000.00. Under such circumstances, the eventual receipt of the said amount by the petitioner makes the taking "unlawful."

To constitute robbery, the taking should be accompanied by intent to gain. Intent to gain, or *animus lucrandi*, as an element of the crime of robbery, is an internal act; hence, presumed from the unlawful taking of things.[38] Actual gain is irrelevant as the important consideration is the intent to gain.[39] Having established that the amount of ₱100,000.00 was unlawfully taken by the petitioner from R&R for her personal benefit, intent to gain was likewise proven.

Lastly, we agree with the Sandiganbayan that petitioner employed intimidation in order to obtain the amount of ₱100,000.00 from R&R.

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[38] *Id.*; *People v. Bustinera*, G.R. No. 148233, June 8, 2004, 431 SCRA 284, 296; *People v. Obillo,* 411 Phil. 139, 150 (2001).

[39] *People v. Bustinera, supra*.

Intimidation is defined in Black's Law Dictionary as unlawful coercion; extortion; duress; putting in fear.[40] In robbery with intimidation of persons, the intimidation consists in causing or creating fear in the mind of a person or in bringing in a sense of mental distress in view of a risk or evil that may be impending, real or imagined. Such fear of injury to person or property must continue to operate in the mind of the victim at the time of the delivery of the money.[41]

Applying this principle to the pertinent facts of the instant case, it is noteworthy that: On September 25, 1992, petitioner discovered the questioned logs and asked that the supporting documents be shown; on October 1, she formally demanded the submission of the required documents; on October 7, she demanded payment of a particular sum of money while offering to "fix" the problem; on October 13, she made the final demand; and on October 14, the representatives of R&R parted with their ₱100,000.00. While it appears that initially, petitioner only demanded the submission of the supporting documents to show that R&R's possession of the subject logs was legal, she agreed to talk about the matter outside her office. This circumstance alone makes her intentions highly suspect. The same was confirmed when petitioner eventually demanded from R&R the payment of a particular sum of money, accompanied by threats of prosecution and confiscation of the logs.

From the foregoing, and in light of the concept of intimidation as defined in various jurisprudence, we find and so hold that the ₱100,000.00 "grease money" was taken by the petitioner from R&R's representatives through intimidation. By using her position as Senior Management Specialist of the DENR, petitioner succeeded in coercing the complainants to choose between two alternatives: to part with their money, or suffer the burden and humiliation of prosecution and confiscation of the logs.

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[40] *People v. Alfeche, Jr.*, G.R. No. 102070, July 23, 1992, 211 SCRA 770, 779.

[41] Luis B. Reyes, *The Revised Penal Code*, Book Two, p. 642, citing *People v. Marco*, 12 C.A. Rep. 377.

Indeed, this Court had, in a number of cases involving substantially the same factual milieu as in the present case, convicted the accused of the crime of robbery with intimidation. These include the early cases of *People v. Francisco*[42] and *United States v. Sanchez*,[43] and the more recent cases of *Fortuna v. People*[44] and *Pablo v. People*.[45]

In *People v. Francisco*, the accused, who was then a sanitary inspector in the Philippine Health Service, discovered during an inspection of the merchandise in Sy Ham's store that the lard was unfit for consumption. He then demanded from Sy Ham the payment of ₱2.00 with threats of prosecution and arrest. For fear of being arrested, prosecuted, and convicted, Sy Ham immediately paid the amount demanded.

In *United States v. Sanchez*, two police officers demanded from a Chinese, who allegedly violated the Opium Law, ₱500.00, accompanied by threats to take him before the proper authorities and have him prosecuted. For fear of being sent to prison for a long term, the Chinese paid a negotiated amount of ₱150.00.

In *Fortuna v. People* and *Pablo v. People*, three policemen frisked Diosdada and Mario Montecillo, and accused the latter of illegal possession of a deadly weapon. The policemen threatened Mario that he would be brought to the police station where he would be interrogated by the police, mauled by other prisoners and heckled by the press. The apprehending policemen took from Mario ₱1,000.00. They likewise rummaged Diosdada's bag where they found and eventually pocketed ₱5,000.00. They further demanded from Diosdada any piece of jewelry that could be pawned. Thereafter, the two were released by the policemen.

In all of the above cases, the Court was convinced that there was sufficient intimidation applied by the accused on the offended parties inasmuch as the acts of the accused engendered fear in

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[42] 45 Phil. 819 (1924).

[43] 26 Phil. 83 (1913).

[44] 401 Phil. 545 (2000).

[45] G.R. No. 152481, April 15, 2005, 456 SCRA 325.

the minds of their victims and hindered the free exercise of their will.

As in the aforesaid cases, petitioner herein was a public officer who, in the performance of her official task, discovered the subject logs which she claimed to be banned species. By reason of said discovery, she had the power to bring the offenders to the proper authorities. As such public officer, she abused her authority and demanded from the offenders the payment of a particular sum of money, accompanied by an assurance that the latter would no longer be prosecuted. Eventually, money was given to the petitioner. We, therefore, find no reason to depart from the above conclusion.

We would like to stress that the Constitution guarantees that in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved. This means proving the guilt of the accused beyond reasonable doubt. Reasonable doubt is present when, after the comparison and consideration of all the evidence adduced, the minds of the judges are left in a condition that they cannot say they feel an abiding conviction, a moral certainty, of the truth of the charge, a certainty that convinces and directs the understanding, and satisfies the reason and judgment of those who are bound to act conscientiously upon it.[46] To be sure, proof beyond reasonable doubt does not demand absolute certainty and the exclusion of all possibility of error.[47]

We find, however, that the Sandiganbayan failed to appreciate the aggravating circumstance of "abuse of public position."[48] The fact that petitioner was Senior Forest Management Specialist of the DENR situated her in a position to perpetrate the offense. It was on account of petitioner's authority that the complainants believed that they could be prosecuted and the subject logs

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[46] *Fernan, Jr. v. People*, G.R. No. 145927, August 24, 2007, 531 SCRA 1, 30-31, citing *People v. Balacano*, 391 Phil. 509 (2000).

[47] *People v. Rayles*, G.R. No. 169874, July 27, 2007, 528 SCRA 409, 416; *Calimutan v. People*, G.R. No. 152133, February 9, 2006, 482 SCRA 44, 57.

[48] *Pablo v. People*, *supra* note 45, at 331; *Fortuna v. People*, *supra* note 44, at 552.

confiscated unless they gave her what she wanted. Consequently, we find that a modification of the penalty imposed by the Sandiganbayan is in order.

Article 294(5) of the RPC fixes the penalty for simple robbery at *prision correccional* in its maximum period to *prision mayor* in its medium period, the range of which is from four (4) years, two (2) months and one (1) day to ten (10) years. Considering the aggravating circumstance of abuse of public position, the penalty should be imposed in its maximum period; and applying the Indeterminate Sentence Law, the same should likewise be the maximum term of the indeterminate penalty. The minimum term, on the other hand, shall be taken from the penalty next lower in degree which is *arresto mayor* maximum to *prision correccional* medium in any of its periods, the range of which is four (4) months and one (1) day to four (4) years and two (2) months.[49]

WHEREFORE, premises considered, the petition is *DENIED*. The Decision of the Sandiganbayan, dated July 26, 2001, and its Resolution dated November 16, 2001 in Criminal Case No. 18257, are *AFFIRMED WITH THE MODIFICATION* that petitioner Zenaida V. Sazon is sentenced to the indeterminate penalty of Two (2) Years, Ten (10) Months and Twenty-One (21) Days of *prision correccional*, as minimum, to Eight (8) Years and Twenty-One (21) Days of *prision mayor*, as maximum.

SO ORDERED.

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

[49] *Ocampo v. People*, G.R. No. 163705, July 30, 2007, 528 SCRA 547, 562-563.

FIRST DIVISION

[G.R. No. 156101. February 10, 2009]

HEIRS OF JOSE T. CALO, namely: GILDA CALO-SANCHEZ, NEMIA[1] **CALO-TEAÑO and WILFREDO C. PABIA,** *petitioners, vs.* **NONA CALO and the HEIRS OF ROMUALDA CALO, namely: LUCINDA LAMIGO, ANITA LAMIGO, MANUEL LAMIGO, JESUS LAMIGO, FEDERICO LAMIGO, RICARDO LAMIGO and CHONA LAMIGO,** *respondents*.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW, PROPER. —** As a general rule, only questions of law may be raised in a petition for review on *certiorari*. Factual issues are entertained only in exceptional cases such as where the findings of fact of the CA and the trial court are conflicting.

2. **CIVIL LAW; LAND REGISTRATION; REGISTERED OWNERS OF LAND FOR MORE THAN 60 YEARS GAIN INDEFEASIBLE RIGHT THERETO.—** Inasmuch as OCT No. 337 was issued on April 3, 1926, Alejo Calo, Romualda Calo, Leoncio Peincenaves and Vicente Calo have been the registered owners of Lot No. 306 for more than 60 years. Thus, their title had become indefeasible and their rights of dominion over it can no longer be challenged. Only those who were able to trace their rights from the registered owners of Lot No. 306 may annotate their claims on OCT No. 337.

APPEARANCES OF COUNSEL

Rodolfo B. Ato for petitioners.
Emmanuel R. Balanon for N. Calo.
Reserva Filoteo Law Office for Heirs of R. Calo.

[1] Also referred to as "Nimia Calo-Teanio" in some parts of the records.

D E C I S I O N

CORONA, *J.*:

On June 8, 1990, respondent Nona Calo filed a petition for reconstitution[2] of Original Certificate of Title (OCT) No. 337 covering Lot No. 306 of the Butuan Cadastre issued on April 3, 1926 to Alejo Calo, Romualda Calo, Leoncio Peincenaves and Vicente Calo.[3] The petition was filed in the Regional Trial Court (RTC) of Agusan del Norte and Butuan City, Branch 5. Nona claimed that the original of OCT No. 337 was lost when the Register of Deeds of the Province of Agusan was destroyed by fire during World War II. She also attached the partially destroyed owner's duplicate of the title.

Several parties moved to intervene in the reconstitution proceedings, asserting their respective claims to portions of Lot No. 306.[4] Of particular interest in this case was the claim of

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[2] Docketed as S.P. No. 239.

[3] Issued on April 3, 1926 pursuant to Decree No. 2099335 in Cadastral Case No. 1, G.L.R.O. Cadastral Record No. 321.

[4] The following parties moved to intervene in S.P. No. 239:

a. Ismael Rosales traced his claim to a portion of lot no. 306 (covered by OCT No. P-2663 issued pursuant to Free Patent No. [X-2] 3113) from Alejo Calo.

   In 1925, Alejo sold his share to Manuel Calo, who sold the same to Antonio Lamigo in 1937. On October 18, 1945, Lamigo sold his portion to Ismael Rosales. This sale was judicially confirmed in CA-G.R. No. 8911-R wherein the Court of Appeals (CA) found that the instrument executed by Lamigo in favor of Rosales was a deed of sale. Records show that this decision was not appealed and consequently attained finality.

b. Cesar Magsaysay claimed the portion designated as Lot 306-A=Lot No. 1402, Cad. 84, Csd.-10-002102-D which he purchased from Ismael and Lalita Rosales.

   The heirs of Roque V. Andaya claimed a hectare of that portion previously adjudicated to Ismael A. Rosales. In CA-G.R. No. L-49104, the CA ordered Rosales to convey one hectare of his interest in lot no. 306 to Roque Andaya as payment for legal services rendered in Civil Case No. 114. Records show that this decision was not appealed and consequently attained finality.

petitioners, the heirs of Jose T. Calo, who asserted ownership over 1/6 of Lot No. 306. According to petitioners, Jose, one of the six children of Ventura Calo who was the original owner of lot No. 306, was given a 1/6 portion.

Sometime before World War II, Jose gave Teofilo Montilla possession of his 1/6 portion of Lot No. 306. In 1948, Montilla declared the said portion for taxation purposes[5] and, in 1965, leased it to Bunawan Sawmill.[6] Upon Montilla's death, possession of the land passed on to his heirs.

In 1989, the heirs of Montilla executed a deed of conveyance and relinquishment of rights in favor of petitioners stating:

> [We] [h]ereby MANIFEST AND ACKNOWLEDGE, to the best of our knowledge and belief that [the portion of lot no. 306] in Barangay Maon, Butuan City x x x which is **registered in the name of our late father**, **Teofilo Montilla**, **for whatever previous reasons or mode of acquisition**, **we**, **the heirs of Teofilo Montilla**, **as relatives in harmonious relation with the heirs of Jose T. Calo**, **hereby RETURN, RENOUNCE, RELINQUISH, TRANSFER and CONVEY in a manner absolute and irrevocable**, **all our rights**, **interest and participation in the said property**. (emphasis supplied)[7]

Thus, petitioners (through their predecessor-in-interest) were in possession of the land for more than 50 years.

Subsequently, Nona and the intervenors (including petitioners) agreed to convert the petition for reconstitution to an action for partition and stipulated on the procedure and manner of presenting evidence.[8]

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[5] Exhibits "4", "5", "6", "7", "8", and "9", records, pp. 41-46.

[6] Records, pp. 51-53. The contract was renewed in 1980. See records, pp. 54-57.

[7] Annex "G", records, p. 47.

[8] In the interest of the speedy disposition of cases, the RTC, acting as a cadastral court, may resolve matters within its general jurisdiction. See *Quiroz v. Manalo*, G.R. No. L-48162, 18 June 1992, 210 SCRA 60; *Augusto v. Risos*, 463 Phil. 67, 75-76 (2003) and *Concepcion v. Concepcion*, G.R. No. 147928, 11 January 2005, 448 SCRA 31, 38.

After a protracted trial, the RTC found that Nona and the intervenors, except the heirs of Romualda, sufficiently established their respective claims to Lot No. 306. In a decision dated December 10, 1993, the RTC ordered the Register of Deeds of Butuan City to reconstitute OCT No. 337 and to annotate thereon the respective claims of Nona and the intervenors (except that of the heirs of Romualda):

> WHEREFORE, the Court renders judgment:
>
> 1. DISMISSING the intervention filed by ROMUALDA CALO;
> 2. Confirming the ownership and possession of intervenors-heirs of Ismael Rosales, heirs of Roque V. Andaya and intervenor Cesar Magsaysay of their respective actual occupancy, to wit:
>
> | | | |
> |---|---|---|
> | Cesar Magsaysay | - | 19,882 sq. m., more or less |
> | Roque Andaya | - | 10,000 sq. m., more or less |
> | Ismael Rosales | - | 24,041.5 sq. m. more or less |
> | T o t a l | | 53,923.5 sq. m., more or less |
>
> 3. Confirming the ownership and possession of petitioner-heirs of Vicente Calo, heirs of Jose Calo and heirs of Leoncio Peincenaves, of their respective actual occupancy, to wit:
>
> | | |
> |---|---|
> | Heirs of Vicente Calo | - 17,974.5 sq. m., more or less |
> | Heirs of Jose Calo | - 17,974.5 sq. m., more or less |
> | Heirs of Leoncio Peincenaves | - 17,974.5 sq. m., more or less |
>
> 4. Ordering the Register of Deeds of Butuan City to annotate and register in the reconstituted Certificate of Title No. 337, the respective ownership and possession of the above-named petitioner[s] and intervenor[s] and issue the corresponding certificate of title in accordance with the approved technical description of their actual occupancy pursuant to the applicable provisions of law in connection with said issuance.
>
> SO ORDERED.

Because the claim of the heirs of Romualda was not annotated on OCT No. 337 and the shares of the heirs of Vicente and

Peincenaves annotated thereon were substantially reduced, Nona appealed the RTC decision to the Court of Appeals (CA).[9]

The CA found that petitioners did not present any deed or affidavit of adjudication showing Jose to be the heir of Ventura. Thus, they were not entitled to a portion of Lot No. 306. Furthermore, since Jose never questioned the validity of OCT No. 337, petitioners were barred from making an adverse claim against the registered owners and their successors-in-interest. The CA affirmed the RTC decision insofar as it ordered the annotation of the claims of the registered owners' successors-in-interest on OCT No. 337 but modified the areas covered by their respective shares:

WHEREFORE, premises considered, the appeal is hereby **GRANTED** and the decision dated December 10, 1993 of the Regional Trial Court of Butuan City is **AFFIRMED** with the following modifications under subparagraphs 2 and 3 thereof:

2. Confirming the ownership and possession of intervernors-appellees Heirs of Roque V. Andaya and Cesar Magsaysay to their respective actual occupancy, to wit:

Cesar Magsaysay	-	19,882.00	sq. m., more or less
Roque Andaya	-	7,079.75	sq. m., more or less
TOTAL		26,961.75	sq. m., more or less

3. Confirming the ownership and possessions, heirs of Vicente Calo, heirs of Romualda Calo and heirs of Leoncio Peincenaves, in the following proportion:

Heirs of Vicente Calo	-26,961.75	sq. m., more or less
Heirs of Romualda Calo	-26,961.75	sq. m., more or less
Heirs of Leoncio Peincenaves	-26,961.75	sq. m., more or less

No costs.

SO ORDERED.[10]

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[9] Docketed as CA-G.R. CV No. 45032.

[10] Penned by Associate Justice Teodoro P. Regino (retired) and concurred in by Associate Justices Eugenio S. Labitoria (retired) and Rebecca Guia-Salvador of the Sixth Division of the Court of Appeals. Dated March 18, 2002. *Rollo*, pp. 42-70.

Petitioners moved for reconsideration[11] but it was denied.[12]

Aggrieved, petitioners filed this petition[13] asserting that the CA erred in excluding their claim to lot No. 306. They basically contend that they are entitled to the 1/6 portion of Lot No. 306 as their predecessor-in-interest, Jose, was a son of the original owner, Ventura. Hence, while Jose was not among the registered owners of Lot No. 306, they (as his sucessors-in-interest) cannot be deprived of his 1/6 portion as they had always been in possession thereof.

The petition is without merit.

As a general rule, only questions of law may be raised in a petition for review on *certiorari*. Factual issues are entertained only in exceptional cases such as where the findings of fact of the CA and the trial court are conflicting.[14] Here, the findings of the RTC are markedly different from those of the CA. The RTC gave credence to the deed of conveyance and relinquishment executed by the heirs of Montilla. Hence, it ordered the annotation of petitioners' claim on OCT No. 337. The CA, on the other hand, found that petitioners failed to establish that their father, Jose, was indeed an heir of the original owner. Thus, it excluded petitioners' claim.

In this case, petitioners failed to present any document proving Jose was indeed a son of Ventura, the original owner of Lot No. 306. Neither did they establish that Jose was fraudulently excluded as a registered owner by his co-heirs when they obtained OCT No. 337.[15] Petitioners presented only the deed of conveyance and relinquishment.

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[11] Annex "B", *id*., pp. 71-76.

[12] Resolution dated October 25, 2002. *Id.*, pp. 80-81.

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

[14] *Titan Ikeda v. Primetown Properties*, G.R. No. 158768, 19 February 2008 citing *Austria v. Gonzales, Jr.*, 465 Phil. 355, 364 (2004).

[15] *Compare Vda. de Jacinto v. Vda. de Jacinto*, 115 Phil. 363 (1962).

A co-heir who, through fraud, succeeds in obtaining a certificate of title in his name to the prejudice of his co-heirs, is deemed to hold the land in trust for the latter and the action by them to recover on the property does not prescribe.

In the said instrument, the heirs of Montilla stated that while the property was "registered" in their father's name, they were unaware why it was so registered. They therefore knew that, although they were in possession of the 1/6 portion of Lot No. 306, they did not own it. Thus, when the heirs of Montilla reconveyed their "rights, interest and participation" therein to petitioners, what they assigned was possession, not ownership.

Furthermore, while petitioners claimed that Montilla leased their portion of Lot No. 306 to Bunawan Sawmill, the lease contracts revealed that Montilla was only a witness[16] and not a lessor.

Inasmuch as OCT No. 337 was issued on April 3, 1926, Alejo Calo, Romualda Calo, Leoncio Peincenaves and Vicente Calo have been the registered owners of Lot No. 306 for more than 60 years. Thus, their title had become indefeasible and their rights of dominion over it can no longer be challenged.[17] Only those who were able to trace their rights from the registered owners of Lot No. 306 may annotate their claims on OCT No. 337.

WHEREFORE, the petition is hereby *DENIED*.

Costs against petitioners.

SO ORDERED.

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

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[16] Nona L. Calo, Vicente L. Calo, Livia L. Calo-Montilla and Lito L. Calo signed as lessors.

[17] A Torrens title becomes irrevocable and indefeasible one year after its issuance. See *Gonzales v. Intermediate Appellate Court,* G.R. No. 66479, 21 November 1991, 204 SCRA 106, 113. See also *Ortigas & Company v. Ruiz,* G.R. No. L-33952, 9 March 1987, 148 SCRA 326, 340 and *Bass v. de la Rama,* 73 Phil. 682, 689 (1942).

SECOND DIVISION

[G.R. No. 166973. February 10, 2009]

NATIONAL POWER CORPORATION, *petitioner, vs.* **BENJAMIN ONG CO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; POWER OF EMINENT DOMAIN; ELUCIDATED.— Eminent domain "is the inherent power of a sovereign state to appropriate private property to particular use to promote public welfare." In the exercise of its power of eminent domain, just compensation must be given to the property owner to satisfy the requirements of Sec. 9, Art. III of the Constitution. Just compensation is the fair market value of the property. Fair market value is that "sum of money which a person desirous but not compelled to buy, and an owner willing but not compelled to sell, would agree on as a price to be given and received therefor." Judicial determination is needed to arrive at the exact amount due to the property owner. The power to expropriate is legislative in character and must be expressly conferred by statute. Under its charter, petitioner is vested with the power of eminent domain.

2. ID.; ID.; JUST COMPENSATION; ON PRIVATE PROPERTY TAKEN TO CONSTRUCT TRANSMISSION LINES, FULL MARKET VALUE OF PROPERTY SHALL BE PAID.— The first aspect of the compensation issue is whether what should be paid is the full fair market value of the property or a mere easement fee. Section 3A of R.A. No. 6395, as amended, substantially provides that properties which will be traversed by transmission lines will only be considered as easements and just compensation for such right of way easement shall not exceed 10 percent of the market value. However, this Court has repeatedly ruled that when petitioner takes private property to construct transmission lines, it is liable to pay the full market value upon proper determination by the courts. In *National Power Corporation v. Manubay Agro-Industrial Development Corporation,* we held that the taking of property was purely an easement of a right of way, but we nevertheless ruled that

the full market value should be paid instead of an easement fee. This Court is mindful of the fact that the construction of the transmission lines will definitely have limitations and will indefinitely deprive the owners of the land of their normal use. The presence of transmission lines undoubtedly restricts respondent's use of his property. Petitioner is thus liable to pay respondent the full market value of the property.

3. ID.; ID.; ID.; RECKONING DATE FOR DETERMINATION OF JUST COMPENSATION.— The second aspect of the compensation issue relates to the reckoning date for the determination of just compensation. Rule 67 clearly provides that the value of just compensation shall "be determined as of the date of the taking of the property or the filing of the complaint, whichever came first." In *B.H. Berkenkotter & Co. v. Court of Appeals*, we held that: It is settled that just compensation is to be ascertained as of the time of the taking, which usually coincides with the commencement of the expropriation proceedings. **Where the institution of the action precedes entry into the property, the just compensation is to be ascertained as of the time of the filing of the complaint.** Typically, the time of taking is contemporaneous with the time the petition is filed. The general rule is what is provided for by Rule 67. There are exceptions—grave injustice to the property owner, the taking did not have color of legal authority, the taking of the property was not initially for expropriation and the owner will be given undue increment advantages because of the expropriation. However, none of these exceptions are present in the instant case.

4. ID.; ID.; RA NO. 8974, ACT TO FACILITATE THE ACQUISITION OF RIGHT-OF-WAY, SITE OR LOCATION FOR NATIONAL GOVERNMENT INFRASTRUCTURE PROJECTS AND FOR OTHER PURPOSES; NATIONAL GOVERNMENT PROJECT; DEFINED.— R.A. No. 8974, entitled "An Act To Facilitate The Acquisition Of Right-Of-Way, Site Or Location For National Government Infrastructure Projects And For Other Purposes," defines "national government projects" as follows: Sec. 2. *National Government Projects*—The term "national government projects" shall refer to all national government infrastructure, engineering works and service contracts, including projects undertaken by

government-owned and -controlled corporations, all projects covered by Republic Act No. 6957, as amended by Republic Act No. 7718, otherwise known as the Build-Operate-and-Transfer Law, and other related and necessary activities, such as site acquisition, supply and/or installation of equipment and materials, implementation, construction, completion, operation, maintenance, improvement, repair and rehabilitation, regardless of source of funding.

5. ID.; ID.; ID.; ID.; INCLUDES LAHAR PROJECT IN CASE AT BAR.— Petitioner expropriated respondent's property for its Lahar Project, a project for public use. In *Republic v. Gingoyon* (Gingoyon), we observed that R.A. No. 8974 covers expropriation proceedings intended for national government infrastructure projects. The Implementing Rules and Regulations of R.A. No. 8974 explicitly include power generation, transmission and distribution projects among the national government projects covered by the law. There is no doubt that the installation of transmission lines is important to the continued growth of the country. Electricity moves our economy, it is a national concern. R.A. No. 8974 should govern the expropriation of respondent's property since the Lahar Project is a national government project.

6. ID.; ID.; ID.; ID.; RA NO. 8974 ON EXPROPRIATION FOR NATIONAL GOVERNMENT PROJECT EXCLUDES RULE 67 OF THE RULES OF COURT.— *Republic v. Gingoyon* is explicit authority that R.A. No. 8974 applies with respect to substantive matters covered by it to the exclusion of Rule 67 in cases when expropriation is availed of for a national government project. We noted in *Gingoyon*: It is the plain intent of Rep. Act No. 8974 to supersede the system of deposit under Rule 67 with the scheme of "immediate payment" in cases involving national government infrastructure projects. x x x It likewise bears noting that the appropriate standard of just compensation is a substantive matter. It is well within the province of the legislature to fix the standard, which it did through the enactment of Rep. Act No. 8974. Specifically, this prescribes the new standards in determining the amount of just compensation in expropriation cases relating to national government infrastructure projects, as well as the manner of payment thereof. At the same time, Section 14 of the

Implementing Rules recognizes the continued applicability of Rule 67 on procedural aspects when it provides "all matters regarding defenses and objections to the complaint, issues on uncertain ownership and conflicting claims, effects of appeal on the rights of the parties, and such other incidents affecting the complaint shall be resolved under the provisions on expropriation of Rule 67 of the Rules of Court. The right of a property owner to receive just compensation prior to the actual taking of the property by the State is a proprietary right which Congress can legislate on. R.A. No. 8974 being applicable in this case, the government agency involved must comply with the guidelines set forth in Sec. 4 of R.A. No. 8974.

7. ID.; ID.; ID.; ID.; ID.; DETERMINATION OF JUST COMPENSATION REMAINS JUDICIAL IN CHARACTER. — The function for determining just compensation remains judicial in character. In *Export Processing Zone Authority v. Dulay*, and *National Power Corporation v. Purefoods*, we ruled: The determination of "just compensation" in eminent domain cases is a judicial function. The executive department or legislature may make the initial determinations but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation. Thus, the lower court must use the standards set forth in Sec. 5 of R.A. No. 8974 to arrive at the amount of just compensation.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Surla & Surla Law Office for respondent.

D E C I S I O N

TINGA, *J.*:

Before us is a Rule 45 petition[1] which seeks the reversal of the Decision[2] and Resolution[3] of the Court of Appeals in CA-G.R. No. 79211. The Court of Appeals' Decision affirmed the Partial Decision[4] of the Regional Trial Court (RTC) of San Fernando, Pampanga, Branch 41 in Civil Case No. 12281, fixing the compensation due respondent following the expropriation of his property for the construction of petitioner's power transmission lines.

Petitioner was established by R.A. No. 6395 to undertake the development of hydroelectric generation of power and the production of electricity from nuclear, geothermal and other sources, as well as the transmission of electric power on a nationwide basis.[5] Its charter grants to petitioner, among others, the power to exercise the right to eminent domain.[6]

On 27 June 2001, petitioner filed a complaint[7] with the RTC of San Fernando, Pampanga, for the acquisition of an easement of right-of-way over three (3) lots at Barangay Cabalantian, Bacolor, Pampanga with a total area of 575 square meters belonging to respondent, in connection with the construction of

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[1] *Rollo*, pp. 9-26.

[2] Dated 20 October 2004, penned by Associate Justice Conrado M. Vazquez and concurred in by Associate Justices Edgardo F. Sundiam and Fernanda Lampas Peralta; *id.* at 31-41.

[3] Dated 19 January 2005, penned by Associate Justice Conrado M. Vazquez and concurred in by Associate Justices Edgardo F. Sundiam and Fernanda Lampas Peralta; *id.* at 42-44.

[4] Dated 19 February 2003, penned by Judge Divina Luz P. Aquino-Simbulan; *id.* at 93-98.

[5] Republic Act No. 6395, Sec. 2.

[6] Republic Act No. 6395, Sec. 3(j) To exercise the right of eminent domain for the purpose of this Act in the manner provided by law for instituting condemnation proceedings by the national, provincial and municipal governments;

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

its transmission lines for its Lahar Affected Transmission Line Project (Lahar Project).

On 25 March 2002, petitioner obtained a writ of possession and on 15 April 2002 it took possession of the property.

At the pre-trial conference, respondent conceded the necessity of expropriation. Thus, the sole issue for litigation revolved around the determination of just compensation.

The RTC appointed three (3) commissioners[8] to determine the fair market value of the property as of 15 April 2002. Commissioners Dayrit and Garcia submitted their joint report[9] wherein they appraised the value of the property at ₱1,900.00 per square meter or a total of ₱1,179,000.00, while Commissioner Abcejo submitted his Commissioner's Report[10] pegging the value of the property at ₱875.00 per square meter.

The RTC rendered its Partial Decision,[11] wherein it declared the validity of the expropriation and ordered petitioner to pay the sum of ₱1,179,000.00, with interest at 6% per annum beginning 15 April 2002, the date of actual taking, until full payment. It adopted the findings of Commissioners Dayrit and Garcia as more reliable since their report was based on established facts and they had evaluated the market, location and physical characteristics of the property while Commissioner Abcejo's report had merely taken the average between the Provincial Appraisal Report (₱1,500.00/sq.m.) and the Land Bank Appraisal Report (₱250.00/sq.m.) that were both done in 1998.

Not satisfied, petitioner filed an appeal with the Court of Appeals.

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[8] The following were appointed as commissioners, Provincial Assessor Arturo Dayrit as chairman, while Engineer Moiselito Abcejo was the representative of NPC, and realtor Conrado Garcia was Ong Co's representative, However, on 08 August 2002, Conrado Garcia was replaced by Eller Garcia.

[9] Dated 29 October 2002; *rollo,* pp. 75-86.

[10] Dated 31 October 2002; *id.* at 87-89.

[11] *Supra* note 4.

On 20 October 2004, the Court of Appeals rendered its Decision[12] holding petitioner liable to pay the full fair market value at the time of actual taking, with interest at 6% per annum from 15 April 2002. To determine the actual valuation of the property, the Court of Appeals ordered the RTC to appoint a new set of disinterested commissioners.

Petitioner filed a motion for partial reconsideration, questioning the order to pay the full fair market value computed as of the date of its actual possession of the property. The Court of Appeals denied the motion for partial reconsideration; hence, the present petition.

On 11 April 2007,[13] the Court required the parties to submit their supplemental memoranda discussing the following issues:

Is Republic Act No. 8974 (2000), otherwise known as "An Act to Facilitate the Acquisition of Right-of-Way, site or Location for National Government Infrastructure Projects and for other purposes," applicable to actions for eminent domain filed by the National Power Corporation (Napocor) pursuant to its charter (Rep. Act. No. 6395, as amended) for the purpose of constructing power transmission lines on the properties subject of said actions?

Assuming that Rep. Act No. 8974 is applicable to said expropriation proceedings:

a. What are the effects, if any, of Rep. Act No. 8974 and its implementing Rules on the Standards for the determination of the provisional value and the final amount of just compensation in the present case, including on the question of whether the just compensation should be reckoned from the date of the filing of the complaint since such date preceded the date of the taking of the property in this case?

b. Is the 10% limit on the amount of just compensation for the acquisition of right-of-way easements on lands or portions thereof to be traversed by the transmission lines, as provided for in Section 3-a(b) of Napocor's charter, still in effect in light of the valuation standards provided for in Rep. Act No. 8974 and its implementing rules?

[12] *Supra* note 2.

[13] See Resolution of the Court, *id.* at 207-208.

Eminent domain "is the inherent power of a sovereign state to appropriate private property to particular use to promote public welfare."[14] In the exercise of its power of eminent domain, just compensation must be given to the property owner to satisfy the requirements of Sec. 9, Art. III[15] of the Constitution. Just compensation is the fair market value of the property.[16] Fair market value is that "sum of money which a person desirous but not compelled to buy, and an owner willing but not compelled to sell, would agree on as a price to be given and received therefor."[17] Judicial determination is needed to arrive at the exact amount due to the property owner.

The power to expropriate is legislative in character and must be expressly conferred by statute. Under its charter, petitioner is vested with the power of eminent domain.

The first aspect of the compensation issue is whether what should be paid is the full fair market value of the property or a mere easement fee. Petitioner relies on Sec. 3A[18] of R.A.

[14] *Republic v. Court of Appeals*, G.R. No. 147245, 31 March 2005, 454 SCRA 516.

[15] Sec. 9—Private property shall not be taken for public use without just compensation.

[16] *National Power Corporation v. Igmedio*, 452 Phil. 649, 663 (2003).

[17] *City of Manila v. Estrada*, 25 Phil. 208, 215 (1913).

[18] Presidential Decree No. 938 (1976). Sec. 3A—In acquiring private property or private property rights through expropriation proceedings where the land or portion thereof will be traversed by the transmission lines, only a right-of-way easement thereon shall be acquired when the principal purpose for which such land is actually devoted will not be impaired, and where the land itself or portion thereof will be needed for the projects or works, such land or portion thereof as necessary shall be acquired.

In determining the just compensation of the property or property sought to be acquired through expropriation proceedings, the same shall—

(a) With respect to the acquired land or portion thereof, not to exceed the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor, whichever is lower.

b) With respect to the acquired right-of-way easement over the land or portion thereof, not to exceed ten percent (10%) of the market value declared by the owner or administrator or anyone having legal

No. 6395, as amended, which provides that only an easement fee equivalent to 10% of the market value shall be paid to affected property owners. Based on this amendatory provision, petitioner is willing to pay an easement fee of 10% for the easement of right-of-way it acquired for the installation of power transmission lines.

As intimated in the Court's 2007 Resolution, the case at bar is further complicated by the enactment of R.A. No. 8974 before the filing of the expropriation complaint.

R.A. No. 8974,[19] entitled "An Act To Facilitate The Acquisition Of Right-Of-Way, Site Or Location For National Government Infrastructure Projects And For Other Purposes," defines "national government projects" as follows:

Sec. 2. *National Government Projects*—The term "national government projects" shall refer to all national government infrastructure, engineering works and service contracts, including projects undertaken by government-owned and -controlled corporations, all projects covered by Republic Act No. 6957, as amended by Republic Act No. 7718, otherwise known as the Build-Operate-and-Transfer Law, and other related and necessary activities, such as site acquisition, supply and/or installation of equipment and materials, implementation, construction, completion, operation,

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interest in the property, or such market value as determined by the assessor whichever is lower.

In addition to the just compensation for easement of right-of-way, the owner of the land or owner of the improvement, as the case may be, shall be compensated for the improvements actually damaged by the construction and maintenance of the transmission lines, in an amount not exceeding the market value thereof as declared by the owner or administrator, or anyone having legal interest in the property, or such market value as determined by the assessor whichever is lower; *Provided*, that in cases any buildings, houses and similar structures are actually affected by the right-of-way for the transmission lines, their transfer, if feasible, shall be effected at the expense of the Corporation; *Provided, further*, that such market value prevailing at the time the Corporation gives notice to the landowner or administrator or anyone having legal interest in the property, to the effect that his land or portion thereof is needed for its projects or works shall be used as basis to determine the just compensation therefor.

[19] ENACTED on 7 November 2000.

maintenance, improvement, repair and rehabilitation, regardless of source of funding.

Petitioner expropriated respondent's property for its Lahar Project, a project for public use.[20] In *Republic v. Gingoyon* (Gingoyon), we observed that R.A. No. 8974 covers expropriation proceedings intended for national government infrastructure projects.[21] The Implementing Rules and Regulations[22] of R.A. No. 8974 explicitly include power generation, transmission and distribution projects among the national government projects covered by the law. There is no doubt that the installation of transmission lines is important to the continued growth of the country. Electricity moves our economy, it is a national concern. R.A. No. 8974 should govern the expropriation of respondent's property since the Lahar Project is a national government project.

Significantly, *Gingoyon* is explicit authority that R.A. No. 8974 applies with respect to substantive matters covered by it to the exclusion of Rule 67 in cases when expropriation is availed of for a national government project. We noted in *Gingoyon*:

> It is the plain intent of Rep. Act No. 8974 to supersede the system of deposit under Rule 67 with the scheme of "immediate payment" in cases involving national government infrastructure projects.
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> xxx xxx xxx
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> It likewise bears noting that the appropriate standard of just compensation is a substantive matter. It is well within the province

[20] Complaint filed by NPC; *Rollo*, p. 48.

[21] *Republic v. Gingoyon,* G.R. No. 166429, 19 December 2005, 478 SCRA 479, 515.

[22] Implementing Rules and Regulations of R.A. No 8974 (2001)

> Sec. 2. Definition of Terms.—
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> xxx xxx xxx
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> (d) National government projects—based on Section 2 of the Act, refer to all national government infrastructure, engineering works, and service contracts, including all projects covered by Republic Act No. 6957, as amended by Republic Act No. 7718, otherwise known as the Build-Operate-Transfer Law x x x these projects shall include, but not limited, to x x x steam and power generation, transmission and distribution x x x

of the legislature to fix the standard, which it did through the enactment of Rep. Act No. 8974. Specifically, this prescribes the new standards in determining the amount of just compensation in expropriation cases relating to national government infrastructure projects, as well as the manner of payment thereof. At the same time, Section 14 of the Implementing Rules recognizes the continued applicability of Rule 67 on procedural aspects when it provides "all matters regarding defenses and objections to the complaint, issues on uncertain ownership and conflicting claims, effects of appeal on the rights of the parties, and such other incidents affecting the complaint shall be resolved under the provisions on expropriation of Rule 67 of the Rules of Court.[23]

The right of a property owner to receive just compensation prior to the actual taking of the property by the State is a proprietary right which Congress can legislate on.[24] R.A. No. 8974 being applicable in this case, the government agency involved must comply with the guidelines set forth in Sec. 4[25] of R.A. No. 8974.

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[23] *Republic v. Gingoyon*, G.R. No. 166429, 19 December 2005, 478 SCRA 474, 519-520.

[24] Resolution denying Motion for Reconsideration in *Republic v. Gingoyon*, G.R. No. 166429, 1 February 2006, 481 SCRA 457.

[25] Section 4. Guidelines for Expropriation Proceedings.—Whenever it is necessary to acquire real property for the right-of-way, site or location for any national government infrastructure project through expropriation, the appropriate implementing agency shall initiate the expropriation proceedings before the proper court under the following guidelines:

(a) Upon the filing of the complaint, and after due notice to the defendant, the implementing agency shall immediately pay the owner of the property the amount equivalent to the sum of (1) one hundred percent (100%) of the value of the property based on the current relevant zonal valuation of the Bureau of Internal Revenue (BIR); and (2) the value of the improvements and/or structures as determined under Section 7 hereof;

(b) In provinces, cities, municipalities and other areas where there is no zonal valuation, the BIR is hereby mandated within the period of sixty (60) days from the date of filing of the expropriation case, to come up with a zonal valuation for said area; and

(c) In case the completion of a government infrastructure project is of utmost urgency and importance, and there is no existing valuation of the area concerned, the implementing agency shall immediately pay

As earlier mentioned, Section 3A of R.A. No. 6395, as amended, substantially provides that properties which will be traversed by transmission lines will only be considered as easements and just compensation for such right of way easement shall not exceed 10 percent of the market value.[26] However, this Court has repeatedly ruled that when petitioner takes private property to construct transmission lines, it is liable to pay the full market value upon proper determination by the courts.[27]

In *National Power Corporation v. Manubay Agro-Industrial Development Corporation*,[28] we held that the taking of property was purely an easement of a right of way, but we nevertheless ruled that the full market value should be paid instead of an easement fee.[29] This Court is mindful of the fact that the construction of the transmission lines will definitely have limitations and will indefinitely deprive the owners of the land of their normal use.

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the owner of the property its proferred value taking into consideration the standards prescribed in Section 5 hereof.

Upon compliance with the guidelines abovementioned, the court shall immediately issue to the implementing agency an order to take possession of the property and start the implementation of the project.

Before the court can issue a Writ of Possession, the implementing agency shall present to the court a certificate of availability of funds from the proper official concerned.

In the event that the owner of the property contests the implementing agency's proferred value, the court shall determine the just compensation to be paid the owner within sixty (60) days from the date of filing of the expropriation case. When the decision of the court becomes final and executory, the implementing agency shall pay the owner the difference between the amount already paid and the just compensation as determined by the court.

[26] *Supra* note 18.

[27] *National Power Corporation v. Gutierrez*, G.R. No. 160077, 18 January 1991, 193 SCRA 1; *National Power Corporation v. Bongbong*, G.R. No. 164079, 3 April 2007, 520 SCRA 290; *National Power Corporation v. Chiong*, 452 Phil. 149 (2003); *National Power Corporation v. Aguirre-Paderanga*, G.R. No. 155065, 28 July 2005, 464 SCRA 481.

[28] G.R. No. 150936, 18 August 2004, 437 SCRA 60.

[29] *Id.* at 67.

The presence of transmission lines undoubtedly restricts respondent's use of his property. Petitioner is thus liable to pay respondent the full market value of the property.

The second aspect of the compensation issue relates to the reckoning date for the determination of just compensation. Petitioner contends that the computation should be made as of 27 June 2001, the date when it filed the expropriation complaint, as provided in Rule 67. We agree.

Rule 67 clearly provides that the value of just compensation shall "be determined as of the date of the taking of the property or the filing of the complaint, whichever came first."[30] In *B.H. Berkenkotter & Co. v. Court of Appeals*, we held that:

> It is settled that just compensation is to be ascertained as of the time of the taking, which usually coincides with the commencement of the expropriation proceedings. **Where the institution of the action precedes entry into the property, the just compensation is to be ascertained as of the time of the filing of the complaint**.[31] (emphasis supplied)

Typically, the time of taking is contemporaneous with the time the petition is filed. The general rule is what is provided for by Rule 67. There are exceptions—grave injustice to the property

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[30] RULES OF COURT, Rule 67, Sec. 4. provides:

> If the objections to and the defenses against the right of the plaintiff to expropriate the property are overruled, or when no party appears to defend as required by this Rule, the court may issue an order of expropriation declaring that the plaintiff has a lawful right to take the property sought to be expropriated, for the public use or purpose described in the complaint, upon payment of just compensation to be determined as of the date of the taking of the property or the filing of the complaint whichever came first.
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> xxx xxx xxx

[31] G.R. No. 89980, 14 December 1992, 216 SCRA 584,587, citing *Republic v. Philippine National Bank*, 1 SCRA 957 and reiterated in *National Power Corporation v. Dela Cruz*, G.R. No. 156093, 2 February 2007, 514 SCRA 56; *Romonafe Corporation v. National Power Corporation*, G.R. No. 168122, 30 January 2001, 513 SCRA 425, 429.

owner,[32] the taking did not have color of legal authority,[33] the taking of the property was not initially for expropriation[34] and the owner will be given undue increment advantages because of the expropriation.[35] However, none of these exceptions are present in the instant case.

Moreover, respondent's reliance on the ruling in *City of Cebu v. Spouses Dedamo*,[36] is misplaced since the applicable law therein was the Local Government Code which explicitly provides that the value of just compensation shall be computed at the time of taking.[37]

Based on the foregoing, the reckoning date for the determination of the amount of just compensation is 27 June 2001, the date when petitioner filed its expropriation complaint.

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[32] *Heirs of Mateo Pidacan and Romana Eigo v. Air Transportation Office (ATO)*, G.R. No. 162779, 15 June 2007, 524 SCRA 679, 687.

[33] *National Power Corporation v. Ibrahim*, G.R. No. 168732, 29 June 2007, 526 SCRA 149, 169 reiterating *National Power Corporation v. Court of Appeals*, 254 SCRA 577.

[34] *Tan v. Republic*, G.R. No. 170740, 25 May 2007, 523 SCRA 203, 213.

[35] *Provincial Government of Rizal v. Caro de Araullo*, 58 Phil. 308 (1933).

[36] 431 Phil. 525 (2002).

[37] Republic Act No. 7160(1991), Sec. 19. *Eminent Domain*— A local government unit may, through its chief executive and acting pursuant to an ordinance, exercise the power of eminent domain for public use, or purpose, or welfare for the benefit of the poor and the landless, upon payment of just compensation, pursuant to the provisions of the Constitution and pertinent laws: *Provided, however*, that the power of eminent domain may not be exercised unless a valid and definite offer has been previously made to the owner, and such offer was not accepted*: Provided, further*, that the local government unit may immediately take possession of the property upon the filing of the expropriation proceedings and upon making a deposit with the proper court of at least fifteen percent (15%) of the fair market value of the property based on the current tax declaration of the property to be expropriated. *Provided, finally*, That, the amount to be paid for the expropriated property shall be determined by the proper court, based on the fair market value at the time of the taking of the property.

As a final note, the function for determining just compensation remains judicial in character. In *Export Processing Zone Authority v. Dulay*,[38] and *National Power Corporation v. Purefoods*,[39] we ruled:

> The determination of "just compensation" in eminent domain cases is a judicial function. The executive department or legislature may make the initial determinations but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation.[40]

Thus, the lower court must use the standards set forth in Sec. 5[41] of R.A. No. 8974 to arrive at the amount of just compensation.

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[38] *Export Processing Zone Authority v. Dulay*, 233 Phil. 313 (1987).

[39] *National Power Corporation v. Purefoods Corporation*, G.R. No. 160725, 12 September 2008.

[40] *Supra* note 39 at 326.

[41] Sec. 5. *Standards for the Assessment of the Value of the Land Subject of Expropriation Proceedings or Negotiated Sale*.—In order to facilitate the determination of just compensation, the court may consider, among other well-established factors, the following relevant standards:

(a) The classification and use for which the property is suited;

(b) The developmental costs for improving the land;

(c) The value declared by the owners;

(d) The current selling price of similar lands in the vicinity;

(e) The reasonable disturbance compensation for the removal and/or demolition of certain improvements on the land and for the value of improvements thereon;

(f) The size, shape, or location, tax declaration and zonal valuation of the land;

(g) The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and

(h) Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible.

To recapitulate, R.A. No. 8974 applies to properties expropriated for the installation of petitioner's power transmission lines. Also, petitioner is liable to pay the full amount of the fair market value and not merely a 10 percent easement fee for the expropriated property. Likewise, the value of the property should be reckoned as of 27 June 2001, the date of the filing of the complaint in compliance with Rule 67. Lastly, respondent failed to assign as error the Court of Appeals' ruling regarding the need to appoint a new set of commissioners.[42] However, even if respondent had assigned the matter as error, it would still be denied since the conflicting appraisals submitted by the commissioners were not both reckoned as of the date of filing of the complaint. Thus, there is need to remand this case in line with the appellate court's valid directive for the new set of commissioners.

WHEREFORE, the petition is partially *GRANTED*. The Decision of the Court of Appeals is *AFFIRMED* insofar as it ordered petitioner to pay the full amount of the fair market value of the property involved as just compensation and is *REVERSED* insofar as it directed that such compensation be computed as of the date of taking instead of earlier which is the date of filing of the complaint. This case is *REMANDED* to the trial court for the appointment of a new set of commissioners in accordance with Sec. 8, Rule 67 of the Rules of Court and the determination of just compensation in conformity with this Decision. The Regional Trial Court of San Fernando City, Pampanga is directed to conduct, complete and resolve the further proceedings with deliberate dispatch.

SO ORDERED.

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

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[42] RULES OF COURT, Rule 51, Sec. 8—No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors.

SECOND DIVISION

[G.R. No. 168433. February 10, 2009]

UCPB GENERAL INSURANCE CO., INC., *petitioner, vs.* **ABOITIZ SHIPPING CORP., EAGLE EXPRESS LINES, DAMCO INTERMODAL SERVICES, INC., and PIMENTEL CUSTOMS BROKERAGE CO.,** *respondents*.

SYLLABUS

1. COMMERCIAL LAW; CODE OF COMMERCE; THAT CLAIM FOR DAMAGES OR AVERAGE MUST BE MADE WITHIN 24 HOURS FROM RECEIPT OF MERCHANDISE IF DAMAGE CANNOT BE ASCERTAINED FROM OUTSIDE PACKAGING OF THE CARGO.— Art. 366 of the Code of Commerce states: Art. 366. Within twenty-four hours following the receipt of the mechandise, the claim against the carrier for damage or average which may be found therein upon opening the packages, may be made, provided that the indications of the damage or average which gives rise to the claim cannot be ascertained from the outside part of such packages, in which case the claim shall be admitted only at the time of receipt. After the periods mentioned have elapsed, or the transportation charges have been paid, no claim shall be admitted against the carrier with regard to the condition in which the goods transported were delivered. The law clearly requires that the claim for damage or average must be made within 24 hours from receipt of the merchandise if, as in this case, damage cannot be ascertained merely from the outside packaging of the cargo. The requirement to give notice of loss or damage to the goods is not an empty formalism. The fundamental reason or purpose of such a stipulation is not to relieve the carrier from just liability, but reasonably to inform it that the shipment has been damaged and that it is charged with liability therefor, and to give it an opportunity to examine the nature and extent of the injury. This protects the carrier by affording it an opportunity to make an investigation of a claim while the matter is still fresh and easily investigated so as to safeguard itself from false and fraudulent claims. We have construed the 24-

hour claim requirement as a condition precedent to the accrual of a right of action against a carrier for loss of, or damage to, the goods. The shipper or consignee must allege and prove the fulfillment of the condition. Otherwise, no right of action against the carrier can accrue in favor of the former.

2. ID.; CARRIAGE OF GOODS BY SEA ACT (COGSA); THREE (3) DAYS NOTICE OF CLAIM IF LOSS OR DAMAGE IS NOT APPARENT.— Sec. 3(6) of the COGSA provides a similar claim mechanism as the Code of Commerce but prescribes a period of three (3) days within which notice of claim must be given if the loss or damage is not apparent. It states: Sec. 3(6). Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as descibed in the bill of lading. If the loss or damage is not apparent, the notice must be given within three days of the delivery. Said notice of loss or damage may be endorsed upon the receipt of the goods given by the person taking delivery thereof. The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

APPEARANCES OF COUNSEL

Jose J. Ferrer, Jr. for petitioner.

Del Rosario & Del Rosario for Eagle Express Lines, Inc.

Libarios Jalandoni Dimayuga & Magtanong for Aboitiz Shipping Corp.

Arreza & Associates for Pimentel Customs Brokerage Co.

D E C I S I O N

TINGA, *J.*:

UCPB General Insurance Co., Inc. (UCPB) assails the Decision[1] of the Court of Appeals dated October 29, 2004, which reversed the Decision[2] dated November 29, 1999 of the Regional Trial Court of Makati City, Branch 146, and its Resolution[3] dated June 14, 2005, which denied UCPB's motion for reconsideration.

The undisputed facts, culled from the assailed Decision, are as follows:

> On June 18, 1991, three (3) units of waste water treatment plant with accessories were purchased by San Miguel Corporation (SMC for brevity) from Super Max Engineering Enterprises, Co., Ltd. of Taipei, Taiwan. The goods came from Charleston, U.S.A. and arrived at the port of Manila on board MV "SCANDUTCH STAR". The same were then transported to Cebu on board MV "ABOITIZ SUPERCON II." After its arrival at the port of Cebu and clearance from the Bureau of Customs, the goods were delivered to and received by SMC at its plant site on August 2, 1991. It was then discovered that one electrical motor of DBS Drive Unit Model DE-30-7 was damaged.
>
> Pursuant to an insurance agreement, plaintiff-appellee paid SMC the amount of ₱1,703,381.40 representing the value of the damaged unit. In turn, SMC executed a Subrogation Form dated March 31, 1992 in favor of plaintiff-appellee.
>
> Consequently, plaintiff-appellee filed a Complaint on July 21, 1992 as subrogee of SMC seeking to recover from defendants the amount it had paid SMC.
>
> On September 20, 1994, plaintiff-appellee moved to admit its Amended Complaint whereby it impleaded East Asiatic Co. Ltd. (EAST for brevity) as among the defendants for being the "general agent"

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[1] *Rollo*, pp. 34-42; penned by Associate Justice Aurora Santiago-Lagman with the concurrence of Associate Justices Portia Aliño-Hormachuelos and Rebecca De Guia-Salvador.

[2] *Id.* at 45-48.

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

of DAMCO. In its Order dated September 23, 1994, the lower court admitted the said amended complaint.

Upon plaintiff-appellee's motion, defendant DAMCO was declared in default by the lower court in its Order dated January 6, 1995.

In the meantime, on January 25, 1995, defendant EAST filed a Motion for Preliminary Hearing on its affirmative defenses seeking the dismissal of the complaint against it on the ground of prescription, which motion was however denied by the court *a quo* in its Order dated September 1, 1995. Such denial was elevated by defendant EAST to this Court through a Petition for *Certiorari* on October 30, 1995 in CA G.R. SP No. 38840. Eventually, this Court issued its Decision dated February 14, 1996 setting aside the lower court's assailed order of denial and further ordering the dismissal of the complaint against defendant EAST. Plaintiff-appellee moved for reconsideration thereof but the same was denied by this Court in its Resolution dated November 8, 1996. As per Entry of Judgment, this Court's decision ordering the dismissal of the complaint against defendant EAST became final and executory on December 5, 1996.

Accordingly, the court *a quo* noted the dismissal of the complaint against defendant EAST in its Order dated December 5, 1997. Thus, trial ensued with respect to the remaining defendants.

On November 29, 1999, the lower court rendered its assailed Decision, the dispositive portion of which reads:

> WHEREFORE, all the foregoing premises considered, judgment is hereby rendered declaring DAMCO Intermodal Systems, Inc., Eagle Express Lines, Inc. and defendant Aboitiz Shipping solidarily liable to plaintiff-subrogee for the damaged shipment and orders them to pay plaintiff jointly and severally the sum of ₱1,703,381.40.
>
> No costs.
>
> SO ORDERED.

Not convinced, defendants-appellants EAGLE and ABOITIZ now come to this Court through their respective appeals x x x[4]

The appellate court, as previously mentioned, reversed the decision of the trial court and ruled that UCPB's right of action

[4] *Id.* at 35-37.

against respondents did not accrue because UCPB failed to file a formal notice of claim within 24 hours from (SMC's) receipt of the damaged merchandise as required under Art. 366 of the Code of Commerce. According to the Court of Appeals, the filing of a claim within the time limitation in Art. 366 is a condition precedent to the accrual of a right of action against the carrier for the damages caused to the merchandise.

In its Memorandum[5] dated February 8, 2007, UCPB asserts that the claim requirement under Art. 366 of the Code of Commerce does not apply to this case because the damage to the merchandise had already been known to the carrier. Interestingly, UCPB makes this revelation: "x x x damage to the cargo was found upon discharge from the foreign carrier onto the International Container Terminal Services, Inc. (ICTSI) in the presence of the carrier's representative who signed the *Request for Bad Order Survey*[6] and the *Turn Over of Bad Order Cargoes*.[7] On transshipment, the cargo was already damaged when loaded on board the inter-island carrier."[8] This knowledge, UCPB argues, dispenses with the need to give the carrier a formal notice of claim. Incidentally, the carrier's representative mentioned by UCPB as present at the time the merchandise was unloaded was in fact a representative of respondent Eagle Express Lines (Eagle Express).

UCPB claims that under the Carriage of Goods by Sea Act (COGSA), notice of loss need not be given if the condition of the cargo has been the subject of joint inspection such as, in this case, the inspection in the presence of the Eagle Express representative at the time the cargo was opened at the ICTSI.

UCPB further claims that the issue of the applicability of Art. 366 of the Code of Commerce was never raised before the trial court and should, therefore, not have been considered by the Court of Appeals.

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[5] *Id.* at 259-279.

[6] *Id.* at 89.

[7] *Id.* at 90.

[8] *Id.* at 259.

Eagle Express, in its Memorandum[9] dated February 7, 2007, asserts that it cannot be held liable for the damage to the merchandise as it acted merely as a freight forwarder's agent in the transaction. It allegedly facilitated the transshipment of the cargo from Manila to Cebu but represented the interest of the cargo owner, and not the carrier's. The only reason why the name of the Eagle Express representative appeared on the *Permit to Deliver Imported Goods* was that the form did not have a space for the freight forwarder's agent, but only for the agent of the shipping line. Moreover, UCPB had previously judicially admitted that upon verification from the Bureau of Customs, it was East Asiatic Co., Ltd. (East Asiatic), regarding whom the original complaint was dismissed on the ground of prescription, which was the real agent of DAMCO Intermodal Services, Inc. (DAMCO), the ship owner.

Eagle Express argues that the applicability of Art. 366 of the Code of Commerce was properly raised as an issue before the trial court as it mentioned this issue as a defense in its Answer to UCPB's Amended Complaint. Hence, UCPB's contention that the question was raised for the first time on appeal is incorrect.

Aboitiz Shipping Corporation (Aboitiz), on the other hand, points out, in its Memorandum[10] dated March 29, 2007, that it obviously cannot be held liable for the damage to the cargo which, by UCPB's admission, was incurred not during transshipment to Cebu on board one of Aboitiz's vessels, but was already existent at the time of unloading in Manila. Aboitiz also argues that Art. 366 of the Code of Commerce is applicable and serves as a condition precedent to the accrual of UCPB's cause of action against it.

The Memorandum[11] dated June 3, 2008, filed by Pimentel Customs Brokerage Co. (Pimentel Customs), is also a reiteration of the applicability of Art. 366 of the Code of Commerce.

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[9] *Id.* at 233-258.

[10] *Id.* at 297-327.

[11] *Id.* at 371-387.

It should be stated at the outset that the issue of whether a claim should have been made by SMC, or UCPB as SMC's subrogee, within the 24-hour period prescribed by Art. 366 of the Code of Commerce was squarely raised before the trial court.

In its Answer to Amended Complaint[12] dated May 10, 1993, Eagle Express averred, thus:

> The amended complaint states no cause of action under the provisions of the Code of Commerce and the terms of the bill of lading; consignee made no claim against herein defendant within twenty four (24) hours following the receipt of the alleged cargo regarding the condition in which said cargo was delivered; however, assuming *arguendo* that the damage or loss, if any, could not be ascertained from the outside part of the shipment, consignee never made any claim against herein defendant at the time of receipt of said cargo; herein defendant learned of the alleged claim only upon receipt of the complaint.[13]

Likewise, in its Answer[14] dated September 21, 1992, Aboitiz raised the defense that UCPB did not file a claim with it and that the complaint states no cause of action.

UCPB obviously made a gross misrepresentation to the Court when it claimed that the issue regarding the applicability of the Code of Commerce, particularly the 24-hour formal claim rule, was not raised as an issue before the trial court. The appellate court, therefore, correctly looked into the validity of the arguments raised by Eagle Express, Aboitiz and Pimentel Customs on this point after the trial court had so ill-advisedly centered its decision merely on the matter of extraordinary diligence.

Interestingly enough, UCPB itself has revealed that when the shipment was discharged and opened at the ICTSI in Manila in the presence of an Eagle Express representative, the cargo *had already been found damaged*. In fact, a request for bad order survey was then made and a turnover survey of bad order

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[12] *Id.* at 150-157.

[13] *Id.* at 153.

[14] *Id.* at 94-98.

cargoes was issued, pursuant to the procedure in the discharge of bad order cargo. The shipment was then repacked and transshipped from Manila to Cebu on board MV Aboitiz Supercon II. When the cargo was finally received by SMC at its Mandaue City warehouse, it was found in bad order, thereby *confirming* the damage already uncovered in Manila.[15]

In charging Aboitiz with liability for the damaged cargo, the trial court condoned UCPB's wrongful suit against Aboitiz to whom the damage could not have been attributable since there was no evidence presented that the cargo was further damaged during its transshipment to Cebu. Even by the exercise of extraordinary diligence, Aboitiz could not have undone the damage to the cargo that had already been there when the same was shipped on board its vessel.

That said, it is nonetheless necessary to ascertain whether any of the remaining parties may still be held liable by UCPB. The provisions of the Code of Commerce, which apply to overland, river and maritime transportation, come into play.

Art. 366 of the Code of Commerce states:

> Art. 366. Within twenty-four hours following the receipt of the merchandise, the claim against the carrier for damage or average which may be found therein upon opening the packages, may be made, provided that the indications of the damage or average which gives rise to the claim cannot be ascertained from the outside part of such packages, in which case the claim shall be admitted only at the time of receipt.
>
> After the periods mentioned have elapsed, or the transportation charges have been paid, no claim shall be admitted against the carrier with regard to the condition in which the goods transported were delivered.

The law clearly requires that the claim for damage or average must be made within 24 hours from receipt of the merchandise if, as in this case, damage cannot be ascertained merely from the outside packaging of the cargo.

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[15] *Id.* at 14-15; Petition for Review on *Certiorari* dated August 1, 2005.

In *Philippine Charter Insurance Corporation v. Chemoil Lighterage Corporation*,[16] petitioner, as subrogee of Plastic Group Phil., Inc. (PGP), filed suit against respondent therein for the damage found on a shipment of chemicals loaded on board respondent's barge. Respondent claimed that no timely notice in accordance with Art. 366 of the Code of Commerce was made by petitioner because an employee of PGP merely made a phone call to respondent's Vice President, informing the latter of the contamination of the cargo. The Court ruled that the notice of claim was not timely made or relayed to respondent in accordance with Art. 366 of the Code of Commerce.

The requirement to give notice of loss or damage to the goods is not an empty formalism. The fundamental reason or purpose of such a stipulation is not to relieve the carrier from just liability, but reasonably to inform it that the shipment has been damaged and that it is charged with liability therefor, and to give it an opportunity to examine the nature and extent of the injury. This protects the carrier by affording it an opportunity to make an investigation of a claim while the matter is still fresh and easily investigated so as to safeguard itself from false and fraudulent claims.[17]

We have construed the 24-hour claim requirement as a condition precedent to the accrual of a right of action against a carrier for loss of, or damage to, the goods. The shipper or consignee must allege and prove the fulfillment of the condition. Otherwise, no right of action against the carrier can accrue in favor of the former.[18]

The shipment in this case was received by SMC on August 2, 1991. However, as found by the Court of Appeals, the claims were dated October 30, 1991, more than three (3) months from

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[16] G.R. No. 136888, June 29, 2005, 462 SCRA 77; See also *Federal Express Corporation v. American Home Assurance Company*, G.R. No. 150094, August 18, 2004, 437 SCRA 50.

[17] *Philippine American General Insurance Co., Inc. v. Sweet Lines, Inc.*, G.R. No. 87434, August 5, 1992, 212 SCRA 194, 208.

[18] *Philippine Charter Insurance Corporation v. Chemoil Litherage Corporation, supra* note 13 at 87.

receipt of the shipment and, at that, even after the extent of the loss had already been determined by SMC's surveyor. The claim was, therefore, clearly filed beyond the 24-hour time frame prescribed by Art. 366 of the Code of Commerce.

But what of the damage already discovered in the presence of Eagle Express's representative at the time the shipment was discharged in Manila? The *Request for Bad Order Survey* and *Turn Over Survey of Bad Order Cargoes*, respectively dated June 17, 1999 and June 28, 1991, evince the fact that the damage to the cargo was already made known to Eagle Express and, possibly, SMC, as of those dates.

Sec. 3(6) of the COGSA provides a similar claim mechanism as the Code of Commerce but prescribes a period of three (3) days within which notice of claim must be given if the loss or damage is not apparent. It states:

> Sec. 3(6). Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as descibed in the bill of lading. If the loss or damage is not apparent, the notice must be given within three days of the delivery.
>
> Said notice of loss or damage may be endorsed upon the receipt of the goods given by the person taking delivery thereof.
>
> The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

UCPB seizes upon the last paragraph which dispenses with the written notice if the state of the goods has been the subject of a joint survey which, in this case, was the opening of the shipment in the presence of an Eagle Express representative. It should be noted at this point that the applicability of the above-quoted provision of the COGSA was not raised as an issue by UCPB before the trial court and was only cited by UCPB in its Memorandum in this case.

UCPB, however, is ambivalent as to which party Eagle Express represented in the transaction. By its own manifestation, East Asiatic, and not Eagle Express, acted as the agent through which summons and court notices may be served on DAMCO. It would be unjust to hold that Eagle Express's knowledge of the damage to the cargo is such that it served to preclude or dispense with the 24-hour notice to the carrier required by Art. 366 of the Code of Commerce. Neither did the inspection of the cargo in which Eagle Express's representative had participated lead to the waiver of the written notice under the Sec. 3(6) of the COGSA. Eagle Express, after all, had acted as the agent of the freight consolidator, not that of the carrier to whom the notice should have been made.

At any rate, the notion that the request for bad order survey and turn over survey of bad cargoes signed by Eagle Express's representative is construable as compliant with the notice requirement under Art. 366 of the Code of Commerce was foreclosed by the dismissal of the complaint against DAMCO's representative, East Asiatic.

As regards respondent Pimentel Customs, it is sufficient to acknowledge that it had no participation in the physical handling, loading and delivery of the damaged cargo and should, therefore, be absolved of liability.

Finally, UCPB's misrepresentation that the applicability of the Code of Commerce was not raised as an issue before the trial court warrants the assessment of double costs of suit against it.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CV No. 68168, dated October 29, 2004 and its Resolution dated June 14, 2005 are *AFFIRMED*. Double costs against petitioner.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 168876. February 10, 2009]

PHILIPPINE PASAY CHUNG HUA ACADEMY and EMILIO CHING, *petitioners, vs.* **SERVANDO L. EDPAN,** *respondent.*

[G.R. No. 172093. February 10, 2009]

SERVANDO L. EDPAN, *petitioner, vs.* **PHILIPPINE PASAY CHUNG HUA ACADEMY and EMILIO CHING,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; DISMISSAL OF EMPLOYEES; DUE PROCESS; TWIN REQUIREMENTS OF NOTICE AND HEARING.— In the dismissal of employees, it has been consistently held that the twin requirements of notice and hearing are essential elements of due process. Article 277 (b) of the Labor Code and Section 2, Rule XXIII, Book V of the Rules Implementing the Labor Code require the employer to furnish the employee with two written notices, to wit: (1) a written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side; and (2) a written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination. The first notice which may be considered as the proper charge, serves to apprise the employee of the particular acts or omissions for which his dismissal is sought. The second notice on the other hand seeks to inform the employee of the employer's decision to dismiss him. With regard to the requirement of a hearing, it should be stressed that the essence of due process lies simply in an opportunity to be heard, and not that an actual hearing should always and indispensably be held.

2. ID.; ID.; ID.; ID.; ID.; COMPLIED WITH IN CASE AT BAR.— In this case, the employer – PPCHA – appears to have complied

with the due process requirements set forth in the law and already established in jurisprudence. PPCHA through its school directress sent Edpan a letter informing him of the complaint filed by the parents of AAA and requiring him to submit a written explanation within 24 hours. He then submitted his written explanation denying the allegations against him. He was later furnished copies of AAA's *Sunumpaang Salaysay* and the parents' letter-complaint and was again required to submit his reply thereto. Edpan was able to submit his reply-affidavit and even attached to it letters of PPCHA students and alumni attesting to his integrity. It was only after giving Edpan opportunities to present his side, that PPCHA furnished him a notice dismissing him from its service. Thus, we rule that PPCHA observed procedural due process before Edpan was dismissed. Even if no hearing or conference was conducted, the requirement of due process had been met since he was accorded a chance to explain his side of the controversy.

APPEARANCES OF COUNSEL

Riguera & Riguera Law Office for S. Edpan.

D E C I S I O N

QUISUMBING, *J.*:

These consolidated petitions before us highlight conflicting decisions promulgated by two divisions of the Court of Appeals concerning the requirements of procedural due process in the termination by the school management of its employee, a high school teacher.

Petitioners in G.R. No. 168876 assail the Decision[1] dated October 25, 2004 and Resolution[2] dated July 13, 2005 by the Special 17th Division of the Court of Appeals in CA-G.R. SP

[1] *Rollo* (G.R. No. 168876), pp. 30-35. Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Remedios A. Salazar-Fernando and Magdangal M. De Leon concurring.

[2] *Id.* at 37.

No. 80757 which affirmed with modification the Decision[3] dated July 31, 2003 of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 034525-03 (NCR-00-05-03248-02). The appellate court had ordered the payment of full backwages, unpaid salaries and proportionate 13th month pay of respondent Servando Edpan.

Edpan as petitioner in G.R. No. 172093, in turn, assails the Decision[4] dated November 9, 2005 and Resolution[5] dated March 29, 2006 by the 16th Division of the Court of Appeals in CA-G.R. SP No. 80779 which affirmed with modification the same decision of the NLRC but deleted the indemnity award of ₱10,000.

The factual antecedents are as follows:

Servando Edpan was a high school teacher at Philippine Pasay Chung Hua Academy (PPCHA) where AAA,[6] a minor-aged student, was enrolled.

On April 10, 2002, PPCHA received a letter-complaint[7] from AAA's parents alleging that Edpan had committed lascivious acts against their daughter. They alleged that on April 5, 2002, Edpan kissed AAA's nape and breasts and touched her private

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[3] CA *rollo*, pp. 12-17.

[4] *Rollo* (G.R. No. 172093), pp. 25-30-A. Penned by Associate Justice Arturo G. Tayag, with Associate Justices Jose L. Sabio, Jr. and Jose C. Mendoza concurring.

[5] *Id.* at 32-33. Penned by Associate Justice Arturo G. Tayag, with Associate Justices Jose L. Sabio, Jr. and Noel G. Tijam concurring.

[6] This appellation is pursuant to Republic Act No. 9262, Sec. 44, otherwise known as the "Anti-Violence Against Women and their Children Act of 2004" and our ruling in *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, wherein this Court has resolved to withhold the real name of the victim-survivor and to use fictitious initials instead to represent her in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed.

[7] CA *rollo*, p. 29.

parts. In support of their complaint, the parents attached AAA's *Sinumpaang Salaysay*.[8]

On April 11, 2002, Edpan received two letters[9] from Mrs. Huichin Auyong Chua, PPCHA School Directress, notifying him of the complaint of AAA's parents. Additionally, the Directress notified Edpan that he is being placed under preventive suspension for 30 days without pay, pending investigation of his case. Likewise, she informed him that he will be notified by the investigation committee to attend a preliminary investigation, and that his failure to attend such investigation will be construed as waiver to defend himself. Edpan was also instructed to submit a written explanation on the matter within 24 hours.

In compliance with the two letters from the school directress, Edpan submitted a letter[10] vehemently denying the allegations against him. In a follow-up letter[11] dated April 17, 2002, Edpan requested that he be given five-days advance notice of the investigation and copies of AAA's *Sinumpaang Salaysay*, the letter-complaint of AAA's parents, and other evidence against him.

PPCHA, by letter[12] dated April 22, 2002, required Edpan to report to school and submit his reply to AAA's *Sinumpaang Salaysay* and her parents' letter-complaint.

On April 29, 2002, Edpan wrote PPCHA informing it that he will be reporting to school and submitting his reply on May 2, 2002 and that he will be bringing along his counsel.[13]

On May 2, 2002, Edpan submitted his reply-affidavit[14] attaching to it letters[15] from several PPCHA students and alumni attesting to his good character and integrity.

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[8] *Id.* at 33-34.

[9] *Id.* at 30-31.

[10] *Id.* at 58-59.

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

[12] *Id.* at 62.

[13] *Id.* at 66.

[14] *Id.* at 67-71.

[15] *Id.* at 73-77.

On May 9, 2002, Edpan received a notice of termination[16] of his employment as a teacher, on the ground of serious misconduct and loss of trust and confidence effective May 11, 2002. Edpan promptly filed an illegal dismissal complaint before the Labor Arbiter.

On December 27, 2002, Labor Arbiter Luis D. Flores dismissed Edpan's complaint for lack of merit. The dispositive portion reads:

> WHEREFORE, judgment is hereby rendered dismissing the instant complaint for lack of merit. Respondent school is however directed to pay complainant his unpaid salaries for services rendered during the summer class and his proportionate 13th month pay.
>
> SO ORDERED.[17]

Edpan appealed to the NLRC, which modified the Decision of the Labor Arbiter, to wit:

> WHEREFORE, premises considered, the Decision appealed from is hereby MODIFIED by directing respondents to indemnify complainant the amount of ten thousand pesos (₱10,000.00) for failure to strictly comply with due process prior to termination.
>
> SO ORDERED.[18]

Edpan and PPCHA filed their respective motions for reconsideration of the NLRC Decision but both were denied. The parties thereafter filed separate special civil actions for *certiorari* before the Court of Appeals.

In CA-G.R. SP No. 80757, the appellate court ruled that PPCHA did not observe procedural due process when it dismissed Edpan. It decreed as follows:

> WHEREFORE, the instant petition is **DENIED**. The assailed Decision dated July 31, 2003 and Resolution dated September 5, 2003 of public respondent NLRC, in NLRC NCR CA NO. 034525 (NCR-00-05-03248-02) are **AFFIRMED** with **MODIFICATION**, by ordering private respondent school to pay petitioner: 1) full

[16] *Id.* at 78-79.

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

[18] *Id.* at 16.

backwages from the time he was dismissed on May 11, 2002 up to the time the herein decision becomes final; and 2) unpaid salaries for services rendered during the summer class and his proportionate 13th month pay. No pronouncement as to cost.

SO ORDERED.[19]

In contrast, the appellate court in CA-G.R. SP No. 80779 found that procedural due process was complied with. The dispositive portion reads:

WHEREFORE, based on the foregoing, the petition is ***GIVEN DUE COURSE***. The assailed Decision is ***MODIFIED***, the award of ₱10,000.00 as indemnity is hereby ***DELETED***.

SO ORDERED.[20]

Both Edpan and PPCHA are now before this Court assailing the decisions rendered by the appellate court. In G.R. No. 168876, PPCHA and co-petitioner allege that in CA-G.R. SP No. 80757, the Court of Appeals

I.

…BLATANTLY DISREGARDED THE LAW AND PREVAILING JURISPRUDENCE WHEN IT UPHELD THE SERRANO DOCTRINE IN ITS RESOLUTION DATED JULY 13, 2005 DESPITE THE FACT THAT, AS OF THE DATE OF PROMULGATION OF THE ASSAILED RESOLUTION, THE SAID DOCTRINE HAD BEEN ABANDONED.

II.

…UTTERLY IGNORED PREVAILING JURISPRUDENCE WHEN IT DIRECTED PETITIONERS TO PAY RESPONDENT BACK WAGES.

III.

…DISREGARDED THE LAW AND ESTABLISHED FACTS ATTENDANT IN THE INSTANT CASE WHEN IT CONCLUDED THAT PETITIONERS DID NOT APPEAL THE NLRC RULING.

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[19] *Rollo* (G.R. No. 168876), p. 35.

[20] *Rollo* (G.R. No. 172093), p. 30.

IV.

…BLATANTLY DISREGARDED THE LAW AND PREVAILING JURISPRUDENCE WHEN IT DID NOT FIND THAT PETITIONERS COMPLIED WITH DUE PROCESS IN DISMISSING RESPONDENT.[21]

In G.R. No. 172093, petitioner Edpan avers that in CA-G.R. SP No. 80779, the Court of Appeals

COMMITTED GRAVE AND REVERSIBLE ERROR IN HOLDING THAT RESPONDENT PHILIPPINE PASAY CHUNG HUA ACADEMY OBSERVED PROCEDURAL DUE PROCESS IN DISMISSING THE PETITIONER.[22]

Simply stated, the basic issue is: Did PPCHA observe procedural due process when it dismissed Edpan?

On one hand, PPCHA contends that it has complied with the two-notice requirement when it dismissed Edpan. It argues that the following are undeniable from the case records: (1) PPCHA served Edpan a written notice informing him of the complaint against him and another notice requiring him to submit a written explanation; (2) PPCHA conducted an investigation; and (3) PPCHA served a written notice to Edpan informing him of his dismissal.[23]

On the other hand, Edpan claims that PPCHA failed to observe procedural process since no hearing was conducted when his case was under investigation. He stresses that the law specifically mandates that there should be a hearing or conference during which the employee concerned, with the assistance of counsel, if he so desires, is given the opportunity to respond to the charge, and present evidence or rebut the evidence presented against him.[24]

After serious consideration of this case, we are in agreement to rule in favor of PPCHA, the employer.

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[21] *Rollo* (G.R. No. 168876), pp. 17-18.

[22] *Rollo* (G.R. No.172093), p. 17.

[23] *Rollo* (G.R. No. 168876), pp. 21-22.

[24] *Rollo* (G.R. No. 172093), p. 18.

In the dismissal of employees, it has been consistently held that the twin requirements of notice and hearing are essential elements of due process. Article 277 (b)[25] of the Labor Code and Section 2,[26] Rule XXIII, Book V of the Rules Implementing the Labor Code require the employer to furnish the employee with two written notices, to wit: (1) a written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side; and (2) a written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.[27] The first notice which may be considered as the proper charge, serves to apprise the employee of the particular acts or omissions for which his dismissal is sought. The second notice on the other hand seeks to inform the employee of the employer's decision to dismiss him.[28] With regard to the requirement

[25] **ART. 277. Miscellaneous provisions**. — ... (b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment....

[26] Section 2. *Standards of due process: requirements of notice.* — In all cases of termination of employment, the following standards of due process shall be substantially observed:

xxx xxx xxx

(a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;

xxx xxx xxx

(c) A written notice termination served on the employee indicating that upon due consideration of all the circumstance, grounds have been established to justify his termination.

xxx xxx xxx

[27] *Pastor Austria v. NLRC,* 371 Phil. 340, 356-357 (1999).

[28] *Id.* at 357.

of a hearing, it should be stressed that the essence of due process lies simply in an opportunity to be heard, and not that an actual hearing should always and indispensably be held.[29]

In this case, the employer – PPCHA – appears to have complied with the due process requirements set forth in the law and already established in jurisprudence. PPCHA through its school directress sent Edpan a letter informing him of the complaint filed by the parents of AAA and requiring him to submit a written explanation within 24 hours. He then submitted his written explanation denying the allegations against him. He was later furnished copies of AAA's *Sinumpaang Salaysay* and the parents' letter-complaint and was again required to submit his reply thereto. Edpan was able to submit his reply-affidavit and even attached to it letters of PPCHA students and alumni attesting to his integrity. It was only after giving Edpan opportunities to present his side, that PPCHA furnished him a notice dismissing him from its service.

Thus, we rule that PPCHA observed procedural due process before Edpan was dismissed. Even if no hearing or conference was conducted, the requirement of due process had been met since he was accorded a chance to explain his side of the controversy.[30]

WHEREFORE, the Decision dated October 25, 2004 and Resolution dated July 13, 2005 of the Court of Appeals in CA-G.R. SP No. 80757 are *SET ASIDE*. The Decision dated November 9, 2005 and Resolution dated March 29, 2006 of the Court of Appeals in CA-G.R. SP No. 80779 are *AFFIRMED*. Thus, we affirm that the employee was validly dismissed and the award to him by the NLRC of ₱10,000 as indemnity was properly deleted.

No pronouncement as to cost.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and *Brion, JJ.*, concur.

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[29] *Metropolitan Bank and Trust Company v. Barrientos*, G.R. No. 157028, January 31, 2006, 481 SCRA 311, 322.

[30] *Asian Terminals, Inc. v. Nepthally B. Sallao and Asian Terminals, Inc. (Mariveles) Workers' Union,* G.R. No. 166211, July 14, 2008, pp. 1, 6.

SECOND DIVISION

[G.R. No. 175048. February 10, 2009]

EXCELLENT QUALITY APPAREL, INC., *petitioner, vs.* **WIN MULTI RICH BUILDERS, INC., represented by its President, WILSON G. CHUA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; REAL PARTY IN INTEREST.— A suit may only be instituted by the real party in interest. Section 2, Rule 3 of the Rules of Court defines "parties in interest" in this manner: 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.

2. COMMERCIAL LAW; SOLE PROPRIETORSHIP; NO JURIDICAL PERSONALITY SEPARATE FROM THE OWNER OF THE ENTERPRISE.— A sole proprietorship is the oldest, simplest, and most prevalent form of business enterprise. It is an unorganized business owned by one person. The sole proprietor is personally liable for all the debts and obligations of the business. In the case of *Mangila v. Court of Appeals*, we held that: x x x In fact, there is no law authorizing sole proprietorships to file a suit in court. A sole proprietorship does not possess a juridical personality separate and distinct from the personality of the owner of the enterprise. The law merely recognizes the existence of a sole proprietorship as a form of business organization conducted for profit by a single individual and requires its proprietor or owner to secure licenses and permits, register its business name, and pay taxes to the national government. The law does not vest a separate legal personality on the sole proprietorship or empower it to file or defend an action in court.

3. ID.; CORPORATION LAW; CORPORATION FILING SUIT AND CLAIMING RECEIVABLES OF ITS PREDECESSOR SOLE PROPRIETORSHIP, PROOF REQUIRED THAT

THE CORPORATION ACQUIRED THE ASSETS AND LIABILITIES OF THE SOLE PROPRIETORSHIP.— Petitioner had continuously contested the legal personality of Win to institute the case. Win was given ample opportunity to adduce evidence to show that it had legal personality. It failed to do so. *Corpus Juris Secundum*, notes: x x x where an individual or sole trader organizes a corporation to take over his business and all his assets, and it becomes in effect merely an alter ego of the incorporator, the corporation, either on the grounds of implied assumption of the debts or on the grounds that the business is the same and is merely being conducted under a new guise, is liable for the incorporator's preexisting debts and liabilities. Clearly, where the corporation assumes or accepts the debt of its predecessor in business it is liable and if the transfer of assets is in fraud of creditors it will be liable to the extent of the assets transferred. The corporation is not liable on an implied assumption of debts from the receipt of assets where the incorporator retains sufficient assets to pay the indebtedness, or where none of his assets are transferred to the corporation, or where, although all the assets of the incorporator have been transferred, there is a change in the persons carrying on the business and the corporation is not merely an alter ego of the person to whose business it succeeded. In order for a corporation to be able to file suit and claim the receivables of its predecessor in business, in this case a sole proprietorship, it must show proof that the corporation had acquired the assets and liabilities of the sole proprietorship.

4. POLITICAL LAW; ADMINISTRATIVE LAW; E.O. NO. 1008 ON CONSTRUCTION INDUSTRY ARBITRATION COMMISSION; JURISDICTION; CANNOT BE DISREGARDED BY TRIAL COURT.— Section 4 of E.O. No. 1008 provides for the jurisdiction of the Construction Industry Arbitration Commission, to wit: Section 4. *Jurisdiction*.— The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the disputes arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. For the Board to acquire jurisdiction, the

parties to a dispute must agree to submit the same to voluntary arbitration. The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual time and delays; amount of damages and penalties; commencement time and delays; maintenance and defects; payment, default of employer or contractor and changes in contract cost. Excluded from the coverage of this law are disputes from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines. There is nothing in the law which limits the exercise of jurisdiction to complex or difficult cases. E.O. No. 1008 does not distinguish between claims involving payment of money or not. The CIAC acquires jurisdiction over a construction contract by the mere fact that the parties agreed to submit to voluntary arbitration. The law does not preclude parties from stipulating a preferred forum or arbitral body but they may not divest the CIAC of jurisdiction as provided by law. Arbitration is an alternative method of dispute resolution which is highly encouraged. The arbitration clause is a commitment on the part of the parties to submit to arbitration the disputes covered since that clause is binding, and they are expected to abide by it in good faith. Clearly, the RTC should not have taken cognizance of the collection suit. The presence of the arbitration clause vested jurisdiction to the CIAC over all construcition disputes between Petitioner and Multi-Rich. The RTC does not have jurisdiction.

APPEARANCES OF COUNSEL

Picazo Buyco Tan Fider and Santos for petitioner.

Icaonapo Litong Morales and Associates Law Office for respondent.

D E C I S I O N

TINGA, *J.*:

Before us is a Rule 45 petition[1] seeking the reversal of the Decision[2] and Resolution[3] of the Court of Appeals in CA-G.R. SP No. 84640. The Court of Appeals had annulled two orders[4] of the Regional Trial Court (RTC), Branch 32, of Manila in Civil Case No. 04-108940. This case involves a claim for a sum of money which arose from a construction dispute.

On 26 March 1996, petitioner Excellent Quality Apparel, Inc. (petitioner) then represented by Max L.F. Ying, Vice-President for Productions, and Alfiero R. Orden, Treasurer, entered into a contract[5] with Multi-Rich Builders (Multi-Rich) represented by Wilson G. Chua (Chua), its President and General Manager, for the construction of a garment factory within the Cavite Philippine Economic Zone Authority (CPEZ).[6] The duration of the project was for a maximum period of five (5) months or 150 consecutive calendar days. Included in the contract is an arbitration clause which is as follows:

Article XIX : ARBITRATION CLAUSE

Should there be any dispute, controversy or difference between the parties arising out of this Contract that may not be resolved by them to their mutual satisfaction, the matter shall be submitted to an Arbitration Committee of three (3) members; one (1) chosen by

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[1] *Rollo*, pp. 3-44.

[2] Dated 14 March 2006 and penned by Associate Justice Monina Arevalo-Zenarosa and concurred in by Associate Justices Remedios A. Salazar-Fernando, Chairperson, Former Sixteenth Division and Rosmari D. Carandang. *Id.* at 53-70.

[3] Dated 11 October 2006 and penned by Associate Justice Monina Arevalo-Zenarosa and concurred in by Associate Justices Remedios A. Salazar-Fernando, Chairperson, Former Sixteenth Division, and Rosmari D. Carandang. *Id.* at 49-51.

[4] *Id.* at 185-186, 230-232. Orders dated 12 April 2004 and 29 April 2004.

[5] *Id.* at 71-86.

[6] *Id.* at 71.

the OWNER; one (1) chosen by the CONTRACTOR; and the Chairman thereof to be chosen by two (2) members. The decision of the Arbitration Committee shall be final and binding on both the parties hereto. The Arbitration shall be governed by the Arbitration Law (R.A. [No.] 876). The cost of arbitration shall be borned [*sic*] jointly by both CONTRACTOR and OWNER on 50-50 basis.[7]

The construction of the factory building was completed on 27 November 1996.

Respondent Win Multi-Rich Builders, Inc. (Win) was incorporated with the Securities and Exchange Commission (SEC) on 20 February 1997[8] with Chua as its President and General Manager. On 26 January 2004, Win filed a complaint for a sum of money[9] against petitioner and Mr. Ying amounting to ₱8,634,448.20. It also prayed for the issuance of a writ of attachment claiming that Mr. Ying was about to abscond and that petitioner was about to close. Win obtained a surety bond[10] issued by Visayan Surety & Insurance Corporation. On 10 February 2004, the RTC issued the Writ of Attachment[11] against the properties of petitioner.

On 16 February 2004, Sheriff Salvador D. Dacumos of the RTC of Manila, Branch 32, went to the office of petitioner in CPEZ to serve the Writ of Attachment, Summons[12] and the Complaint. Petitioner issued Equitable PCIBank (PEZA Branch) Check No. 160149, dated 16 February 2004, in the amount of ₱8,634,448.20, to prevent the Sheriff from taking possession of its properties.[13] The check was made payable to the Office of the Clerk of Court of the RTC of Manila as a guarantee for whatever liability there may be against petitioner.

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[7] *Id.* at 84.

[8] *Id.* at 175.

[9] *Id.* at 95-102.

[10] *Id.* at 103.

[11] *Id.* at 89-90.

[12] *Id.* at 94.

[13] *Id.* at 9-10.

Petitioner filed an Omnibus Motion[14] claiming that it was neither about to close. It also denied owing anything to Win, as it had already paid all its obligations to it. Lastly, it questioned the jurisdiction of the trial court from taking cognizance of the case. Petitioner pointed to the presence of the Arbitration Clause and it asserted that the case should be referred to the Construction Industry Arbitration Commission (CIAC) pursuant to Executive Order (E.O.) No. 1008.

In the hearing held on 10 February 2004, the counsel of Win moved that its name in the case be changed from "Win Multi-Rich Builders, Inc." to "Multi-Rich Builders, Inc." It was only then that petitioner apparently became aware of the variance in the name of the plaintiff. In the Reply[15] filed by petitioner, it moved to dismiss the case since Win was not the contractor and neither a party to the contract, thus it cannot institute the case. Petitioner obtained a Certificate of Non-Registration of Corporation/ Partnership[16] from the SEC which certified that the latter did not have any records of a "Multi-Rich Builders, Inc." Moreover, Win in its Rejoinder[17] did not oppose the allegations in the Reply. Win admitted that it was only incorporated on 20 February 1997 while the construction contract was executed on 26 March 1996. Likewise, it admitted that at the time of execution of the contract, Multi-Rich was a registered sole proprietorship and was issued a business permit[18] by the Office of the Mayor of Manila.

In an Order[19] dated 12 April 2004, the RTC denied the motion and stated that the issues can be answered in a full-blown trial. Upon its denial, petitioner filed its Answer and prayed for the dismissal of the case.[20] Win filed a Motion[21] to deposit the

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[14] Dated 17 February 2004; *id.* at 132-141.

[15] Dated 11 March 2004; *id.* at 167-173.

[16] *Id.* at 174.

[17] Dated 22 March 2004; *id.* at 176-180.

[18] *Id.* at 175.

[19] *Id.* at 185-186.

[20] Dated 22 April 2004; *id.* at 187-198.

[21] *Id.* at 208-209.

garnished amount to the court to protect its legal rights. In a Manifestation,[22] petitioner vehemently opposed the deposit of the garnished amount. The RTC issued an Order[23] dated 20 April 2004, which granted the motion to deposit the garnished amount. On the same date, Win filed a motion[24] to release the garnished amount to it. Petitioner filed its opposition[25] to the motion claiming that the release of the money does not have legal and factual basis.

On 18 June 2004, petitioner filed a petition for review on *certiorari*[26] under Rule 65 before the Court of Appeals, which questioned the jurisdiction of the RTC and challenged the orders issued by the lower court with a prayer for the issuance of a temporary restraining order and a writ of preliminary injunction. Subsequently, petitioner filed a Supplemental Manifestation and Motion[27] and alleged that the money deposited with the RTC was turned over to Win. Win admitted that the garnished amount had already been released to it. On 14 March 2006, the Court of Appeals rendered its Decision[28] annulling the 12 April and 20 April 2004 orders of the RTC. It also ruled that the RTC had jurisdiction over the case since it is a suit for collection of sum of money. Petitioner filed a Motion for Reconsideration[29] which was subsequently denied in a resolution.[30]

Hence this petition.

Petitioner raised the following issues to wit: (1) does Win have a legal personality to institute the present case; (2) does the RTC have jurisdiction over the case notwithstanding the presence of the arbitration clause; and (3) was the issuance of

[22] *Id.* at 211-212.

[23] *Id.* at 229-232.

[24] *Id.* at 233-235.

[25] *Id.* at 236-240.

[26] Dated 17 June 2004; *id.* at 254-294.

[27] *Id.* at 328-331.

[28] *Supra* note 2.

[29] *Rollo*, pp. 295-311.

[30] *Supra* note 3.

the writ of attachment and the subsequent garnishment proper.

A suit may only be instituted by the real party in interest. Section 2, Rule 3 of the Rules of Court defines "parties in interest" in this manner:

> 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.

Is Win a real party in interest? We answer in the negative.

Win admitted that the contract was executed between Multi-Rich and petitioner. It further admitted that Multi-Rich was a sole proprietorship with a business permit issued by the Office of the Mayor of Manila. A sole proprietorship is the oldest, simplest, and most prevalent form of business enterprise.[31] It is an unorganized business owned by one person. The sole proprietor is personally liable for all the debts and obligations of the business.[32] In the case of *Mangila v. Court of Appeals*,[33] we held that:

> x x x In fact, there is no law authorizing sole proprietorships to file a suit in court.
>
> A sole proprietorship does not possess a juridical personality separate and distinct from the personality of the owner of the enterprise. The law merely recognizes the existence of a sole proprietorship as a form of business organization conducted for profit by a single individual and requires its proprietor or owner to secure licenses and permits, register its business name, and pay taxes to the national government. The law does not vest a separate legal personality on the sole proprietorship or empower it to file or defend an action in court.

The original petition was instituted by Win, which is a SEC-registered corporation. It filed a collection of sum of money

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[31] HENN, HARRY G. *CASES AND MATERIALS ON THE LAWS OF CORPORATIONS AMERICAN CASEBOOK SERIES*, WEST PUBLISHING CO. ST. PAUL. © 1974, p. 67.

[32] SCHNEEMAN, ANGELA. *THE LAW OF CORPORATIONS AND OTHER BUSINESS ORGANIZATIONS*. 4th ed. THOMPSON. © 2007, p. 26.

[33] 435 Phil. 870, 886 (2002).

suit which involved a construction contract entered into by petitioner and Multi-Rich, a sole proprietorship. The counsel of Win wanted to change the name of the plaintiff in the suit to Multi-Rich. The change cannot be countenanced. The plaintiff in the collection suit is a corporation. The name cannot be changed to that of a sole proprietorship. Again, a sole proprietorship is not vested with juridical personality to file or defend an action.[34]

Petitioner had continuously contested the legal personality of Win to institute the case. Win was given ample opportunity to adduce evidence to show that it had legal personality. It failed to do so. *Corpus Juris Secundum*, notes:

> x x x where an individual or sole trader organizes a corporation to take over his business and all his assets, and it becomes in effect merely an alter ego of the incorporator, the corporation, either on the grounds of implied assumption of the debts or on the grounds that the business is the same and is merely being conducted under a new guise, is liable for the incorporator's preexisting debts and liabilities. Clearly, where the corporation assumes or accepts the debt of its predecessor in business it is liable and if the transfer of assets is in fraud of creditors it will be liable to the extent of the assets transferred. The corporation is not liable on an implied assumption of debts from the receipt of assets where the incorporator retains sufficient assets to pay the indebtedness, or where none of his assets are transferred to the corporation, or where, although all the assets of the incorporator have been transferred, there is a change in the persons carrying on the business and the corporation is not merely an alter ego of the person to whose business it succeeded.[35]

In order for a corporation to be able to file suit and claim the receivables of its predecessor in business, in this case a sole proprietorship, it must show proof that the corporation had acquired the assets and liabilities of the sole proprietorship. Win could have easily presented or attached any document *e.g.*, deed of assignment which will show whether the assets, liabilities and receivables of Multi-Rich were acquired by Win. Having been given the opportunity to rebut the allegations made by petitioner,

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[34] *Berman Memorial Park, Inc. v. Cheng*, G.R. No. 154630, 6 May 2005, 458 SCRA 112.

[35] 18 C.J.S. Corporation. §121, p. 522.

Win failed to use that opportunity. Thus, we cannot presume that Multi-Rich is the predecessor-in-business of Win and hold that the latter has standing to institute the collection suit.

Assuming *arguendo* that Win has legal personality, the petition will still be granted.

Section 4 of E.O. No. 1008[36] provides for the jurisdiction of the Construction Industry Arbitration Commission, to wit:

> Section 4. *Jurisdiction*.—The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the disputes arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.
>
> The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual time and delays; amount of damages and penalties; commencement time and delays; maintenance and defects; payment, default of employer or contractor and changes in contract cost.
>
> Excluded from the coverage of this law are disputes from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines.

There is nothing in the law which limits the exercise of jurisdiction to complex or difficult cases. E.O. No. 1008 does not distinguish between claims involving payment of money or not.[37] The CIAC acquires jurisdiction over a construction contract by the mere fact that the parties agreed to submit to voluntary arbitration.[38] The law does not preclude parties from stipulating a preferred forum or arbitral body but they may not divest the CIAC of

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[36] ENTITLED CREATING AN ARBITRATION MACHINERY IN THE CONSTRUCTION INDUSTRY OF THE PHILIPPINES, approved on 4 February 1985.

[37] PARLADE, CUSTODIO, *THE LAW AND PRACTICE OF CONCILIATION AND ARBITRATION OF CONSTRUCTION DISPUTES*, ©2001, p. 89.

[38] *National Irrigation Authority v. Court of Appeals*, 376 Phil. 362, 375 (1999).

jurisdiction as provided by law.[39] Arbitration is an alternative method of dispute resolution which is highly encouraged.[40] The arbitration clause is a commitment on the part of the parties to submit to arbitration the disputes covered since that clause is binding, and they are expected to abide by it in good faith.[41] Clearly, the RTC should not have taken cognizance of the collection suit. The presence of the arbitration clause vested jurisdiction to the CIAC over all construction disputes between Petitioner and Multi-Rich. The RTC does not have jurisdiction.[42]

Based on the foregoing, there is no need to discuss the propriety of the issuance of the writ of attachment. However, we cannot allow Win to retain the garnished amount which was turned over by the RTC. The RTC did not have jurisdiction to issue the questioned writ of attachment and to order the release of the garnished funds.

WHEREFORE, the petition is *GRANTED*. The Decision of the Court of Appeals is hereby *MODIFIED*. Civil Case No. 04-108940 is *DISMISSED*. Win Multi-Rich Builders, Inc. is *ORDERED* to return the garnished amount of EIGHT MILLION SIX HUNDRED THIRTY-FOUR THOUSAND FOUR HUNDRED FORTY-EIGHT PESOS AND FORTY CENTAVOS (₱8,634,448.40), which was turned over by the Regional Trial Court, to petitioner with legal interest of 12 percent (12%) per annum upon finality of this Decision until payment.

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[39] *China Chang Jiang Energy Corporation v. Rosal Infrastructure Builders, etc.*, G.R. No. 125706, Third Division Resolution dated 30 September 1996.

[40] *Home Bankers Savings and Trust Company v. Court of Appeals*, 376 Phil. 669 (1999).

[41] *LM Power Engineering Corporation v. Capitol Industrial Construction Groups, Inc.*, 447 Phil. 705, 716 (2003).

[42] Apart from Sec. 4 of E.O. No. 1008, *supra* note 11, R.A. No. 9285, otherwise known as the "Alternative Disputes Resolution Act of 2004," provides:

SEC. 39. *Court to Dismiss Case Involving a Construction Dispute*.— A Regional Trial Court before which a construction dispute is filed shall, upon becoming aware, not later than the pretrial conference, that the parties had entered into an arbitration agreement, dismiss the case and refer the parties to arbitration to be conducted by the CIAC, unless both parties, assisted by their respective counsel, shall submit to the Regional Trial Court a written agreement exclusively for the Court, rather than the CIAC, to resolve the dispute.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 175914. February 10, 2009]

RUBY SHELTER BUILDERS AND REALTY DEVELOPMENT CORPORATION, *petitioner, vs.* **HON. PABLO C. FORMARAN III, Presiding Judge of Regional Trial Court Branch 21, Naga City, as Pairing Judge for Regional Trial Court Branch 22, Formerly Presided By HON. NOVELITA VILLEGAS-LLAGUNO (Retired 01 May 2006), ROMEO Y. TAN, ROBERTO L. OBIEDO and ATTY. TOMAS A. REYES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; DOCKET FEES; PAYMENT THEREOF IS JURISDICTIONAL.— In *Manchester Development Corporation v. Court of Appeals*, the Court explicitly pronounced that "[t]he court acquires jurisdiction over any case only upon the payment of the prescribed docket fee." Hence, the payment of docket fee is not only mandatory, but also jurisdictional. In *Sun Insurance Office, Ltd. (SIOL) v. Asuncion*, the Court laid down guidelines for the implementation of its previous pronouncement in *Manchester* under particular circumstances, to wit: 1. It is not simply the filing of the complaint or appropriate initiatory pleading, but the payment of the prescribed docket fee, that vests a trial court with jurisdiction over the subject matter or nature of the action. Where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court

may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period. 2. The same rule applies to permissive counterclaims, third-party claims and similar pleadings, which shall not be considered filed until and unless the filing fee prescribed therefor is paid. The court may also allow payment of said fee within a reasonable time but also in no case beyond its applicable prescriptive or reglementary period. 3. Where the trial court acquires jurisdiction over a claim by the filing of the appropriate pleading and payment of the prescribed filing fee but, subsequently, the judgment awards a claim not specified in the pleading, or if specified the same has been left for determination by the court, the additional filing fee therefor shall constitute a lien on the judgment. It shall be the responsibility of the Clerk of Court or his duly authorized deputy to enforce said lien and assess and collect the additional fee.

2. ID.; LEGAL FEES; DOCKET FEES INVOLVING REAL PROPERTY DEPENDS ON THE FAIR MARKET VALUE OF THE SAME, AND ACTIONS INCAPABLE OF PECUNIARY ESTIMATION HAS FIXED RATE IMPOSED. — Relevant to the present controversy are the following provisions under Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC and Supreme Court Amended Administrative Circular No. 35-2004: SEC. 7. Clerks of Regional Trial Courts. — (a) For filing an action or a permissive OR COMPULSORY counterclaim, CROSS-CLAIM, or money claim against an estate not based on judgment, or for filing a third-party, fourth-party, *etc*. complaint, or a complaint-in-intervention, if the total sum claimed, INCLUSIVE OF INTERESTS, PENALTIES, SURCHARGES, DAMAGES OF WHATEVER KIND, AND ATTORNEY'S FEES, *LITIGATION EXPENSES* AND COSTS and/or in cases involving property, the FAIR MARKET value of the REAL property in litigation STATED IN THE CURRENT TAX DECLARATION OR CURRENT ZONAL VALUATION OF THE BUREAU OF INTERNAL REVENUE, WHICHEVER IS HIGHER, OR IF THERE IS NONE, THE STATED VALUE OF THE PROPERTY IN LITIGATION OR THE VALUE OF THE PERSONAL PROPERTY IN LITIGATION AS ALLEGED BY THE CLAIMANT, is: [Table of fees omitted.] If the action involves both a money claim and relief pertaining to property, then THE fees will be charged on both the amounts claimed and value of

property based on the formula prescribed in this paragraph a. (b) For filing: 1. Actions where the value of the subject matter cannot be estimated 2. Special civil actions, except judicial foreclosure of mortgage, EXPROPRIATION PROCEEDINGS, PARTITION AND QUIETING OF TITLE which will 3. All other actions not involving property [Table of fees omitted.] The docket fees under Section 7(a), Rule 141, in cases involving real property depend on the fair market value of the same: the higher the value of the real property, the higher the docket fees due. In contrast, Section 7(b)(1), Rule 141 imposes a fixed or flat rate of docket fees on actions incapable of pecuniary estimation.

3. **ID.; ID.; ID.; CORRECT DOCKET FEES DETERMINED FROM THE TRUE NATURE OF THE COMPLAINT.—** In order to resolve the issue of whether petitioner paid the correct amount of docket fees, it is necessary to determine the true nature of its Complaint. The *dictum* adhered to in this jurisdiction is that the nature of an action is determined by the allegations in the body of the pleading or Complaint itself, rather than by its title or heading. However, the Court finds it necessary, in ascertaining the true nature of Civil Case No. 2006-0030, to take into account significant facts and circumstances beyond the Complaint of petitioner, facts and circumstances which petitioner failed to state in its Complaint but were disclosed in the preliminary proceedings before the court *a quo.*

4. **ID.; CIVIL PROCEDURE; REAL ACTIONS; DOCKET FEES THEREOF.—** A real action is one in which the plaintiff seeks the recovery of real property; or, as indicated in what is now Section 1, Rule 4 of the Rules of Court, a real action is an action affecting title to or recovery of possession of real property. Section 7, Rule 141 of the Rules of Court, prior to its amendment by A.M. No. 04-2-04-SC, had a specific paragraph governing the assessment of the docket fees for real action, to wit: In a real action, the assessed value of the property, or if there is none, the estimated value thereof shall be alleged by the claimant and shall be the basis in computing the fees.

5. **ID.; ID.; ID.; ID.; CASE OF *SERRANO V. DELICA*, SIMILARITY IN CASE AT BAR.—** It was in *Serrano v. Delica*, that the Court dealt with a complaint that bore the most similarity to the one at bar. Therein respondent Delica averred that undue influence, coercion, and intimidation were exerted upon him

by therein petitioners Serrano, *et al.* to effect transfer of his properties. Thus, Delica filed a complaint before the RTC against Serrano, *et al.*, praying that the special power of attorney, the affidavit, the new titles issued in the names of Serrano, *et al.*, and the contracts of sale of the disputed properties be cancelled; that Serrano, *et al.* be ordered to pay Delica, jointly and severally, actual, moral and exemplary damages in the amount of ₱200,000.00, as well as attorney's fee of ₱200,000.00 and costs of litigation; that a TRO and a writ of preliminary injunction be issued ordering Serrano, *et al.* to immediately restore him to his possession of the parcels of land in question; and that after trial, the writ of injunction be made permanent. The Court dismissed Delica's complaint for the following reasons: A careful examination of respondent's complaint is that it is a real action. In *Paderanga vs. Buissan,* we held that "in a real action, the plaintiff seeks the recovery of real property, or, as stated in Section 2(a), Rule 4 of the Revised Rules of Court, a real action is one 'affecting title to real property or for the recovery of possession of, or for partition or condemnation of, or foreclosure of a mortgage on a real property.'" Obviously, respondent's complaint is a real action involving not only the recovery of real properties, but likewise the cancellation of the titles thereto. Considering that respondent's complaint is a real action, the Rule requires that "the assessed value of the property, or if there is none, the estimated value thereof shall be alleged by the claimant and shall be the basis in computing the fees." We note, however, that neither the "assessed value" nor the "estimated value" of the questioned parcels of land were alleged by respondent in both his original and amended complaint. What he stated in his amended complaint is that the disputed realties have a "BIR zonal valuation" of ₱1,200.00 per square meter. However, the alleged "BIR zonal valuation" is not the kind of valuation required by the Rule. It is the *assessed value* of the realty. Having utterly failed to comply with the requirement of the Rule that he shall allege in his complaint the assessed value of his real properties in controversy, the correct docket fee cannot be computed. As such, his complaint should not have been accepted by the trial court. We thus rule that it has not acquired jurisdiction over the present case for failure of herein respondent to pay the required docket fee. On his ground alone, respondent's complaint is vulnerable to dismissal.

6. ID.; ID.; ID.; ID.; BASIS FOR COMPUTATION OF DOCKET FEES.— With the amendments introduced by A.M. No. 04-2-04-SC, which became effective on 16 August 2004, the paragraph in Section 7, Rule 141 of the Rules of Court, pertaining specifically to the basis for computation of docket fees for real actions was deleted. Instead, Section 7(1) of Rule 141, as amended, provides that **"in cases involving real property,** the **FAIR MARKET *value*** of the REAL property in litigation STATED IN THE CURRENT TAX DECLARATION OR CURRENT ZONAL VALUATION OF THE BUREAU OF INTERNAL REVENUE, WHICH IS HIGHER, OR IF THERE IS NONE, THE STATED VALUE OF THE PROPERTY IN LITIGATION x x x" shall be the basis for the computation of the docket fees. A real action indisputably involves real property. The docket fees for a real action would still be determined in accordance with the value of the real property involved therein; the only difference is in what constitutes the acceptable value. In computing the docket fees for cases involving real properties, the courts, instead of relying on the assessed or estimated value, would now be using the **fair market value** of the real properties (as stated in the Tax Declaration or the Zonal Valuation of the Bureau of Internal Revenue, whichever is higher) or, in the absence thereof, the stated value of the same.

APPEARANCES OF COUNSEL

Benito B. Nate for petitioner.
Avelino V. Sales, Jr. for private respondents.
Tomas A. Reyes for and by himself.

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 seeking the reversal of the Decision[1] dated 22 November 2006 of the Court of Appeals in CA-G.R. SP No. 94800. The Court of Appeals, in its assailed Decision,

[1] Penned by Associate Justice Mariano C. del Castillo with Associate Justices Conrado M. Vasquez, Jr. and Ramon R. Garcia, concurring; *rollo*, pp. 109-120.

affirmed the Order[2] dated 24 March 2006 of the Regional Trial Court (RTC), Branch 22, of Naga City, in Civil Case No. RTC-2006-0030, ordering petitioner Ruby Shelter Builders and Realty Development Corporation to pay additional docket/filing fees, computed based on Section 7(a) of Rule 141 of the Rules of Court, as amended.

The present Petition arose from the following facts:

Petitioner obtained a loan[3] in the total amount of ₱95,700,620.00 from respondents Romeo Y. Tan (Tan) and Roberto L. Obiedo (Obiedo), secured by real estate mortgages over five parcels of land, all located in Triangulo, Naga City, covered by Transfer Certificates of Title (TCTs) No. 38376,[4] No. 29918,[5] No. 38374,[6] No. 39232,[7] and No. 39225,[8] issued by the Registry of Deeds for Naga City, in the name of petitioner. When petitioner was unable to pay the loan when it became due and demandable, respondents Tan and Obiedo agreed to an extension of the same.

In a Memorandum of Agreement[9] dated 17 March 2005, respondents Tan and Obiedo granted petitioner until 31 December 2005 to settle its indebtedness, and condoned the interests, penalties and surcharges accruing thereon from 1 October 2004 to 31 December 2005 which amounted to ₱74,678,647.00. The Memorandum of Agreement required, in turn, that petitioner execute simultaneously with the said Memorandum, "by way of *dacion en pago,*" Deeds of Absolute Sale in favor of respondents Tan and Obiedo, covering the same parcels of land subject of the mortgages. The Deeds of Absolute Sale would

[2] Penned by Judge Novelita Villegas-Llaguno; *id.* at 74-79.

[3] Records do not disclose other details regarding the said loan, *i.e.*, when it was obtained, if it was reduced to writing, and when it exactly became due and demandable.

[4] With an area of 4,343 square meters.

[5] With an area of 17,183 square meters.

[6] With an area of 8,203 square meters.

[7] With an area of 1,043 square meters.

[8] With an area of 616 square meters.

[9] *Rollo,* pp. 39-42.

be uniformly dated 2 January 2006, and state that petitioner sold to respondents Tan and Obiedo the parcels of land for the following purchase prices:

TCT No.	Purchase Price
38376	₱ 9,340,000.00
29918	₱ 28,000,000.00
38374	₱ 12,000,000.00
39232	₱ 1,600,000.00
39225	₱ 1,600,000.00

Petitioner could choose to pay off its indebtedness with individual or all five parcels of land; or it could redeem said properties by paying respondents Tan and Obiedo the following prices for the same, inclusive of interest and penalties:

TCT No.	Redemption Price
38376	₱ 25,328,939.00
29918	₱ 35,660,800.00
38374	₱ 28,477,600.00
39232	₱ 6,233,381.00
39225	₱ 6,233,381.00

In the event that petitioner is able to redeem any of the aforementioned parcels of land, the Deed of Absolute Sale covering the said property shall be nullified and have no force and effect; and respondents Tan and Obiedo shall then return the owner's duplicate of the corresponding TCT to petitioner and also execute a Deed of Discharge of Mortgage. However, if petitioner is unable to redeem the parcels of land within the period agreed upon, respondents Tan and Obiedo could already present the Deeds of Absolute Sale covering the same to the Office of the Register of Deeds for Naga City so respondents Tan and Obiedo could acquire TCTs to the said properties in their names.

The Memorandum of Agreement further provided that should petitioner contest, judicially or otherwise, any act, transaction, or event related to or necessarily connected with the said Memorandum and the Deeds of Absolute Sale involving the five parcels of land, it would pay respondents Tan and Obiedo ₱10,000,000.00 as liquidated damages inclusive of costs and attorney's fees. Petitioner would likewise pay respondents Tan

and Obiedo the condoned interests, surcharges and penalties.[10] Finally, should a contest arise from the Memorandum of Agreement, Mr. Ruben Sia (Sia), President of petitioner corporation, personally assumes, jointly and severally with petitioner, the latter's monetary obligation to respondent Tan and Obiedo.

Respondent Atty. Tomas A. Reyes (Reyes) was the Notary Public who notarized the Memorandum of Agreement dated 17 March 2005 between respondent Tan and Obiedo, on one hand, and petitioner, on the other.

Pursuant to the Memorandum of Agreement, petitioner, represented by Mr. Sia, executed separate Deeds of Absolute Sale,[11] over the five parcels of land, in favor of respondents Tan and Obiedo. On the blank spaces provided for in the said Deeds, somebody wrote the 3rd of January 2006 as the date of their execution. The Deeds were again notarized by respondent Atty. Reyes also on 3 January 2006.

Without payment having been made by petitioner on 31 December 2005, respondents Tan and Obiedo presented the Deeds of Absolute Sale dated 3 January 2006 before the Register of Deeds of Naga City on 8 March 2006, as a result of which, they were able to secure TCTs over the five parcels of land in their names.

On 16 March 2006, petitioner filed before the RTC a Complaint[12] against respondents Tan, Obiedo, and Atty. Reyes, for declaration of nullity of deeds of sales and damages, with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order (TRO). The Complaint was docketed as Civil Case No. 2006-0030.

On the basis of the facts already recounted above, petitioner raised two causes of action in its Complaint.

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[10] According to paragraph 7 of the Memorandum of Agreement, the condoned interests, surcharges and penalties amounted to "₱55,167,000.00 (as stated in paragraph 2 hereof);" but paragraph 2 of the said Memorandum computed the interests, penalties and surcharges from 1 October 2004 to 31 December 2005 condoned or written-off by respondents Tan and Obiedo to be ₱74,678,647.00.

[11] *Rollo*, pp. 43-52.

[12] *Id.* at 53-62.

As for the first cause of action, petitioner alleged that as early as 27 December 2005, its President already wrote a letter informing respondents Tan and Obiedo of the intention of petitioner to pay its loan and requesting a meeting to compute the final amount due. The parties held meetings on 3 and 4 January 2006 but they failed to arrive at a mutually acceptable computation of the final amount of loan payable. Respondents Tan and Obiedo then refused the request of petitioner for further dialogues. Unbeknownst to petitioner, despite the ongoing meetings, respondents Tan and Obiedo, in evident bad faith, already had the pre-executed Deeds of Absolute Sale notarized on 3 January 2006 by respondent Atty. Reyes. Atty. Reyes, in connivance with respondents Tan and Obiedo, falsely made it appear in the Deeds of Absolute Sale that Mr. Sia had personally acknowledged/ ratified the said Deeds before Atty. Reyes.

Asserting that the Deeds of Absolute Sale over the five parcels of land were executed merely as security for the payment of its loan to respondents Tan and Obiedo; that the Deeds of Absolute Sale, executed in accordance with the Memorandum of Agreement, constituted *pactum commisorium* and as such, were null and void; and that the acknowledgment in the Deeds of Absolute Sale were falsified, petitioner averred:

> 13. That by reason of the fraudulent actions by the [herein respondents], [herein petitioner] is prejudiced and is now in danger of being deprived, physically and legally, of the mortgaged properties without benefit of legal processes such as the remedy of foreclosure and its attendant procedures, solemnities and remedies available to a mortgagor, while [petitioner] is desirous and willing to pay its obligation and have the mortgaged properties released.[13]

In support of its second cause of action, petitioner narrated in its Complaint that on 18 January 2006, respondents Tan and Obiedo forcibly took over, with the use of armed men, possession of the five parcels of land subject of the falsified Deeds of Absolute Sale and fenced the said properties with barbed wire. Beginning 3 March 2006, respondents Tan and Obiedo started demolishing some of the commercial spaces standing on the parcels of land

[13] *Id.* at 58.

in question which were being rented out by petitioner. Respondents Tan and Obiedo were also about to tear down a principal improvement on the properties consisting of a steel-and-concrete structure housing a motor vehicle terminal operated by petitioner. The actions of respondents Tan and Obiedo were to the damage and prejudice of petitioner and its tenants/lessees. Petitioner, alone, claimed to have suffered at least ₱300,000.00 in actual damages by reason of the physical invasion by respondents Tan and Obiedo and their armed goons of the five parcels of land.

Ultimately, petitioner's prayer in its Complaint reads:

WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court that upon the filing of this complaint, a 72-hour temporary restraining order be forthwith issued *ex parte*:

(a) Restraining [herein respondents] Tan and Obiedo, their agents, privies or representatives, from committing act/s tending to alienate the mortgaged properties from the [herein petitioner] pending the resolution of the case, including but not limited to the acts complained of in paragraph "14", above;

(b) Restraining the Register of Deeds of Naga City from entertaining moves by the [respondents] to have [petitioner's] certificates of title to the mortgaged properties cancelled and changed/registered in [respondents] Tan's and Obiedo's names, and/or released to them;

(c) After notice and hearing, that a writ of preliminary injunction be issued imposing the same restraints indicated in the next preceding two paragraphs of this prayer; and

(d) After trial, judgment be rendered:

1. Making the injunction permanent;

2. Declaring the provision in the Memorandum of Agreement requiring the [petitioner] to execute deed of sales (sic) in favor of the [respondents Tan and Obiedo] as *dacion en pago* in the event of non-payment of the debt as *pactum commissorium*;

3. Annulling the Deed[s] of Sale for TCT Nos. 29918, 38374, 38376, 39225 and 39232, all dated January 3, 2006, the same being in contravention of law;

4. Ordering the [respondents] jointly and solidarily to pay the [petitioner] actual damages of at least ₱300,000.00; attorney's fees in the amount of ₱100,000.00 plus ₱1,000.00 per court attendance of

counsel as appearance fee; litigation expenses in the amount of at least ₱10,000.00 and exemplary damages in the amount of ₱300,000.00, plus the costs.

[Petitioner] further prays for such other reliefs as may be proper, just and equitable under the premises.[14]

Upon filing its Complaint with the RTC on 16 March 2006, petitioner paid the sum of ₱13,644.25 for docket and other legal fees, as assessed by the Office of the Clerk of Court. The Clerk of Court initially considered Civil Case No. 2006-0030 as an action incapable of pecuniary estimation and computed the docket and other legal fees due thereon according to Section 7(b)(1), Rule 141 of the Rules of Court.

Only respondent Tan filed an Answer[15] to the Complaint of petitioner. Respondent Tan did admit that meetings were held with Mr. Sia, as the representative of petitioner, to thresh out Mr. Sia's charge that the computation by respondents Tan and Obiedo of the interests, surcharges and penalties accruing on the loan of petitioner was replete with errors and uncertainties. However, Mr. Sia failed to back up his accusation of errors and uncertainties and to present his own final computation of the amount due. Disappointed and exasperated, respondents Tan and Obiedo informed Mr. Sia that they had already asked respondent Atty. Reyes to come over to notarize the Deeds of Absolute Sale. Respondent Atty. Reyes asked Mr. Sia whether it was his signature appearing above his printed name on the Deeds of Absolute Sale, to which Mr. Sia replied yes. On 4 January 2006, Mr. Sia still failed to establish his claim of errors and uncertainties in the computation of the total amount which petitioner must pay respondent Tan and Obiedo. Mr. Sia, instead, sought a nine-month extension for paying the loan obligation of petitioner and the reduction of the interest rate thereon to only one percent (1%) per month. Respondents Tan and Obiedo rejected both demands.

Respondent Tan maintained that the Deeds of Absolute Sale were not executed merely as securities for the loan of petitioner.

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[14] *Id.* at 60-62.

[15] *Id.* at 65-71.

The Deeds of Absolute Sale over the five parcels of land were the consideration for the payment of the total indebtedness of petitioner to respondents Tan and Obiedo, and the condonation of the 15-month interest which already accrued on the loan, while providing petitioner with the golden opportunity to still redeem all or even portions of the properties covered by said Deeds. Unfortunately, petitioner failed to exercise its right to redeem any of the said properties.

Belying that they forcibly took possession of the five parcels of land, respondent Tan alleged that it was Mr. Sia who, with the aid of armed men, on board a Sports Utility Vehicle and a truck, rammed into the personnel of respondents Tan and Obiedo causing melee and disturbance. Moreover, by the execution of the Deeds of Absolute Sale, the properties subject thereof were, *ipso jure*, delivered to respondents Tan and Obiedo. The demolition of the existing structures on the properties was nothing but an exercise of dominion by respondents Tan and Obiedo.

Respondent Tan, thus, sought not just the dismissal of the Complaint of petitioner, but also the grant of his counterclaim. The prayer in his Answer is faithfully reproduced below:

> Wherefore, premises considered, it is most respectfully prayed that, after due hearing, judgment be rendered dismissing the complaint, and on the counterclaim, [herein petitioner] and Ruben Sia, be ordered to indemnify, jointly and severally [herein respondents Tan and Obiedo] the amounts of not less than ₱10,000,000.00 as liquidated damages and the further sum of not less than ₱500,000.00 as attorney's fees. In the alternative, and should it become necessary, it is hereby prayed that [petitioner] be ordered to pay herein [respondents Tan and Obiedo] the entire principal loan of ₱95,700,620.00, plus interests, surcharges and penalties computed from March 17, 2005 until the entire sum is fully paid, including the amount of ₱74,678,647.00 foregone interest covering the period from October 1, 2004 to December 31, 2005 or for a total of fifteen (15) months, plus incidental expenses as may be proved in court, in the event that Annexes "G" to "L" be nullified. Other relief and remedies as are just and equitable under the premises are hereby prayed for.[16]

[16] *Id.* at 69-70.

Thereafter, respondent Tan filed before the RTC an Omnibus Motion in which he contended that Civil Case No. 2006-0030 involved real properties, the docket fees for which should be computed in accordance with Section 7(a), not Section 7(b)(1), of Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC which took effect on 16 August 2004. Since petitioner did not pay the appropriate docket fees for Civil Case No. 2006-0030, the RTC did not acquire jurisdiction over the said case. Hence, respondent Tan asked the RTC to issue an order requiring petitioner to pay the correct and accurate docket fees pursuant to Section 7(a), Rule 141 of the Rules of Court, as amended; and should petitioner fail to do so, to deny and dismiss the prayer of petitioner for the annulment of the Deeds of Absolute Sale for having been executed in contravention of the law or of the Memorandum of Agreement as *pactum commisorium*.

As required by the RTC, the parties submitted their Position Papers on the matter. On 24 March 2006, the RTC issued an Order[17] granting respondent Tan's Omnibus Motion. In holding that both petitioner and respondent Tan must pay docket fees in accordance with Section 7(a), Rule 141 of the Rules of Court, as amended, the RTC reasoned:

> It must be noted that under ***paragraph (b) 2 of the said Section 7***, it is provided that QUIETING OF TITLE which is an action classified as beyond pecuniary estimation "shall be governed by paragraph (a)". Hence, the filing fee in an action for Declaration of Nullity of Deed which is also classified as beyond pecuniary estimation, must be computed based on the provision of Section 7(A) herein-above, in part, quoted.
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> Since [herein respondent], Romeo Tan in his Answer has a counterclaim against the plaintiff, the former must likewise pay the necessary filling (sic) fees as provided for under ***Section 7 (A) of Amended Administrative Circular No. 35-2004*** issued by the Supreme Court.[18]

Consequently, the RTC decreed on the matter of docket/filing fees:

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[17] *Id.* at 74-79.

[18] *Id.* at 75.

WHEREFORE, premises considered, the [herein petitioner] is hereby ordered to pay additional filing fee and the [herein respondent], Romeo Tan is also ordered to pay docket and filing fees on his counterclaim, both computed based on Section 7(a) of the Supreme Court Amended Administrative Circular No. 35-2004 within fifteen (15) days from receipt of this Order to the Clerk of Court, Regional Trial Court, Naga City and for the latter to compute and to collect the said fees accordingly.[19]

Petitioner moved[20] for the partial reconsideration of the 24 March 2006 Order of the RTC, arguing that Civil Case No. 2006-0030 was principally for the annulment of the Deeds of Absolute Sale and, as such, incapable of pecuniary estimation. Petitioner submitted that the RTC erred in applying Section 7(a), Rule 141 of the Rules of Court, as amended, to petitioner's first cause of action in its Complaint in Civil Case No. 2006-0030.

In its Order[21] dated 29 March 2006, the RTC refused to reconsider its 24 March 2006 Order, based on the following ratiocination:

> Analyzing, the action herein pertains to real property, for as admitted by the [herein petitioner], "the deeds of sale in question pertain to real property" x x x. The Deeds of Sale subject of the instant case have already been transferred in the name of the [herein respondents Tan and Obiedo].
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> Compared with Quieting of Title, the latter action is brought when there is cloud on the title to real property or any interest therein or to prevent a cloud from being cast upon title to the real property ***(Art. 476, Civil Code of the Philippines)*** and the plaintiff must have legal or equitable title to or interest in the real property which is the subject matter of the action ***(Art. 447, ibid.)***, and yet plaintiff in QUIETING OF TITLE is required to pay the fees in accordance with paragraph (a) of Section 7 of the said Amended Administrative Circular No. 35-2004, hence, with more reason that the [petitioner] who no longer has title to the real properties subject of the instant case must be required to pay the required fees in accordance with

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[19] *Id.* at 78.

[20] *Id.* at 80-84.

[21] Penned by Judge Novelita Villegas-Llaguno; *id.* at 85-88.

Section 7(a) of the Amended Administrative Circular No. 35-2004 afore-mentioned.

Furthermore, while [petitioner] claims that the action for declaration of nullity of deed of sale and memorandum of agreement is one incapable of pecuniary estimation, however, as argued by the [respondent Tan], the issue as to how much filing and docket fees should be paid was never raised as an issue in the case of ***Russell vs. Vestil, 304 SCRA 738***.

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WHEREFORE, the Motion for Partial Reconsideration is hereby DENIED.[22]

In a letter dated 19 April 2006, the RTC Clerk of Court computed, upon the request of counsel for the petitioner, the additional docket fees petitioner must pay for in Civil Case No. 2006-0030 as directed in the afore-mentioned RTC Orders. Per the computation of the RTC Clerk of Court, after excluding the amount petitioner previously paid on 16 March 2006, petitioner must still pay the amount of ₱720,392.60 as docket fees.[23]

Petitioner, however, had not yet conceded, and it filed a Petition for *Certiorari* with the Court of Appeals; the petition was docketed as CA-G.R. SP No. 94800. According to petitioner, the RTC[24] acted with grave abuse of discretion, amounting to lack or excess of jurisdiction, when it issued its Orders dated 24 March 2006 and 29 March 2006 mandating that the docket/filing fees for Civil Case No. 2006-0030, an action for annulment of deeds of sale, be assessed under Section 7(a), Rule 141 of the Rules of Court, as amended. If the Orders would not be revoked, corrected, or rectified, petitioner would suffer grave injustice and irreparable damage.

On 22 November 2006, the Court of Appeals promulgated its Decision wherein it held that:

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[22] *Id.* at 86-88.

[23] *Id.* at 89.

[24] Judge Pablo C. Fomaran, Presiding Judge of RTC Branch 21, Naga City, was named as a respondent in CA-G.R. SP No. 94800 in his capacity as the Pairing Judge for RTC Branch 22, Naga City, which was formerly presided by Judge Novelita Villegas-Llaguno, who retired on 1 May 2006.

Clearly, the petitioner's complaint involves not only the annulment of the deeds of sale, but also the recovery of the real properties identified in the said documents. In other words, the objectives of the petitioner in filing the complaint were to cancel the deeds of sale and ultimately, to recover possession of the same. It is therefore a real action.

Consequently, the additional docket fees that must be paid cannot be assessed in accordance with Section 7(b). As a real action, Section 7(a) must be applied in the assessment and payment of the proper docket fee.

Resultantly, there is no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the court *a quo*. By grave abuse of discretion is meant capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, and mere abuse of discretion is not enough – it must be grave. The abuse must be grave and patent, and it must be shown that the discretion was exercised arbitrarily and despotically.

Such a situation does not exist in this particular case. The evidence is insufficient to prove that the court *a quo* acted despotically in rendering the assailed orders. It acted properly and in accordance with law. Hence, error cannot be attributed to it.[25]

Hence, the *fallo* of the Decision of the appellate court reads:

WHEREFORE, the petition for *certiorari* is ***DENIED***. The assailed Orders of the court *a quo* are ***AFFIRMED***.[26]

Without seeking reconsideration of the foregoing Decision with the Court of Appeals, petitioner filed its Petition for Review on *Certiorari* before this Court, with a lone assignment of error, to wit:

18. The herein petitioner most respectfully submits that the Court of Appeals committed a grave and serious reversible error in affirming the assailed Orders of the Regional Trial Court which are **clearly contrary to the pronouncement of this Honorable Court in the case of *Spouses De Leon v. Court of Appeals*, G.R. No. 104796, March 6, 1998**, not to mention the fact that if the said judgment is allowed to stand and not rectified, the same would result in grave

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[25] *Rollo,* pp. 118-119.

[26] *Id*.

injustice and irreparable damage to herein petitioner in view of the prohibitive amount assessed as a consequence of said Orders.[27]

In *Manchester Development Corporation v. Court of Appeals*,[28] the Court explicitly pronounced that "[t]he court acquires jurisdiction over any case only upon the payment of the prescribed docket fee." Hence, the payment of docket fees is not only mandatory, but also jurisdictional.

In *Sun Insurance Office, Ltd. (SIOL) v. Asuncion*,[29] the Court laid down guidelines for the implementation of its previous pronouncement in *Manchester* under particular circumstances, to wit:

1. It is not simply the filing of the complaint or appropriate initiatory pleading, but the payment of the prescribed docket fee, that vests a trial court with jurisdiction over the subject matter or nature of the action. Where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period.

2. The same rule applies to permissive counterclaims, third-party claims and similar pleadings, which shall not be considered filed until and unless the filing fee prescribed therefor is paid. The court may also allow payment of said fee within a reasonable time but also in no case beyond its applicable prescriptive or reglementary period.

3. Where the trial court acquires jurisdiction over a claim by the filing of the appropriate pleading and payment of the prescribed filing fee but, subsequently, the judgment awards a claim not specified in the pleading, or if specified the same has been left for determination by the court, the additional filing fee therefor shall constitute a lien on the judgment. It shall be the responsibility of the Clerk of Court or his duly authorized deputy to enforce said lien and assess and collect the additional fee.

In the Petition at bar, the RTC found, and the Court of Appeals affirmed, that petitioner did not pay the correct amount

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[27] *Id.* at 27.

[28] G.R. No. 75919, 7 May 1987, 149 SCRA 562, 569.

[29] G.R. Nos. 79937-38, 13 February 1989, 170 SCRA 274, 285.

of docket fees for Civil Case No. 2006-0030. According to both the trial and appellate courts, petitioner should pay docket fees in accordance with Section 7(a), Rule 141 of the Rules of Court, as amended. Consistent with the liberal tenor of *Sun Insurance*, the RTC, instead of dismissing outright petitioner's Complaint in Civil Case No. 2006-0030, granted petitioner time to pay the additional docket fees. Despite the seeming munificence of the RTC, petitioner refused to pay the additional docket fees assessed against it, believing that it had already paid the correct amount before, pursuant to Section 7(b)(1), Rule 141 of the Rules of Court, as amended.

Relevant to the present controversy are the following provisions under Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC[30] and Supreme Court Amended Administrative Circular No. 35-2004[31]:

SEC. 7. Clerks of Regional Trial Courts. —

(a) For filing an action or a permissive OR COMPULSORY counterclaim, CROSS-CLAIM, or money claim against an estate not based on judgment, or for filing a third-party, fourth-party, *etc*. complaint, or a complaint-in-intervention, if the total sum claimed, INCLUSIVE OF INTERESTS, PENALTIES, SURCHARGES, DAMAGES OF WHATEVER KIND, AND ATTORNEY'S FEES, *LITIGATION EXPENSES* AND COSTS and/or in cases involving property, the FAIR MARKET value of the REAL property in litigation STATED IN THE CURRENT TAX DECLARATION OR CURRENT ZONAL VALUATION OF THE BUREAU OF INTERNAL REVENUE, WHICHEVER IS HIGHER, OR IF THERE IS NONE, THE STATED VALUE OF THE PROPERTY IN LITIGATION OR THE VALUE OF THE PERSONAL PROPERTY IN LITIGATION AS ALLEGED BY THE CLAIMANT, is:

[Table of fees omitted.]

If the action involves both a money claim and relief pertaining to property, then THE fees will be charged on both the amounts claimed and value of property based on the formula prescribed in this paragraph a.

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[30] Re: Proposed Revision of Rule 141, Revised Rules of Court

[31] Guidelines in the Allocation of Legal Fees Collected Under Rule 141 of the Rules of Court, as Amended, between the Special Allowance for the Judiciary Fund and the Judiciary Development Fund.

(b) For filing:

1. Actions where the value of the subject matter cannot be estimated

2. Special civil actions, except judicial foreclosure of mortgage, EXPROPRIATION PROCEEDINGS, PARTITION AND QUIETING OF TITLE which will

3. All other actions not involving property

[Table of fees omitted.]

The docket fees under Section 7(a), Rule 141, in cases involving real property depend on the fair market value of the same: the higher the value of the real property, the higher the docket fees due. In contrast, Section 7(b)(1), Rule 141 imposes a fixed or flat rate of docket fees on actions incapable of pecuniary estimation.

In order to resolve the issue of whether petitioner paid the correct amount of docket fees, it is necessary to determine the true nature of its Complaint. The *dictum* adhered to in this jurisdiction is that the nature of an action is determined by the allegations in the body of the pleading or Complaint itself, rather than by its title or heading.[32] However, the Court finds it necessary, in ascertaining the true nature of Civil Case No. 2006-0030, to take into account significant facts and circumstances beyond the Complaint of petitioner, facts and circumstances which petitioner failed to state in its Complaint but were disclosed in the preliminary proceedings before the court *a quo*.

Petitioner persistently avers that its Complaint in Civil Case No. 2006-0030 is primarily for the annulment of the Deeds of Absolute Sale. Based on the allegations and reliefs in the Complaint alone, one would get the impression that the titles to the subject real properties still rest with petitioner; and that the interest of respondents Tan and Obiedo in the same lies only in the Deeds of Absolute Sale sought to be annulled.

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[32] *Gochan v. Gochan*, 423 Phil. 491, 501 (2001).

What petitioner failed to mention in its Complaint was that respondents Tan and Obiedo already had the Memorandum of Agreement, which clearly provided for the execution of the Deeds of Absolute Sale, registered on the TCTs over the five parcels of land, then still in the name of petitioner. After respondents Tan and Obiedo had the Deeds of Absolute Sale notarized on 3 January 2006 and presented the same to Register of Deeds for Naga City on 8 March 2006, they were already issued TCTs over the real properties in question, in their own names. Respondents Tan and Obiedo have also acquired possession of the said properties, enabling them, by petitioner's own admission, to demolish the improvements thereon.

It is, thus, suspect that petitioner kept mum about the aforementioned facts and circumstances when they had already taken place before it filed its Complaint before the RTC on 16 March 2006. Petitioner never expressed surprise when such facts and circumstances were established before the RTC, nor moved to amend its Complaint accordingly. Even though the Memorandum of Agreement was supposed to have long been registered on its TCTs over the five parcels of land, petitioner did not pray for the removal of the same as a cloud on its title. In the same vein, although petitioner alleged that respondents Tan and Obiedo forcibly took physical possession of the subject real properties, petitioner did not seek the restoration of such possession to itself. And despite learning that respondents Tan and Obiedo already secured TCTs over the subject properties in their names, petitioner did not ask for the cancellation of said titles. The only logical and reasonable explanation is that petitioner is reluctant to bring to the attention of the Court certain facts and circumstances, keeping its Complaint safely worded, so as to institute only an action for annulment of Deeds of Absolute Sale. Petitioner deliberately avoided raising issues on the title and possession of the real properties that may lead the Court to classify its case as a real action.

No matter how fastidiously petitioner attempts to conceal them, the allegations and reliefs it sought in its Complaint in Civil Case No. 2006-0030 appears to be ultimately a real action, involving as they do the recovery by petitioner of its title to

and possession of the five parcels of land from respondents Tan and Obiedo.

A real action is one in which the plaintiff seeks the recovery of real property; or, as indicated in what is now Section 1, Rule 4 of the Rules of Court, a real action is an action affecting title to or recovery of possession of real property.[33]

Section 7, Rule 141 of the Rules of Court, prior to its amendment by A.M. No. 04-2-04-SC, had a specific paragraph governing the assessment of the docket fees for real action, to wit:

> In a real action, the assessed value of the property, or if there is none, the estimated value thereof shall be alleged by the claimant and shall be the basis in computing the fees.

It was in accordance with the afore-quoted provision that the Court, in *Gochan v. Gochan*,[34] held that although the caption of the complaint filed by therein respondents Mercedes Gochan, *et al*. with the RTC was denominated as one for "specific performance and damages," the relief sought was the conveyance or transfer of real property, or ultimately, the execution of deeds of conveyance in their favor of the real properties enumerated in the provisional memorandum of agreement. Under these circumstances, the case before the RTC was actually a real action, affecting as it did title to or possession of real property. Consequently, the basis for determining the correct docket fees shall be the assessed value of the property, or the estimated value thereof as alleged in the complaint. But since *Mercedes Gochan* failed to allege in their complaint the value of the real properties, the Court found that the RTC did not acquire jurisdiction over the same for non-payment of the correct docket fees.

Likewise, in *Siapno v. Manalo*,[35] the Court disregarded the title/denomination of therein plaintiff Manalo's amended petition as one for *Mandamus* with Revocation of Title and Damages; and adjudged the same to be a real action, the filing fees for

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[33] *Id.*; *Serrano v. Delica*, G.R. No. 136325, 29 July 2005, 465 SCRA 82, 88.

[34] *Gochan v. Gochan, id.*

[35] G.R. No. 132260, 30 August 2005, 468 SCRA 330.

which should have been computed based on the assessed value of the subject property or, if there was none, the estimated value thereof. The Court expounded in *Siapno* that:

> In his amended petition, respondent Manalo prayed that NTA's sale of the property in dispute to Standford East Realty Corporation and the title issued to the latter on the basis thereof, be declared null and void. In a very real sense, *albeit* the amended petition is styled as one for "*Mandamus* with Revocation of Title and Damages," it is, at bottom, a suit to recover from Standford the realty in question and to vest in respondent the ownership and possession thereof. In short, the amended petition is in reality an action in *res* or a real action. Our pronouncement in *Fortune Motors (Phils.), Inc. vs. Court of Appeals* is instructive. There, we said:
>
> **A prayer for annulment or rescission of contract does not operate to efface the true objectives and nature of the action which is to recover real property.** (*Inton, et al. v. Quintan*, 81 Phil. 97, 1948)
>
> **An action for the annulment or rescission of a sale of real property is a real action. Its prime objective is to recover said real property.** (*Gavieres v. Sanchez*, 94 Phil. 760, 1954)
>
> An action to annul a real estate mortgage foreclosure sale is no different from an action to annul a private sale of real property. (*Muñoz v. Llamas*, 87 Phil. 737, 1950).
>
> **While it is true that petitioner does not directly seek the recovery of title or possession of the property in question, his action for annulment of sale and his claim for damages are closely intertwined with the issue of ownership of the building which, under the law, is considered immovable property, the recovery of which is petitioner's primary objective. The prevalent doctrine is that an action for the annulment or rescission of a sale of real property does not operate to efface the fundamental and prime objective and nature of the case, which is to recover said real property. It is a real action.**

Unfortunately, and evidently to evade payment of the correct amount of filing fee, respondent Manalo never alleged in the body of his amended petition, much less in the prayer portion thereof, the assessed value of the subject *res*, or, if there is none, the estimated value thereof, to serve as basis for the receiving clerk in computing

and arriving at the proper amount of filing fee due thereon, as required under Section 7 of this Court's *en banc* resolution of 04 September 1990 (*Re: Proposed Amendments to Rule 141 on Legal Fees*).

Even the amended petition, therefore, should have been expunged from the records.

In fine, we rule and so hold that the trial court never acquired jurisdiction over its Civil Case No. Q-95-24791.[36]

It was in *Serrano v. Delica*,[37] however, that the Court dealt with a complaint that bore the most similarity to the one at bar. Therein respondent Delica averred that undue influence, coercion, and intimidation were exerted upon him by therein petitioners Serrano, *et al*. to effect transfer of his properties. Thus, Delica filed a complaint before the RTC against Serrano, *et al*., praying that the special power of attorney, the affidavit, the new titles issued in the names of Serrano, *et al.*, and the contracts of sale of the disputed properties be cancelled; that Serrano, *et al.* be ordered to pay Delica, jointly and severally, actual, moral and exemplary damages in the amount of ₱200,000.00, as well as attorney's fee of ₱200,000.00 and costs of litigation; that a TRO and a writ of preliminary injunction be issued ordering Serrano, *et al.* to immediately restore him to his possession of the parcels of land in question; and that after trial, the writ of injunction be made permanent. The Court dismissed Delica's complaint for the following reasons:

A careful examination of respondent's complaint is that it is a real action. In *Paderanga vs. Buissan*, we held that "in a real action, the plaintiff seeks the recovery of real property, or, as stated in Section 2(a), Rule 4 of the Revised Rules of Court, a real action is one 'affecting title to real property or for the recovery of possession of, or for partition or condemnation of, or foreclosure of a mortgage on a real property.'"

Obviously, respondent's complaint is a real action involving not only the recovery of real properties, but likewise the cancellation of the titles thereto.

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[36] *Id.* at 340.

[37] *Supra* note 33.

Considering that respondent's complaint is a real action, the Rule requires that "the assessed value of the property, or if there is none, the estimated value thereof shall be alleged by the claimant and shall be the basis in computing the fees."

We note, however, that neither the "assessed value" nor the "estimated value" of the questioned parcels of land were alleged by respondent in both his original and amended complaint. What he stated in his amended complaint is that the disputed realties have a "BIR zonal valuation" of ₱1,200.00 per square meter. However, the alleged "BIR zonal valuation" is not the kind of valuation required by the Rule. It is the *assessed value* of the realty. Having utterly failed to comply with the requirement of the Rule that he shall allege in his complaint the assessed value of his real properties in controversy, the correct docket fee cannot be computed. As such, his complaint should not have been accepted by the trial court. We thus rule that it has not acquired jurisdiction over the present case for failure of herein respondent to pay the required docket fee. On this ground alone, respondent's complaint is vulnerable to dismissal.[38]

Brushing aside the significance of *Serrano*, petitioner argues that said decision, rendered by the Third Division of the Court, and not by the Court *en banc*, cannot modify or reverse the doctrine laid down in *Spouses De Leon v. Court of Appeals*.[39] Petitioner relies heavily on the declaration of this Court in *Spouses De Leon* that an action for annulment or rescission of a contract of sale of real property is incapable of pecuniary estimation.

The Court, however, does not perceive a contradiction between *Serrano* and the *Spouses De Leon*. The Court calls attention to the following statement in *Spouses De Leon*: "A review of the jurisprudence of this Court indicates that in determining whether an action is one the subject matter of which is not capable of pecuniary estimation, this Court has adopted the criterion of first ascertaining the nature of the principal action or remedy sought." Necessarily, the determination must be done on a case-to-case basis, depending on the facts and circumstances of each. What petitioner conveniently ignores is

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[38] *Rollo*, pp. 88-89.

[39] 350 Phil. 535 (1998).

that in *Spouses De Leon*, the action therein that private respondents instituted before the RTC was "solely for annulment or rescission" of the contract of sale over a real property.[40] There appeared to be no transfer of title or possession to the adverse party. Their complaint simply prayed for:

> 1. Ordering the nullification or rescission of the Contract of Conditional Sale (Supplementary Agreement) for having violated the rights of plaintiffs (private respondents) guaranteed to them under Article 886 of the Civil Code and/or violation of the terms and conditions of the said contract.
>
> 2. Declaring void *ab initio* the Deed of Absolute Sale for being absolutely simulated; and
>
> 3. Ordering defendants (petitioners) to pay plaintiffs (private respondents) attorney's fees in the amount of ₱100,000.00.[41]

As this Court has previously discussed herein, the nature of Civil Case No. 2006-0030 instituted by petitioner before the RTC is closer to that of *Serrano*, rather than of *Spouses De Leon*, hence, calling for the application of the ruling of the Court in the former, rather than in the latter.

It is also important to note that, with the amendments introduced by A.M. No. 04-2-04-SC, which became effective on 16 August 2004, the paragraph in Section 7, Rule 141 of the Rules of Court, pertaining specifically to the basis for computation of docket fees for real actions was deleted. Instead, Section 7(1) of Rule 141, as amended, provides that "**in cases involving real property**, the **FAIR MARKET value** of the REAL property in litigation STATED IN THE CURRENT TAX DECLARATION OR CURRENT ZONAL VALUATION OF THE BUREAU OF INTERNAL REVENUE, WHICH IS HIGHER, OR IF THERE IS NONE, THE STATED VALUE OF THE PROPERTY IN LITIGATION x x x" shall be the basis for the computation of the docket fees. Would such an amendment have an impact on *Gochan*, *Siapno*, and *Serrano*? The Court rules in the negative.

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[40] *Id.* at 541-543.

[41] *Id.* at 537.

A real action indisputably involves real property. The docket fees for a real action would still be determined in accordance with the value of the real property involved therein; the only difference is in what constitutes the acceptable value. In computing the docket fees for cases involving real properties, the courts, instead of relying on the assessed or estimated value, would now be using the **fair market value** of the real properties (as stated in the Tax Declaration or the Zonal Valuation of the Bureau of Internal Revenue, whichever is higher) or, in the absence thereof, the stated value of the same.

In sum, the Court finds that the true nature of the action instituted by petitioner against respondents is the recovery of title to and possession of real property. It is a real action necessarily involving real property, the docket fees for which must be computed in accordance with Section 7(1), Rule 141 of the Rules of Court, as amended. The Court of Appeals, therefore, did not commit any error in affirming the RTC Orders requiring petitioner to pay additional docket fees for its Complaint in Civil Case No. 2006-0030.

The Court does not give much credence to the allegation of petitioner that if the judgment of the Court of Appeals is allowed to stand and not rectified, it would result in grave injustice and irreparable injury to petitioner in view of the prohibitive amount assessed against it. It is a sweeping assertion which lacks evidentiary support. Undeniably, before the Court can conclude that the amount of docket fees is indeed prohibitive for a party, it would have to look into the financial capacity of said party. It baffles this Court that herein petitioner, having the capacity to enter into multi-million transactions, now stalls at paying ₱720,392.60 additional docket fees so it could champion before the courts its rights over the disputed real properties. Moreover, even though the Court exempts individuals, as indigent or pauper litigants, from paying docket fees, it has never extended such an exemption to a corporate entity.

WHEREFORE, premises considered, the instant Petition for Review is hereby *DENIED*. The Decision, dated 22 November 2006, of the Court of Appeals in CA-G.R. SP No. 94800, which

affirmed the Orders dated 24 March 2006 and 29 March 2006 of the RTC, Branch 22, of Naga City, in Civil Case No. RTC-2006-0030, ordering petitioner Ruby Shelter Builders and Realty Development Corporation to pay additional docket/filing fees, computed based on Section 7(a), Rule 141 of the Rules of Court, as amended, is hereby *AFFIRMED*. Costs against the petitioner.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 178064. February 10, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ELIZABETH CARDENAS,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; FORMAL OFFER OF EVIDENCE; EFFECT OF ABSENCE THEREOF.— In affirming appellant's conviction in the third and fourth cases, the appellate court noted that the checks subject thereof were dishonored due to "payment stopped" or "account closed." Only photocopies of the checks bearing "payment stopped" or "account closed" stamped thereon form part of the records, however. While the Court of Appeals observed that photocopies of the checks, which were not objected to, may be admitted as an exception to the best evidence rule after the offeror has laid the foundation for the unavailability of the originals, without bad faith on his part, and has proved their existence, due execution, loss or unavailability and content/substance, the photocopies of the checks still may *not* be appreciated as they were not formally offered in evidence.

2. CRIMINAL LAW; ESTAFA; THAT ISSUANCE OF CHECK SHOULD BE THE MEANS TO OBTAIN MONEY OR PROPERTY FROM THE PAYEE; IN THE COMMISSION THEREOF, NO FRAUD WAS EMPLOYED. – Appellant was, in **Criminal Case No. 8743-13**, charged under Article 315, par. 2(d) of the Revised Penal Code which provides: Art. 315 2(d) *Swindling* (*estafa*). – Any person who shall defraud another by any of the means herein below . . . 2. By means of any of the following false pretenses or fraudulent acts executed **prior to or simultaneously with the commission of the fraud:** xxx (d) By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be *prima facie* evidence of deceit constituting false pretense or fraudulent act. The accusatory portion of the Information in said case alleges that when Check No. 001260A was drawn, appellant "represent[ed] that the [same] w[ould] be paid when presented for payment simultaneous to and as payment for jewelr[y purchased]." To constitute estafa under Article 315, par. 2(d) of the Revised Penal Code, the issuance of a check should be the means to obtain money or property from the payee. In the case at bar, it is gathered that during her transactions since 1991 with Nenit, appellant usually issued postdated checks after jewelry was turned over to her and that in fact some of the postdated checks previously issued were dishonored but were not made subject of criminal complaints. Appellant did not thus have to assure Nenit when she issued on November 15, 1994 Check No. 001260A postdated December 30, 1994 that it would be funded on maturity to convince her to part off with the jewelry. In other words, the issuance of the check was not the means to obtain the jewelry. Appellant did not thus employ fraud. *Ergo* she did not commit estafa.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Jose R. Jimenez for appellant.

D E C I S I O N

CARPIO MORALES, *J.*:

On complaint of Nenette Musni (Nenit), four Informations each charging Elizabeth Cardenas (appellant) with estafa were filed before the Regional Trial Court (RTC) of Laoag City.

Criminal Case No. 8740-13 alleged:

xxx xxx xxx

That on or about the 15th day of October, 1994, in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the herein accused with deceit and intent to defraud, did then and there willfully, unlawfully and feloniously issue the following checks:

CHECK NO.	AMOUNT	POSTDATED
001247A	₱401,000.00	November 15, 1994
001248A	₱401,000.00	December 15, 1994

in favor of Nenette[1] Musni, against the drawee Philippine Commercial and Industrial Bank [PCIB], Vigan Branch, affixing therein a signature different from her specimen signature on file with the drawee bank and representing that the checks will be paid when presented for payment, simultaneous to and as payment for jewelries purchased by the accused from Nenette Musni, which checks were subsequently dishonored by the drawee bank when presented for payment due to signature different on file and for having been drawn against insufficient funds, and despite notice to the accused of the dishonor of her checks and demands made upon her by Nenette Musni for the cash replacement of the checks, the accused had refused and failed to do so, to the damage and prejudice of Nenete Musni.[2]

Criminal Case No. 8741-13 alleged:

That on or about the 15th day of November, 1994, in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the herein accused with deceit and intent to defraud, did then and there willfully, unlawfully and feloniously issue the following checks:

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[1] Sometimes spelled as "Nenit" or "Nenita."

[2] Records, Vol. I, p. 1.

CHECK NO.	AMOUNT	POSTDATED
001226A	₱250,000.00	December 30, 1994
001227A	₱668,000.00	December 15, 1994

in favor of Nenette Musni, against the drawee Philippine Commercial and Industrial Bank Vigan Branch, affixing therein a signature different from her specimen signature on file with the drawee bank and representing that the checks will be paid when presented for payment, simultaneous to and as payment for jewelries purchased by the accused from Nenette Musni, which checks were subsequently dishonored by the drawee bank when presented for payment due to signature different on file and for having been drawn against insufficient funds, and despite notice to the accused of the dishonor of her checks and demands made upon her by Nenette Musni for the cash replacement of the checks, the accused had refused to do so, to the damage and prejudice of Nenette Musni.[3]

xxx xxx xxx

Criminal Case No. 8742-13 alleged:

xxx xxx xxx

That on or about the 2nd day of November, 1994, in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the herein accused with deceit and intent to defraud, did then and there willfully, unlawfully and feloniously issue the following checks:

CHECK NO.	AMOUNT	POSTDATED
001231A	₱ 318,000.00	February 20, 1995
001232A	₱ 779,000.00	December 25, 1994
001233A	₱1,093,000.00	January 15, 1995

in favor of Nenette Musni, against the drawee Philippine Commercial and Industrial Bank Vigan Branch, affixing therein a signature different from her specimen signature on file with the drawee bank and representing that the checks will be paid when presented for payment, simultaneous to and as payment for jewelries purchased by the accused from Nennette Musni, which checks were subsequently dishonored by the drawee bank when presented for payment due to signature different on file and for having been drawn against a closed account for Check No. 001231A and against insufficient funds for Check

[3] Records, Vol. II, p. 1.

Nos. 001232A and 001233A, and despite notice to the accused of the dishonor of her checks and demands made upon her by Nenette Musni for the cash replacement of the checks, the accused had refused to do so, to the damage and prejudice of Nenette Musni.[4]

xxx xxx xxx

Criminal Case No. 8743-13 alleged:

xxx xxx xxx

That on or about the 15th day of December, 1994, in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the herein accused with deceit and intent to defraud, did then and there willfully, unlawfully and feloniously issue the following checks:

CHECK NO.	AMOUNT	POSTDATED
001222A	₱400,000.00	March 31, 1995
001260A	₱458,000.00	March 15, 1995

in favor of Nenette Musni, against the drawee Philippine Commercial Industrial Bank Vigan Branch, affixing therein a signature different from her specimen signature on file with the drawee bank for Check No. 001222A and **representing that the checks will be paid when presented for payment, simultaneous to and as payment for jewelries purchased** by the accused from Nenette Musni, which checks were subsequently dishonored by the drawee bank when presented for payment due to signature different on file for Check 001222A and for having been drawn against a closed account for both checks, and despite notice to the accused of the dishonor of her checks and demands made upon her by Nenette Musni for the cash replacement of the checks, the accused had refused to do so, to the damage and prejudice of Nenette Musni.[5] (Emphasis and underscoring supplied)

xxx xxx xxx

During pre-trial, the prosecution and the defense stipulated on the following, quoted *verbatim*:

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[4] Records, Vol. III, p. 1.

[5] Records, Vol. IV, p. 1.

IN CRIM. CASE NO. 8740-13

1. That on October 15, 1994, the accused received jewelries from the complaining witness at Laoag City;
2. That the accused has a checking account with the PCIB, Vigan Branch, Vigan, Ilocos Sur;
3. That due to such receipt of jewelries, the accused delivered to the complainant PCIB Vigan Branch Check No. 001247A covering the amount of ₱401,000.00 dated November 15, 1994 and Check No. 001248A in the amount of ₱401,000.00 dated December 15, 1994;
4. That the two (2) checks were delivered by the accused to the complaining witness on October 15, 1994 at Laoag City;
5. That the two (2) checks aforestated were presented for payment but dishonored.

IN CRIM. CASE NO. 8741-13

1. That on November 15, 1994, the accused received jewelries from the complaining witness at Laoag City;
2. That due to such receipt of jewelries, the accused delivered two (2) postdated checks, PCIB Vigan Branch Check No. 001226A dated December 30, 1994 covering the amount of ₱250,000.00 and Check No. 001227A dated December 15, 1994 in the amount of ₱668,000.00;
3. That the above-mentioned checks were presented for payment with the drawee bank on their respective due dates;
4. That said checks were dishonored by the drawee bank on the ground that the **signature of the drawer differs from the signature on file**. (Emphasis and underscoring supplied)

IN CRIM. CASE NO. 8742-13

1. That on November 2, 1994, the accused received jewelries from the complaining witness at Laoag City;
2. That due to the receipt of the jewelries, the accused delivered three (3) postdated checks to the complainant PCIB Vigan Branch Check No. 001231A dated February 20, 1995 in the amount of ₱318,000.00; Check No. 001232A dated December 25, 1994 in the amount of ₱779,000.00 and Check

No. 001233A in the amount of ₱1,093,000.00 dated January 15, 1995;

3. That the said three (3) checks aforementioned were presented for payment but dishonored because the **signature[s] differ from the signature on file**. (Emphasis and underscoring supplied)

IN CRIM. CASE NO. 8743-13

1. That the accused on December 15, 1994 received jewelries from the complaining witness at Laoag City;

2. That out of the receipt of the jewelries by the accused from the complaining witness, the accused delivered two (2) postdated checks, PCIB Vigan Branch Check No. 001222A dated March 31, 1995 in the amount of ₱400,000.0 and Check No. 001260A dated March 15, 1995 in the amount of ₱458,000.00;

3. That said Check No. 001222A when presented for payment was **dishonored because the signature on file is different from the signature on the check**;

4. That Check No. 001260A in the amount of ₱458,000.00 was delivered to the complainant with the signature of the accused, the same being signed by her on the same date of the delivery of the jewelries.[6] (Emphasis and underscoring supplied)

Culled from the evidence for the prosecution is its following version:[7]

Nenit (erroneously spelled as "Nenette" in the Informations), who does business under the name *Bombom Jewelries*, buys pieces of jewelry from pawnshops for resale. In 1991, in the course of her business operation, she was introduced to appellant to whom she had since been selling gold. Their usual practice was to weigh the gold and agree on the price, after which appellant would issue checks covering the value thereof.

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[6] Records, Vol. I, pp. 77-78.

[7] *Vide* TSN, May 31, 2000, pp. 2-21; TSN, August 8, 2000, pp. 1-24; TSN, October 5, 2000, pp. 23-41; TSN, March 12, 2001, pp. 43-51; TSN, September 18, 2001, pp. 1-25.

Nenit and appellant's transactions were regular until October 15, 1994 when appellant issued Check No. 001247A for ₱401,000 and Check No. 001248A for the same amount[8] covering payment of gold, which checks were dishonored. Nenit informed appellant of the dishonor, but she denied owing anything to her.

On November 2, 1994, appellant again issued three checks drawn against PCIB Vigan Branch representing payment of gold: Check No. 001231A for ₱318,000, Check No. 001232A for ₱779,000, and Check No. 001233A for ₱1,093,000.[9] Again the checks were dishonored.

Still again on November 15, 1994, appellant issued two postdated checks drawn against PCIB Vigan Branch representing payment of gold purchased from Nenit: Check No. 001226A for ₱250,000 and Check No. 01227A for ₱668,000.[10] Still again the checks were dishonored.

Finally, on December 15, 1994, appellant issued to Nenit two postdated checks, both drawn against PCIB Vigan Branch: Check No. 001222A for ₱400,000, and Check No. 001260A for ₱458,000 representing payment of gold.[11] Like the previous checks, these two were dishonored.

Nenit demanded the settlement of the dishonored checks, but appellant maintained not having any obligations to her.

In defense,[12] appellant claimed that, except for Check No. 1260A, one of the two checks subject of the fourth case, Crim. Case No. 8743-13, all the checks subject of the cases were unsigned as they were issued as a "secondary collateral."

Explaining the circumstances under which the checks were issued, appellant stated that whenever Nenit entrusted to her

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[8] *Vide* records, Vol. I, pp. 32-33.

[9] *Vide* records, Vol. III, pp. 32-34.

[10] *Vide* records, Vol. II, pp. 32-33.

[11] *Vide* records, Vol. IV, pp. 32-33.

[12] TSN, November 20, 2001, pp. 3-20; TSN, January 29, 2002, pp. 52-70; TSN, March 7, 2002, pp. 72-79; TSN, May 7, 2002, pp. 2-18; July 11, 2002, pp. 81-102.

jewelry for resale, she was required to and did sign receipts and did issue the unsigned checks; that failing to resell the jewelry, she would return them and ask Nenit to return to her the receipts she signed and the unsigned checks, but Nenit would merely claim that she would tear them; and that with respect to Check No. 1260A, for ₱458,000, she having sold the jewelry covered thereby, she affixed her signature thereon, but she did not cause the check to be honored because she and Nenit agreed to offset the amount thereof against the amount which Nenit and her son owed her for jewelry they had borrowed from her.[13]

Appellant thus claimed that the signatures attributed to her on all the checks, except Check No. 1260A for ₱458,000, were forged, in support of which she presented National Bureau of Investigation (NBI) Senior Documents Examiner Adela Cruz-Demantillo (Adela) who examined the signatures on the questioned checks and concluded that the signature on Check No. 1260A and those on other checks were not made by one and the same person.[14]

Branch 13 of the Laoag City RTC, by Decision of September 30, 2003, convicted appellant of the four counts of estafa, disposing as follows:

> WHEREFORE, the Court renders judgment finding the accused GUILTY beyond reasonable doubt of the crime of Estafa on four (4) counts as charged and therefore sentences her to suffer for each of the charges the indeterminate penalty of imprisonment ranging from TWELVE YEARS of *prision mayor* as maximum to THIRTY YEARS of *reclusion perpetua* and to pay the private complainant the sum of ₱4,768,000.00 representing her total obligation and with legal interest thereon to be reckoned from the finality of this judgment, with costs against her.
>
> SO ORDERED.[15]

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[13] Exhibit "2" and submarkings, records, Vol. I, pp. 216-219.

[14] TSN, August 22, 2002, pp. 26-27; Exhibit "4", records, Vol. I, pp. 224-225.

[15] *Id.* at 249.

On intermediate review, the Court of Appeals, by Decision[16] of November 20, 2006, acquitted appellant in the first and second cases — Criminal Case Nos. 8740-13 and 8741-13 —, the checks subject thereof having been dishonored because the signatures thereon differed from the specimen signatures of appellant on file at the drawee bank. The Court of Appeals reasoned:

> It may be recalled that criminal and penal statutes are strictly construed against the State, that is, they cannot be enlarged by intendment, implication, or by any equitable considerations. In other words, the language cannot be enlarged beyond the ordinary meaning of its terms in order to carry out into effect the general purpose for which the statute was enacted. The reason for dishonor goes into the element of the felony and may not justly be ignored. When the law speaks of "insufficiency of funds" as the reason for dishonor, it means just that and nothing else. x x x[17]

The appellate court, however, affirmed the conviction of appellant in the third and fourth cases — Criminal Case Nos. 8742-13 and 8743-13. Thus it disposed:

> WHEREFORE, in view of the foregoing, the court hereby **ACQUITS** the accused of charges in Criminal Case Nos. 8740 and 8741, for insufficiency of evidence; and **AFFIRMS** the *Decision* insofar as it found the accused guilty beyond reasonable doubt of two (2) counts of estafa defined and penalized under Article 315, 2(d) of the Revised Penal Code, in Criminal Case Nos. 8742 and 8743; with the modification that the accused is to pay the private complainant the sum of ₱3,048,000.00,[18] instead of ₱4,768,000.00.
>
> The penalty imposed, "x x x sentence[ing] her to suffer for each of the charges of the indeterminate penalty of imprisonment ranging from TWELVE YEARS of *prison mayor* to THIRTY YEARS of *reclusion perpetua*, is **MAINTAINED**.
>
> The herein judgment is further appealable to the Supreme Court by notice of appeal filed with this court.

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[16] Penned by Court of Appeals Associate Justice Apolinario D. Bruselas, Jr. with the concurrences of Associate Justices Josefina Guevara-Salonga and Vicente Q. Roxas. CA *rollo*, pp. 235-258.

[17] CA *rollo*, p. 249.

[18] The Court of Appeals did not explain how it arrived at ₱3,048,000.

IT IS SO ORDERED.[19] (Emphasis and italics in the original; underscoring supplied)

Hence, the present appeal. Both the prosecution and the defense manifested their intention not to file supplemental briefs and to adopt the respective briefs which were considered by the Court of Appeals.[20]

In affirming appellant's conviction in the third and fourth cases, the appellate court noted that the checks subject thereof were dishonored due to "payment stopped" or "account closed."[21] Only photocopies of the checks bearing "payment stopped" or "account closed" stamped thereon form part of the records,[22] however. While the Court of Appeals observed that photocopies of the checks, which were not objected to, may be admitted as an exception to the best evidence rule after the offeror has laid the foundation for the unavailability of the originals, without bad faith on his part, and has proved their existence, due execution, loss or unavailability and content/substance,[23] the photocopies of the checks still may **not** be appreciated as they were not formally offered in evidence.[24]

More importantly, it bears noting that, as reflected above, the relevant stipulations of the prosecution and defense during pre-trial were that the checks, except Check No. 001260A which is one of the two checks subject of the fourth case, were dishonored because the signatures therein were different from appellant's signature on file.[25]

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[19] CA *rollo*, pp. 287-288.

[20] *Rollo*, pp. 32-34, 36-37.

[21] CA *rollo*, pp. 250-251.

[22] Records, Vol. III, pp. 32-34; records, Vol. IV, p. 32.

[23] CA *rollo*, p. 255. The checks were not available during trial because they were with the Metropolitan Trial Court before which they were subject of a case for the violation of Batas Pambansa Blg. 22 (*vide* TSN, May 31, 2000, p. 16).

[24] *Vide* TSN, September 18, 2001, pp. 24-25; TSN, June 19, 2003, pp. 12-14.

[25] Records Vol. I, pp. 77-78.

The prosecution contends, however, that appellant intentionally altered her own signature on the checks.[26] In light, however, of the findings of the handwriting expert and, indeed, from the naked eye, a comparison of the questioned signatures with the standard signature of appellant,[27] the possibility that appellant's signature on the checks in question was forged is not ruled out.

Respecting Check No. 001260A which, admittedly, was signed by appellant,[28] appellant did not deny that it was dishonored for insufficiency of funds and that demand was made for the settlement of the amount covered by it.[29] She claimed, however, that she and Nenit agreed to set off the amount of the check against the value of the jewelry which Nenit and her son had borrowed from her.[30] In support of her claim, she presented receipts. Brushing aside this claim, the trial court made the following observations which this Court finds well-taken:

> Neither can the Court believe that there was an off-setting arrangement with respect to PCIB Check No. 1260A in the amount of ₱458,000.00. Again, while the accused would claim that the jewelry all valued at ₱420,000.00 that Carlito Musni received from her as contained in the receipts that the latter issued, the Court observes that there were no indications in the said receipts that the items therein mentioned were to offset the jewelry that the accused had taken from the complainant for which she issued the aforementioned check. There is also no such indication in the receipt issued by complainant for a Rosita earring valued of ₱100,000.00 which was part of the alleged offsetting. Moreover, if there was an offsetting, the accused has not fully explained why the value of the jewelry that complainant and Carlito Musni received from her were more than the value of the check which is ₱458,000.00. x x x[31] (Underscoring supplied)

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[26] CA *rollo*, p. 210.

[27] *Vide* Exhibits "5" and "7".

[28] *Vide* TSN, January 29, 2002, pp. 68-69; records, Vol. I, p. 78.

[29] TSN, May 31, 2000, pp. 9-11.

[30] TSN, June 19, 2003, pp. 6-10.

[31] Records, Vol. I, pp. 278-279.

Nevertheless, the acquittal of appellant with regard to Check No. 001260A is in order.

Undoubtedly, appellant was, in **Criminal Case No. 8743-13**, charged under Article 315, par. 2(d) of the Revised Penal Code which provides:

> Art. 315 2(d) *Swindling (estafa).* — Any person who shall defraud another by any of the means herein below . . .
>
> 2. By means of any of the following false pretenses or fraudulent acts executed **prior to or simultaneously with the commission of the fraud:**
>
> xxx xxx xxx
>
> (d) By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be *prima facie* evidence of deceit constituting false pretense or fraudulent act. (Emphasis supplied)

The above-quoted accusatory portion of the Information in said case alleges that when Check No. 001260A was drawn, appellant "represent[ed] that the [same] w[ould] be paid when presented for payment simultaneous to and as payment for jewelr[y purchased]."

To constitute estafa under Article 315, par. 2(d) of the Revised Penal Code, the issuance of a check should be the means to obtain money or property from the payee.[32] In *Ilagan v. People*,[33] the therein accused was charged with estafa for indorsing postdated checks which were dishonored on maturity. In acquitting the accused, the Court noted that he and the payee had been priorly engaged for four years in rediscounting transactions hence; the

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[32] Vide *People v. Reyes,* G.R. No. 154159, March 31, 2005, 454 SCRA 635, 647.

[33] G.R. No. 166873, April 27, 2007, 522 SCRA 699.

Court held that it would have been unnecessary for the accused to assure the payee that the checks would be sufficiently funded on maturity to convince her to change them with cash.[34]

In the case at bar, it is gathered that during her transactions since 1991 with Nenit, appellant usually issued postdated checks after jewelry was turned over to her and that in fact some of the postdated checks previously issued were dishonored but were not made subject of criminal complaints. Appellant did not thus have to assure Nenit when she issued on November 15, 1994 Check No. 001260A postdated December 30, 1994 that it would be funded on maturity to convince her to part off with the jewelry. In other words, the issuance of the check was not the means to obtain the jewelry. Appellant did not thus employ fraud. *Ergo* she did not commit estafa.

However, appellant's civil liability under Check No. 001260A for ₱458,000 stands in the absence of evidence that she had, as she claimed, already settled the same.

WHEREFORE, the Decision of the Court of Appeals dated November 20, 2006 is *SET ASIDE*.

Appellant, Elizabeth Cardenas, is *ACQUITTED* in Criminal Case No. 8742-13.

Appellant is likewise *ACQUITTED* in Criminal Case No. 8743-13. She is, however, declared civilly liable to the private complainant, Nenette *a.k.a.* Nenit Musni, insofar as the case involves Check No. 001260A, and is *ORDERED* to pay her its face value of Four Hundred Fifty -Eight Thousand (₱458,000.00) Pesos.

SO ORDERED.

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

[34] *Id.* at 711.

THIRD DIVISION

[G.R. No. 180551. February 10, 2009]

ERWIN H. REYES, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION, COCA-COLA BOTTLERS PHILS. and/or ROTAIDA TAGUIBAO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SERVICE AND FILING OF PLEADINGS; PERSONAL SERVICE AND FILING AS MANDATORY GENERAL RULE; ELUCIDATED.— In the case of *Solar Team Entertainment, Inc. v. Ricafort*, the Court stressed the mandatory character of Section 11, Rule 13, *viz*: We thus take this opportunity to clarify that under Section 11, Rule 13 of the 1997 Rules of Civil Procedure, personal service and filing is the general rule, and resort to other modes of service and filing, the exception. Henceforth, whenever personal service or filing is practicable, in light of the circumstances of time, place and person, personal service or filing is mandatory. Only when personal service or filing is not practicable may resort to other modes be had, which must then be accompanied by a written explanation as to why personal service or filing was not practicable to begin with. In adjudging the plausibility of an explanation, a court shall likewise consider the importance of the subject matter of the case or the issues involved therein, and the *prima facie* merit of the pleading sought to be expunged for violation of Section 11. This Court cannot rule otherwise, lest we allow circumvention of the innovation introduced by the 1997 Rules in order to obviate delay in the administration of justice. The Rules of Court itself calls for its liberal construction, with the view of promoting their objective of securing a just, speedy and inexpensive disposition of every action and proceeding. The Court is fully aware that procedural rules are not to be belittled or simply disregarded for these prescribed procedures insure an orderly and speedy administration of justice. However, it is equally true that litigation is not merely a game of technicalities. Law and jurisprudence grant to courts the prerogative to relax compliance with procedural rules of even

the most mandatory character, mindful of the duty to reconcile both the need to put an end to litigation speedily and the parties' right to an opportunity to be heard.

2. ID.; ID.; ID.; ID.; LIBERAL INTERPRETATION OF THE RULE MADE PROPER IN THE INTEREST OF JUSTICE. — In numerous cases, the Court has allowed liberal construction of Section 11, Rule 13 of the Revised Rules of Court when doing so would be in the service of the demands of substantial justice and in the exercise of the equity jurisdiction of this Court. In one such case, *Fulgencio v. National Labor Relations Commission,* this Court provided the following justification for its non-insistence on a written explanation as required by Section 11, Rule 13 of the Revised Rules of Court: The rules of procedure are merely tools designed to facilitate the attainment of justice. They were conceived and promulgated to effectively aid the court in the dispensation of justice. Courts are not slaves to or robots of technical rules, shorn of judicial discretion. In rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat against substantive rights, and not the other way around. Thus, if the application of the Rules would tend to frustrate rather than promote justice, it is always within our power to suspend the rules, or except a particular case from its operation.

3. LEGAL ETHICS; LAWYER-CLIENT RELATIONSHIP; ON NEGLIGENCE OF COUNSEL; RULE AND EXCEPTION; CASE AT BAR.— The basic general rule is that the negligence of counsel binds the client. Hence, if counsel commits a mistake in the course of litigation, thereby resulting in his losing the case, his client must perforce suffer the consequences of the mistake. The reason for the rule is to avoid the possibility that every losing party would raise the issue of negligence of his or her counsel to escape an adverse decision of the court, to the detriment of our justice system, as no party would ever accept a losing verdict. This general rule, however, pertains only to simple negligence of the lawyer. **Where the negligence of counsel is one that is so gross, palpable, pervasive, reckless and inexcusable, then it does not bind the client since, in such a case, the client is effectively deprived of his or her day in court.** The circumstances of this case qualify it under the exception, rather than the general rule. The

negligence of petitioner's former counsel may be considered gross since it invariably resulted to the foreclosure of remedies otherwise readily available to the petitioner. Not only was petitioner deprived of the opportunity to bring his case before the Court of Appeals with the outright dismissal of his Petition on a technicality, but he was also robbed of the chance to seek reconsideration of the dismissal of his Petition. **What further impel this Court to heed the call for substantial justice are the pressing merits of this case which, if left overshadowed by technicalities, could result in flagrant violations of the provisions of the Labor Code and of the categorical mandate of the Constitution affording protection to labor**. Higher interests of justice and equity demand that petitioner should not be denied his day in court and made him to suffer for his counsel's indiscretions. To cling to the general rule in this case would only to condone, rather than rectify, a serious injustice to a party — whose only fault was to repose his faith and trust in his previous counsel — and close our eyes to the glaring grave abuse of discretion committed by the NLRC.

4. REMEDIAL LAW; CIVIL PROCEDURE; REMAND OF CASE TO APPELLATE COURT SERVING NO REAL PURPOSE MAY BE DISPENSED WITH.— This Court is aware that in the instant case, since petitioner's appeal before the Court of Appeals is to be given due course, the normal procedure is for us to remand the case to the appellate court for further proceedings. The Court, however, dispensed with this time-consuming procedure, since there is enough basis on which proper evaluation of the merits of the case may be had. Remand of this case would serve no purpose save to further delay its disposition contrary to the spirit of fair play. It is already an accepted rule of procedure for us to strive to settle the entire controversy in a single proceeding, leaving no root or branch to bear the seed of future litigation.

5. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; SECURITY OF TENURE; ILLEGAL DISMISSAL; PAYMENT OF BACKWAGES AND OTHER BENEFITS; COMPUTATION THEREOF.— Explicit is Art. 279 of the Labor Code which states: Art. 279. Security of Tenure.— In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who

is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. Applying the above-quoted statutory provision, this Court decreed in *Pheschem Industrial Corporation v. Moldez*: Article 279 of the Labor Code provides that an illegally dismissed employee shall be entitled, *inter alia*, to the payment of his full backwages, inclusive of allowances and to his other benefits or their monetary equivalent **computed from the time that his compensation was withheld from him, *i.e.*, from the time of his illegal dismissal, up to the time of his actual reinstatement.** Thus, where reinstatement is adjudged, the award of backwages and other benefits continues beyond the date of the Labor Arbiter's Decision ordering reinstatement and extends up to the time said order of reinstatement is actually carried out. The Court was more emphatic in *Philippine Industrial Security Agency Corporation v. Dapiton*, when it ruled that backwages had to be paid by the employer as part of the price or penalty he had to pay for illegally dismissing his employee. **It was to be computed from the time of the employee's illegal dismissal (or from the time his compensation was withheld from him) up to the time of his reinstatement.**

6. ID.; ID.; ID.; ID.; ID.; ID.; FAILURE TO IMMEDIATELY FILE COMPLAINT, NOT MATERIAL TO THE COMPUTATION OF BACKWAGES; CASE AT BAR. — One of the natural consequences of a finding that an employee has been illegally dismissed is the payment of backwages corresponding to the period from his dismissal up to actual reinstatement. The statutory intent of this matter is clearly discernible. The payment of backwages allows the employee to recover from the employer that which he has lost by way of wages as a result of his dismissal. Logically, it must be computed from the date of petitioner's illegal dismissal up to the time of actual reinstatement. There can be no gap or interruption, lest we defeat the very reason of the law in granting the same. That petitioner did not immediately file his Complaint should not affect or diminish his right to backwages, for it is a right clearly granted to him by law — should he be found to have

been illegally dismissed — and for as long as his cause of action has not been barred by prescription. The Labor Arbiter, in his computation of the award for backwages to petitioner, had followed the long-settled rule that full backwages should be awarded, to be reckoned from the time of illegal dismissal up to actual reinstatement. The NLRC, however, modified the Labor Arbiter's award for backwages by computing the same only from the time petitioner filed his Complaint for illegal dismissal before the Labor Arbiter, *i.e.*, on 24 October 2004, up to the day when the Labor Arbiter promulgated his judgment, *i.e.*, 30 April 2005. The NLRC provided no other explanation for its modification except that it was just and equitable to reduce the amount of backwages given to petitioner since, having been dismissed on 15 September 2001, it took him more than three years to file his Complaint against respondents CCBP and Taguibao. We find no justice or rationality in the distinction created by the NLRC; and when there is neither justice or rationality, the distinction transgresses the elementary principle of equal protection and must be stricken out. Equal protection requires that all persons or things similarly situated should be treated alike, as to both rights conferred and responsibilities imposed. There is no sufficient basis why petitioner should not be placed in the same plane with other illegally dismissed employees who were awarded backwages without qualification.

7. ID.; ID.; ID.; ID.; PRESCRIPTION OF ACTION FOR ILLEGAL DISMISSAL IS FOUR YEARS; CASE AT BAR. — The law fixes the period of time within which petitioner could seek remedy for his illegal dismissal and for as long as he filed his Complaint within the prescriptive period, he shall be entitled to the full protection of his right to backwages. In illegal dismissal cases, the employee concerned is given a period of four years from the time of his illegal dismissal within which to institute the complaint. This is based on Article 1146 of the New Civil Code which states that actions based upon an injury to the rights of the plaintiff must be brought within four years. The four-year prescriptive period shall commence to run only upon the accrual of a cause of action of the worker. Here, petitioner was dismissed from service on 15 September 2001. He filed his complaint for illegal dismissal on 14 June 2004. Clearly, then, the instant case was filed within the prescriptive period.

8. ID.; ID.; ID.; RIGHT TO REINSTATEMENT; DOCTRINE OF "STRAINED RELATIONS," STRICTLY APPLIED.— To protect the employee's security of tenure, the Court has emphasized that the doctrine of "strained relations" should be strictly applied so as not to deprive an illegally dismissed employee of his right to reinstatement. Every labor dispute almost always results in "strained relations," and the phrase cannot be given an overarching interpretation; otherwise, an unjustly dismissed employee can never be reinstated.

9. ID.; ID.; CONFIDENTIAL EMPLOYEE; JOB AS SALESMAN, NOT INCLUDED.— We cannot sustain the NLRC's conclusion that petitioner's position is confidential in nature. Receipt of proceeds from sales of respondent CCBP's products does not make petitioner a confidential employee. A confidential employee is one who (1) assists or acts in a confidential capacity, in regard to (2) persons who formulate, determine, and effectuate management policies specifically in the field of labor relations. Verily, petitioner's job as a salesman does not fall under this qualification.

10. ID.; ID.; ILLEGAL DISMISSAL; DAMAGES; ATTORNEY'S FEES, PROPER.— The Court overrules the deletion by the NLRC of the Labor Arbiter's award for attorney's fees to petitioner. Petitioner is evidently entitled to attorney's fees, since he was compelled to litigate to protect his interest by reason of unjustified and unlawful termination of his employment by respondents CCBP and Taguibao.

APPEARANCES OF COUNSEL

Law Firm of Coluso Chica and Associates for petitioner.

Angara Abello Concepcion Regala & Cruz for private respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is a Special Civil Action for *Certiorari* under Rule 65 of the Revised Rules of Court filed by petitioner Erwin H. Reyes, seeking to reverse and set aside the Resolutions

dated 10 November 2006[1] and 9 November 2007[2] of the Court of Appeals in CA-G.R. SP No. 96343. In its assailed Resolutions, the appellate court dismissed petitioner's Petition for *Certiorari* therein for failure to give an explanation why copy of the said Petition was not personally served upon the counsel of the respondents.

The present Petition arose from a Complaint for illegal dismissal with claims for moral and exemplary damages and attorney's fees filed by petitioner against respondents Coca Cola Bottlers Philippines (CCBP) and Rotaida Taguibao (Taguibao) before the Labor Arbiter on 14 June 2004.

Respondent CCBP is a corporation engaged in the business of production and distribution of carbonated drinks, and Taguibao is its Human Resource Manager.

In his Complaint, petitioner alleged that he was first employed by respondent CCBP, through Interserve Manpower Agency (Interserve), as a Leadman in February 1988. Petitioner was initially assigned to the Mendiola Sales Office of respondent CCBP. Petitioner's employment contract was renewed every five months and he was assigned a different task every time. Such an arrangement continued until petitioner was directly hired by respondent CCBP as a Route Salesman on 15 September 2000. Exactly one year from the time of petitioner's employment as a Route Salesman, respondent CCBP, thru Taguibao, terminated his services on 15 September 2001. Since he already acquired the status of a regular employee, petitioner asserted that his dismissal from employment without the benefit of due process was unlawful.

In opposing the Complaint, respondent CCBP refuted petitioner's allegation that he was a regular employee. Petitioner's

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[1] Penned by Associate Justice Renato C. Dacudao with Associate Justices Rosmari D. Carandang and Estela M. Perlas-Bernabe, concurring. *Rollo,* pp. 34-35.

[2] Penned by Associate Justice Rosmari D. Carandang with Associate Justices Regalado E. Maambong and Estela M. Perlas-Bernabe, concurring. *Rollo,* pp. 37-38.

employment was for a fixed period of three months, which was subsequently extended[3] with petitioner's consent. Petitioner was employed pursuant to the mini-*bodega* project of respondent CCBP wherein respondent CCBP sought to extend its market to areas that cannot be serviced by its regular salesmen. After the viability of this marketing scheme was found to be unsuccessful, respondent CCBP was constrained to discontinue petitioner's fixed-term employment. In addition, respondent Taguibao had no liability for terminating petitioner's employment when it was not effected in bad faith.

On 30 April 2005, the Labor Arbiter promulgated his Decision,[4] favoring petitioner, since there was insufficient evidence to sustain the averment of respondents CCBP and Taguibao that petitioner's employment was for a fixed period. The Labor Arbiter noted that respondents CCBP and Taguibao failed to present a copy of petitioner's purported Contract of Employment. The only evidence adduced by respondents CCBP and Taguibao to buttress their contention of petitioner's fixed-period employment was the Affidavit of respondent Taguibao herself, which could not be afforded any evidentiary weight in the absence of independent corroborating evidence. The Labor Arbiter thus decreed:

> WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered ordering [herein respondents CCBP and Taguibao] as follows:
>
> (1) To reinstate [herein petitioner] to his former position as route salesman, or to any substantially equivalent position with all the rights, privileges, and benefits appertaining thereto including seniority rights;
>
> (2) To pay [petitioner] his full backwages which as of August 30, 2005 already amount to ₱565,500.00 subject to re-computation to include salary increases granted during the intervening period and

[3] Pleadings submitted by respondent CCBP were silent as to how long petitioner's employment was extended. No copy of the original contract or its extension was submitted by respondent CCBP.

[4] *Rollo*, pp. 175-179.

during the pendency of the instant case, as well as benefits and privileges due a regular employee; and

(3) To pay [petitioner] the award of attorney's fees equivalent to 10% of the total judgment sum.

In compliance with the directive of the Labor Arbiter, respondents CCBP and Taguibao immediately reinstated petitioner to his former position as Route Salesman on 1 March 2006.[5] However, respondents CCBP and Taguibao, by filing a Memorandum of Appeal before the National Labor Relations Commission (NLRC) and posting the corresponding Supersedeas Bond, sought the stay of the execution of the monetary awards made by the Labor Arbiter in his Decision. Respondents CCBP and Taguibao asserted in their appeal that petitioner was merely employed for a particular project which turned out to be not viable. Petitioner was subsequently terminated from work on account of the expiration of his employment contract. Petitioner's claim of illegal dismissal was, therefore, tenuous.

On 31 May 2006, the NLRC promulgated its Decision[6] dismissing the appeal of respondents CCBP and Taguibao and affirming with modification the 30 April 2005 Decision of the Labor Arbiter. The NLRC reduced the amount of backwages awarded to petitioner underscoring the latter's unexplained delay (more than three years) in filing his Complaint for illegal dismissal. Instead, the NLRC reckoned the computation of backwages only from the time petitioner filed his Complaint for illegal dismissal before the Labor Arbiter.[7] The NLRC further modified the Labor Arbiter's Decision by deleting the order reinstating petitioner to his former position in view of the confidential nature of the latter's employment as a salesman, which exposed him to voluminous financial transactions involving the property of respondent CCBP. The NLRC likewise deleted the Labor Arbiter's award for attorney's fees. The *fallo* of the NLRC Decision reads:

[5] *Id.* at 302.

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

[7] The Complaint before the Labor Arbiter was filed on 14 June 2004 as shown in the upper right corner of the form, but the NLRC stated in its Decision that it was filed on 24 October 2004.

WHEREFORE, the decision dated 30 April 2005 is MODIFIED. The order reinstating [herein petitioner] is deleted. [Respondents CCBP and Taguibao] are hereby ordered to pay [petitioner] the following:

1. Backwages:
   24 October 2004 to 30 April 2005
   Salary – ₱13,000 x 6.2 months = ₱ 80,200.00
   13th month pay – ₱ 80,600 / 12 = 6,716.67
   ₱87,316.67

2. Separation Pay
   1 September 2000 to 30 April 2005
   ₱13,000 x 5 years = ₱ 65,000.00
   ₱152,316.67

The award of 10% attorney's fees is deleted.

All the parties, namely petitioner and respondents CCBP and Taguibao, moved for the reconsideration of the foregoing NLRC Decision. Petitioner, on one hand, maintained that the reckoning point for the computation of his backwages must be from the time his employment was unlawfully terminated, and not from the institution of his Complaint for illegal dismissal. Respondents CCBP and Taguibao, on the other hand, reiterated their previous position that petitioner's employment was terminated only after the expiration of the fixed period for the same; and prayed that the NLRC vacate its previous finding of illegal dismissal.

In a Resolution dated 13 July 2006, the NLRC denied the Motions for Reconsideration of all the parties for lack of a valid reason to disturb its earlier disposition.

From the 13 July 2006 Resolution of the NLRC, only petitioner elevated his case before the Court of Appeals by filing a Petition for *Certiorari*, which was docketed as CA-G.R. S.P. No. 96343. Petitioner averred in his Petition that the NLRC abused its discretion in ignoring the established facts and legal principles when it modified the award for his backwages and deleted the order for his reinstatement.

The Court of Appeals, however, in its Resolution dated 10 November 2006, dismissed petitioner's Petition for *Certiorari* for his failure to give any explanation why a copy of the said

Petition was not personally served upon the counsel of the adverse parties.

Since petitioner failed to timely file a Motion for Reconsideration, the Resolution dated 10 November 2006 of the Court of Appeals became final and executory, and an Entry of Judgment was made in CA-G.R. S.P. No. 96343 on 2 December 2006.

On 19 July 2007, petitioner's new counsel filed an Entry of Appearance with an Urgent Motion for Reconsideration. Petitioner, through his new counsel, sought for the liberality of the Court of Appeals, faulting his former counsel for the procedural defects of his Petition and for his failure to seasonably seek reconsideration of the 10 November 2006 Resolution of the appellate court. Also, this time, it would appear that petitioner provided the explanation required by Section 11, Rule 13 of the Revised Rules of Court.

In a Resolution dated 9 November 2007, the Court of Appeals denied petitioner's Urgent Motion for Reconsideration for being filed out of time.

Hence, petitioner comes before this Court *via* the instant Special Civil Action for *Certiorari* assailing the Resolutions dated 10 November 2006 and 9 November 2007 of the Court of Appeals. Petitioner raises the following issues in the Petition at bar:

I.

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN NOT EXCUSING PETITIONER'S PROCEDURAL LAPSES.

II.

WHETHER OR NOT THE NLRC GRAVELY ABUSED ITS DISCRETION IN REDUCING THE AMOUNT OF BACKWAGES AWARDED COMPUTED FROM THE TIME THE COMPLAINT FOR ILLEGAL DISMISSAL WAS FILED.

III.

WHETHER OR NOT THE NLRC GRAVELY ABUSED ITS DISCRETION IN ORDERING THE PAYMENT OF SEPARATION PAY IN LIEU OF REINSTATEMENT.

IV.

WHETHER OR NOT THE NLRC GRAVELY ABUSED ITS DISCRETION IN DELETING THE AWARD FOR ATTORNEY'S FEE.

The Court first disposes the procedural issues involved in the present case.

It is evident from a perusal of the records that petitioner indeed failed to provide the Court of Appeals a written explanation as to why he did not personally serve a copy of his Petition therein upon the adverse parties, as required by Section 11, Rule 13[8] of the Revised Rules of Court. The records also readily reveal that petitioner did not file a timely Motion for Reconsideration of the 10 November 2006 Resolution of the Court of Appeals.

Petitioner, however, submits that he raised meritorious arguments in his Petition before the Court of Appeals, and the dismissal thereof on a mere technicality defeated the greater interest of substantial justice. Petitioner attributes the technical flaws committed before the appellate court to his former counsel, and urges the Court to excuse him therefrom since compliance with the procedural rules calls for the application of legal knowledge and expertise which he, as a layman, cannot be expected to know. Petitioner, thus, prays that this Court give his Petition due course and set aside the Resolutions dated 10 November 2006 and 9 November 2007 of the Court of Appeals in CA-G.R. SP No. 96343.

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[8] SEC. 11. *Priorities in modes of service and filing.* — Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed.

For their part, respondents CCBP and Taguibao had long conceded in this battle when they no longer appealed the 31 May 2006 Decision of the NLRC, therefore, rendering the same final and executory with respect to them. Yet, respondents CCBP and Taguibao still insist before this Court that petitioner was not illegally dismissed, since he was employed for a fixed-term only, and his services were terminated upon the expiration thereof. Respondents CCBP and Taguibao also argue that petitioner's *procedural faux pas* cannot be excused by merely attributing the same to his former counsel, in view of the doctrinal rule that negligence of the counsel binds his client.

The Court rules in favor of petitioner.

It is true that for petitioner's failure to comply with Section 11, Rule 13 of the Revised Rules of Court, his petition should be expunged from the records. In the case of *Solar Team Entertainment, Inc. v. Ricafort*,[9] the Court stressed the mandatory character of Section 11, Rule 13, *viz*:

> We thus take this opportunity to clarify that under Section 11, Rule 13 of the 1997 Rules of Civil Procedure, personal service and filing is the general rule, and resort to other modes of service and filing, the exception. Henceforth, whenever personal service or filing is practicable, in light of the circumstances of time, place and person, personal service or filing is mandatory. Only when personal service or filing is not practicable may resort to other modes be had, which must then be accompanied by a written explanation as to why personal service or filing was not practicable to begin with. In adjudging the plausibility of an explanation, a court shall likewise consider the importance of the subject matter of the case or the issues involved therein, and the *prima facie* merit of the pleading sought to be expunged for violation of Section 11. This Court cannot rule otherwise, lest we allow circumvention of the innovation introduced by the 1997 Rules in order to obviate delay in the administration of justice.

Nevertheless, the Rules of Court itself calls for its liberal construction, with the view of promoting their objective of securing a just, speedy and inexpensive disposition of every

[9] 355 Phil. 404, 413-414 (1998).

action and proceeding.[10] The Court is fully aware that procedural rules are not to be belittled or simply disregarded for these prescribed procedures insure an orderly and speedy administration of justice. However, it is equally true that litigation is not merely a game of technicalities. Law and jurisprudence grant to courts the prerogative to relax compliance with procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to put an end to litigation speedily and the parties' right to an opportunity to be heard.[11]

In numerous cases,[12] the Court has allowed liberal construction of Section 11, Rule 13 of the Revised Rules of Court when doing so would be in the service of the demands of substantial justice and in the exercise of the equity jurisdiction of this Court. In one such case, *Fulgencio v. National Labor Relations Commission*,[13] this Court provided the following justification for its non-insistence on a written explanation as required by Section 11, Rule 13 of the Revised Rules of Court:

> The rules of procedure are merely tools designed to facilitate the attainment of justice. They were conceived and promulgated to effectively aid the court in the dispensation of justice. Courts are not slaves to or robots of technical rules, shorn of judicial discretion. In rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat against substantive rights, and not the other way around. Thus, if the application of the Rules would tend to frustrate rather than promote justice, it is always within our power to suspend the rules, or except a particular case from its operation.

The call for a liberal interpretation of the Rules is even more strident in the instant case which petitioner's former counsel was obviously negligent in handling his case before the Court

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[10] 1997 RULES OF CIVIL PROCEDURE, Rule 1, Section 6.

[11] *Barnes v. Padilla*, G.R. No. 160753, 28 June 2005, 461 SCRA 533, 539.

[12] *Fulgencio v. National Labor Relations Commission*, 457 Phil. 868, 881-882 (2003); *Musa v. Amor*, 430 Phil. 128, 138 (2002); *Maceda v. De Guzman Vda. de Macatangay*, G.R. No. 164947, 31 January 2006, 481 SCRA 415, 423; *Barnes v. Reyes*, 458 Phil. 430, 438 (2003).

[13] *Id.*

of Appeals. It was petitioner's former counsel who failed to attach the required explanation to the Petition in CA-G.R. SP No. 96343. Said counsel did not bother to inform petitioner, his client, of the 10 November 2006 Resolution of the appellate court dismissing the Petition for lack of the required explanation. Worse, said counsel totally abandoned petitioner's case by merely allowing the reglementary period for filing a Motion for Reconsideration to lapse without taking any remedial steps; thus, the 10 November 2006 Resolution became final and executory.

The basic general rule is that the negligence of counsel binds the client. Hence, if counsel commits a mistake in the course of litigation, thereby resulting in his losing the case, his client must perforce suffer the consequences of the mistake. The reason for the rule is to avoid the possibility that every losing party would raise the issue of negligence of his or her counsel to escape an adverse decision of the court, to the detriment of our justice system, as no party would ever accept a losing verdict. This general rule, however, pertains only to simple negligence of the lawyer. **Where the negligence of counsel is one that is so gross, palpable, pervasive, reckless and inexcusable, then it does not bind the client since, in such a case, the client is effectively deprived of his or her day in court.**[14]

The circumstances of this case qualify it under the exception, rather than the general rule. The negligence of petitioner's former counsel may be considered gross since it invariably resulted to the foreclosure of remedies otherwise readily available to the petitioner. Not only was petitioner deprived of the opportunity to bring his case before the Court of Appeals with the outright dismissal of his Petition on a technicality, but he was also robbed of the chance to seek reconsideration of the dismissal of his Petition. **What further impel this Court to heed the call for substantial justice are the pressing merits of this case which, if left overshadowed by technicalities, could result in flagrant violations of the provisions of the Labor Code and of the**

[14] *Escudero v. Dulay*, G.R. No. 60578, 23 February 1988, 158 SCRA 69, 77.

categorical mandate of the Constitution affording protection to labor.

Higher interests of justice and equity demand that petitioner should not be denied his day in court and made him to suffer for his counsel's indiscretions. To cling to the general rule in this case would only to condone, rather than rectify, a serious injustice to a party — whose only fault was to repose his faith and trust in his previous counsel — and close our eyes to the glaring grave abuse of discretion committed by the NLRC.

This Court is aware that in the instant case, since petitioner's appeal before the Court of Appeals is to be given due course, the normal procedure is for us to remand the case to the appellate court for further proceedings. The Court, however, dispensed with this time-consuming procedure, since there is enough basis on which proper evaluation of the merits of the case may be had. Remand of this case would serve no purpose save to further delay its disposition contrary to the spirit of fair play. It is already an accepted rule of procedure for us to strive to settle the entire controversy in a single proceeding, leaving no root or branch to bear the seed of future litigation.[15]

Having thus settled the procedural matters in the instant case, the Court now proceeds to resolve the substantive issues.

The Court is convinced beyond cavil that the NLRC committed grave abuse of its discretion, amounting to lack or excess of jurisdiction, in modifying the 30 April 2005 Decision of the Labor Arbiter, for in so doing, the NLRC not only disregarded the elementary statutory and jurisprudential principles, but also violated the basic principles of social justice and protection to labor enshrined in the Constitution.

Explicit is Art. 279 of the Labor Code which states:

Art. 279. Security of Tenure. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who

[15] *Bunao v. Social Security System*, G.R. No. 159606, 13 December 2005, 477 SCRA 564, 571.

is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

Applying the above-quoted statutory provision, this Court decreed in *Pheschem Industrial Corporation v. Moldez*[16]:

Article 279 of the Labor Code provides that an illegally dismissed employee shall be entitled, *inter alia*, to the payment of his full backwages, inclusive of allowances and to his other benefits or their monetary equivalent **computed from the time that his compensation was withheld from him, *i.e.*, from the time of his illegal dismissal, up to the time of his actual reinstatement**. Thus, where reinstatement is adjudged, the award of backwages and other benefits continues beyond the date of the Labor Arbiter's Decision ordering reinstatement and extends up to the time said order of reinstatement is actually carried out. (Emphasis supplied.)

The Court was more emphatic in *Philippine Industrial Security Agency Corporation v. Dapiton*,[17] when it ruled that backwages had to be paid by the employer as part of the price or penalty he had to pay for illegally dismissing his employee. **It was to be computed from the time of the employee's illegal dismissal (or from the time his compensation was withheld from him) up to the time of his reinstatement.**

One of the natural consequences of a finding that an employee has been illegally dismissed is the payment of backwages corresponding to the period from his dismissal up to actual reinstatement. The statutory intent of this matter is clearly discernible. The payment of backwages allows the employee to recover from the employer that which he has lost by way of wages as a result of his dismissal.[18] Logically, it must be computed from the date of petitioner's illegal dismissal up to the time of actual reinstatement. There can be no gap or interruption, lest

[16] G.R. No. 161158, 9 May 2005, 458 SCRA 339, 348.

[17] 377 Phil. 951, 966 (1999).

[18] *Santos v. National Labor Relations Commission*, G.R. No. 76721, 21 September 1987, 154 SCRA 168, 172.

we defeat the very reason of the law in granting the same. That petitioner did not immediately file his Complaint should not affect or diminish his right to backwages, for it is a right clearly granted to him by law — should he be found to have been illegally dismissed — and for as long as his cause of action has not been barred by prescription.

The law fixes the period of time within which petitioner could seek remedy for his illegal dismissal and for as long as he filed his Complaint within the prescriptive period, he shall be entitled to the full protection of his right to backwages. In illegal dismissal cases, the employee concerned is given a period of four years from the time of his illegal dismissal within which to institute the complaint. This is based on Article 1146 of the New Civil Code which states that actions based upon an injury to the rights of the plaintiff must be brought within four years.[19] The four-year prescriptive period shall commence to run only upon the accrual of a cause of action of the worker.[20] Here, petitioner was dismissed from service on 15 September 2001. He filed his complaint for illegal dismissal on 14 June 2004. Clearly, then, the instant case was filed within the prescriptive period.

The Labor Arbiter, in his computation of the award for backwages to petitioner, had followed the long-settled rule[21] that full backwages should be awarded, to be reckoned from the time of illegal dismissal up to actual reinstatement. The NLRC, however, modified the Labor Arbiter's award for backwages by computing the same only from the time petitioner filed his Complaint for illegal dismissal before the Labor Arbiter, *i.e.*, on 24 October 2004, up to the day when the Labor Arbiter promulgated his judgment, *i.e.*, 30 April 2005. The NLRC provided no other explanation for its modification except that it

[19] *Callanta v. Carnation Philippines, Inc.*, 229 Phil. 279, 288-289 (1986).

[20] *Ramos v. Our Lady of Peace School*, 218 Phil. 708, 712 (1984).

[21] Labor Code, Art. 279; *C-E Construction Corp. v. National Labor Relations Commission*, 456 Phil. 597, 607-608 (2003); *Dela Cruz v. National Labor Relations Commission*, 359 Phil. 317, 329 (1998); *Paramount Vinyl Products Corp. v. National Labor Relations Commission*, G.R. No. 81200, 17 October 1990, 190 SCRA 525, 537.

was just and equitable to reduce the amount of backwages given to petitioner since, having been dismissed on 15 September 2001, it took him more than three years to file his Complaint against respondents CCBP and Taguibao.

We find no justice or rationality in the distinction created by the NLRC; and when there is neither justice or rationality, the distinction transgresses the elementary principle of equal protection and must be stricken out. Equal protection requires that all persons or things similarly situated should be treated alike, as to both rights conferred and responsibilities imposed.[22] There is no sufficient basis why petitioner should not be placed in the same plane with other illegally dismissed employees who were awarded backwages without qualification.

Herein petitioner, having been unjustly dismissed from work, is entitled to reinstatement without loss of seniority rights and other privileges and to full backwages, inclusive of allowances, and to other benefits or their monetary equivalents computed **from the time compensation was withheld up to the time of actual reinstatement.**[23] Accordingly, backwages must be awarded to petitioner in the amount to be computed from the time his employment was unlawfully terminated by respondents CCBP and Taguibao on 15 September 2001 up to the time he was actually reinstated on 1 March 2006.

We also do not agree with the NLRC in deleting the directive of the Labor Arbiter for the reinstatement of petitioner to his former position, on the flimsy excuse that the petitioner's position as Route Salesman was confidential in nature and that the relationship between petitioner and respondents CCBP and Taguibao was already strained.

To protect the employee's security of tenure, the Court has emphasized that the doctrine of "strained relations" should be strictly applied so as not to deprive an illegally dismissed employee of his right to reinstatement. Every labor dispute almost always results in "strained relations," and the phrase cannot be given

[22] *Lao Ichong v. Hernandez*, 101 Phil. 1155, 1164 (1957).

[23] Labor Code of the Philippines, Article 279.

an overarching interpretation; otherwise, an unjustly dismissed employee can never be reinstated.[24] The assumption of strained relations was already debunked by the fact that as early as March 2006 petitioner returned to work for respondent CCBP, without any antagonism having been reported thus far by any of the parties. Neither can we sustain the NLRC's conclusion that petitioner's position is confidential in nature. Receipt of proceeds from sales of respondent CCBP's products does not make petitioner a confidential employee. A confidential employee is one who (1) assists or acts in a confidential capacity, in regard to (2) persons who formulate, determine, and effectuate management policies specifically in the field of labor relations.[25] Verily, petitioner's job as a salesman does not fall under this qualification.

Finally, the Court overrules the deletion by the NLRC of the Labor Arbiter's award for attorney's fees to petitioner. Petitioner is evidently entitled to attorney's fees, since he was compelled to litigate[26] to protect his interest by reason of unjustified and unlawful termination of his employment by respondents CCBP and Taguibao.

WHEREFORE, premises considered, the instant Petition is *GRANTED*. The Resolutions dated 10 November 2006 and 9 November 2007 of the Court of Appeals in CA-G.R. SP No. 96343 and the Decision dated 31 May 2006 of the NLRC in NLRC NCR CA No. 044658-05 are *REVERSED* and *SET ASIDE*. The Decision of the Labor Arbiter in NLRC-NCR Case No. 00-06-07161-14 is hereby *REINSTATED*. Let the records of this case be remanded to the Labor Arbiter for implementation of this Decision, and he shall report his compliance herewith within ten (10) days from receipt hereof.

SO ORDERED.

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[24] *Quijano v. Mercury Drug Corporation*, 354 Phil. 112, 122 (1998).

[25] *San Miguel Corp. Supervisors and Exempt Union v. Laguesma*, 343 Phil. 143, 149 (1997).

[26] Civil Code of the Philippines , Art. 2208(2).

Ynares-Santiago (Chairperson), Austria-Martinez, Corona,[*] and *Peralta, JJ.,* concur.

THIRD DIVISION

[G.R. No. 182419. February 10, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **WILFREDO ENCILA *Y* SUNGA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF TRIAL COURT IF SUSTAINED BY APPELLATE COURT, RESPECTED. — We reiterate the fundamental rule that findings of the trial courts, which are factual in nature and which involve the credibility of witnesses, are accorded respect when no glaring errors, gross misapprehension of facts or speculative, arbitrary and unsupported conclusions can be gathered from such findings. This rule finds an even more stringent application where said findings are sustained by the Court of Appeals as in the case at bar. Prosecutions involving illegal drugs largely depend on the credibility of the police officers who conducted the buy-bust operation. In the process of converting into written form the statements of living human beings, not only fine nuances but a world of meaning apparent to the judge present, watching and listening, may escape the reader of the translated words. Considering that this Court has access only to the cold and impersonal records of the proceedings, it generally relies upon the assessment of the trial court, which had the distinct advantage of observing the conduct and demeanor of the witnesses during

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[*] Associate Justice Renato C. Corona was designated to sit as additional member replacing Associate Justice Antonio Eduardo B. Nachura per Raffle dated 10 September 2008.

trial. Hence, factual findings of the trial courts are accorded respect, absent any showing that certain facts of weight and substance bearing on the elements of the crime have been overlooked, misapprehended or misapplied. We have no reason to deviate from this rule.

2. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF "*SHABU*"; ELEMENTS.— When what is involved is a prosecution for illegal sale of regulated or prohibited drugs, conviction can be had if the following elements are present: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* of the crime. The delivery of the contraband to the poseur-buyer and the receipt of the marked money consummate the buy-bust transaction between the entrapment officers and the accused. The crime of illegal sale of dangerous drugs is committed as soon as the sale transaction is consummated.

3. ID.; ID.; ID.; ESTABLISHED IN BUY BUST OPERATION. — The prosecution clearly showed that the sale of *shabu* actually took place. Accused-appellant was caught *in flagrante delicto*, selling *shabu* through a buy-bust operation, which is a form of entrapment employed by peace officers as an effective way of apprehending a criminal in the act of the commission of an offense.

4. ID.; ID.; ID.; ID.; PRESENTATION OF MARKED MONEY, NOT INDISPENSABLE BUT STRENGTHENS THE TESTIMONIAL EVIDENCE.— While this Court has ruled in *People v. Cueno* that the failure to present the marked money in evidence is not indispensable for the conviction of the accused, as long as the sale can be adequately proved in some other way by the prosecution. The production of the marked money recovered from the possession of accused-appellant further strengthened the testimony of the prosecution witnesses that a buy-bust operation was conducted.

5. ID.; ID.; ILLEGAL POSSESSION OF "*SHABU*"; ELEMENTS; ALL PRESENT IN CASE AT BAR.— For an accused to be convicted of illegal possession of prohibited or regulated drugs, the following elements must concur: (1) the accused is in

possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possesses the said drug. With respect to the charge of illegal possession of dangerous drugs under Section 11, Article II of Republic Act No. 9165, all of these elements were present and duly proven in Criminal Case No. 3694. These are: (1) accused was found to be in possession of 2.63 grams of *shabu*, a dangerous drug; (2) his identity as the person found in possession of the dangerous drug was established; and (3) the person found to be in possession was not authorized to posses the dangerous drug. The prosecution has established that the arresting officers were able to retrieve six more plastic sachets of *shabu* in accused-appellant's possession when he was directed to empty his pockets upon being arrested *in flagrante delicto* in the buy-bust operation.

6. **REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; CANNOT PREVAIL OVER POSITIVE TESTIMONY.—** Accused-appellant's defense of denial and alibi deserves scant consideration when presented *vis-a-vis* the positive identification by poseur-buyer Ruben Potencion and back-up Richard Prior, who enjoy in their favor the presumption of regularity in the performance of their duties. The defense of denial, like alibi, are viewed by the Court with disfavor, for it can just as easily be concocted and is a common and standard defense ploy in most prosecutions for violation of the Dangerous Drugs Act. Bare denials cannot prevail over the direct and positive testimony of the witness pointing to accused as the perpetrator of the offense and cannot overcome the presumption that the police officers performed their duties regularly.

7. **ID.; ID.; CREDIBILITY OF WITNESSES; POLICE OPERATIVES PRESUMED TO BE PERFORMING THEIR REGULAR DUTIES AND WITH NO IMPROPER MOTIVE IMPUTED, UPHELD IN CASE AT BAR.—** Much weight is to be given to the testimony of the police operatives, who are presumed to have performed their duties in a regular manner. Accused-appellant has not imputed any improper motive on the part of the arresting officers nor filed a case against them in court. He also admitted that he had never met or encountered any of the police officers involved in the buy-bust operation prior to his arrest. He had no prior altercation or

misunderstanding with the arresting officers as to doubt the reasons for his arrest. The defense did not adduce any evidence that could have shown that the policemen deviated from the regular performance of their duty and that could have overcome this presumption. Neither did the defense interpose any evidence to show that said police officers were not performing their duty properly when the buy-bust operation was conducted. When the police officers involved in the buy-bust operation have no motive to falsely testify against the accused, the courts shall uphold the presumption that they have performed their duties regularly. *And unless there is clear and convincing evidence to the contrary suggesting ill motive on the part of the police officers or deviation from the regular performance of their duties, their testimonies with respect to the operation deserve full faith and credit.* The presumption in favor of the prosecution witnesses, who are all police officers, taken together with the overwhelming evidence presented by the prosecution against the accused, should therefore stand.

8. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE AND ILLEGAL POSSESSION OF *"SHABU"*; PENALTIES; CASE AT BAR.— Drug-pushing, as a crime, has been condemned as "an especially vicious crime," which is "one of the most pernicious evils that has ever crept into our society." We find that: Indeed nothing is more depraved than for anyone to be a merchant of death by selling prohibited drugs, an act which, as this Court said in one case, "often breeds other crimes. It is not what we might call a 'contained' crime whose consequences are limited to that crime alone, like swindling and bigamy. Court and police records show that a significant number of murders, rapes, and similar offenses have been committed by persons under the influence of dangerous drugs, or while they are 'high.' While spreading such drugs, the drug-pusher is also abetting, through his greed and irresponsibility, the commission of other crimes." With respect to the penalties imposed in Criminal Case No. 03-3693 for violation of Section 5, Article II of Republic Act No. 9165, the trial court, as affirmed by the Court of Appeals, was correct in imposing the penalty of life imprisonment and a fine of ₱500,000. Under Republic Act No. 9165, the *unauthorized sale of shabu* carries with it 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). Pursuant to the enactment of Republic Act No. 9346 entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," only life imprisonment and fine, instead of death, 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 or all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions. On the penalty imposed in Criminal Case No. 03-3694 for violation of Section 11, Article II of Republic Act No. 9165, the penalty of imprisonment of 12 years and 1 day to 20 years and a fine ranging from ₱300,000.00 to ₱400,000.00 are to be imposed, if the quantities of dangerous drugs are less than five (5) grams of *shabu*. Following the provisions of Republic Act No. 4103, otherwise known as the "Indeterminate Sentence Law," the indeterminate penalty of imprisonment of twelve (12) years and one (1) day as minimum to fourteen (14) years and one (1) day as maximum and a fine of ₱300,000.00 imposed by the trial court, as affirmed by the Court of Appeals, are proper.

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.*:

Before Us is an appeal from the Decision[1] dated 11 October 2007 of the Court of Appeals in CA-G.R. CR-HC No. 02146 entitled, ***People of the Philippines v. Wilfredo Encila Y Sunga alias "Freddie,"*** affirming the Decision[2] rendered by the Regional Trial Court (RTC) of Makati City, Branch 64, in Criminal Cases No. 03-3693 and No. 03-3694, finding accused-appellant Wilfredo

[1] Penned by Associate Justice Ramon R. Garcia with Associate Justices Josefina Guevara-Salonga and Vicente Q. Roxas, concurring; *rollo*, pp. 2-16.

[2] Penned by Judge Benjamin M. Aquino; 2 April 2004; CA *rollo*, pp. 54-61.

Encila *y* Sunga *alias* "Freddie" guilty beyond reasonable doubt of illegal sale, and illegal possession of methamphetamine hydrochloride, more popularly known as "*shabu*."

On 19 September 2003, two separate Informations were filed against accused-appellant before the RTC of Makati City for violation of Sections 5 and 11, Article II, Republic Act No. 9165, as amended, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, for allegedly (a) selling 0.22 gram of *shabu* and (b) being in illegal possession of 2.63 grams of *shabu*.

The offense involved in Criminal Case No. 03-3693 for violation of Section 5,[3] Article II of Republic Act No. 9165, was allegedly committed as follows:

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[3] SECTION 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*.— The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, ***shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.***

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, courtiers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursor and essential chemicals 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.

That on or about the 18th day of September 2003, in the City of Makati Philippines and a place within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, distribute and transport zero point twenty two (0.22) grams of Methylamphetamine Hydrochloride (*shabu*) which is a dangerous drug in consideration of five hundred (₱500.00) pesos.[4]

On the other hand, the Information pertaining to Criminal Case No. 03-3694 for violation of Section 11,[5] Article II of the same law, reads:

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. (Emphasis ours.)

[4] Records, p. 3.

[5] Section 11. *Possession of Dangerous Drugs*. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand persos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

xxx xxx xxx

(5) 50 grams or more of metamphetamine hydrochloride or "*shabu*";

xxx xxx xxx

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

xxx xxx xxx

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), ***if the quantities of dangerous drugs are less than five (5) grams*** of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, ***methamphetamine hydrochloride or "shabu,"*** or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

That on or about the 18th day of September 2003, in the City of Makati Philippines and a place within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in possession two point sixty three (2.63) grams of Methylamphetamine Hydrochloride, which is a dangerous drug.[6]

Upon his arraignment on 22 October 2003, accused-appellant, assisted by a counsel *de oficio*, pleaded "NOT GUILTY" to both charges.[7] Pre-trial was conducted. Trial on the merits followed.

During trial, the prosecution presented four witnesses: Forensic Chemist Police Inspector (P/Insp.) Richard Allan Mangalip, whose testimony was the subject of stipulation during the initial trial of the case; Makati City Anti Drug Abuse Council (MADAC) operative Ruben Potencion, the designated poseur-buyer; MADAC operative Richard Prior, back-up operative; and Police Officer 3 (PO3) Jay Lagasca, the team leader.

The prosecution's version is as follows:

Sometime in September 2003, an informant[8] reported to the MADAC office in Barangay San Isidro that accused-appellant Wilfredo Encila *alias* "Freddie" was rampantly selling illegal drugs. On the basis of this information, a buy-bust operation against the latter was planned by the MADAC operatives, headed by PO3 Jay Lagasca. The buy-bust operation was coordinated[9] with the Philippine Drug Enforcement Agency (PDEA). It was agreed upon by the team conducting the buy-bust operation that MADAC operative Ruben Potencion was to act as poseur-buyer. He was provided with one piece of marked five hundred peso bill.[10]

On 18 September 2003, at about 3:30 in the afternoon, the buy-bust team, composed of ten people on board two vehicles,

[6] Records, p. 5.

[7] *Id.* at 23.

[8] *Id.* at 6.

[9] *Id.* at 14.

[10] *Id.* at 17.

proceeded to E. Ramos Street, Barangay Pio del Pilar, Makati City. After a fifteen-minute wait, appellant was spotted by the team standing near a *sari-sari* store along E. Ramos Street. The informant and MADAC operative Ruben Potencion approached appellant. The informant introduced Ruben Potencion to appellant as a potential buyer of *shabu*. Accused-appellant asked Ruben Potencion how much *shabu* was needed. The latter replied that he needed ₱500.00 worth of *shabu*. Appellant received the marked money from Ruben Potencion and took out one plastic sachet containing *shabu* from his left pocket. Ruben Potencion examined the sachet and, upon being satisfied that the sachet contained *shabu*, gave the pre-arranged signal by throwing his lighted cigarette.

PO3 Jay Lagasca, with the assistance of back-up MADAC operative Richard Prior, rushed in and frisked appellant. Upon orders to empty his pockets, accused-appellant was found in possession of one piece of ₱500.00 bill, which was the marked buy-bust money, and six plastic sachets with suspected *shabu*. PO3 Lagasca placed appellant under arrest, informing him of the crime he committed and of his constitutional rights. Accused-appellant was asked his full name, and he answered. Ruben Potencion marked the plastic sachet of *shabu* with the initials of accused-appellant, "WSE," for the illegal sale; and the other plastic sachets recovered from the latter after his arrest, "WSE-1" to "WSE-6."

Accused-appellant was brought to the Makati City Police Station, Anti-Illegal Drugs Special Operation Task Force; then to the Philippine National Police (PNP) Crime Laboratory, to which all seven sachets were sent for examination.[11] The examination yielded the following results:

SPECIMEN SUBMITTED:

Seven (7) small heat-sealed transparent plastic sachet each containing white crystalline substance having the following markings and recorded net weights:

A (WSE) = 0.22 gram

[11] Request for Laboratory Examination; *id.* at 89.

B (WSE-1) = 1.30 grams
C (WSE-2) = 0.53 gram
D (WSE-3) = 0.41 gram
E (WSE-4) = 0.01 gram
F (WSE-5) = 0.25 gram
G (WSE-6) = 0.13 gram

FINDINGS:

Qualitative examination conducted on the above stated specimen gave POSITIVE result to the tests for the presence of Methylamphetamine Hydrochloride, a dangerous [drug].[12]

The contents of the seven plastic sachets were found positive for methylamphetamine hydrochloride (*shabu*), a dangerous drug, as evidenced by Physical Science Report No. D-1160-03S issued by Forensic Chemist Richard Allan B. Mangalip.

The accused's urine sample was found positive for THC[13] metabolites and methylamphetamine hydrochloride, which meant he was a user of *marijuana* and methylamphetamine hydrochloride or *shabu*, both dangerous drugs.

The prosecution also submitted, apart from the testimonial evidence given by the three witnesses, several documentary pieces of evidence:

(1) Makati City Police Anti-Illegal Drug Special Operation Sub Task Force PNP Aid SOTF Coordination Form dated 18 September 2003 with control number PDEA NOC 1809-03-14 indicating the details of the buy-bust operation (area, duration, vehicles, members of the buy-bust team, equipment);

(2) Request for Laboratory Examination dated 18 September 2003;

(3) Physical Science Report No. D-1160-03S;

(4) White crystalline substance with marking "WSE";

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[12] Exhibits B and B-3, Physical Science Report No. D-1160-03S; *id.* at 90.

[13] Records, p. 97.

(5) Photocopy of the ₱500-Peso Bill marked C2 above the Serial Number EJO88272;

(6) Sworn Statements of MADAC Ruben Potencion and PO3 Jay Lagasca;

(7) Spot Report dated 18 September 2003 made by the DEU of the PNP Anti-Illegal Drugs Special Operation Sub Task Force regarding accused-appellant's arrest;

(8) Final Investigation Report dated 19 September 2003 of the Makati City Police.[14]

The charges were denied by accused-appellant. The defense presented him and his alleged daughter, and they gave their own version.

Accused-appellant testified that he was 43 years old and worked as a contractual painter, having finished Grade III only.

Wilfredo Encila[15] and daughter Jocelyn Encila[16] testified that there was no buy-bust operation on 18 September 2003. On direct examination, accused-appellant asserted that at around 4:00 o'clock in the afternoon of 18 September 2003, he was arrested by the MADAC Police operatives at the house of a certain Danny, located at E. Ramos St., Barangay Pio del Pilar in Makati City. He was at said place because he brought his TV set to Danny for repair. The house of Danny was just a block away from his house. Danny, whose surname the accused-appellant did not know, was engaged in repairing of TV sets and other house appliances at his residence. He was not aware of any violation he committed.

On cross examination, however, accused-appellant mentioned that he was with his daughter at the house of Danny when four armed men in civilian clothes barged into the house and introduced themselves as police officers. He and Danny were frisked, but the police officers did not recover anything from the two of them. Despite their strong protests, accused-appellant and Danny

[14] Records, pp. 89-100.

[15] Testified that his daughter was 21 years old.

[16] Stated on testimony that she was only 17 years old.

were handcuffed. They asked the policemen why they were being apprehended, but they were simply ignored and forced to board a vehicle. Jocelyn Encila ran away in fear and reported the incident to their relatives. The two men were thereafter brought to the Makati City police station for further investigation, and Wilfredo Encila was turned over to the Crime Investigation Division. Danny was later released. It was only during the inquest proceedings in court that accused-appellant learned of the charges filed against him. Danny was not charged.

Accused-appellant also testified that, of the three prosecution witnesses who testified in court, only PO3 Jay Lagasca was among the four men who held him in the house of Danny.[17]

On 21 February 2006, after the prosecution and the defense rested their respective cases, Makati RTC Branch 64 convicted accused-appellant after determining that the prosecution had proven his guilt beyond reasonable doubt in Criminal Cases No. 03-3693 for illegal sale of *shabu* and No. 03-3694 for illegal possession of *shabu*. In its joint Decision,[18] the trial court disposed of the cases as follows:

WHEREFORE, in view of the foregoing, judgment is rendered as follows:

1. In Criminal Case No. 03-3693, the accused WILFREDO ENCILA *y* SUNGA is found GUILTY beyond reasonable doubt of the crime of violation of Section 5, Article II, Republic Act No. 9165 and is sentenced to suffer the penalty of the (sic) life imprisonment and to pay the fine of ₱500,000.00; and

2. In Criminal Case No. 03-3694, the accused WILFREDO ENCILA *y* SUNGA is found GUILTY beyond reasonable doubt of the crime of violation of Section 11, Art. II, Republic Act No. 9165 and is sentenced to suffer the indeterminate penalty of TWELVE (12) YEARS and ONE (1) DAY as minimum to FOURTEEN (14) YEARS and ONE (1) DAY as maximum pursuant to the Indeterminate Sentence Law (R.A. No. 4103, as amended).

[17] TSN, 7 November 2005, p. 16.

[18] CA *rollo*, pp. 19-26.

The accused is likewise ordered to pay a fine of ₱300,000.00.

The period during which the accused was under detention shall be considered in his favor pursuant to existing rules.[19]

Aggrieved by the decision, accused-appellant filed a Notice of Appeal, informing the trial court that he was appealing the same to the Court of Appeals.[20] He thereafter filed his appellant's brief on 18 October 2006. The Office of the Solicitor General filed the People's brief on 19 March 2006.

In a Decision dated 11 October 2007, the Court of Appeals affirmed the challenged RTC decision, disposing as follows:

WHEREFORE, premises considered, the Appeal is hereby DENIED and the questioned Decision dated February 21, 2006 of the Regional Trial Court (RTC), Branch 64, Makati City in Criminal Case Nos. 03-3693 & 03-3694 is AFFIRMED.[21]

Accused-appellant then filed a Notice of Appeal with the Court of Appeals on 30 October 2007 to appeal its decision before this Court.[22] In the meantime, accused-appellant remained committed at the Bureau of Corrections in Muntinlupa City.[23]

Presented before this Court, *via* Notice of Appeal, is accused-appellant's lone assignment of error:

THE COURT *A QUO* ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

The core issue for resolution is whether or not error attended the trial court's findings, as affirmed by the Court of Appeals, that accused-appellant is guilty beyond reasonable doubt of

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

[20] *Id.* at 27.

[21] *Rollo*, p. 16.

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

[23] *Id.* at 22.

violating Sections 5 and 11, Article II of Republic Act No. 9165.

In praying for his acquittal, accused-appellant denies the charges and claims that the prosecution's evidence failed to establish his guilt beyond reasonable doubt. According to the defense, the trial court relied heavily on the deficiency or weakness of the defense evidence,[24] instead of looking at the weight of the evidence presented by the prosecution. The defense argued that the trial court erred in finding fault in every minor and inconsequential discrepancy in the testimony of the defense witnesses — such as discrepancies in Jocelyn Encila's age, the residence of accused-appellant, the number of policemen who apprehended the accused-appellant, the tools and fixtures found at the shop of Danny — instead of focusing on the prosecution's evidence, which failed to discharge its burden of proving accused-appellant's guilt beyond reasonable doubt. The trial court belabored these non-issues, instead of ascertaining whether the accused was arrested in a legitimate entrapment operation, or *in flagrante delicto*.[25]

The defense assails the credibility of prosecution witness MADAC operative Ruben Potencion, claiming that the following testimony showed that even he was confused as to whether six sachets of *shabu* were found in accused-appellant's left pocket:

Q: And what did you do after the sachet of *shabu* was handed to you?

A: I examined it first, sir.

Q: What happened after that?

A: When I was sure that what I bought was really *shabu*, I gave the pre-arranged signal, sir.

xxx xxx xxx

Q: What happened next after you gave the pre-arranged signal?

A: PO3 Jay Lagasca and my back-up Richard Prior rushed to us, sir.

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[24] *Id.* at 49.

[25] *Id.*

Q: What did Richard Prior and PO3 Lagasca do after they rushed to the place where you were at that time?

A: They introduced themselves as MADAC and police operatives, sir.

Q: And what did they do after they introduced themselves as such?

A: They asked the name of the accused and PO3 Lagasca informed the accused of his constitutional rights, sir.

Q: How about Richard Prior, what else did he do?

A: He frisked the accused, sir.

Q: What did he find out if he found anything?

A: Nothing, sir.

Q: So, what happened after he failed to find anything from the accused?

A: Richard Prior ordered the accused to empty his pockets, sir.

Q: And what happened after the accused was ordered to empty his pockets?

A: The marked money was recovered and another six (6) plastic sachets were recovered from the left pocket of the accused, sir.[26]

The defense laments that while the witness may have expertly recognized the *shabu* just by looking at it, however, what is also apparent is his confusion as to whether the six sachets of *shabu* were found in the possession of the accused, further stating that accused-appellant was not even called upon to offer evidence on his behalf.

On the other hand, the Office of the Solicitor General (OSG), argues otherwise, maintaining that the prosecution presented overwhelming evidence proving his guilt beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act No. 9165.

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[26] Testimony of Ruben Potencion, TSN, pp. 14-17, 23 September 2004.

We sustain accused-appellant's conviction.

The presumption of innocence accorded the accused was overturned by the evidence presented by the prosecution.

First of all, we reiterate the fundamental rule that findings of the trial courts, which are factual in nature and which involve the credibility of witnesses, are accorded respect when no glaring errors, gross misapprehension of facts or speculative, arbitrary and unsupported conclusions can be gathered from such findings.[27] This rule finds an even more stringent application where said findings are sustained by the Court of Appeals as in the case at bar.[28]

Prosecutions involving illegal drugs largely depend on the credibility of the police officers who conducted the buy-bust operation.[29] In the process of converting into written form the statements of living human beings, not only fine nuances but a world of meaning apparent to the judge present, watching and listening, may escape the reader of the translated words. Considering that this Court has access only to the cold and impersonal records of the proceedings, it generally relies upon the assessment of the trial court, which had the distinct advantage of observing the conduct and demeanor of the witnesses during trial.[30] Hence, factual findings of the trial courts are accorded respect, absent any showing that certain facts of weight and substance bearing on the elements of the crime have been overlooked, misapprehended or misapplied. We have no reason to deviate from this rule.

Considering, however, that what is at stake is no less than the liberty of accused-appellant, this Court conducted a painstaking review of the entire records of the case. Contrary to accused-

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[27] *People v. Soriano*, G.R. No. 173795, 3 April 2007, 520 SCRA 458, 463-464.

[28] *Teodosio v. Court of Appeals*, G.R. No. 124346, 8 June 2004, 431 SCRA 194, 203.

[29] *People v. Nicolas*, G.R. No. 170234, 8 February 2007, 515 SCRA 187, 204.

[30] *People v. Ahmad*, 464 Phil. 848, 857 (2004).

appellant's allegation, we find that the prosecution presented overwhelming evidence to prove his guilt beyond reasonable doubt.

When what is involved is a prosecution for illegal sale of regulated or prohibited drugs, conviction can be had if the following elements are present: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* of the crime. The delivery of the contraband to the poseur-buyer and the receipt of the marked money consummate the buy-bust transaction between the entrapment officers and the accused.[31] The crime of illegal sale of dangerous drugs is committed as soon as the sale transaction is consummated.

All of the foregoing elements were present in Criminal Case No. 03-3693.

The prosecution clearly showed that the sale of *shabu* actually took place. Accused-appellant was caught *in flagrante delicto*, selling *shabu* through a buy-bust operation, which is a form of entrapment employed by peace officers as an effective way of apprehending a criminal in the act of the commission of an offense.[32]

MADAC operative and "poseur-buyer" Ruben Potencion categorically identified[33] accused-appellant Wilfredo Encila *y* Sunga *alias* "Freddie" as the "seller" who sold to him one plastic sachet of *shabu*,[34] and who received the ₱500.00 marked bill as payment for it on 18 September 2004 along E. Ramos Street, in Barangay Pio del Pilar, Makati City. The *shabu*, subject of

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[31] *People v. Mala*, 458 Phil. 180, 190 (2003).

[32] *People v. Jocson*, G.R. No. 169875, 18 December 2007, 540 SCRA 585, 592; *People v. Doria*, 361 Phil. 595, 610 (1999), citing *People v. Basilgo*, G.R. No. 107327, 5 August 1994, 235 SCRA 191, 195-196.

[33] TSN, 23 September 2004, p. 6.

[34] *Id.* at 14-15.

the sale, was recovered and identified in court by Ruben Potencion.[35] He testified:

Q: Mr. Witness, if the sachet of *shabu* that you bought from the accused will be shown to you, will you be able to identify the same?

A: Yes, sir.

Q: I'm showing to you several pieces of plastic sachets. Will you please go over the same and identify the sachet of *shabu* that you bought from the accused during the operation?

Witness

This one, sir.

Pros. Bagaoisan

Why are you certain Mr. Witness that this is the same sachet of *shabu* that you bought from the accused?

A: Because I was the one who put the marking "WSE", sir.

Q: Where were you when you placed this marking?

A: At the place of operation, sir.

Q: What does this marking "WSE" stand for?

A: It's the initial of the accused – Wilfredo Sunga Encila, sir.

Pros. Bagaoisan:

x x x With respect to the six (6) other sachets which were taken by MADAC Operative Richard Prior from the possession of the accused, were you able to see them?

Witness:

Yes, sir.

Pros. Bagaoisan:

Where were you when you first saw these six (6) other sachets?

A: I was also there, sir.

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[35] *Id.* at 17-19.

Q: Please go over these sachets I presented to you earlier and identify the six (6) sachets which were taken by Richard Prior from the possession of the accused.

A: These are the six (6) sachets, sir.

Q: Why are you certain that these are the same sachets that were recovered by Richard Prior from the possession of the accused?

A: Because I was the one who placed the markings, sir.

Q: For the record, what were the markings that you placed?

Witness

WSE-1 to WSE-6, sir.

Pros. Bagaoisan:

The witness Your Honor identified Exhibits C-1 to C-6 as the sachets subject matter of possession. After you have arrested the accused, where did you bring him?

A: We brought him to the Makati City Police Station, Anti-Illegal Drugs Special Operation Task Force, sir.

Q: From that office, where did you bring the accused as well as the pieces of evidence?

A: We brought the accused together with the pieces of evidence to the PNP Crime Laboratory, sir.[36]

Based on the Physical Science Report[37] conducted by Forensic Chemist Richard Allan B. Mangalip, the substance, weighing 0.22 gram, which was bought from accused-appellant, was examined and determined to be methamphetamine hydrochloride. The other six sachets of *shabu*, weighing a total of 2.66 grams, found in accused-appellant's pockets upon being asked to empty his pockets after his arrest, were also examined and tested to be methamphetamine hydrochloride (*shabu*). The testimony of poseur-buyer Ruben Potencion was later corroborated on material points by the other members of the buy-bust team, particularly

[36] *Id.* at 17-20.

[37] Records, p. 90.

PO3 Jay Lagasca (team leader) and MADAC operative Richard Prior (backup).

While this Court has ruled in *People v. Cueno*[38] that the failure to present the marked money in evidence is not indispensable for the conviction of the accused, as long as the sale can be adequately proved in some other way by the prosecution. The production of the marked money recovered from the possession of accused-appellant further strengthened the testimony of the prosecution witnesses that a buy-bust operation was conducted.

We herein quote the material portions of the testimony of the poseur-buyer detailing accused-appellant's arrest, to wit:

Pros. Bagaoisan

How long did you wait for the accused?

Witness

Fifteen (15) minutes, sir.

Q: And what happened after the lapse of fifteen (15) minutes waiting period?

A: We were just there watching, observing his movements, sir.

Q: And what happened next after you watched his movements?

xxx xxx xxx

Q: And after you saw the accused, what did you do next?

Witness

The informant and I approached the accused, sir.

Pros. Bagaoisan

And what happened after you approached the accused?

A: The accused and the informant talked with each other, sir.

Q: Where were you when the informant and the accused talked with each other?

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[38] 359 Phil. 151, 162 (1998).

A: I was there, sir.

Q: What was the topic of their conversation?

A: The informant introduced me to the accused as someone who was in need of *shabu*, sir.

xxx xxx xxx

Pros. Bagaoisan

Q: What was your answer?

A: *Tapatan mo na lang tong limang daan ko*.

Q: After you said that, what did you do?

A: I then handed to him the marked money, sir.

Q: After the accused received the same, what did he do?

A: He put it inside his right pocket and he drew out from his left pocket one (1) plastic sachet and he handed the same to me, sir.

Q: What did you do after the sachet of *shabu* was handed to you?

A: I examined it first, sir.

Pros. Bagaoisan

What happened after that?

Witness

When I was sure that what I bought was really *shabu*, I gave the pre-arranged signal, sir.

Q: What was the pre-arranged signal that you gave?

A: I threw my lighted cigarette, sir.

Q: What happened next after you gave the pre-arranged signal?

A: PO3 Jay Lagasca and my backup Richard Prior rushed to us, sir.

Q: What did Richard Prior and PO3 Lagasca do after they rushed to the place where you were at that time?

A: They introduced themselves as MADAC and police operatives, sir.

Pros. Bagaoisan

And what did they do after they introduced themselves as such?

Witness

They asked the name of the accused and PO3 Lagasca informed the accused of his constitutional rights, sir.

Q: How about Richard Prior, what else did he do?

A: He frisked the accused, sir.

Q: What did he find out, if he found anything?

A: Nothing, sir.

Q: So, what happened after he failed to find anything from the accused?

A: Richard Prior ordered the accused to empty his pockets, sir.

Q: And what happened after the accused was ordered to empty his pockets?

Witness

The marked money was recovered and another six (6) plastic sachets were recovered from the left pocket of the accused, sir.

Pros. Bagaoisan

How far were you from Richard Prior and the accused when Prior was able to recover the buy-bust money and six (6) other plastic sachets?

A: We were near each other, sir.[39]

On the other hand, for an accused to be convicted of illegal possession of prohibited or regulated drugs, the following elements must concur: (1) the accused is in possession of an item or

[39] TSN, 23 September 2004, pp. 12-17.

object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possesses the said drug.[40]

With respect to the charge of illegal possession of dangerous drugs under Section 11, Article II of Republic Act No. 9165, all of these elements were present and duly proven in Criminal Case No. 3694. These are: (1) accused was found to be in possession of 2.63 grams of *shabu*, a dangerous drug; (2) his identity as the person found in possession of the dangerous drug was established; and (3) the person found to be in possession was not authorized to posses the dangerous drug. The prosecution has established that the arresting officers were able to retrieve six more plastic sachets of *shabu* in accused-appellant's possession when he was directed to empty his pockets upon being arrested *in flagrante delicto* in the buy-bust operation.

Material points in the testimony of MADAC operative Richard Prior's testimony are herein quoted:

PROSECUTOR

> From that distance of ten to fifteen meters away, what did you observe or notice in the place where the transaction was going on?

WITNESS

> I saw Ruben Potencion and the suspect talking with each other together with the informant.

> xxx xxx xxx

WITNESS

> I saw MADAC Ruben Potencion [hand] the money to the accused.

> xxx xxx xxx

WITNESS

> The accused received the money and in turn, he gave something to Ruben Potencion.

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[40] *People v. Lagata*, 452 Phil. 846, 853 (2003).

xxx xxx xxx

WITNESS

I saw Ruben Potencion looking at the item that was handed to him.

PROSECUTOR

What happened after that?

WITNESS

Ruben Potencion gave the pre-arranged signal.

PROSECUTOR

What was the pre-arranged signal that was given by MADAC Ruben Potencion?

WTINESS

By throwing a lighted cigarette, sir.

xxx xxx xxx

PROSECUTOR

After the pre-arranged signal was given, what did you do?

WITNESS

We proceeded to the place where Ruben Potencion and the accused were at that time to arrest Wilfredo.

xxx xxx xxx

PROSECUTOR

What happened after you proceeded to the place where the transaction took place?

WITNESS

PO3 Jay Lagasca introduced himself as operative of the DEU and we ordered the accused to empty his pocket.

PROSECUTOR

What happened after you ordered the accused to empty his pocket?

WITNESS

I recovered the buy-bust money and six pieces of plastic sachets containing suspected *shabu*, sir.

PROSECUTOR

What happened after the recovery of the buy-bust money and six more sachets from the possession of the accused?

WITNESS

I gave the marked money to PO3 Lagasca and I gave the plastic sachets to Ruben Potencion.

PROSECUTOR

Why did you give the plastic sachets you recovered to MADAC Ruben Potencion?

WITNESS

For markings, sir.

xxx xxx xxx

PROSECUTOR

How about the six sachets that you were able to recover from the possession of the accused, will you be able to identify the same?

WITNESS

Yes, sir.

xxx xxx xxx

PROSECUTOR

Now, Mr. Witness, who brought the items to the crime laboratory for laboratory examination and the accused for drug testing?

WITNESS

Me, sir.[41]

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[41] TSN, 7 June 2005, pp. 7-15.

Accused-appellant raised as his defense the seemingly confusing statements made by MADAC operative Richard Prior in open court as to the retrieval of the six additional plastic sachets of *shabu* found in his possession. The alleged confusion and incredibility are more imaginary than real. Taken as a whole, the testimony of MADAC operative Richard Prior clearly showed that when accused-appellant was searched and directed to empty his pockets, they found six more plastic sachets of *shabu* in his possession.

On another point, the rigid testimonies of the witnesses for the defense leave this Court with no other alternative but to discredit the evidence for being incredible. Accused-appellant's defense was anchored on his assertions of denial and alibi. The defense claims that at the time the alleged buy-bust operation took place, accused-appellant was with his 17-year-old daughter Jocelyn at the repair shop of a certain Danny. This defense seemed more like an afterthought considering that, on his direct examination, this corroborating detail that his daughter was with him at that time was not even mentioned by accused-appellant. It was only on cross-examination that this detail was revealed. He also testified that four armed men entered the house of Danny. Jocelyn, on the other hand, said there were three armed persons. Accused-appellant and Jocelyn could not give the surname of Danny despite the fact that the accused had known him for more than a year. The defense also provided no explanation as to why this certain Danny was not presented as defense witness, considering what would have been the weight of his corroborating testimony.

Accused-appellant's defense of denial and alibi deserves scant consideration when presented *vis-a-vis* the positive identification by poseur-buyer Ruben Potencion and back-up Richard Prior, who enjoy in their favor the presumption of regularity in the performance of their duties. The defense of denial, like alibi, are viewed by the Court with disfavor, for it can just as easily be concocted and is a common and standard defense ploy in most prosecutions for violation of the Dangerous Drugs Act. Bare denials cannot prevail over the direct and positive testimony of the witness pointing to accused as the perpetrator of the

offense[42] and cannot overcome the presumption that the police officers performed their duties regularly.[43]

Much weight is to be given to the testimony of the police operatives, who are presumed to have performed their duties in a regular manner. Accused-appellant has not imputed any improper motive on the part of the arresting officers nor filed a case against them in court. He also admitted that he had never met or encountered any of the police officers involved in the buy-bust operation prior to his arrest. He had no prior altercation or misunderstanding with the arresting officers as to doubt the reasons for his arrest.

The defense did not adduce any evidence that could have shown that the policemen deviated from the regular performance of their duty and that could have overcome this presumption. Neither did the defense interpose any evidence to show that said police officers were not performing their duty properly when the buy-bust operation was conducted. When the police officers involved in the buy-bust operation have no motive to falsely testify against the accused, the courts shall uphold the presumption that they have performed their duties regularly.[44] *And unless there is clear and convincing evidence to the contrary suggesting ill motive on the part of the police officers or deviation from the regular performance of their duties, their testimonies with respect to the operation deserve full faith and credit.*[45] The presumption in favor of the prosecution witnesses, who are all police officers, taken together with the overwhelming evidence presented by the prosecution against the accused, should therefore stand.

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[42] TSN, 23 September 2003, p. 6.

[43] *People v. Pacis*, 434 Phil. 148, 160 (2002).

[44] *People v. Villanueva*, G.R. No. 172116, 30 October 2006, 506 SCRA 280, 288.

[45] *People v. De Guzman*, G.R. No. 177569, 28 November 2007, 539 SCRA 306, 317.

Drug-pushing, as a crime, has been condemned as "an especially vicious crime,"[46] which is "one of the most pernicious evils that has ever crept into our society."[47] We find that:

> Indeed nothing is more depraved than for anyone to be a merchant of death by selling prohibited drugs, an act which, as this Court said in one case, "often breeds other crimes. It is not what we might call a 'contained' crime whose consequences are limited to that crime alone, like swindling and bigamy. Court and police records show that a significant number of murders, rapes, and similar offenses have been committed by persons under the influence of dangerous drugs, or while they are 'high.' While spreading such drugs, the drug-pusher is also abetting, through his greed and irresponsibility, the commission of other crimes."[48]

With respect to the penalties imposed in Criminal Case No. 03-3693 for violation of Section 5, Article II of Republic Act No. 9165, the trial court, as affirmed by the Court of Appeals, was correct in imposing the penalty of life imprisonment and a fine of ₱500,000. Under Republic Act No. 9165, the *unauthorized sale of shabu* carries with it 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). Pursuant to the enactment of Republic Act No. 9346 entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," only life imprisonment and fine, instead of death, 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 or all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

On the penalty imposed in Criminal Case No. 03-3694 for violation of Section 11, Article II of Republic Act No. 9165, the penalty of imprisonment of 12 years and 1 day to 20 years

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[46] *People v. Nario*, G.R. No. 94863, 19 July 1993, 224 SCRA 647, 652.

[47] *People v. Policarpio*, G.R. No. 69844, 23 February 1988, 158 SCRA 85, 91.

[48] *Office of the Court Administrator v. Librado*, 329 Phil. 433, 436 (1996).

and a fine ranging from ₱300,000.00 to ₱400,000.00 are to be imposed, if the quantities of dangerous drugs are less than five (5) grams of *shabu*. Following the provisions of Republic Act No. 4103, otherwise known as the "Indeterminate Sentence Law," the indeterminate penalty of imprisonment of twelve (12) years and one (1) day as minimum to fourteen (14) years and one (1) day as maximum and a fine of ₱300,000.00 imposed by the trial court, as affirmed by the Court of Appeals, are proper.

WHEREFORE, in view of the foregoing, the Court of Appeals Decision dated 11 October 2007 in CA-G.R. CR-H.C. No. 02146 affirming the Decision promulgated on 21 February 2006 by the Regional Trial Court of Makati City, Branch 64, in Criminal Cases No. 03-3693 and No. 03-3694, finding accused-appellant Wilfredo Encila *y* Sunga, *alias* "Freddie," guilty beyond reasonable doubt of violating Sections 5 (illegal sale of regulated and prohibited drugs) and 11 (illegal possession of regulated and prohibited drugs) of the Comprehensive Dangerous Drugs Act of 2002, and imposing upon him the penalties of (a) life imprisonment and a fine of ₱500,000.00 in Criminal Case No. 03-3693; and (b) the indeterminate penalty of imprisonment of twelve (12) years and one (1) day as minimum to fourteen (14) years and one (1) day as maximum pursuant to the Indeterminate Sentence Law (Republic Act No. 4103) and a fine of ₱300,000.00 in Criminal Case No. 03-3694, is hereby *AFFIRMED*.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Brion,[*] and *Peralta, JJ.,* concur.

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[*] Associate Justice Arturo D. Brion was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 28 January 2009.

THIRD DIVISION

[G.R. No. 182791. February 10, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ELISTER BASMAYOR *y* GRASCILLA,**[1] *accused-appellant.*

SYLLABUS

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

2. REMEDIAL LAW; EVIDENCE; CREDIBLTY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED.— Both trial court and the Court of Appeals gave full faith and credence to the testimony of AAA on the rape that happened on 12 November 2001. They found the same to be sufficient to convict appellant of the crime charged. There being overwhelming evidence showing that on 12 November 2001 appellant had carnal knowledge of AAA by means of force and intimidation, we find no compelling reason to deviate from the findings of the trial court as affirmed by the Court of Appeals. When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly.

[1] Sometimes spelled "Grascilia."

3. ID.; ID.; ID; TESTIMONIES OF YOUNG RAPE VICTIM UPHELD, ESPECIALLY WHEN CONSISTENT WITH THE MEDICAL FINDINGS.— This Court has held time and again that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being the subject of a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. Youth and immaturity are generally badges of truth. It is highly improbable that a girl of tender years, one not yet exposed to the ways of the world, would impute to any man a crime so serious as rape if what she claims is not true. x x x Hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration. And when the consistent and forthright testimony of a rape victim is consistent with medical findings, there is sufficient basis to warrant a conclusion that the essential requisites of carnal knowledge have been established.

4. ID.; ID.; DENIAL; CANNOT PREVAIL OVER POSITIVE TESTIMONY.— As against the convincing evidence of the prosecution, appellant simply denies the charge that he raped AAA on 12 November 2001, saying that he was resting at home with his wife. His denial, unsubstantiated and uncorroborated, must certainly fail. Mere denial, if unsubstantiated by clear and convincing evidence, has no weight in law and cannot be given greater evidentiary value than the positive testimony of a rape victim. Denial is intrinsically weak, being a negative and self-serving assertion.

5. ID.; ID.; CREDIBILITY OF WITNESSES; UPHELD IN THE ABSENCE OF IMPROPER MOTIVE.— Appellant's statement that he does not know of any reason why AAA charged him with rape further strengthened AAA's credibility. When there is no evidence to show any improper motive on the part of the rape victim to testify falsely against the accused or to falsely implicate him in the commission of a crime, the logical conclusion is that the testimony is worthy of full faith and credence.

6. CRIMINAL LAW; ANTI-RAPE LAW OF 1997 (RA 8353); LAW APPLICABLE FOR STATUTORY RAPE COMMITTED IN 2001.— The felony was committed on 12 November 2001.

The provisions of Republic Act No. 8353, which was the law in effect on the day when the rape was committed, shall apply. The gravamen of the offense of rape is sexual congress with a woman by force and without consent. If the woman is under 12 years of age, proof of force is not an element of statutory rape, but the absence of a free consent is presumed. Conviction will therefore lie, provided sexual intercourse is proven. But if the woman is 12 years of age or over at the time she was violated, sexual intercourse must be proven and also that it was done through force, violence, intimidation or threat. As provided for in the Revised Penal Code, sexual intercourse with a girl below 12 years old is statutory rape. The two elements of statutory rape are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman is below 12 years of age. Sexual congress with a girl under 12 years old is always rape. Appellant was charged with statutory rape. The first element was proved by the testimony of the victim herself, while the second element was established by AAA's Certificate of Live Birth showing that she was born on 4 February 1990. AAA was eleven (11) years old when the crime was committed on 12 November 2001.

7. ID.; ID.; QUALIFIED RAPE; MINORITY AND RELATIONSHIP; ESTABLISHED IN CASE AT BAR.— For one to be convicted of qualified rape, at least one of the aggravating/qualifying circumstances mentioned in Article 266-B must be alleged in the information and duly proved during the trial. In the instant case, the aggravating/qualifying circumstance of minority (under twelve years old) and relationship have been alleged in the information. As stated above, the victim's minority has been proved by her Certificate of Live Birth. As regards the qualifying circumstance of relationship, it is alleged in the information that the victim is the daughter of appellant's live-in partner (common-law spouse). We agree with the Court of Appeals that the qualifying circumstance of relationship has been sufficiently proved. The victim declared that the appellant was her mother's live-in partner. Her mother, BBB, also testified and pointed to appellant as her live-in partner. On the other hand, appellant, who calls the victim his "*anak-anakan*," claimed that his live-in partner was CCC, not BBB. We find that BBB and CCC are one and the same person. It is of no moment that appellant knows BBB by the name of CCC. BBB categorically identified appellant to be her live-in partner, which statement

was seconded by the victim. If BBB and CCC were truly different persons, appellant could have easily presented CCC to show such reality. This, he did not do. His reliance on his declaration that his common-law wife was CCC and not BBB was fatal to his cause.

8. ID.; ID.; ID.; PROPER PENALTY AND DAMAGES IN CASE AT BAR.— The prosecution having alleged and proved during trial the aggravating/qualifying circumstances of minority and relationship mentioned in Article 266-B, the Court of Appeals correctly convicted him of qualified rape and imposed on him the capital punishment. With the effectivity, however, of Republic Act No. 9346, entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of the supreme penalty of death has been prohibited. Pursuant to Section 2 thereof, the penalty to be meted out to appellant shall be *reclusion perpetua*. Notwithstanding the reduction of the penalty imposed on appellant, he is not eligible for parole, following Section 3 of said law which provides: SECTION 3. Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended. As to the award of damages, the trial court awarded ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. The Court of Appeals properly increased the said amounts to ₱75,000.00, because the amount of ₱75,000.00 each for civil indemnity and moral damages is to be awarded if the crime is qualified by circumstances that warrant the imposition of the death penalty. With respect to the award of moral damages, the same is to be granted without need of pleading or proof of basis thereof. Due to the presence of the aggravating/qualifying circumstances of minority and relationship, the award of exemplary damages in the amount of ₱25,000.00 by the Court of Appeals is in order.

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.*:

On appeal is the Decision[2] of the Court of Appeals in CA-G.R. CR-HC No. 01132 dated 21 December 2007 which affirmed with modifications the Decision[3] of the Regional Trial Court (RTC) of Pasig City, Branch 261, in Criminal Cases Nos. 122127-H and 122128-H, dismissing the first case for statutory rape against appellant Elister Basmayor due to insufficiency of evidence, while finding him guilty of statutory rape on the second charge committed against AAA.[4] The Court of Appeals found appellant guilty of Qualified Rape and imposed on him the penalty of *Reclusion Perpetua*. It further increased the awards for civil indemnity and moral damages from ₱50,000.00 to ₱75,000.00 each and, in addition awarded exemplary damages in the amount of ₱25,000.00.

On 19 November 2001, two informations were filed before the RTC of Pasig City, docketed as Criminal Cases Nos. 122127-H

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[2] Penned by Associate Justice Japar B. Dimaampao with Associate Justices Mario L. Guariña and Sixto C. Marella, Jr., concurring; CA *rollo*, pp. 86-95.

[3] Records, pp. 140-146.

[4] This is pursuant to the ruling of this Court in *People of the Philippines v. Cabalquinto* (G.R. No. 167693, 19 September 2006, 502 SCRA 419), wherein this Court resolved to withhold the real name of the victims-survivors and to use fictitious initials instead to represent them in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. The names of such victims, and of their immediate family members other than the accused, shall appear as "AAA", "BBB", "CCC", and so on. Addresses shall appear as "XXX" as in "No. XXX Street, XXX District, City of XXX."

The Supreme Court took note of the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Sec. 29 of Republic Act No. 7610, otherwise known as *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*; Sec. 44 of Republic Act No. 9262, otherwise known as *Anti-Violence Against Women and Their Children Act of 2004*; and Sec. 40 of A.M. No. 04-10-11-SC, known as *Rule on Violence Against Women and Their Children* effective November 15, 2004.

and 122128-H, charging appellant with two counts of Statutory Rape in relation to Republic Act No. 7610 and Articles 266-A and 266-B of the Revised Penal Code. The accusatory portion of the two informations is similarly worded except for the date. The information in Criminal Case No. 122128-H reads:

> On or about November 12, 2001,[5] in Pasig City, and within the jurisdiction of this Honorable Court, the accused, with lewd design and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with one AAA, 11 years old, minor, and the child of the live-in partner of the accused, against her will and consent.[6]

When arraigned on 13 December 2001, appellant, with the assistance of counsel *de oficio*, pleaded "not guilty" to the two counts of rape.[7]

At the pre-trial conference held on 8 February 2002, no stipulation was made by the parties. The prosecution marked some of its exhibits and reserve the right to present other exhibits during trial. The defense likewise reserved its right to adduce documentary exhibits during the course of the proceedings.[8]

The prosecution presented four witnesses, namely: AAA,[9] the victim; BBB, the victim's mother;[10] Larry dela Cruz,[11] Security Force Member of Barangay Sto. Tomas, Pasig City; and Dr. Pierre Paul F. Carpio,[12] Medico-Legal Officer, Philippine National Police (PNP) Crime Laboratory, Libis, Quezon City.[13]

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[5] 9 November 2001 (Criminal Case No. 122127-H) and 12 November 2001 (Crim. Case No. 122128-H); records, pp. 1 and 10.

[6] Records, p. 10.

[7] *Id.* at 15-16.

[8] *Id.* at 19.

[9] TSN, 19 July 2002; TSN, 23 August 2002.

[10] TSN, 10 April 2003.

[11] TSN, 18 September 2003.

[12] *Id*.

[13] TSN, 7 February 2001.

AAA testified that at around 9:00 a.m. of 9 November 2001, she was with her mother (BBB) and the latter's live-in partner (appellant) in their house at XXX, XXX, XXX City. While her mother was sleeping, her stepfather (appellant) embraced her and touched her "*pepe*." She removed his hands from her private parts and went to sleep beside her mother. An hour after, or at around 10:00 a.m., she was awakened from her sleep by appellant who was undressing her. Appellant removed his shorts and brief and lay on top of her. Appellant kissed her cheeks, mashed her breasts, licked her vagina and inserted his penis therein causing her much pain. During this time, her mother was out peddling goods.

On 12 November 2001, at around 10:00 a.m., while lying in bed, appellant again placed himself on top of AAA and inserted his penis inside her vagina, causing her pain. Her mother was not in the house when appellant violated her a second time.

AAA clarified that when the first rape happened on 9 November 2001, her mother was with her sleeping. She tried to wake her up, but to no avail. The rape lasted only for a minute. Appellant told her not to tell anyone about the incident. She merely cried and did not tell anyone because she was afraid that appellant might kill her. She said rape is bad. She revealed that her "*Ate* Lily" came to know of her ordeal from a neighbor who witnessed what happened to the victim. Further, she explained that on 12 November 2001, her mother was in the market when the rape occurred.

AAA identified the appellant as the person who raped her. She also identified the sworn affidavit she executed[14] relative to these cases and confirmed the contents thereof.

BBB testified that AAA was her daughter who was born on 4 February 1990 as evidenced by the latter's Certificate of Live Birth.[15] BBB said that on 9 and 12 November 2001, she, AAA and appellant (common-law husband) were still living together. She disclosed that she did not witness the rape of AAA on said

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[14] Records, p. 263; Exhs. B-B2.

[15] *Id.* at 268; Exh. F.

dates because she was in the market. She identified appellant as her live-in partner.

Larry dela Cruz testified that he was one of the members of the Security Force of Barangay Sto. Tomas, Pasig City, who arrested appellant upon the complaint of one Jerry Tadena. Mr. Tadena reported that appellant raped AAA. Dela Cruz, together with his co-*tanods*, immediately went to the house of appellant, whom they invited to the *barangay* headquarters. Appellant voluntarily went with them and was informed that somebody was complaining against him. At the *barangay* headquarters, AAA pointed to appellant as the one who raped her. Mr. dela Cruz identified the sworn statements[16] he and Mr. Tadena executed.

The last witness for the prosecution, Dr. Pierre Paul F. Carpio, testified that he interviewed AAA and conducted a genital examination on her. His findings and conclusion are contained in Medico-Legal Report No. M-2980-01,[17] to wit:

FINDINGS:

xxx xxx xxx

GENITAL:

xxx xxx xxx

HYMEN: Elastic, fleshy-type with shallow fresh laceration at 3 & 6 o'clock position.

xxx xxx xxx

CONCLUSION: Subject is compatible with recent loss of virginity. There are no external signs of application of any form of trauma.

Dr. Carpio disclosed that AAA was coherent when he interviewed her. He explained that the loss of virginity may be caused by the insertion of a blunt object like a penis. He said that AAA divulged to him that she was raped only once. As to

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[16] *Id.* at 264-265; Exhs. C and D.

[17] *Id.* at 269; Exh. G.

the findings of hymenal lacerations, he said that the same were fresh – maybe three days old – and could have possibly resulted from the 12 November 2001 incident.

On 17 October 2003, the prosecution formally offered[18] its documentary evidence consisting of Exhibits A to F, with sub-markings, on which the defense filed its comment.[19] The trial court admitted all the exhibits on 6 November 2003.[20]

For the defense, appellant Elister Basmayor took the stand.

Appellant testified that AAA was his "*anak-anakan*" because her mother, CCC, was his live-in partner. He started living with CCC and AAA at XXX St., XXX, XXX City, in the year 2000. He denied the accusations that he raped AAA twice, on 9 and 12 November 2001. When he was arrested, he was at home sleeping. The *barangay tanods* invited him, and he voluntarily went with them. He was told that there was a complaint of rape against him. He learned that it was AAA who was the complainant. He was detained at the Pasig City Police Station. At the police station, AAA, who was accompanied by a woman, pointed to him and then cried. His live-in partner (CCC) was not there. He told the policemen he did not commit the crime charged.

Appellant insisted that he was innocent of the charges made by AAA. He said AAA complained against him because Raniel, a brother-in-law of CCC who was angry with him, induced AAA to file the cases against him. As to AAA, he did not know of any reason why she would get mad at him.

On 9 November 2001, appellant said that he, AAA and CCC were at home. The three of them went to church at 4:00 p.m. to sell their wares/goods. They stayed there until midnight, but they told AAA to go home. Appellant explained that he was not in their house when AAA was allegedly raped at 10:00 a.m. of 9 November 2001, because he was at Barangay San Nicolas, Pasig City, bringing money to his friend, Ding Sumulong. He

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[18] *Id.* at 260-269.

[19] *Id.* at 270.

[20] *Id.* at 273-A.

stayed there for half an hour then went to the market to play pool. At 2:30 p.m., he watched a movie at Mariposa Theatre. After the movie ended at 3:30 p.m., he went home. On 12 November 2001, he said he was at home with his common-law wife. He does not know of any motive why his common-law wife would implicate him in such a serious crime.

The defense rested its case without marking any documentary exhibit.[21]

On 8 April 2005, the trial court promulgated its decision. In Criminal Case No. 122128-H, appellant was found guilty of simple rape and was sentenced to *reclusion perpetua*. In Criminal Case No. 122127-H, said case was dismissed for insufficiency of evidence. The dispositive portion of the decision reads:

> WHEREFORE, the Prosecution having proved the guilt of the accused, ELISTER BASMAYOR *y* GRASCILIA IN Criminal Case No. 122128-H, of the crime of Simple Rape, he is hereby sentenced to undergo an imprisonment of *RECLUSION PERPETUA*.
>
> Accused is further ordered to pay the offended party the sum of ₱50,000.00 as civil indemnity and ₱50,000.00 for moral damages without need of proof.
>
> Meantime, Criminal Case No. 122127-H is DISMISSED, for insufficiency of evidence.[22]

The trial court was convinced that appellant, indeed, raped AAA not twice, but only once. Due to AAA's conflicting testimonies as to the number of times she was raped and whether her mother was present when she was allegedly raped on 9 November 2001, the trial court was compelled to dismiss Criminal Case No. 122127-H. However, as to the second rape committed on 12 November 2001, the trial court was persuaded that it happened and that appellant was the culprit. It accorded full credence to AAA's testimony as to what happened on the fateful morning of 12 November 2001. The victim identified appellant as the one who violated her honor. Her testimony was further

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[21] *Id.* at 299.

[22] *Id.* at 329.

supported by the findings of the Dr. Carpio who, upon genital examination, found fresh lacerations in her hymen at the 3:00 o'clock and 6:00 o'clock positions. Consistent with his findings, Dr. Carpio concluded that AAA had lost her virginity and that the lacerations, which were about three days old, were possibly caused by the rape committed on 12 November 2001.

The trial court found that appellant's defense of bare denial was self-serving and could not prevail over the positive, spontaneous and straightforward declarations and identification made by the credible victim. It likewise found appellant's claim that AAA was instigated by her relative to be too flimsy a motive for one to file a serious charge of rape against him. It added that there being no showing of improper motive on AAA's part to falsely testify against the appellant, it concluded that no such improper motive existed and that her testimony was worthy of belief.

The trial court convicted appellant only of simple rape, because the prosecution failed to establish that appellant was the common-law spouse of AAA's mother. It said that the prosecution failed to show that BBB and CCC were one and the same person.

On 15 April 2005, appellant filed his Notice of Appeal manifesting his intention to appeal the decision to the Court of Appeals.[23] In an Order dated 18 April 2005, the trial court forwarded the records of the case to the Court of Appeals.[24]

On 21 December 2007, the Court of Appeals affirmed appellant's conviction, but modified the decision of the trial court by finding him guilty of Qualified Rape, increasing the awards of civil indemnity and moral damages to ₱75,000.00 each, and awarding exemplary damages in the amount of ₱25,000.00. The decretal portion of the decision reads:

WHEREFORE, the Decision dated 1 April 2005 of the Regional Trial Court, Branch 261, Pasig City, is AFFIRMED with the following MODIFICATIONS:

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[23] *Id.* at 348.

[24] *Id.* at 350.

1. ELISTER BASMAYOR is found guilty beyond reasonable doubt of the crime of Qualified Rape. The death penalty supposed to be meted upon him is reduced to *Reclusion Perpetua*, without eligibility for parole; and

2. The awards of civil indemnity, moral damages and exemplary damages are set at ₱75,000.00, ₱75,000.00 and ₱25,000.00, respectively.[25]

Finding that the prosecution proved the presence of the special qualifying circumstances of minority and relationship, it adjudged him guilty of Qualified Rape.

On 12 February 2008, with appellant's notice of appeal having been filed on time, the Court of Appeals elevated the records of the case to this Court.[26] Thereafter, in our resolution dated 16 July 2008, we noted the elevation of the records, accepted the appeal and notified the parties that they may file their respective supplemental briefs, if they so desired, within thirty (30) days from notice.[27] The parties opted not to file supplemental briefs on the ground they had fully argued their positions in their respective briefs.[28]

Appellant makes the following assignment of error:

I

THE COURT *A QUO* ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF RAPE DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II

THE COURT *A QUO* GRAVELY ERRED IN GIVING CREDENCE TO THE CONFLICTING TESTIMONY OF THE COMPLAINING WITNESS.[29]

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[25] CA *rollo*, p. 95.

[26] *Id.* at 105.

[27] *Rollo*, p. 19.

[28] *Id.* at 20-21, 24-26.

[29] CA *rollo*, p. 37.

To determine the innocence or guilt of the accused in rape cases, the courts are guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[30]

Appellant maintains that since the trial court found discrepancies in the testimonies of AAA, it should have entirely rejected the testimony of AAA, because the latter was lying and her testimony unbelievable. He argues that in resolving conflict regarding credibility of witnesses, it is the general rule that findings of the trial court should be respected, for it is in a better position to observe the witnesses' deportment and manner of testifying. However, this rule, he contends, should not apply, as to the case under consideration, if the evidence on record — or the lack of it — shows that the trial court erred in its appreciation of facts.

After reviewing the testimony of the victim, who was eleven (11) years old when the rape occurred on 12 November 2001, we find the same to be clear, credible, convincing and worthy of belief. The victim narrated her ordeal as follows:

Q: x x x Now my question to you is: what time when Elister Basmayor raped you on November 12, 2001?

A: "*Alas diyes po ng umaga.*"

Q: How did the accused rape you on November 12, 2001 at 10:00 o'clock in the morning?

A: *"Nakahiga po ako at pinatungan niya ako."*

Q: So when Elister Basmayor put himself on top of your body, what did Elister Basmayor do to you in raping you?

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[30] *People v. Arango*, G.R. No. 168442, 30 August 2006, 500 SCRA 259, 269.

A: *"Ipinasok niya po iyong ari niya sa pepe ko."*

Q: Where (sic) did you feel when Elister Basmayor put his penis inside your vagina?

A: *"Masakit po."*

Q: Who were with you in that house when Elister Basmayor inserted his penis into your vagina?

A: *"Wala po."*

Q: *"Ibig mong sabihin, kayo lang dalawa ang nasa loob ng bahay noong oras na iyon?*

A: *"Opo."*

Q: Can you please inform this court how are you related to Elister Basmayor, the accused in this case?

A: *"Step-father po."*

Q: So if Elister Basmayor, the accused who inserted his penis into your vagina is inside this courtroom, could you please point to him?

A: *"Opo."*

Q: Will you please standup and point to him.

A: Yes, sir, that man.

INTERPRETER: Witness pointing to a person inside the courtroom, wearing a yellow t-shirt, who upon being asked answered by the name Elister Basmayor.[31]

Both trial court and the Court of Appeals gave full faith and credence to the testimony of AAA on the rape that happened on 12 November 2001. They found the same to be sufficient to convict appellant of the crime charged. There being overwhelming evidence showing that on 12 November 2001 appellant had carnal knowledge of AAA by means of force and intimidation, we find no compelling reason to deviate from the findings of the trial court as affirmed by the Court of Appeals. When it comes to credibility, the trial court's assessment deserves great

[31] TSN, 23 August 2002, pp. 5-9.

weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly.[32]

In the case at bar, even though there were inconsistencies in the testimony of AAA regarding the alleged rape committed on 9 November 2001, we find that said discrepancies did not affect her credibility when she testified on the rape committed on her on 12 November 2001. We agree with the Court of Appeals when it said that the rape committed on 12 November 2001 was separate and distinct from the one allegedly committed on 9 November 2001, and that what was essential was the consistency in the narration of the 12 November 2001 rape.

This Court has held time and again that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being the subject of a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her.[33] Youth and immaturity are generally badges of truth.[34] It is highly improbable that a girl of tender years, one not yet exposed to the ways of the world, would impute to any man a crime so serious as rape if what she claims is not true.[35]

In this case, considering that the victim is of tender age and has undergone a harrowing experience and exposed herself to the rigors of public trial, we find it very unlikely that she would impute so grave a crime to appellant whom she calls her "Papa."

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[32] *People v. Escultor*, G.R. Nos. 149366-67, 27 May 2004, 429 SCRA 651, 661.

[33] *People v. Villafuerte*, G.R. No. 154917, 18 May 2004, 428 SCRA 427, 433.

[34] *People v. Espinosa*, G.R. No. 138742, 15 June 2004, 432 SCRA 86, 99.

[35] *People v. Andales*, 466 Phil. 873, 887 (2004).

AAA positively identified appellant as the person who ravished her and said, "*Ipinasok niya po iyong ari niya sa pepe ko.*" As explained above, we find AAA to be a credible witness. As such, her sole testimony is sufficient to convict. Her claim that she was raped was further corroborated by the medical report[36] of Dr. Carpio. The findings of fresh lacerations in AAA's vagina indicated that she was no longer a virgin. The hymenal lacerations inflicted on AAA were possibly caused by the penetration of a penis. Dr. Carpio further explained that such fresh lacerations were usually three days old, and so he concluded that the lacerations on AAA's hymen were possibly inflicted during the 12 November 2001 incident. Hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration.[37] And when the consistent and forthright testimony of a rape victim is consistent with medical findings, there is sufficient basis to warrant a conclusion that the essential requisites of carnal knowledge have been established.[38]

As against the convincing evidence of the prosecution, appellant simply denies the charge that he raped AAA on 12 November 2001, saying that he was resting at home with his wife. His denial, unsubstantiated and uncorroborated, must certainly fail. Mere denial, if unsubstantiated by clear and convincing evidence, has no weight in law and cannot be given greater evidentiary value than the positive testimony of a rape victim.[39] Denial is intrinsically weak, being a negative and self-serving assertion.[40]

Moreover, appellant's statement that he does not know of any reason why AAA charged him with rape[41] further strengthened AAA's credibility. When there is no evidence to show any improper motive on the part of the rape victim to testify falsely against

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[36] Records, p. 269; Exh. G.

[37] *People v. Limio*, G.R. Nos. 148804-06, 27 May 2004, 429 SCRA 597, 610.

[38] *Id.* at 611.

[39] *People v. Esperas*, 461 Phil. 700, 713 (2003).

[40] *People v. Agsaoay, Jr.*, G.R. Nos. 132125-26, 3 June 2004, 430 SCRA 450, 466.

[41] TSN, 6 November 2003, p. 14.

the accused or to falsely implicate him in the commission of a crime, the logical conclusion is that the testimony is worthy of full faith and credence.[42]

As to appellant's claim that AAA was merely coerced by her uncle to file the instant case, we find the same to be dubious. The trial court correctly ruled:

> Further, the claim of the accused that the offended party was instigated by her uncle, Raniel, is too flimsy a motive for one to file a serious charge of rape against him. Moreover, the fact that the accused had quarreled with Raniel is too insignificant to cause [AAA] and her mother to go to the extreme of filing a rape charge against him. There being no showing of improper motive on the victim's part to falsely testify against the accused, the logical conclusion is that no such improper motive exists and that her testimony is worthy of belief.[43]

The felony was committed on 12 November 2001. The provisions of Republic Act No. 8353,[44] which was the law in effect on the day when the rape was committed, shall apply.

The gravamen of the offense of rape is sexual congress with a woman by force and without consent. If the woman is under 12 years of age, proof of force is not an element of statutory rape, but the absence of a free consent is presumed. Conviction will therefore lie, provided sexual intercourse is proven. But if the woman is 12 years of age or over at the time she was violated, sexual intercourse must be proven and also that it was done through force, violence, intimidation or threat.[45]

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[42] *People v. Malabago*, 338 Phil. 177, 190 (1997); *People v. Gagto*, 323 Phil. 539, 556 (1996).

[43] Records, p. 328.

[44] AN ACT EXPANDING THE DEFINITION OF THE CRIME OF RAPE, RECLASSIFYING THE SAME AS A CRIME AGAINST PERSONS, AMENDING FOR THE PURPOSE ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE, AND FOR OTHER PURPOSES. Republic Act No. 8353, otherwise known as The Anti-Rape Law of 1997, took effect on 22 October 1997.

[45] *People v. Dimaano*, G.R. No. 168168, 14 September 2005, 469 SCRA 647, 665.

As provided for in the Revised Penal Code,[46] sexual intercourse with a girl below 12 years old is statutory rape. The two elements of statutory rape are: 1) that the accused had carnal knowledge of a woman; and (2) that the woman is below 12 years of age. Sexual congress with a girl under 12 years old is always rape.[47]

Appellant was charged with statutory rape. The first element was proved by the testimony of the victim herself, while the second element was established by AAA's Certificate of Live Birth showing that she was born on 4 February 1990. AAA was eleven (11) years old when the crime was committed on 12 November 2001.

For one to be convicted of qualified rape, at least one of the aggravating/qualifying circumstances mentioned in Article 266-B[48] must be alleged in the information and duly proved during the trial. In the instant case, the aggravating/qualifying circumstance of minority (under twelve years old) and relationship have been alleged in the information. As stated above, the victim's minority has been proved by her Certificate of Live Birth. As regards the qualifying circumstance of relationship, it is alleged in the information that the victim is the daughter of appellant's live-in partner (common-law spouse).

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[46] Art. 266-A. *Rape; When and How Committed.*— Rape is committed—

1) By any man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

xxx xxx xxx

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

[47] *People v. Jusayan*, G.R. No. 149785, 28 April 2004, 428 SCRA 228, 234-235.

[48] Art. 266-B. Penalties. x x x

xxx xxx xxx

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating /qualifying circumstances:

1) When the victim is **under eighteen (18) years of age** and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or

Appellant claims that his live-in partner is not BBB, the victim's mother, but CCC. On such claim, the trial court ruled that the prosecution failed to prove the qualifying circumstance of relationship and convicted appellant only of simple rape. The Court of Appeals, however, convicted him of qualified rape, because it was shown that BBB and CCC were one and the same person.

We agree with the Court of Appeals that the qualifying circumstance of relationship has been sufficiently proved. The victim declared that the appellant was her mother's live-in partner. Her mother, BBB, also testified and pointed to appellant as her live-in partner. On the other hand, appellant, who calls the victim his "*anak-anakan*," claimed that his live-in partner was CCC, not BBB. We find that BBB and CCC are one and the same person. It is of no moment that appellant knows BBB by the name of CCC. BBB categorically identified appellant to be her live-in partner, which statement was seconded by the victim. If BBB and CCC were truly different persons, appellant could have easily presented CCC to show such reality. This, he did not do. His reliance on his declaration that his common-law wife was CCC and not BBB was fatal to his cause.

The prosecution having alleged and proved during trial the aggravating/qualifying circumstances of minority and relationship mentioned in Article 266-B, the Court of Appeals correctly convicted him of qualified rape and imposed on him the capital punishment.

With the effectivity,[49] however, of Republic Act No. 9346, entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of the supreme penalty of death has been prohibited. Pursuant to Section 2 thereof, the penalty to be meted out to appellant shall be *reclusion perpetua*. Said section reads:

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affinity within the third civil degree, or the **common-law spouse of the parent of the victim**;

[49] Republic Act No. 9346 took effect immediately after its publication in two newspapers of general circulation, namely Malaya and Manila Times, on 29 June 2006 in accordance with Section 5 thereof.

SECTION 2. In lieu of the death penalty, the following shall be imposed:

(a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

(b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

The Court of Appeals properly lowered the penalty that should have been imposed on appellant from death penalty to *reclusion perpetua*. Notwithstanding the reduction of the penalty imposed on appellant, he is not eligible for parole, following Section 3 of said law which provides:

SECTION 3. Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

As to the award of damages, the trial court awarded ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. The Court of Appeals properly increased the said amounts to ₱75,000.00, because the amount of ₱75,000.00 each for civil indemnity and moral damages is to be awarded if the crime is qualified by circumstances that warrant the imposition of the death penalty.[50] With respect to the award of moral damages, the same is to be granted without need of pleading or proof of basis thereof.[51] Due to the presence of the aggravating/qualifying circumstances of minority and relationship, the award of exemplary damages in the amount of ₱25,000.00 by the Court of Appeals is in order.[52]

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[50] *People v. Barcena*, G.R. No. 168737, 16 February 2006, 482 SCRA 543, 561.

[51] *People v. Alfaro*, 458 Phil. 942, 963 (2003).

[52] In criminal offenses, exemplary damages as a part of civil liability may be imposed when the crime was committed with one or more aggravating circumstances. (Art. 2230, Civil Code.)

WHEREFORE, premises considered, the decision of the Court of Appeals in CA-G.R. CR-HC No. 01132 dated 21 December 2007 is *AFFIRMED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 182984. February 10, 2009]

MARIANO NOCOM, *petitioner, vs.* **OSCAR CAMERINO, EFREN CAMERINO, CORNELIO MANTILE and MILDRED DEL ROSARIO, in her capacity as legal heir and representative of NOLASCO DEL ROSARIO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SUMMARY JUDGMENT FOR CLAIMANT.— Under Section 1, Rule 35 of the Rules of Court, a party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof.

2. ID.; ID.; SUMMARY JUDGMENT; ELUCIDATED.— Summary judgment is a procedural device resorted to in order to avoid long drawn out litigations and useless delays. When the pleadings on file show that there are no genuine issues of fact to be tried, the Rules allow a party to obtain immediate relief by way of summary judgment, that is, when the facts are

not in dispute, the court is allowed to decide the case summarily by applying the law to the material facts. Conversely, where the pleadings tender a genuine issue, summary judgment is not proper. A "genuine issue" is such issue of fact which requires the presentation of evidence as distinguished from a sham, fictitious, contrived or false claim. Section 3 of the said rule provides two (2) requisites for summary judgment to be proper: (1) there must be no genuine issue as to any material fact, except for the amount of damages; and (2) the party presenting the motion for summary judgment must be entitled to a judgment as a matter of law. A summary judgment is permitted only if there is no genuine issue as to any material fact and a moving party is entitled to a judgment as a matter of law. A summary judgment is proper if, while the pleadings on their face appear to raise issues, the affidavits, depositions, and admissions presented by the moving party show that such issues are not genuine.

3. ID.; ID.; ID.; NOT PROPER IN THE PRESENCE OF GENUINE ISSUES.— Summary judgment is not warranted when there are genuine issues which call for a full blown trial. The party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, or that the issue posed in the complaint is patently unsubstantial so as not to constitute a genuine issue for trial. Trial courts have limited authority to render summary judgments and may do so only when there is clearly no genuine issue as to any material fact. When the facts as pleaded by the parties are disputed or contested, proceedings for summary judgment cannot take the place of trial.

4. ID.; ID.; PARTIES; INDISPENSABLE PARTIES; JOINDER IN CASE IS MANDATORY BUT NOT A GROUND FOR DISMISSAL OF ACTION; REMEDY IS TO IMPLEAD SAID PARTIES OR ITS FAILURE THEREOF THAT WILL LEAD TO THE DISMISSAL OF THE ACTION.— In *Domingo v. Scheer*, the Court explained that the non-joinder of an indispensable party is not a ground for the dismissal of an action. Section 7, Rule 3 of the Rules, as amended, requires indispensable parties to be joined as plaintiffs or defendants. The joinder of indispensable parties is mandatory. Without the presence of indispensable parties to the suit, the judgment of the court cannot attain real finality. Strangers to a case are

not bound by the judgment rendered by the court. The absence of an indispensable party renders all subsequent actions of the court null and void. There is lack of authority to act not only of the absent party but also as to those present. The responsibility of impleading all the indispensable parties rests on the petitioner or plaintiff. However, the non-joinder of indispensable parties is not a ground for the dismissal of an action. Parties may be added by order of the court on motion of the party or on its own initiative at any stage of the action and/or such times as are just. If the petitioner or plaintiff refuses to implead an indispensable party despite the order of the court, the latter may dismiss the complaint or petition for the petitioner or plaintiff's failure to comply therefor. The remedy is to implead the non-party claimed to be indispensable. In the present case, the RTC and the CA did not require the respondents to implead Atty. Santos as party-defendant or respondent in the case. The operative act that would lead to the dismissal of Civil Case No. 05-172 would be the refusal of respondents to comply with the directive of the court for the joinder of an indispensable party to the case.

APPEARANCES OF COUNSEL

Gilberto C. Alfafara for petitioner.
Donato Zarate & Rodriguez for O. Camerino.
Yasay Regalado Atienza Mendoza & Bernabe Law Offices for E. Camerino, C. Mantile & M. del Rosario.

D E C I S I O N

AZCUNA, *J.*:

This is a petition for review on *certiorari* seeking to reverse and set aside the Decision dated February 14, 2008 of the Court of Appeals (CA) which affirmed the Joint Order dated June 9, 2005 and Summary Judgment dated June 15, 2006 of the Regional Trial Court (RTC) of Muntinlupa City, Branch 203 and dismissed petitioner's appeal under Rule 41 of the Rules of Court for lack of jurisdiction and its Resolution dated May 23, 2008 which denied petitioner's motion for reconsideration.

The present case is an offshoot of the prior case, G.R. No. 161029, entitled "*Springsun Management Systems Corporation v. Oscar Camerino, Efren Camerino, Cornelio Mantile, Nolasco Del Rosario, and Domingo Enriquez,*" which was promulgated on January 19, 2005 (449 SCRA 65) and became final and executory on May 4, 2005 as recorded in the Book of Entries of Judgment.

The factual antecedents are as follows:

G.R. No. 161029:

Respondent Oscar Camerino and respondents-intervenors Efren Camerino, Cornelio Mantile, the deceased Nolasco Del Rosario, represented by Mildred Del Rosario, and Domingo Enriquez were the tenants who were tilling on the parcels of land planted to rice and corn previously owned by Victoria Homes, Inc. covered by Transfer Certificate of Title (TCT) Nos. 289237, now S-6135 (109,451 square meters); S-72244 (73,849 square meters); and 289236, now S-35855 (109,452 square meters). On February 9, 1983, without notifying the respondents, Victoria Homes, Inc. sold the said lots to Springsun Management Systems Corporation (SMSC) for ₱9,790,612. The three deeds of sale were duly registered with the Registry of Deeds of Rizal and new titles were issued in the name of SMSC.

Subsequently, SMSC mortgaged to Banco Filipino (BF) the said lots as collaterals for its loans amounting to ₱11,545,000. As SMSC failed to pay the loans due, BF extrajudicially foreclosed the mortgage and, later, was adjudged the highest bidder. On May 10, 2000, SMSC redeemed the lots from BF. Earlier, on March 7, 1995, respondents filed a complaint against SMSC and BF for "Prohibition/*Certiorari*, Reconveyance/Redemption, Damages, Injunction with Preliminary Injunction and Temporary Restraining Order," docketed as Civil Case No. 95-020, with the RTC of Muntinlupa City, Branch 256.

On January 25, 2002, the RTC of Muntinlupa City, Branch 256, found respondents to be tenants who have been tilling on the subject land planted to rice and corn since 1967 and, thus, authorized them to redeem the subject lots. The dispositive portion of the decision states:

WHEREFORE, judgment is hereby as follows:

1. Declaring that plaintiffs are entitled (*sic*) to redeem, and ordering the defendant Springsun Management Systems Corporation (now petitioner) to allow plaintiffs to redeem the landholdings in question within 180 days from finality of this decision at the total price of ₱9,790,612.00; upon full payment of the redemption price, the defendant Springsun Management Systems Corporation is ordered to deliver plaintiffs the titles and the corresponding Deed of Redemption so that the titles to the properties in litigation can be transferred in the name of the plaintiffs;

2. Declaring plaintiffs entitled to possession, and ordering the defendant Springsun Management Systems Corporation and all persons claiming under it to vacate the lands in question and to surrender the same to the plaintiffs;

3. Dismissing the case against Banco Filipino Savings and Mortgage Bank;

4. Ordering the defendant Springsun Management Systems Corporation to pay plaintiffs the sum of ₱200,000.00 as attorney's fees, plus costs.

SO ORDERED.[1]

On September 23, 2003, the CA, in CA-G.R. SP No. 72475, affirmed with modification the RTC by declaring the respondents to be tenants or agricultural lessees on the disputed lots and, thus, entitled to exercise their right of redemption, but deleted the award of ₱200,000 attorney's fees for lack of legal basis.

On January 19, 2005, this Court, in G.R. No. 161029, affirmed the CA and reiterated that being agricultural tenants of Victoria Homes, Inc. that had sold the lots to SMSC without notifying them, respondents had the right to redeem the subject properties from SMSC.

This Court denied SMSC's motions for reconsideration and for leave to file a second motion for reconsideration and, on May 4, 2005, an Entry of Judgment was made.

[1] *Rollo*, pp. 49-50.

The present G.R. No. 182984:

On December 3, 2003, petitioner Mariano Nocom gave the respondents several Philtrust Bank Manager's Checks amounting to ₱500,000 each, which the latter encashed, representing the price of their "inchoate and contingent rights" over the subject lots which they sold to him.

On December 18, 2003, respondents, with the marital consent of their wives, executed an "Irrevocable Power of Attorney" which was notarized by their counsel Atty. Arturo S. Santos. Thus,

IRREVOCABLE POWER OF ATTORNEY[2]

KNOW ALL MEN BY THESE PRESENTS:

WE, OSCAR CAMERINO, of legal age, Filipino, married to Teresita L. Magbanua: EFREN CAMERINO, of legal age, Filipino, married to Susana Camerino, CORNELIO MANTILE, of legal age, Filipino, married to Maria Fe Alon, NOLASCO DEL ROSARIO, of legal age, Filipino, married to Mildred Joplo, and DOMINGO ENRIQUEZ, of legal age, Filipino, married to Dionicia Enriquez whose residences are stated under our respective names, hereby APPOINT, NAME, and CONSTITUTE MARIANO NOCOM, of legal age, Filipino, married to Anacoreta Nocom and with office at No. 2315 Aurora Blvd, Pasay City, in an irrevocable manner, coupled with interest, for us and in our stead, to do all or any of the following acts and deeds:

1. To sell, assign, transfer, dispose of, mortgage and alienate the properties described in TCT Nos. 120542, 120541 and 123872 of the Register of Deeds of Muntinlupa City, currently in the name of Springsun Management Systems Corporation, consisting of 292,752 square meters subject matter of Civil Case No. 95-020 of the Regional Trial Court of Muntinlupa City, Branch 256. The said court, in its decision dated January 25, 2002 which was affirmed with modification of the Court of Appeals in its decision dated September 24, 2003 in CA-G.R. SP No. 72475, adjudged that we are

[2] *Rollo*, pp. 154-155.

legally entitled to redeem the lands from Springsun Management Systems Corporation;

2. To comply with the said decision by paying the redemption price to Springsun Management Systems Corporation and/or to the court, and upon such payment, to secure execution of the judgment so that the titles can be issued in the name of our attorney-in-fact;

3. To accept and receive for his exclusive benefit all the proceeds which may be derived from the sale, mortgage, transfer or deposition thereof;

4. To sign and execute all the necessary papers, deed and documents that may be necessary or the accomplishment of purposes of the Deed of Assignment, and to issue receipts and proper discharges therefor;

5. To negotiate, deal and transact with all the persons and entities involved in Civil Case No. 95-020, RTC, Muntinlupa City, Branch 256, with full power and authority to compromise with them;

6. To procure all documents and papers in government agencies relative to the said properties and case in court; and

7. To procure the necessary transfer certificate of titles in his name as the absolute owner of said properties.

GIVING AND GRANTING full power and authority to our said attorney-in-fact to do all things requisite and necessary with legal effects as if done by us when present.

IN WITNESS WHEREOF, We have hereunto affixed [our] signatures this 18th day of December, 2003.

(Sgd.) OSCAR CAMERINO
Principal
Sparrow St., Diamond Park
Victoria Homes, Tunasan
Muntinlupa City

(Sgd.) EFREN CAMERINO
Principal
San Antonio, San Pedro
Laguna

(Sgd.) CORNELIO MANTILE
Principal
Victoria Ave., Tunasan
Muntinlupa City

(Sgd.) NOLASCO DEL ROSARIO
Principal
Esmido St., Diamond Park
Victoria Homes, Muntinlupa City

(Sgd.) DOMINGO ENRIQUEZ
Principal
Tunasan Proper, Arandia
Tunasan, Muntinlupa City

WITH OUR MARITAL CONSENT:

(Sgd.) TERESITA MAGBANUA
Wife of Oscar Camerino

(Sgd.) SUSANA CAMERINO
Wife of Efren Camerino

(Sgd.) MARIA FE ALON ALON
Wife of Cornelio Mantile

(Sgd.) MILDRED JOPLO
Wife of Nolasco del Rosario

(Sgd.) DIONICIA ENRIQUEZ
Wife of Domingo Enriquez

CONFORME:

(Sgd.) MARIANO NOCOM
Attorney-in-Fact

Meanwhile, on July 21, 2005, the respondents, in Civil Case No. 95-020 of the RTC of Muntinlupa City, Branch 256, filed a Motion for Execution with Prayer to Order the Register of Deeds of Muntinlupa City to divest SMSC of title to the subject lots and have the same vested on them. As SMSC refused to accept the redemption amount of ₱9,790,612 plus ₱147,059.18 as commission given by the petitioner, the respondents deposited, on August 4, 2005, the amounts of ₱9,790,612, ₱73,529.59, and ₱73,529.59, duly evidenced by official receipts, with the RTC of Muntinlupa City, Branch 256. The RTC of Muntinlupa City, Branch 256 granted respondents' motion for execution and, consequently, TCT Nos. 120542, 120541 and 123872 in the name of SMSC were cancelled and TCT Nos. 15895, 15896 and 15897 were issued in the names of the respondents. It also ordered that the "Irrevocable Power of Attorney," executed on December 18, 2003 by respondents in favor of petitioner, be annotated in the memorandum of encumbrances of TCT Nos. 15895, 15896, and 15897.

On October 24, 2005, respondent Oscar Camerino filed a complaint against petitioner, captioned as "Petition to Revoke Power of Attorney," docketed as Civil Case No. 05-172, in the

RTC of Muntinlupa City, Branch 203, seeking to annul the "Irrevocable Power of Attorney" dated December 18, 2003, the turnover of the titles to the properties in his favor, and the payment of attorney's fees and other legal fees.

Respondent Oscar Camerino's complaint alleged that he and co-respondents were asked by their counsel, Atty. Arturo S. Santos, to sign a document with the representation that it was urgently needed in the legal proceedings against SMSC; that the contents of the said document were not explained to him; that in the first week of September 2005, he learned that TCT Nos. 15895, 15896 and 15897 were issued in their favor by the Register of Deeds; that he discovered that the annotation of the "Irrevocable Power of Attorney" on the said titles was pursuant to the Order of the RTC of Muntinlupa City, Branch 256 dated August 31, 2005; that the "Irrevocable Power of Attorney" turned out to be the same document which Atty. Santos required him and the other respondents to sign on December 18, 2003; that despite repeated demands, petitioner refused to surrender the owner's duplicate copies of the said titles; that petitioner had retained ownership over the subject lots; that he had no intention of naming, appointing, or constituting anyone, including petitioner, to sell, assign, dispose, or encumber the subject parcels of land; and that he executed an Affidavit of Adverse Claim which was annotated on the titles involving the subject lots.

In his Answer with Counterclaim, petitioner countered that on September 3, 2003, Atty. Santos informed him of the desire of his clients, herein respondents, to sell and assign to him their "inchoate and contingent rights and interests" over the subject lots because they were in dire need of money and could no longer wait until the termination of the proceedings as SMSC would probably appeal the CA's Decision to this Court; that they did not have the amount of ₱9,790,612 needed to redeem the subject lots; that on December 18, 2003, he decided to buy the contingent rights of the respondents and paid each of them ₱500,000 or a total of ₱2,500,000 as evidenced by Philtrust Bank Manager's Check Nos. MV 0002060 (for respondent Oscar Camerino), MV 0002061 (for respondent Efren Camerino), MV

0002062 (for respondent Cornelio Mantile), MV 0002063 (for Nolasco Del Rosario), and MV 0002064 (for Domingo Enriquez) which they personally encashed on December 19, 2003; that on August 4, 2005, he also paid the amount of ₱147,059.18 as commission; that simultaneous with the aforesaid payment, respondents and their spouses voluntarily signed the "Irrevocable Power of Attorney" dated December 18, 2003; that being coupled with interest, the "Irrevocable Power of Attorney" cannot be revoked or cancelled at will by any of the parties; and that having received just and reasonable compensation for their contingent rights, respondents had no cause of action or legal right over the subject lots. Petitioner prayed for the dismissal of the complaint and the payment of ₱1,000,000 moral damages, ₱500,000 exemplary damages, and ₱500,000 attorney's fees plus costs.

On January 17, 2006, petitioner filed a Motion for Preliminary Hearing on his special and/or affirmative defense that respondent Oscar Camerino had no cause of action or legal right over the subject lots because the latter and his wife received the proceeds of the Philtrust Bank Manager's check in the sum of ₱500,000 which they personally encashed on December 19, 2003 and that being coupled with interest, the "Irrevocable Power of Attorney" cannot be revoked or cancelled at will by any of the parties.

On January 26, 2006, respondents Efren Camerino, Cornelio Mantile and Mildred Del Rosario, in her capacity as legal heir and representative of Nolasco Del Rosario, filed a Motion for Leave of Court to Admit the Complaint-in-Intervention with the attached Complaint-in-Intervention, dated January 26, 2006, seeking the nullification of the "Irrevocable Power of Attorney" for being contrary to law and public policy and the annotation of the "Irrevocable Power of Attorney" on the titles of the subject lots with prayer that petitioner be ordered to deliver to them the copies of the owner's duplicate certificate of TCT Nos. 15895, 15896, and 15897. Their Complaint-in-Intervention alleged that they had a legal interest in the subject matter of the controversy and would either be directly injured or benefited by the judgment in Civil Case No. 05-172; that they were co-

signatories or co-grantors of respondent Oscar Camerino in the "Irrevocable Power of Attorney" they executed in favor of the petitioner; that their consent was vitiated by fraud, misrepresentation, machination, mistake and undue influence perpetrated by their own counsel, Atty. Santos, and petitioner; that sometime in December 2003, Atty. Santos called for a meeting which was attended by petitioner and one Judge Alberto Lerma where petitioner gave them checks in the amount of ₱500,000 each as "Christmas gifts"; and that the "Irrevocable Power of Attorney" was void *ab initio* as the same was contrary to law and public policy and for being a champertous contract.

On January 30, 2006, respondent Oscar Camerino filed a Motion for Summary Judgment alleging that since the existence of the "Irrevocable Power of Attorney" was admitted by petitioner, the only issue to be resolved was whether the said document was coupled with interest and whether it was revocable in contemplation of law and jurisprudence; that Summary Judgment was proper because petitioner did not raise any issue relevant to the contents of the "Irrevocable Power of Attorney"; and that in an Affidavit dated January 23, 2005, he admitted receipt of a check amounting to ₱500,000.00 which was given to him by petitioner as financial assistance.

On February 3, 2006, petitioner opposed respondent Oscar Camerino's motion on the ground that there were factual issues that required the presentation of evidence.

On February 14, 2006, petitioner filed a Motion to Dismiss the complaint on the ground that the petition for the cancellation of the "Irrevocable Power of Attorney" was actually an action to recover the titles and ownership over the properties; that since respondent Oscar Camerino alleged in paragraph 29 of his Motion for Summary Judgment that the assessed value of the subject lots amounted to ₱600,000,000, the case partook of the nature of a real action and, thus, the docket fees of ₱3,929 was insufficient; and that due to insufficient docket fee, his complaint should be dismissed as the RTC was not vested with jurisdiction over the subject matter of the complaint.

On February 22, 2006, respondent Oscar Camerino opposed petitioner's motion for preliminary hearing of special and/or affirmative defenses alleging that it was dilatory and that he had a cause of action.

On March 9, 2006, respondent Oscar Camerino filed his Reply to petitioner's Opposition to the Motion for Summary Judgment claiming that the determinative issue of whether or not the amount of ₱500,000 given to him by petitioner rendered the power of attorney irrevocable can be determined from the allegations in the pleadings and affidavits on record without the need of introduction of evidence.

On May 5, 2006, respondent Oscar Camerino filed an Opposition to petitioner's Motion to Dismiss stating that the instant case was a personal action for the revocation of the "Irrevocable Power of Attorney" and not for the recovery of real property and, thus, the correct docket fees were paid.

On June 9, 2006, the RTC of Muntinlupa City, Branch 203 admitted the Complaint-in-Intervention because the movants-intervenors ([herein respondents] Efren Camerino, Cornelio Mantile, and Mildred Del Rosario as legal heir of Nolasco Del Rosario) "have legal interest in the subject properties in litigation and in the success of the petitioner [herein respondent Oscar Camerino], who was precisely their co-plaintiff in Civil Case No. 95-020, entitled '*Oscar Camerino, et al. v. Springsun Management Systems Corporation, et al.,*' where they are the prevailing parties against the defendant therein [SMSC], with respect to the same properties, subject of this case, in a decision rendered by Branch 256 of this Court." The RTC, Branch 203, also granted the Motion for Summary Judgment because "a meticulous scrutiny of the material facts admitted in the pleadings of the parties reveals that there is really no genuine issue of fact presented therein that needs to be tried to enable the court to arrive at a judicious resolution of a matter of law if the issues presented by the pleadings are not genuine issues as to any material fact but are patently unsubstantial issues that do not require a hearing on the merits." Thus,

The instant Motion to Dismiss by the respondent is therefore DENIED, PROVIDED, the petitioner should pay the balance of the docket fees remaining unpaid, if any, pursuant to Rule 141, Section 7 of the Rules of Court, as amended by A.M. No. 04-2-04-SC within the applicable prescriptive or reglementary period.

The "Motion for Intervention" timely filed by intervenors Efren Camerino, Cornelio Mantile and Mildred Del Rosario, in her capacity as legal heir of Nolasco Del Rosario, as opposed by the respondent, is hereby GRANTED.

xxx xxx xxx

Petitioner's Motion for Summary Judgment is therefore GRANTED.

Consequently, respondent's Motion for Preliminary Hearing on his Special and Affirmative Defenses is deemed moot and academic.

SO ORDERED.[3]

On June 15, 2006, the RTC of Muntinlupa City, Branch 203 rendered a Summary Judgment annulling the "Irrevocable Power of Attorney" for being contrary to law and public policy. The pertinent portions of the trial court's decision state that:

Irrespective of whether the Power of Attorney in question is coupled with interest, or not, the same can be revoked or annulled, firstly, because it is contrary to law and secondly it is against public policy.

As aptly pointed out by the intervenors, the assailed Special Power of Attorney which under its ultimate paragraph among others, authorizes the respondent (Nocom) 'to procure the necessary Transfer Certificate of Title in his name, as the absolute owner of the said properties is a disguised conveyance or assignment of the signatories' statutory rights of redemption and therefore prohibited under the provisions of Republic Act No. 3844, Sec. 62 which provides:

Sec. 62. Limitation on Land Rights.

Except in case of heredity succession by one heir, landholdings acquired under this Code may not be resold, mortgaged, encumbered, or transferred until after the lapse of ten years from the date of full

[3] *Rollo*, pp. 188, 190.

payment and acquisition and after such ten year period, any transfer, sale or disposition may be made only in favor of persons qualified to acquire economic family-size farm units in accordance with the provisions of this Code xxx. (underlining supplied)

The assailed "power of attorney" which was executed on December 18, 2003 is void *ab initio* for being contrary to the express prohibition or spirit of the aforesaid law or the declared state and public policy on the qualification of the beneficiaries of the agrarian reform program. It bears stressing that the redemption price of the subject lots was paid only on August 4, 2005 or 1 year, 8 months and 14 days after the execution of the assailed power of attorney.

If pursuant to the spirit of the Agrarian Reform Law, the tenant cannot even sell or dispose of his landholding within ten (10) years after he already acquired the same or even thereafter to persons not qualified to acquire economic size farm units in accordance with the provisions of the Agrarian Reform Code, with more reason should the tenant not be allowed to alienate or sell his landholding before he actually acquires the same.

The right of redemption of the petitioner and his co-plaintiffs in Civil Case No. 95-020 as upheld by the Court of Appeals and the Supreme Court is founded on a piece of social legislation known as Agrarian Reform Code.

Enunciated in the case of *Association of Small Landowners in the Philippines, et al., vs. Hon. Secretary of Agrarian Reform* (G.R. No. 78742, July 14, 1989) is the policy of the State on agrarian reform legislation. Said State policy emphasizes the "Land for the Landless" slogan that underscores the acute imbalance in the distribution of land among the people.

Furthermore, the assailed Special Power of Attorney is a champertous contract and therefore void for being against public policy. The pleadings of the parties show that the same special power of attorney was executed by the petitioner, *et al*. through the intercession of Atty. Arturo Santos and at the behest of the respondent. In his own answer to the instant petition which he is estopped to deny, the respondent alleges that the actual agreement was for the respondent to pay the expenses of the proceedings to enforce the rights of the petitioner and his co-plaintiffs in Civil Case No. 95-020 without any provision for reimbursement. In other words, the respondents, through the intercession of Atty. Santos, petitioner's

attorney, had agreed to carry on with the action for the petitioner *et al*. at his own expense in consideration of procuring for himself the title to the lots in question as the absolute owner thereof, with the respondent paying the redemption price of said lots, as well as separate amounts of Five Hundred Thousand (₱500,000.00) to each of the five (5) co-plaintiffs in Civil Case No. 95-020, including herein petitioner, or a total sum of Two Million Five Hundred Thousand Pesos (₱2,500,000.00).

Under the premises, the aforesaid contract brokered by Atty. Arturo Santos has all really the earmarks of a champertous contract which is against public policy as it violates the fiduciary relations between the lawyer and his client, whose weakness or disadvantage is being exploited by the former. In other words, the situation created under the given premises is a clear circumvention of the prohibition against the execution of champertous contracts between a lawyer and a client.

> A champertous contract is defined as a contract between a stranger and a party to a lawsuit, whereby the stranger pursues the party's claim in consideration of receiving part or any of the proceeds recovered under the judgment; a bargain by a stranger with a party to a suit, by which such third person undertakes to carry on the litigation at his own cost and risk, in consideration of receiving, if successful, a part of the proceeds or subject sought to be recovered. (*Blacks Dictionary; Schnabel v. Taft Broadcasting Co., Inc.* Mo. App. 525 S.W. 2d 819, 823). An Agreement whereby the attorney agrees to pay expenses of proceedings to enforce the client's rights is champertous. [*JBP Holding Corporation v. U.S.* 166 F. Supp. 324 (1958)]. Such agreements are against public policy especially where as in this case, the attorney has agreed to carry on the action at its own expense in consideration of some bargain to have part of the thing in dispute. [See *Sampliner v. Motion Pictures Patents Co., et al.*, 225 F. 242 (1918). The execution of these contracts violates the fiduciary relationship between the lawyer and his client, for which the former must incur administrative sanction.

The intention of the law in prohibiting this kind of contract is to prevent a lawyer from acquiring an interest in the subject of the litigation and to avoid a conflict of interest between him and his client.

In the instant case, it seems that Atty. Santos and the respondent colluded and conspired to circumvent these prohibitions. Considering therefore that Atty. Santos, then petitioner's counsel, brokered the alleged deal between petitioners *et al.* and the respondent with respect to the lands subject of litigation in Civil Case No. 95-020, the deal contracted is illegal for being a champertous agreement and therefore it cannot be enforced.

Be that as it may, granting the agency established in the assailed Power of Attorney is coupled with interest, the petitioner and his co-plaintiffs in Civil Case No. 95-020, who are the present intervenors, are not revoking the Power of Attorney at will but have precisely gone to court and filed the instant petition for its cancellation or revocation. What is prohibited by law and jurisprudence is the arbitrary and whimsical revocation of a power of attorney or agency coupled with interest, at will by a party, without court declaration.

WHEREFORE, judgment is hereby rendered as follows:

(1) Nullifying the "Irrevocable Power of Attorney" in question dated December 18, 2003, signed by the petitioner [herein respondent Oscar Camerino] and his co-plaintiffs [herein respondents who were the movant-intervenors] in Civil Case No. 95-020 in favor of the respondent [herein petitioner];

(2) Ordering the respondent to turnover the Certificates of Title Nos. 15895, 15896 and 15897 covering the lots, the subject of this case, to the petitioner and the intervenors;

(3) Ordering the respondent to pay the petitioner attorney's fees and all other legal fees incurred by the latter in connection with this case;

(4) Ordering the petitioner and the intervenors to return to the respondent the amount of ₱7,790,612 paid by the latter as redemption price of the lots in question plus commission of ₱147,049.18; and

(5) Ordering the petitioner Oscar Camerino and the intervenors Efren Camerino, Cornelio Mantile, Nolasco Del Rosario or his heirs and Domingo Enriquez, who are petitioner's co-plaintiffs in Civil Case No. 95-020, to return to the respondent the total amount of ₱2,500,000.00 or ₱500,000.00 from each of them paid by the respondent to them under Philtrust Bank Check Nos. MV 0002060, MV 0002061, MV 0002062, MV 0002063, and MV 0002064 which checks were encashed by them with the drawee bank.

SO ORDERED.[4]

On July 3, 2006 petitioner filed an Omnibus Motion for Reconsideration seeking to set aside the trial court's Joint Order dated June 9, 2005 and Summary Judgment dated June 15, 2006 which was opposed by the respondents.

On July 4, 2006, respondents filed a Motion for Execution Pending Final Decision/Appeal which was opposed by petitioner.

On August 14, 2006, the trial court issued an order denying petitioner's Omnibus Motion for Reconsideration. Within the reglementary period, petitioner filed a Notice of Appeal and paid the corresponding appeal docket fees.

On February 14, 2008, the CA affirmed the trial court's Joint Order dated June 9, 2006 and Summary Judgment dated June 15, 2006 and dismissed the petitioner's appeal for lack of jurisdiction. The CA ruled that as the RTC rendered the assailed Summary Judgment based on the pleadings and documents on record, without any trial or reception of evidence, the same did not involve factual matters. The CA found the issues raised by the petitioner in his appeal to be questions of law, to wit: (a) whether Summary Judgment was proper under the admitted facts and circumstances obtaining in the present case; (b) whether undue haste attended the rendition of the Summary Judgment; (c) whether the Summary Judgment was valid for failure of the RTC to implead an indispensable party; (d) whether the RTC erred in allowing the intervention of respondents Efren Camerino, Cornelio Mantile, and Mildred Del Rosario; and (e) whether the RTC erred in taking cognizance of the case despite nonpayment of the required docket fees. The CA concluded that since the issues involved questions of law, the proper mode of appeal should have been through a petition for review on *certiorari* under Rule 45 of the Rules of Court directly to this Court and not through an ordinary appeal under Rule 41 thereof and, thus, petitioner's appeal to the CA should be dismissed outright pursuant to this Court's Circular No. 2-90, dated March 9, 1990, mandating

[4] *Rollo*, pp. 500-503.

the dismissal of appeals involving pure questions of law erroneously brought to the CA.

In its Resolution of May 23, 2008, the CA denied petitioner's Motion for Reconsideration dated February 26, 2008.

Hence, this present petition.

Petitioner raises the following issues:

I

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED AN ERROR IN DISMISSING PETITIONER'S APPEAL.

II

WHETHER OR NOT THE COURT OF APPEALS ERRED IN UPHOLDING THE SUMMARY JUDGMENT OF THE TRIAL COURT DESPITE THE GENUINE ISSUE OF FACT RAISED IN PETITIONER'S ANSWER.

III

WHETHER OR NOT THE COURT OF APPEALS IS CORRECT IN NOT VOIDING THE ASSAILED SUMMARY JUDGMENT FOR FAILURE OF RESPONDENTS TO IMPLEAD AN INDISPENSABLE PARTY.

IV

WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT DISMISSING CIVIL CASE NO. 05-172 FOR NON-PAYMENT OF THE CORRECT DOCKET FEES.

Petitioner contends that the CA erred in dismissing his appeal as the case involves questions of fact; that summary judgment was not proper as there were genuine issues of fact raised in his Answer; that respondents failed to implead their lawyer, Atty. Arturo S. Santos, as an indispensable party-defendant, who, according to them, allegedly connived with him in making them sign the "Irrevocable Power of Attorney" in his favor; and that since the case partakes of the nature of an action to recover ownership and titles to the properties, respondents' complaint should be dismissed for failure to pay the correct docket fees.

Respondent Oscar Camerino argues that the sole issue to be resolved pertains to the legal issue of whether the Special Power of Attorney (SPA) denominated as irrevocable may be revoked; that three material facts have been established, *i.e.*, that the SPA was executed, that Atty. Santos facilitated the signing and execution of the SPA, and that petitioner paid ₱500,000 to each of the respondents in consideration for the signing of the SPA and, thus, summary judgment was proper; and that pure questions of law are not proper in an ordinary appeal under Rule 41 of the Rules.

Respondents Efren Camerino, Cornelio Mantile, and Mildred Del Rosario, in her capacity as legal heir of Nolasco Del Rosario, aver that petitioner's petition is insufficient in form, *i.e.*, due to defective verification as the word "personal" was not stated when referring to "personal knowledge," and in substance, *i.e.*, there is no genuine issue to be resolved as the factual allegations of the petitioner are unsubstantial and that Atty. Santos is not an indispensable party to the case.

The petition has merit.

In dismissing petitioner's appeal, the CA erroneously relied on the rationale that the petitioner's appeal raised questions of law and, therefore, it had no recourse but to dismiss the same for lack of jurisdiction. The summary judgment rendered by the trial court has the effect of an adjudication on the merits and, thus, the petitioner, being the aggrieved party, correctly appealed the adverse decision of the RTC to the CA by filing a notice of appeal coupled with the appellant's brief under Rule 41 of the Rules.

Contrary to the findings of the RTC and the CA, the present case involves certain factual issues which remove it from the coverage of a summary judgment.

Under Section 1, Rule 35 of the Rules of Court, a party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits,

depositions or admissions for a summary judgment in his favor upon all or any part thereof.

Summary judgment is a procedural device resorted to in order to avoid long drawn out litigations and useless delays. When the pleadings on file show that there are no genuine issues of fact to be tried, the Rules allow a party to obtain immediate relief by way of summary judgment, that is, when the facts are not in dispute, the court is allowed to decide the case summarily by applying the law to the material facts. Conversely, where the pleadings tender a genuine issue, summary judgment is not proper. A "genuine issue" is such issue of fact which requires the presentation of evidence as distinguished from a sham, fictitious, contrived or false claim. Section 3 of the said rule provides two (2) requisites for summary judgment to be proper: (1) there must be no genuine issue as to any material fact, except for the amount of damages; and (2) the party presenting the motion for summary judgment must be entitled to a judgment as a matter of law.[5] A summary judgment is permitted only if there is no genuine issue as to any material fact and a moving party is entitled to a judgment as a matter of law. A summary judgment is proper if, while the pleadings on their face appear to raise issues, the affidavits, depositions, and admissions presented by the moving party show that such issues are not genuine.[6]

The present case should not be decided via a summary judgment. Summary judgment is not warranted when there are genuine issues which call for a full blown trial. The party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, or that the issue posed in the complaint is patently unsubstantial so as not to constitute a genuine issue for trial. Trial courts have limited authority to render summary judgments and may do so only when there is clearly no genuine issue as to any material fact.

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[5] *Solidbank Corporation v. CA*, G.R. No. 120010, October 3, 2002, 390 SCRA 241.

[6] *Ong v. Roban Lending Corporation*, G.R. No. 172592, July 9, 2008.

When the facts as pleaded by the parties are disputed or contested, proceedings for summary judgment cannot take the place of trial.[7]

Summary judgment is generally based on the facts proven summarily by affidavits, depositions, pleadings, or admissions of the parties. In this present case, while both parties acknowledge or admit the existence of the "Irrevocable Power of Attorney," the variance in the allegations in the pleadings of the petitioner *vis-à-vis* that of the respondents require the presentation of evidence on the issue of the validity of the "Irrevocable Power of Attorney" to determine whether its execution was attended by the vices of consent and whether the respondents and their spouses did not freely and voluntarily execute the same. In his Answer with Counterclaim, petitioner denied the material allegations of respondent Oscar Camerino's complaint for being false and baseless as respondents were informed that the document they signed was the "Irrevocable Power of Attorney" in his favor and that they had received the full consideration of the transaction and, thus, had no legal right over the three parcels of land. Indeed, the presentation of evidence is necessary to determine the validity and legality of the "Irrevocable Power of Attorney," dated December 18, 2003, executed by the respondents in favor of the petitioner. From said main factual issue, other relevant issues spring therefrom, to wit: whether the said "Irrevocable Power of Attorney" was coupled with interest; whether it had been obtained through fraud, deceit, and misrepresentation or other vices of consent; whether the five (5) Philtrust Bank Manager's checks given by petitioner to the respondents amounting to ₱500,000 each were in consideration of the "inchoate and contingent rights" of the respondents in favor of the petitioner; whether Atty. Santos connived with petitioner in causing the preparation of the said document and, therefore, should be impleaded as party-defendant together with the petitioner; whether respondents deposited the amount of ₱9,790,612.00 plus ₱147,059.18 with the RTC of Muntinlupa City, Branch 256; and whether the sale of respondents' inchoate

[7] *Tan v. De la Vega*, G.R. No. 168809, March 10, 2006, 484 SCRA 538.

and contingent rights amounted to a champertous contract.

The incongruence and disparity in the material allegations of both parties have been evident. Respondent Oscar Camerino alleged in his complaint that he and his co-respondents were required by their counsel, Atty. Santos, to sign a document on the representation that it was urgently needed in the legal proceedings against SMSC which turned out to be the "Irrevocable Power of Attorney"; but petitioner disproved the vitiated consent on the part of the respondents as they knew fully well that the document they signed, voluntarily and intelligently, on December 18, 2003, was the said "Irrevocable Power of Attorney." Respondent Oscar Camerino alleged in his complaint that he has no intention of naming, appointing or constituting anyone, including the petitioner, to sell, assign, dispose or encumber the lots in question; but petitioner maintained that respondent Oscar Camerino agreed to sell and assign to him his "inchoate and contingent rights and interests" over the subject lot for and in consideration of the sum of ₱500,000, plus the redemption price of ₱9,790,612. Respondents claimed that the amount they received was grossly disproportionate to the value of the subject land; but petitioner countered that the respondents did not have the amount of ₱9,790,612 needed to redeem the subject lots, so he decided to buy their contingent rights and paid each of them ₱500,000 or a total of ₱2,500,000 as evidenced by five (5) Philtrust Bank Manager's Check which they personally encashed on December 19, 2003, that he also paid the amount of ₱147,059.18 as commission on August 4, 2005, that simultaneous with the aforesaid payment, respondents and their spouses voluntarily signed the "Irrevocable Power of Attorney" dated December 18, 2003, and that being coupled with interest, the "Irrevocable Power of Attorney" cannot be revoked at will by any of the parties.

Respondents maintain that they were deceived into executing the "Irrevocable Power of Attorney" in favor of the petitioner which was done through the maneuverings of their own lawyer, Atty. Santos, who, according to them, had connived with petitioner in order to effect the fraudulent transaction. In this regard,

respondents should have impleaded Atty. Santos as an indispensable party-defendant early on when the case was still with the RTC, but they failed to do so. However, their procedural lapse did not constitute a sufficient ground for the dismissal of Civil Case No. 05-172.

In *Domingo v. Scheer*,[8] the Court explained that the non-joinder of an indispensable party is not a ground for the dismissal of an action. Section 7, Rule 3 of the Rules, as amended, requires indispensable parties to be joined as plaintiffs or defendants. The joinder of indispensable parties is mandatory. Without the presence of indispensable parties to the suit, the judgment of the court cannot attain real finality. Strangers to a case are not bound by the judgment rendered by the court. The absence of an indispensable party renders all subsequent actions of the court null and void. There is lack of authority to act not only of the absent party but also as to those present. The responsibility of impleading all the indispensable parties rests on the petitioner or plaintiff. However, the non-joinder of indispensable parties is not a ground for the dismissal of an action. Parties may be added by order of the court on motion of the party or on its own initiative at any stage of the action and/or such times as are just. If the petitioner or plaintiff refuses to implead an indispensable party despite the order of the court, the latter may dismiss the complaint or petition for the petitioner or plaintiff's failure to comply therefor. The remedy is to implead the non-party claimed to be indispensable. In the present case, the RTC and the CA did not require the respondents to implead Atty. Santos as party-defendant or respondent in the case. The operative act that would lead to the dismissal of Civil Case No. 05-172 would be the refusal of respondents to comply with the directive of the court for the joinder of an indispensable party to the case.

In his petition, petitioner prays for the reversal of the Decision dated February 14, 2008 of the CA which affirmed the Joint Order dated June 9, 2005 and Summary Judgment dated

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

June 15, 2006 of the RTC of Muntinlupa City, Branch 203 and dismissed petitioner's appeal under Rule 41 of the Rules for lack of jurisdiction and its Resolution dated May 23, 2008 which denied petitioner's motion for reconsideration; the annulment of the RTC's Summary Judgment rendered on June 15, 2006; and the dismissal of Civil Case No. 05-172 filed with the RTC on the ground that respondents failed to pay the correct docket fees as the action actually sought the recovery of ownership over the subject properties.

The record shows that Civil Case No. 05-172 is a complaint filed by respondent Oscar Camerino against petitioner, denominated as "Petition to Revoke Power of Attorney," that seeks to nullify the "Irrevocable Power of Attorney" coupled with interest dated December 18, 2003; that petitioner be ordered to turn over TCT No. 15898, 15896, and 15897 to him; and that petitioner be ordered to pay the attorney's fees and other legal fees as a consequence of the suit. This case is therefore not an action to recover the titles and ownership over the subject properties. For now, the nature of the suit remains that of personal action and not a real action in contemplation of Rule 4 of the Rules. Hence, the docket fees paid by the respondents were in order. Should the complaint be amended to seek recovery of ownership of the land, then the proper docket fees should be paid and collected.

While the RTC erred in rendering the summary judgment, Civil Case No. 05-172 should not perforce be dismissed. Instead, this present case should be remanded to the RTC for further proceedings and proper disposition according to the rudiments of a regular trial on the merits and not through an abbreviated termination of the case by summary judgment.

WHEREFORE, the petition is *PARTLY GRANTED*. The Decision of the Court of Appeals dated February 14, 2008 which affirmed the Joint Order dated June 9, 2005 and Summary Judgment dated June 15, 2006 of the Regional Trial Court of Muntinlupa City, Branch 203 and dismissed petitioner's appeal under Rule 41 of the Rules of Court on the ground of lack of

jurisdiction and the Resolution of the Court of Appeals dated May 23, 2008 which denied petitioner's motion for reconsideration in CA-G.R. CV No. 87656 are *REVERSED and SET ASIDE*. The case is *REMANDED* to the Regional Trial Court of Muntinlupa City, Branch 203, for further proceedings in accordance with this Decision.

No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 183702. February 10, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RICHARD SULIMA *y* GALLANO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; GUIDING PRINCIPLES IN REVIEWING RAPE CASES; PRIMORDIAL CONSIDERATION IN A DETERMINATION CONCERNING THE CRIME OF RAPE IS THE CREDIBILITY OF THE COMPLAINANT'S TESTIMONY.— In reviewing rape cases, the Court has always been guided by three well-entrenched principles: (a) that 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; (b) that in view of the intrinsic nature of the crime which usually involves two persons, the complainant's testimony must be scrutinized with extreme caution; and (c) that the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw

strength from the weakness of evidence of the defense. In addition, it is well-nigh to stress over and over again, that no woman would concoct a story of defloration, allow the examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her. It is settled jurisprudence that when a woman says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. A woman would think twice before she concocts a story of rape, unless she is motivated by a patent desire to seek justice for the wrong committed against her. **Accordingly, the primordial consideration in a determination concerning the crime of rape is the credibility of the complainant's testimony.**

2. ID.; ID.; CREDIBILITY OF WITNESSES; ASSESSMENT OF CREDIBILITY BY TRIAL COURTS ARE ACCORDED GREAT WEIGHT AND RESPECT ON APPEAL.— After a close and careful scrutiny of the records, this Court finds no compelling reason to disturb and depart from the aforesaid findings and conclusion of the trial court, which findings were also affirmed by the Court of Appeals. It is a fundamental rule that the trial court's factual findings, especially its assessment of the credibility of witnesses, are accorded great weight and respect on appeal. This is so because the trial court was in a better position to decide the question, having heard the witnesses and observed their deportment and manner of testifying during the trial. The appellate courts will generally not disturb such findings, unless the trial court plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case.

3. ID.; ID.; ID.; TESTIMONY OF VICTIM FOUND CREDIBLE, TRUTHFUL, POSITIVE, STRAIGHTFORWARD AND ABLE TO WITHSTAND THE TEST OF CREDIBILITY.— In this case, the trial court found AAA's testimony to be credible and truthful. It even described AAA's testimony as positive, straightforward and able to withstand the test of credibility. In AAA's narration of the manner in which the appellant took advantage of her, she never wavered in her testimony. In fact, she even exemplified the details of the incident without flourish and innuendo. AAA also positively identified the appellant before the court *a quo* as her abuser. The trial court also

observed that even on cross-examination, AAA maintained that the appellant sexually molested her while threatening her not to shout, otherwise, she would be killed by him. This finding of the trial court clearly overthrows the appellant's assertion that his identification as AAA's abuser was merely instigated by AAA's father.

4. ID.; ID.; ID.; COMMISSION OF RAPE SHOWN BY THE DETAILED ACCOUNT OF VICTIM'S PAINFUL EXPERIENCE IN THE HANDS OF APPELLANT.— Contrary to appellant's contention, the records revealed that AAA narrated in detail how the appellant ravished her at midnight of 13 January 2000. AAA bravely declared before the court *a quo* that at midnight of 13 January 2000, she was awakened when she felt that someone was on top of her. The man then told her not to shout; otherwise, he would kill her. The man removed her clothes and inserted his penis into her vagina. Thereafter, the man momentarily stood up and then again inserted his penis into her vagina and threatened to kill her if she would not submit to his desire. After satisfying his lust, the man stood up and went out of the house. AAA vividly recognized the man as the appellant because of the light coming from the post outside their house. With the foregoing, it has been clearly shown that AAA did not simply make a general statement on the manner in which the appellant raped her. Instead, AAA took courage in giving a detailed account of her painful experience in the hands of the appellant. Thus, it is beyond any cavil of doubt that indeed, AAA was raped by the appellant, and what happened between them was not consensual sex as the appellant claimed it to be.

5. ID.; ID.; ID.; THERE IS NO STANDARD FORM OF BEHAVIOR THAT CAN BE ANTICIPATED OF A RAPE VICTIM FOLLOWING HER DEFILEMENT, PARTICULARLY OF A CHILD WHO COULD NOT BE EXPECTED TO FULLY COMPREHEND THE WAYS OF AN ADULT.— Appellant claims that AAA's behavior after the commission of the crime, *i.e.*, not doing anything considering that the house of the *barangay tanod* was just 10 steps away from their house, was contrary to human experience and quite unbelievable. The Court has repeatedly observed, however, that there is no standard form of behavior that can be anticipated of a rape victim following her defilement, particularly of a

child who could not be expected to fully comprehend the ways of an adult. People react differently to emotional stress, and rape victims are no different from them.

6. ID.; ID.; ID.; NO DELAY IN REPORTING THE INCIDENT TO THE AUTHORITIES.— The appellant was mistaken in saying that AAA's father did not immediately report the rape incident to the authorities after being informed thereof and, instead, slept soundly. As can be gleaned from AAA's testimony, when her father arrived at around 3:00 o'clock in the morning of 14 January 2000, she immediately told her father that she was raped. Thereafter, she and her father wasted no time in searching for the appellant. Unfortunately, they did not find him. Considering the wee hours, AAA's father who was weary and sleepy from attending to his wife who was in the hospital took some time to sleep. As the appellate court stated in its Decision, the fact that it was already in the evening of 14 January 2000 that BBB accompanied AAA to the *barangay* hall to report the rape incident could have been due to the fact that BBB still had to attend to his wife who had just given birth in the hospital.

7. ID.; ID.; ALIBI AND DENIAL; CANNOT PREVAIL OVER THE POSITIVE IDENTIFICATION OF APPELLANT AND WHEN IT DOES NOT MEET THE REQUIREMENTS OF TIME AND PLACE; ALSO CONTRADICTORY TO APPELLANT'S OWN ARGUMENT THAT WHAT HAPPENED BETWEEN HIM AND THE VICTIM WAS CONSENSUAL SEX.— The evidence presented by the defense consisted mainly of bare denials and alibi. Denial and alibi are inherently weak defenses; unless supported by clear and convincing evidence, the same cannot prevail over the positive declaration of the victim, who in a simple and straightforward manner convincingly identified the appellant who sexually molested her at midnight of 13 January 2000. Further, for the defense of alibi to prosper, it must be sufficiently convincing as to preclude any doubt on the physical impossibility of the presence of the accused at the *locus criminis* or its immediate vicinity at the time of the incident. The appellant in this case admitted that his residence was just 30 houses away from that of AAA; thus, it was not physically impossible for him to be at the *locus criminis* at the time of the rape incident. More so, appellant's defenses of denial and alibi run counter to his

own argument that what happened between him and AAA was consensual sex. Given the foregoing, this Court is convinced that the trial court and the appellate court correctly convicted the appellant of the crime of rape, which is punishable by *reclusion perpetua*.

8. CRIMINAL LAW; RAPE; RESISTANCE OF THE VICTIM IS NOT AN ELEMENT OF THE CRIME AND NEED NOT BE ESTABLISHED BY THE PROSECUTION.— AAA's failure to offer any kind of resistance to her abuser is of no moment and cannot in any way affect the credibility of her testimony. Rape is perpetrated when the accused has carnal knowledge of the victim through the use of force or threats or intimidation. It must be stressed that the **resistance of the victim is not an element of the crime**, and it need not be established by the prosecution. In any event, the failure of the victim to shout or to offer tenacious resistance does not make the sexual congress voluntary. Indeed, rape victims have no uniform reaction: some may offer strong resistance; others may be too intimidated to offer any resistance at all. In the present case, AAA categorically testified that she was cowed into submission because the appellant threatened to kill her if she would not submit to his bestial desire. Considering the age of AAA at the time she was raped, *i.e.*, 14 years old, such threat made by the appellant upon her life was sufficient to produce fear in the victim. This sufficiently explains the seeming lack of resistance by AAA when the offense was being perpetrated. Moreover, AAA's failure to wake up her siblings who were just sleeping right next to her was understandable. As stated by the Court of Appeals, AAA's siblings who were with her at the time she was raped were young, aged one, three, five and seven. Aside from the fact that the said children were incapable of protecting AAA, their safety might also be endangered should they be awakened.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.

Public Attorney's Office for accused-appellant.

D E C I S I O N

CHICO-NAZARIO, *J.*:

For review is the Decision[1] dated 16 January 2008 of the Court of Appeals in CA-G.R. CR-H.C. No. 02074, which affirmed *in toto* the Decision[2] dated 1 February 2006 of the Regional Trial Court (RTC) of Parañaque City, Branch 260, in Criminal Case No. 00-0180, finding herein appellant Richard Sulima *y* Gallano guilty beyond reasonable doubt of the crime of rape committed against AAA[3] and sentencing him to suffer the penalty of *reclusion perpetua*. The appellant was also ordered to pay AAA civil indemnity in the amount of ₱50,000.00 and moral damages also in the amount of ₱50,000.00.

Appellant Richard Sulima *y* Gallano was charged before the RTC of Parañaque City with raping AAA in an Information which reads:

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[1] Penned by Associate Justice Marina L. Buzon with Associate Justices Rosmari D. Carandang and Mariflor P. Punzalan Castillo, concurring, *rollo*, pp. 2-14.

[2] Penned by Judge Jaime M. Guray, CA *rollo*, pp. 15-21.

[3] This is pursuant to the ruling of this Court in *People of the Philippines v. Cabalquinto* (G.R. No. 167693, 19 September 2006, 502 SCRA 419), wherein this Court resolved to withhold the real name of the victim-survivor and to use fictitious initials instead to represent her in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. The names of such victims, and of their immediate family members other than the accused, shall appear as "AAA", "BBB", "CCC", and so on. Addresses shall appear as "XXX" as in "No. XXX Street, XXX District, City of XXX."

The Supreme Court took note of the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Sec. 29 of R.A. No. 7610, otherwise known as *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*; Sec. 44 of R.A. No. 9262, otherwise known as *Anti-Violence Against Women and Their Children Act of 2004*; and Sec. 40 of A.M. No. 04-10-11-SC, known as *Rule on Violence Against Women and Their Children* effective November 15, 2004.

That on or about the 13th day of January 2000, in the City of XXX, Philippines, and within the jurisdiction of this Honorable Court, the above-named [appellant], by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the [private] complainant AAA, a minor, against her will and consent.[4]

Upon arraignment, the appellant, assisted by counsel *de oficio*, pleaded NOT GUILTY to the crime charged. The pre-trial was terminated upon agreement of the parties. Thereafter, trial on the merits ensued.

The prosecution presented the testimonies of the following witnesses: AAA, the private complainant; Police Senior Inspector (P/Sr. Insp.) Mary Ann Fajardo, Medico-legal officer at the Philippine National Police (PNP) Crime Laboratory, Camp Crame, Quezon City, who submitted before the court *a quo* the medico-legal report on AAA; Joseph Monteclaro, the person implicated by the appellant as the one who really raped AAA; Alfredo Guadez, the *barangay tanod* to whom the rape incident was first reported; and BBB, the father of AAA.

The evidence for the prosecution, culled from the testimonies of the aforesaid witnesses, established the following facts:

On 25 December 1999, AAA, then 14 years old, her father, BBB, and her older sister were outside their house located at XXX Compound, XXX, Barangay XXX, XXX City. Suddenly, the appellant arrived, introduced himself and invited BBB for a round of drink which the latter declined.[5] When the appellant, however, told BBB that his other friends were also invited, BBB then accepted the appellant's invitation.[6] AAA's older sister then told AAA to go inside their house.[7]

At around midnight of 13 January 2000, AAA, together with her younger siblings, were inside their house sleeping. AAA's

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[4] CA *rollo*, pp. 13-14.

[5] AAA's Testimony, TSN, 31 July 2000, pp. 3-5.

[6] BBB's Testimony, TSN, 24 October 2001, p. 4.

[7] AAA's Testimony, TSN, 31 July 2000, p. 5.

father, BBB, was then in the hospital attending to his wife who was about to give birth. While AAA was asleep, she was awakened by the weight of a person who was on top of her. The man threatened AAA not to shout; otherwise, he would kill her. Out of fear, AAA did not shout. The man began to undress AAA and thereafter succeeded in inserting his penis into AAA's vagina. After satisfying his lust, the man stood up momentarily and then again inserted his penis into AAA's vagina, threatening AAA that he would kill her if she would not submit to his desires. Thereafter, the man stood up and went out of the house. At this juncture, AAA vividly recognized the man as the appellant, whom she first saw on Christmas day, because of the light coming from the post outside their house.[8]

After that harrowing experience, AAA could not do anything but cry. When her father, BBB, arrived at around 3:00 o'clock in the morning of 14 January 2000, AAA told her father that she was raped by the appellant. Immediately thereafter, AAA and BBB went out of their house to look for the appellant. Unfortunately, they did not find him.[9]

On the evening of 14 January 2000, AAA and BBB went to the house of Alfredo Guadez, a *barangay tanod*, to report the rape incident. Alfredo Guadez then accompanied them to the *barangay* hall where their *barangay* chairman made an initial investigation of what had happened and took AAA's statements. On their way home, AAA and BBB saw the appellant in a gambling house. They returned to the *barangay* hall and told the *barangay* chairman of the whereabouts of the appellant. As a result, the appellant was fetched and invited to the *barangay* hall where he was identified by AAA as her assailant.[10]

On 15 January 2000, the appellant was brought to the Parañaque Police Station for investigation.[11] AAA also went to the said Police Station where she executed a sworn statement and identified

[8] *Id.* at 8-12.

[9] *Id.* at 13-14.

[10] *Id.* at 15-18.

[11] Testimony of Alfredo Guadez, TSN, 25 June 2001, p. 21.

the appellant as the person who raped her at midnight of 13 January 2000.[12] On the same day, AAA was advised by the police investigator to go to the PNP Crime Laboratory at Camp Crame, Quezon City, for her medical examination.[13] Medico-Legal Report No. M-196-00 issued on AAA contained the following findings and conclusion:

> PHYSICAL INJURIES: 1) Area of multiple contusion, proximal third of the right arm, measuring 2.0 x 5 cm. bisected by its anterior midline. 2) Contusion proximal third of the right arm, measuring 0.9 x 1.2 cm, 2 cm medial to its anterior midline.
>
> **GENITAL:**
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> xxx xxx xxx
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> HYMEN: Elastic, fleshy with shallow **fresh laceration at 3 o'clock position**.
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> xxx xxx xxx
>
> PERIURETHRAL AND VAGINAL SMEARS: Positive for spermatozoa but negative for gram negative diplococci.
>
> **CONCLUSION: Findings are compatible with recent sexual intercourse**. Barring unforeseen complications, it is estimated that the above injuries will resolve in 5 to 7 days.[14] [Emphasis supplied].

For its part, the defense presented the testimony of Lucita Vergara, neighbor of the appellant; and the appellant himself, who interposed the defenses of denial and alibi.

Lucita Vergara testified that at midnight of 13 January 2000, while she was outside her house, she saw Michael Halaan, Rey Justiniano, Joseph "Ogie" Monteclaro and a certain Eric having a drinking session. When the appellant arrived, he was invited

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[12] AAA's Testimony, TSN, 31 July 2000, pp. 22-23.

[13] *Supra* note 11.

[14] Records, p. 11.

to join the group but he declined. The appellant went home. Lucita Vergara disclosed that she was not sure if the appellant stayed at home the whole day. On 16 January 2000, she went around their area requesting women to sign up as she was a leader of the women's group. She then saw AAA and her friend with the latter telling her that AAA was raped. When she asked AAA who raped her, AAA replied that she did not know as it was dark during that time, and she only pointed to the appellant because her father told her to.[15]

The appellant denied having raped AAA. He averred that on the date of the rape incident, he was inside his house resting because he still had to go to work the following day. The appellant also stated that he only met AAA at the *barangay* hall when he was informed that there was a complaint for rape against him. He claimed that when AAA could not identify her rapist, AAA's father brought her outside the *barangay* hall and when they came back, AAA already pointed to him as the culprit.[16]

After trial, a Decision was rendered by the court *a quo* on 1 February 2006 finding the appellant guilty beyond reasonable doubt of the crime of rape. The trial court found AAA's testimony on how she was raped by the appellant at midnight of 13 January 2000 to be straightforward, credible and truthful. Moreover, AAA's positive identification of the appellant as her ravisher completely overturned appellant's defenses of denial and alibi. The trial court thus decreed:

> WHEREFORE, finding the [appellant] Richard G. Sulima *y* Gallano, guilty beyond reasonable doubt of the crime of rape, the Court hereby sentences him to suffer the penalty of *reclusion perpetua*. He is ordered to pay the victim moral damages in the amount of ₱50,000.00 and civil indemnity also in the amount of ₱50,000.00.[17]

The appellant appealed the aforesaid Decision of the trial court to the Court of Appeals. In his brief, the appellant assigned the following errors:

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[15] Testimony of Lucita Vergara, TSN, 14 October 2002, pp. 9-13, 17-21.

[16] Appellant's Testimony, TSN, 12 May 2005, pp. 3-4, 9.

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

I. THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE [APPELLANT] OF THE CRIME CHARGED, WHEN HIS GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.

II. THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE CONTRADICTORY EVIDENCE OF THE PROSECUTION.[18]

On 16 January 2008, the Court of Appeals rendered a Decision affirming *in toto* the Decision of the trial court.

The appellant filed a Notice of Appeal.[19] Thereupon, the Court of Appeals forwarded the records of this case to this Court.

This Court required the parties to simultaneously submit their respective supplemental briefs. In compliance therewith, the Office of the Solicitor General submitted its Supplemental Brief dated 24 October 2008. The appellant, on the other hand, made a Manifestation adopting his Appellant's Brief filed before the Court of Appeals as his Supplemental Brief.

Essentially, the appellant assails the credibility of the victim, as he asserts that his guilt of the crime of rape was not proven beyond reasonable doubt.

The appellant contends that AAA merely claimed that she was raped, but she did not narrate in detail how the crime was committed; thus, what happened at midnight of 13 January 2000 was consensual sex. Moreover, AAA's reaction during and after the rape was consummated was contrary to human experience and quite unbelievable. AAA neither resisted nor woke up her siblings who just slept right next to her while she was being raped. She did not do anything after the rape incident, considering that the house of the *barangay tanod* was just 10 steps away from their house. Also, the appellant pointed out that the reaction of AAA's father — sleeping soundly despite the fact that his daughter has been just raped, instead of immediately reporting the matter to the authorities — was quite unusual. Thus, AAA's

[18] *Id.* at 33.

[19] *Rollo,* pp. 15-16.

testimony cannot be regarded as credible and truthful, and the prosecution failed to prove his guilt beyond reasonable doubt.

Similarly, the appellant maintains that AAA's testimony is full of inconsistencies, and it even contradicts the testimony of her own father, as well as the result of her medical examination contained in the Medico-Legal Report No. M-196-00. The appellant emphasized that while AAA testified that her father came from work in the early morning of 14 January 2000, her father, on the other hand, stated that he came from the hospital as his wife just gave birth. Also, AAA's statement that she did not resist her ravisher when she was raped runs counter to the medico-legal report that she sustained several contusions caused by a probable physical resistance against the assailant.

The appellant's contentions are bereft of merit.

In reviewing rape cases, the Court has always been guided by three well-entrenched principles: (a) that 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; (b) that in view of the intrinsic nature of the crime which usually involves two persons, the complainant's testimony must be scrutinized with extreme caution; and (c) that the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of evidence of the defense. In addition, it is well-nigh to stress over and over again, that no woman would concoct a story of defloration, allow the examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her. It is settled jurisprudence that when a woman says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. A woman would think twice before she concocts a story of rape, unless she is motivated by a patent desire to seek justice for the wrong committed against her.[20] **Accordingly, the primordial consideration in a determination**

[20] *People v. Bontuan*, 437 Phil. 233, 241 (2002).

concerning the crime of rape is the credibility of the complainant's testimony.[21]

After a close and careful scrutiny of the records, this Court finds no compelling reason to disturb and depart from the aforesaid findings and conclusion of the trial court, which findings were also affirmed by the Court of Appeals.

It is a fundamental rule that the trial court's factual findings, especially its assessment of the credibility of witnesses, are accorded great weight and respect on appeal. This is so because the trial court was in a better position to decide the question, having heard the witnesses and observed their deportment and manner of testifying during the trial. The appellate courts will generally not disturb such findings, unless the trial court plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case.[22]

In this case, the trial court found AAA's testimony to be credible and truthful. It even described AAA's testimony as positive, straightforward and able to withstand the test of credibility. In AAA's narration of the manner in which the appellant took advantage of her, she never wavered in her testimony. In fact, she even exemplified the details of the incident without flourish and innuendo. AAA also positively identified the appellant before the court *a quo* as her abuser. The trial court also observed that even on cross-examination, AAA maintained that the appellant sexually molested her while threatening her not to shout, otherwise, she would be killed by him.[23] This finding of the trial court clearly overthrows the appellant's assertion that his identification as AAA's abuser was merely instigated by AAA's father.

Further, contrary to appellant's contention, the records revealed that AAA narrated in detail how the appellant ravished her at midnight of 13 January 2000. AAA bravely declared before the court *a quo* that at midnight of 13 January 2000, she was awakened when she felt that someone was on top of her. The man then

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[21] *People v. Dizon*, 453 Phil. 858, 881 (2003).

[22] *People v. Jose*, 367 Phil. 68, 76 (1999).

[23] CA *rollo*, p. 20.

told her not to shout; otherwise, he would kill her. The man removed her clothes and inserted his penis into her vagina. Thereafter, the man momentarily stood up and then again inserted his penis into her vagina and threatened to kill her if she would not submit to his desire. After satisfying his lust, the man stood up and went out of the house. AAA vividly recognized the man as the appellant because of the light coming from the post outside their house.[24]

With the foregoing, it has been clearly shown that AAA did not simply make a general statement on the manner in which the appellant raped her. Instead, AAA took courage in giving a detailed account of her painful experience in the hands of the appellant. Thus, it is beyond any cavil of doubt that indeed, AAA was raped by the appellant, and what happened between them was not consensual sex as the appellant claimed it to be.

AAA's failure to offer any kind of resistance to her abuser is of no moment and cannot in any way affect the credibility of her testimony. Rape is perpetrated when the accused has carnal knowledge of the victim through the use of force or threats or intimidation. It must be stressed that the **resistance of the victim is not an element of the crime**, and it need not be established by the prosecution. In any event, the failure of the victim to shout or to offer tenacious resistance does not make the sexual congress voluntary. Indeed, rape victims have no uniform reaction: some may offer strong resistance; others may be too intimidated to offer any resistance at all.[25]

In the present case, AAA categorically testified that she was cowed into submission because the appellant threatened to kill her if she would not submit to his bestial desire. Considering the age of AAA at the time she was raped, *i.e.*, 14 years old, such threat made by the appellant upon her life was sufficient to produce fear in the victim. This sufficiently explains the seeming lack of resistance by AAA when the offense was being perpetrated. Moreover, AAA's failure to wake up her siblings who were just

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[24] AAA's Testimony, TSN, 31 July 2000, pp. 8-12.

[25] *People v. Buendia,* 373 Phil. 430, 442 (1999).

sleeping right next to her was understandable. As stated by the Court of Appeals, AAA's siblings who were with her at the time she was raped were young, aged one, three, five and seven. Aside from the fact that the said children were incapable of protecting AAA, their safety might also be endangered should they be awakened.[26]

Appellant claims that AAA's behavior after the commission of the crime, *i.e.*, not doing anything considering that the house of the *barangay tanod* was just 10 steps away from their house, was contrary to human experience and quite unbelievable. The Court has repeatedly observed, however, that there is no standard form of behavior that can be anticipated of a rape victim following her defilement, particularly of a child who could not be expected to fully comprehend the ways of an adult. People react differently to emotional stress, and rape victims are no different from them.[27]

The appellant was mistaken in saying that AAA's father did not immediately report the rape incident to the authorities after being informed thereof and, instead, slept soundly. As can be gleaned from AAA's testimony, when her father arrived at around 3:00 o'clock in the morning of 14 January 2000, she immediately told her father that she was raped. Thereafter, she and her father wasted no time in searching for the appellant.[28] Unfortunately, they did not find him. Considering the wee hours, AAA's father who was weary and sleepy from attending to his wife who was in the hospital took some time to sleep. As the appellate court stated in its Decision, the fact that it was already in the evening of 14 January 2000 that BBB accompanied AAA to the *barangay* hall to report the rape incident could have been due to the fact that BBB still had to attend to his wife who had just given birth in the hospital.

The appellant's allegation that AAA's testimony was full of inconsistencies as it contradicted the testimony of her own father, as well as the result of her medical examination, is just appellant's

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[26] *Rollo*, p. 12.

[27] *People v. Iluis*, 447 Phil. 517, 528 (2003).

[28] AAA's Testimony, TSN, 31 July 2000, p. 13-14.

futile attempt to escape the consequences of the crime he committed. Here we quote with authority the pronouncements made by the appellate court on the matter, thus:

It should be noted that **AAA testified during the direct examination that BBB was not in their house when she was raped by [appellant] because he was in the hospital as her mother was about to give birth**. However, on cross-examination, AAA was asked by the defense counsel the following question, which she answered in the affirmative.

"Q: *Samakatwid nang sinabi mo sa tatay nang galing sa trabaho, natulog siya*?

A" *Opo*."

It appears that the affirmative answer of AAA actually referred to the question that her father slept. It should be noted that prior to said question of the defense counsel as to whether BBB slept, the defense counsel had already asked AAA several questions. It has been held that a witness may contradict himself on the circumstances of an act or different acts due to a long series of questions on cross-examination during which the mind becomes tired to such a degree that the witness does not understand what he is testifying about, especially if the questions, in their majority are leading and tend to make him ratify a former contrary declaration.[29] **Moreover, the alleged inconsistency pertains to a matter extraneous to the crime of rape and does not detract from the fact that AAA had indeed been sexually defiled.**[30] Thus, it is immaterial where BBB came from when he arrived in his house at about 3:00 o'clock in the morning of [14 January 2000].[31] (Emphasis supplied.)

In contrast, the evidence presented by the defense consisted mainly of bare denials and alibi. Denial and alibi are inherently weak defenses; unless supported by clear and convincing evidence, the same cannot prevail over the positive declaration of the

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[29] *Philippine Airlines, Inc. v. Court of Appeals*, 462 Phil. 649, 669-670 (2003).

[30] *People v. Suarez*, G.R. Nos. 153573-76, 15 April 2005, 456 SCRA 333, 346.

[31] CA *rollo*, pp. 8-9.

victim,[32] who in a simple and straightforward manner convincingly identified the appellant who sexually molested her at midnight of 13 January 2000. Further, for the defense of alibi to prosper, it must be sufficiently convincing as to preclude any doubt on the physical impossibility of the presence of the accused at the *locus criminis* or its immediate vicinity at the time of the incident.[33] The appellant in this case admitted that his residence was just 30 houses away from that of AAA;[34] thus, it was not physically impossible for him to be at the *locus criminis* at the time of the rape incident. More so, appellant's defenses of denial and alibi run counter to his own argument that what happened between him and AAA was consensual sex.

Given the foregoing, this Court is convinced that the trial court and the appellate court correctly convicted the appellant of the crime of rape,[35] which is punishable by *reclusion perpetua*.[36]

This Court affirms the award of ₱50,000.00 as civil indemnity given by the lower courts to the victim. Civil indemnity, which is in the nature of actual or compensatory damages, is mandatory upon the finding of the fact of rape.[37]

Moral damages in rape cases should be awarded without need of showing that the victim suffered the trauma of mental, physical, and psychological sufferings constituting the basis thereof. These are too obvious to still require their recital at the trial by the victim, since we even assume and acknowledge such agony as

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[32] *People v. Agravante*, 392 Phil. 543, 551 (2000).

[33] *People v. Andal*, 344 Phil. 889, 908 (1997).

[34] Appellant's Testimony, TSN, 12 May 2005, p. 12.

[35] ART. 266-A. *Rape: When and How Committed*.— Rape is committed:

1) By a man who have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat or intimidation;

x x x. (Revised Penal Code).

[36] ART. 266-B. *Penalties*.— Rape under paragraph 1 of the next preceeding article shall be punished by *reclusion perpetua*. (Revised Penal Code).

[37] *People v. Callos*, 424 Phil. 506, 516 (2002).

a gauge of her credibility.[38] Thus, this Court finds the award of moral damages by both lower courts in the amount of ₱50,000.00, proper.

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02074 dated 16 January 2008 finding herein appellant guilty beyond reasonable doubt of the crime of rape is hereby *AFFIRMED in toto*.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Velasco, Jr.,[*] and *Peralta, JJ.*, concur.

EN BANC

[A.C. No. 7056. February 11, 2009]

PLUS BUILDERS, INC., and EDGARDO C. GARCIA, *complainants, vs.* **ATTY. ANASTACIO E. REVILLA, JR.,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; RESPONDENT'S MOTION FOR RECONSIDERATION AND HUMBLE ACKNOWLEDGMENT OF HIS MISFEASANCE PERSUADED THE COURT TO EXTEND A CERTAIN DEGREE OF LENIENCY TOWARDS HIM; EARLIER DECREED SUSPENSION OF TWO (2) YEARS FROM THE PRACTICE OF LAW REDUCED TO SIX (6) MONTHS

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[38] *People v. Docena*, 379 Phil. 903, 917-918 (2000).

[*] Associate justice Prebitero J. Velasco, Jr. was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 8 December 2008.

SUSPENSION.— It is the rule that when a lawyer accepts a case, he is expected to give his full attention, diligence, skill and competence to the case, regardless of its importance and whether he accepts it for a fee or for free. A lawyer's devotion to his client's cause not only requires but also entitles him to deploy every honorable means to secure for the client what is justly due him or to present every defense provided by law to enable the latter's cause to succeed. In this case, respondent may not be wanting in this regard. On the contrary, it is apparent that the respondent's acts complained of were committed out of his over-zealousness and misguided desire to protect the interests of his clients who were poor and uneducated. We are not unmindful of his dedication and conviction in defending the less fortunate. Taking the cudgels from the former lawyer in this case is rather commendable, but respondent should not forget his first and foremost responsibility as an officer of the court. We stress what we have stated in our decision that, in support of the cause of their clients, lawyers have the duty to present every remedy or defense within the authority of the law. This obligation, however, is not to be performed at the expense of truth and justice. This is the criterion that must be borne in mind in every exertion a lawyer gives to his case. Under the Code of Professional Responsibility, a lawyer has the duty to assist in the speedy and efficient administration of justice, and is enjoined from unduly delaying a case by impeding execution of a judgment or by misusing court processes. Certainly, violations of these canons cannot be countenanced, as respondent must have realized with the sanction he received from this Court. However, the Court also knows how to show compassion and will not hesitate to refrain from imposing the appropriate penalties in the presence of mitigating factors, such as the respondent's length of service, acknowledgment of his or her infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations, and respondent's advanced age, among other things, which have varying significance in the Court's determination of the imposable penalty. Thus, after a careful consideration of herein respondent's motion for reconsideration and humble acknowledgment of his misfeasance, we are persuaded to extend a degree of leniency towards him. We find the suspension of six (6) months from the practice of law sufficient in this case.

APPEARANCES OF COUNSEL

Leopoldo S. Gonzalez for complainants.

R E S O L U T I O N

NACHURA, *J.*:

Before us is a motion for reconsideration of our Decision dated September 13, 2006, finding respondent guilty of gross misconduct for committing a willful and intentional falsehood before the court, misusing court procedure and processes to delay the execution of a judgment and collaborating with non-lawyers in the illegal practice of law.

To recall, the antecedents of the case are as follows:

On November 15, 1999, a decision was rendered by the Provincial Adjudicator of Cavite (PARAD) in favor of herein complainant, Plus Builders, Inc. and against the tenants/farmers Leopoldo de Guzman, Heirs of Bienvenido de Guzman, Apolonio Ilas and Gloria Martirez Siongco, Heirs of Faustino Siongco, Serafin Santarin, Benigno Alvarez and Maria Esguerra, who were the clients of respondent, Atty. Anastacio E. Revilla, Jr. The PARAD found that respondent's clients were mere tenants and not rightful possessors/owners of the subject land. The case was elevated all the way up to the Supreme Court, with this Court sustaining complainant's rights over the land. Continuing to pursue his clients' lost cause, respondent was found to have committed intentional falsehood; and misused court processes with the intention to delay the execution of the decision through the filing of several motions, petitions for temporary restraining orders, and the last, an action to quiet title despite the finality of the decision. Furthermore, he allowed non-lawyers to engage in the unauthorized practice of law – holding themselves out as his partners/associates in the law firm.

The dispositive portion of the decision thus reads:

WHEREFORE, Anastacio E. Revilla, Jr. is hereby found guilty of gross misconduct and is ***SUSPENDED*** for two years from the

practice of law, effective upon his receipt of this Decision. He is warned that a repetition of the same or similar acts will be dealt with more severely.

Let copies of this Decision be entered in the record of respondent as attorney and served on the IBP, as well as on the court administrator who shall circulate it to all courts for their information and guidance.[1]

Respondent duly filed a motion for reconsideration within the reglementary period, appealing to the Court to take a second look at his case and praying that the penalty of suspension of two years be reduced to mere reprimand or admonition for the sake of his family and the poor clients he was defending.[2]

Respondent maintains that he did not commit the acts complained of. The courses of action he took were not meant to unduly delay the execution of the DARAB Decision dated November 19, 1999, but were based on his serious study, research and experience as a litigation lawyer for more than 20 years and on the facts given to him by his clients in the DARAB case. He believes that the courses of action he took were valid and proper legal theory designed to protect the rights and interests of Leopoldo de Guzman, *et al*.[3] He stresses that he was not the original lawyer in this case. The lawyer-client relationship with the former lawyer was terminated because Leopoldo de Guzman, *et al*. felt that their former counsel did not explain/ argue their position very well, refused to listen to them and, in fact, even castigated them. As the new counsel, respondent candidly relied on what the tenants/farmers told him in the course of his interview. They maintained that they had been in open, adverse, continuous and notorious possession of the land in the concept of an owner for more than 50 years. Thus, the filing of the action to quiet title was resorted to in order to determine the rights of his clients respecting the subject property. He avers that he merely exhausted all possible remedies and defenses to which his clients were entitled under the law, considering that

[1] Decision, p. 17.

[2] Motion for Reconsideration, p. 13.

[3] *Id.* at 2.

his clients were subjected to harassment and threats of physical harm and summary eviction by the complainant.[4] He posits that he was only being protective of the interest of his clients as a good father would be protective of his own family[5] and that his services to Leopoldo de Guzman, *et al.* were almost *pro bono.*[6]

Anent the issue that he permitted his name to be used for unauthorized practice of law, he humbly submits that there was actually no sufficient evidence to prove the same or did he fail to dispute this, contrary to the findings of the Integrated Bar of the Philippines (IBP). He was counsel of Leopoldo de Guzman, *et al*. only and not of the cooperative Kalayaan Development Cooperative (KDC). He was just holding his office in this cooperative, together with Attys. Dominador Ferrer, Efren Ambrocio, the late Alfredo Caloico and Marciano Villavert. He signed the retainer agreement with Atty. Dominador to formalize their lawyer-client relationship, and the complainants were fully aware of such arrangement.[7]

Finally, he submits that if he is indeed guilty of violating the rules in the courses of action he took in behalf of his clients, he apologizes and supplicates the Court for kind consideration, pardon and forgiveness. He reiterates that he does not deserve the penalty of two years suspension, considering that the complaint fails to show him wanting in character, honesty, and probity; in fact, he has been a member of the bar for more than 20 years, served as former president of the IBP Marinduque Chapter, a legal aide lawyer of IBP Quezon City handling detention prisoners and *pro bono* cases, and is also a member of the Couples for Christ, and has had strict training in the law school he graduated from and the law offices he worked with.[8] He is the sole breadwinner in the family with a wife who is

[4] *Id.* at 5.

[5] *Id.* at 6.

[6] *Id.* at 8.

[7] *Id.* at 9.

[8] *Id.* at 4.

jobless, four (4) children who are in school, a mother who is bedridden and a sick sister to support. The family's only source of income is respondent's private practice of law, a work he has been engaged in for more than twenty-five (25) years up to the present.[9]

On August 15, 2008, the Office of the Bar Confidant (OBC) received a letter from respondent, requesting that he be issued a clearance for the renewal of his notarial commission. Respondent stated therein that he was aware of the pendency of the administrative cases[10] against him, but pointed out that said cases had not yet been resolved with finality. Respondent sought consideration and compassion for the issuance of the clearance — considering present economic/financial difficulties — and reiterating the fact that he was the sole breadwinner in the family.

It is the rule that when a lawyer accepts a case, he is expected to give his full attention, diligence, skill and competence to the case, regardless of its importance and whether he accepts it for a fee or for free.[11] A lawyer's devotion to his client's cause not only requires but also entitles him to deploy every honorable means to secure for the client what is justly due him or to present every defense provided by law to enable the latter's cause to succeed.[12] In this case, respondent may not be wanting in this regard. On the contrary, it is apparent that the respondent's acts complained of were committed out of his over-zealousness and misguided desire to protect the interests of his clients who were poor and uneducated. We are not unmindful of his dedication and conviction in defending the less fortunate. Taking the cudgels from the former lawyer in this case is rather commendable, but respondent should not forget his first and foremost responsibility as an officer of the court. We stress what we have stated in our decision that, in support of the cause of their clients, lawyers have the duty to present every remedy or defense within the

[9] *Id.* at 11.

[10] A.C. Nos. 5473, 6586, 7054.

[11] *Santiago v. Fojas*, A.C. No, 4103, September 7, 1995, 248 SCRA 68, 75-76.

[12] *Miraflor v. Hagad*, A.C. No. 2468, May 12, 1995, 244 SCRA 106.

authority of the law. This obligation, however, is not to be performed at the expense of truth and justice.[13] This is the criterion that must be borne in mind in every exertion a lawyer gives to his case.[14] Under the Code of Professional Responsibility, a lawyer has the duty to assist in the speedy and efficient administration of justice, and is enjoined from unduly delaying a case by impeding execution of a judgment or by misusing court processes.[15]

Certainly, violations of these canons cannot be countenanced, as respondent must have realized with the sanction he received from this Court. However, the Court also knows how to show compassion and will not hesitate to refrain from imposing the appropriate penalties in the presence of mitigating factors, such as the respondent's length of service, acknowledgment of his or her infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations, and respondent's advanced age, among other things, which have varying significance in the Court's determination of the imposable penalty. Thus, after a careful consideration of herein respondent's motion for reconsideration and humble acknowledgment of his misfeasance, we are persuaded to extend a degree of leniency towards him.[16] We find the suspension of six (6) months from the practice of law sufficient in this case.

IN VIEW OF THE FOREGOING, the letter-request dated August 15, 2008 is *NOTED*. Respondent's Motion for Reconsideration is *PARTIALLY GRANTED*. The Decision dated September 13, 2006 is hereby *MODIFIED* in that respondent is *SUSPENDED* from the practice of law for a period of six (6) months, effective upon receipt of this Resolution. Respondent is *DIRECTED* to inform the Court of the date of

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[13] Decision, p. 14; *Plus Builders, Inc. v. Garcia*, A.C. No. 7056, September 13, 2006, 501 SCRA 615, 625.

[14] *Ali v. Bubong,* A.C. No. 4018, March 8, 2005, 453 SCRA 220.

[15] *Ramos v. Pallugna,* A.C. No. 5908, October 25, 2004, 441 SCRA 220.

[16] *Rayos v. Hernandez*, G.R. No. 169079, August 28, 2007, 531 SCRA 477.

his receipt of said Resolution within ten (10) days from receipt thereof.

Let copies of this Decision be entered in the record of respondent as attorney and served on the *IBP*, as well as on the Court Administrator, who shall circulate it to all courts for their information and guidance.

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

EN BANC

[G.R. No. 175888. February 11, 2009]

SUZETTE NICOLAS *y* SOMBILON, *petitioner, vs.* **ALBERTO ROMULO, in his capacity as Secretary of Foreign Affairs; RAUL GONZALEZ, in his capacity as Secretary of Justice; EDUARDO ERMITA, in his capacity as Executive Secretary; RONALDO PUNO, in his capacity as Secretary of the Interior and Local Government; SERGIO APOSTOL, in his capacity as Presidential Legal Counsel; and L/CPL. DANIEL SMITH,** *respondents*.

[G.R. No. 176051. February 11, 2009]

JOVITO R. SALONGA, WIGBERTO E. TAÑADA, JOSE DE LA RAMA, EMILIO C. CAPULONG, H. HARRY L. ROQUE, JR., FLORIN HILBAY, and BENJAMIN POZON, *petitioners, vs.* **DANIEL SMITH, SECRETARY RAUL GONZALEZ, PRESIDENTIAL LEGAL**

COUNSEL SERGIO APOSTOL, SECRETARY RONALDO PUNO, SECRETARY ALBERTO ROMULO, The Special 16th Division of the COURT OF APPEALS, and all persons acting in their capacity, *respondents*.

[G.R. No. 176222. February 11, 2009]

BAGONG ALYANSANG MAKABAYAN (BAYAN), represented by Dr. Carol Araullo; GABRIELA, represented by Emerenciana de Jesus; BAYAN MUNA, represented by Rep. Satur Ocampo; GABRIELA WOMEN'S PARTY, represented by Rep. Liza Maza; KILUSANG MAYO UNO (KMU), represented by Elmer Labog; KILUSANG MAGBUBUKID NG PILIPINAS (KMP), represented by Willy Marbella; LEAGUE OF FILIPINO STUDENTS (LFS), represented by Vencer Crisostomo; and THE PUBLIC INTEREST LAW CENTER, represented by Atty. Rachel Pastores, *petitioners, vs.* **PRESIDENT GLORIA MACAPAGAL-ARROYO, in her capacity as concurrent Defense Secretary, EXECUTIVE SECRETARY EDUARDO ERMITA, FOREIGN AFFAIRS SECRETARY ALBERTO ROMULO, JUSTICE SECRETARY RAUL GONZALEZ, and INTERIOR AND LOCAL GOVERNMENT SECRETARY RONALDO PUNO,** *respondents*.

SYLLABUS

1. POLITICAL LAW; INTERNATIONAL LAW; TREATIES AND INTERNATIONAL AGREEMENTS; THE VISITING FORCES AGREEMENT (VFA) WAS DULY CONCURRED IN BY THE PHILIPPINE SENATE AND HAS BEEN RECOGNIZED AS A TREATY BY THE UNITED STATES AND ATTESTED AND CERTIFIED BY THE DULY AUTHORIZED REPRESENTATIVE OF THE UNITED STATES GOVERNMENT; THE FACT THAT THE VFA WAS NOT SUBMITTED FOR ADVICE AND CONSENT OF THE

UNITED STATES SENATE DOES NOT DETRACT FROM ITS STATUS AS A BINDING INTERNATIONAL AGREEMENT OR TREATY RECOGNIZED BY SAID STATE.— As held in *Bayan v. Zamora*, the VFA was duly concurred in by the Philippine Senate and has been recognized as a treaty by the United States as attested and certified by the duly authorized representative of the United States government. The fact that the VFA was not submitted for advice and consent of the United States Senate does not detract from its status as a binding international agreement or treaty recognized by the said State. For this is a matter of internal United States law. Notice can be taken of the internationally known practice by the United States of submitting to its Senate for advice and consent agreements that are policymaking in nature, whereas those that carry out or further implement these policymaking agreements are merely submitted to Congress, under the provisions of the so-called Case–Zablocki Act, within sixty days from ratification.

2. ID.; ID.; ID.; THE VFA IS AN IMPLEMENTING AGREEMENT OF THE RP-US MUTUAL DEFENSE TREATY OF AUGUST 30, 1951, AS SUCH, IT IS NOT NECESSARY TO SUBMIT IT TO THE US SENATE FOR ADVICE AND CONSENT BUT MERELY TO THE US CONGRESS UNDER THE CASE-ZABLOCKI ACT WITHIN 60 DAYS OF ITS RATIFICATION.— The second reason has to do with the relation between the VFA and the RP-US Mutual Defense Treaty of August 30, 1951. This earlier agreement was signed and duly ratified with the concurrence of both the Philippine Senate and the United States Senate. Clearly, therefore, joint RP-US military exercises for the purpose of developing the capability to resist an armed attack fall squarely under the provisions of the RP-US Mutual Defense Treaty. The VFA, which is the instrument agreed upon to provide for the joint RP-US military exercises, is simply an implementing agreement to the main RP-US Military Defense Treaty. The Preamble of the VFA states: The Government of the United States of America and the Government of the Republic of the Philippines, Reaffirming their faith in the purposes and principles of the Charter of the United Nations and their desire to strengthen international and regional security in the Pacific area; Reaffirming their obligations under the Mutual Defense Treaty of August 30, 1951; Noting that from time to time elements of the United

States armed forces may visit the Republic of the Philippines; Considering that cooperation between the United States and the Republic of the Philippines promotes their common security interests; Recognizing the desirability of defining the treatment of United States personnel visiting the Republic of the Philippines; Have agreed as follows: Accordingly, as an implementing agreement of the RP-US Mutual Defense Treaty, it was not necessary to submit the VFA to the US Senate for advice and consent, but merely to the US Congress under the Case–Zablocki Act within 60 days of its ratification. It is for this reason that the US has certified that it recognizes the VFA as a binding international agreement, *i.e.*, a treaty, and this substantially complies with the requirements of Art. XVIII, Sec. 25 of our Constitution.

3. ID.; ID.; ID.; THE PROVISION OF ART. XVIII, SECTION 25 OF THE CONSTITUTION IS COMPLIED WITH BY VIRTUE OF THE FACT THAT THE PRESENCE OF THE US ARMED FORCES THROUGH THE VFA IS A PRESENCE "ALLOWED UNDER" THE RP-US MUTUAL DEFENSE TREATY.— The provision of Art. XVIII, Sec. 25 of the Constitution, is complied with by virtue of the fact that the presence of the US Armed Forces through the VFA is a presence "allowed under" the RP-US Mutual Defense Treaty. Since the RP-US Mutual Defense Treaty itself has been ratified and concurred in by both the Philippine Senate and the US Senate, there is no violation of the Constitutional provision resulting from such presence. The VFA being a valid and binding agreement, the parties are required as a matter of international law to abide by its terms and provisions.

4. ID.; ID.; ID.; NOTHING IN THE CONSTITUTION WHICH PROHIBITS AGREEMENTS RECOGNIZING IMMUNITY FROM JURISDICTION OR SOME ASPECTS OF JURISDICTION (SUCH AS CUSTODY), IN RELATION TO LONG RECOGNIZED SUBJECTS OF SUCH IMMUNITY LIKE HEADS OF STATE, DIPLOMATS AND MEMBERS OF THE ARMED FORCES CONTINGENTS OF A FOREIGN STATE ALLOWED TO ENTER ANOTHER STATE'S TERRITORY.— The equal protection clause is not violated, because there is a substantial basis for a different treatment of a member of a foreign military armed forces allowed to enter our territory and all other accused. The rule

in international law is that a foreign armed forces allowed to enter one's territory is immune from local jurisdiction, except to the extent agreed upon. The Status of Forces Agreements involving foreign military units around the world vary in terms and conditions, according to the situation of the parties involved, and reflect their bargaining power. But the principle remains, *i.e.*, the receiving State can exercise jurisdiction over the forces of the sending State only to the extent agreed upon by the parties. As a result, the situation involved is not one in which the power of this Court to adopt rules of procedure is curtailed or violated, but rather one in which, as is normally encountered around the world, the laws (including rules of procedure) of one State do not extend or apply – **except to the extent agreed upon** – to subjects of another State due to the recognition of extraterritorial immunity given to such bodies as visiting foreign armed forces. Nothing in the Constitution prohibits such agreements recognizing immunity from jurisdiction or some aspects of jurisdiction (such as custody), in relation to long-recognized subjects of such immunity like Heads of State, diplomats and members of the armed forces contingents of a foreign State allowed to enter another State's territory. On the contrary, the Constitution states that the Philippines adopts the generally accepted principles of international law as part of the law of the land. (Art. II, Sec. 2).

5. ID.; ID.; ID.; THE VFA CLEARLY STATES THAT THE DETENTION SHALL BE CARRIED OUT IN FACILITIES AGREED ON BY AUTHORITIES OF BOTH PARTIES BUT ALSO THAT THE DETENTION SHALL BE BY "PHILIPPINE AUTHORITIES"; THE ROMULO-KENNEY AGREEMENTS ARE NOT IN ACCORD WITH THE VFA ITSELF BECAUSE SUCH DETENTION IS NOT BY PHILIPPINE AUTHORITIES.— Applying, however, the provisions of VFA, the Court finds that there is a different treatment when it comes to detention as against custody. The moment the accused has to be detained, *e.g.*, after conviction, the rule that governs is the following provision of the VFA: Article V Criminal Jurisdiction x x x Sec. 10. The confinement or detention by Philippine authorities of United States personnel shall be carried out in facilities agreed on by appropriate Philippines and United States authorities. United States personnel serving sentences in the Philippines shall have the

right to visits and material assistance. It is clear that the parties to the VFA recognized the difference between custody during the trial and detention after conviction, because they provided for a specific arrangement to cover detention. And this specific arrangement clearly states not only that the detention shall be carried out in facilities agreed on by authorities of both parties, but also that the detention shall be "by Philippine authorities." Therefore, the Romulo-Kenney Agreements of December 19 and 22, 2006, which are agreements on the detention of the accused **in the United States Embassy**, are not in accord with the VFA itself because such detention is not "by Philippine authorities." Respondents should therefore comply with the VFA and negotiate with representatives of the United States towards an agreement on detention facilities under Philippine authorities as mandated by Art. V, Sec. 10 of the VFA.

6. ID.; ID.; ID.; THE VFA IS A SELF-EXECUTING AGREEMENT AND IS COVERED BY IMPLEMENTING LEGISLATION, NAMELY, THE CASE-ZABLOCKI ACT, USC SEC. 112(b).— After deliberation, the Court holds, on these points, as follows: First, the VFA is a self-executing Agreement, as that term is defined in *Medellin* itself, because the parties intend its provisions to be enforceable, precisely because the Agreement is intended to carry out obligations and undertakings under the RP-US Mutual Defense Treaty. As a matter of fact, the VFA has been implemented and executed, with the US faithfully complying with its obligation to produce L/CPL Smith before the court during the trial. Secondly, the VFA is covered by implementing legislation, namely, the Case-Zablocki Act, USC Sec. 112(b), inasmuch as it is the very purpose and intent of the US Congress that executive agreements registered under this Act within 60 days from their ratification be immediately implemented. The parties to these present cases do not question the fact that the VFA has been registered under the Case-Zablocki Act. In sum, therefore, the VFA differs from the Vienna Convention on Consular Relations and the *Avena* decision of the International Court of Justice (ICJ), subject matter of the *Medellin* decision. The Convention and the ICJ decision are not self-executing and are not registrable under the Case-Zablocki Act, and thus lack legislative implementing authority.

PUNO, *C.J., dissenting opinion:*

1. POLITICAL LAW; INTERNATIONAL LAW; TREATIES AND INTERNATIONAL AGREEMENTS; IMPLICATION OF *MEDELLIN V. TEXAS* ON THE VISITING FORCES AGREEMENT; ACKNOWLEDGMENT BY U.S. PRESIDENT THAT AN AGREEMENT IS A TREATY, EVEN WITH THE CONCURRENCE OF THE U.S. SENATE, IS NOT SUFFICIENT TO MAKE A TREATY ENFORCEABLE IN ITS DOMESTIC SPHERE; EXCEPTIONS; CASE AT BAR.—With **Medellin**, the case law is now settled that acknowledgement by the U.S. President that an agreement is a treaty, even with the concurrence of the U.S. Senate, is not sufficient to make a treaty enforceable in its domestic sphere, unless the words of the treaty itself clearly express the intention to make the treaty self-executory, or unless there is corresponding legislative enactment providing for its domestic enforceability. **The VFA does not satisfy either of these requirements and cannot thus be enforced within the U.S.** I **reiterate** my dissent in ***Bayan v. Zamora*** that the VFA failed to meet the constitutional requirement of recognition by the U.S. as a treaty. The 1987 Constitution provides in Sec. 25, Art. XVIII, *viz*.: After the expiration in 1991 of the Agreement between the Republic of the Philippines and the United States of America concerning Military Bases, foreign military bases, troops, or facilities shall not be allowed in the Philippines except under a treaty duly concurred in by the Senate and, when the Congress so requires, ratified by a majority of the votes cast by the people in a national referendum held for that purpose, and **recognized as a treaty by the other contracting State.** Among the three constitutional requisites that must be complied with before foreign military bases, troops, or facilities can be allowed in Philippine territory, the **third requirement,** that any such agreement should be recognized as treaty by the other contracting party, lies at the very heart of this case.

2. ID.; ID.; ID.; ID.; *MEDELLIN* IMPOSES A "CLEAR STATEMENT REQUIREMENT" OF THE SELF-EXECUTORY NATURE OF A TREATY BEFORE JUDGMENTS BASED ON THE TREATY COULD OVERRULE STATE LAW AND BE ENFORCED DOMESTICALLY; CASE AT BAR.— Medellin is straightforward in ruling that the domestic enforceability of

the treaty should be reflected in the text of the treaty itself; it cannot simply be inferred from a multitude of factors, nor can it be derived from the context in which the agreement was entered into. In **Medellin**, the U.S. Court ruled that the Supremacy Clause does not require Texas to enforce the ICJ judgment. The President alone cannot require Texas to comply with a non-self-executing treaty absent congressional implementation. **Medellin** now imposes a "**clear statement requirement**" of the self-executory nature of treaty, before judgments based on that treaty could overrule state law and be enforced domestically. The Court now looks into the language of the treaty, parsing the treaty's text to determine whether the treaty was intended to be self-executory or not. If the text of the treaty does not clearly indicate the intention of the signatories to make it executory in the domestic sphere, Congress has the responsibility to transform an international obligation arising from a non-self-executory treaty into domestic law. **An examination of the text of the VFA does not show any provision that would satisfy the "clear statement requirement" within the text of the treaty to show that the United States intended it to be reciprocally enforced in the domestic sphere.** Absent such clear wording in the VFA itself that it is to be self-executory, and without the concurrence of the Senate, the VFA remains an international obligation of the U.S., but it does not have the corresponding mechanism to have the rights and obligations found therein enforced against the U.S. This is especially true when the enforcement of such rights would cause a violation of U.S. domestic laws, whether substantive or procedural.

3. ID.; ID.; ID.; ID.; ID.; CONGRESSIONAL ACT IS NECESSARY TO TRANSFORM THE INTERNATIONAL OBLIGATIONS BROUGHT ABOUT BY THE VFA INTO THE DOMESTIC SPHERE.— The Philippine Senate has concurred in the ratification of the VFA by a two-thirds vote of its members. The Romulo-Kenny Agreement was entered into in implementation of Article V(6) of the VFA, and the custody over Daniel Smith was transferred from the Philippine Government to the U.S. Embassy. The ruling in **Medellin** is proof that the U.S. cannot yet reciprocally enforce the provisions of the VFA. It highlights the obvious disparity in treatment of the VFA on the part of the United States. At best, the VFA can be considered as an international commitment by the U.S., but "the responsibility of transforming an international

obligation arising from a non-self-executing treaty into domestic law falls to Congress." I reiterate my dissent in *Bayan v. Zamora*, about the clear intention of the framers of the Constitution in imposing the requirement that the agreement must be "recognized by the other state as treaty." Recognition as a treaty by the other contracting state does not merely concern the procedure by which it is ratified, or whether or not it is concurred in by the Senate. The decisive mark to show that the agreement is considered as a treaty by the other contracting state is whether the agreement or treaty has obligatory effects and may be used as a source of rights enforceable in the domestic sphere of the other contracting party. **Medellin** evidently shows us that the wording of the VFA does not bear this mark. Though considered as a treaty by the Executive, it may not create obligatory effects in the U.S.'s domestic sphere absent a clear statement in the text of the Agreement that it is self-executory, or without a congressional act implementing it.

4. ID.; ID.; ID.; ID.; ID.; ID.; DISPARITY IN THE TREATMENT OF THE VFA ON THE PART OF THE UNITED STATES IS EVIDENTLY PROSCRIBED BY THE CONSTITUTION, FOR SUCH DICHOTOMY WOULD RENDER OUR SOVEREIGNTY IN TATTERS.— Regardless of whether there is concurrence by the U.S. Senate in the RP-U.S. Mutual Defense Treaty, the disparity in the legal treatment of the VFA by the U.S. is clear, considering the **Medellin** ruling. Indeed, even assuming there is a Senate concurrence in the RP-U.S. Mutual Defense Treaty, the VFA still cannot be given domestic effect in the United States. It is up to the Court to decide whether the terms of a treaty reflect a determination by the President who negotiated it and the Senate that confirmed it if the treaty has domestic effect. To repeat, any treaty becomes enforceable within U.S. only when the Court has determined it to be so, based on the clear terms of the treaty or through Congressional enactment to implement the provisions of the treaty. **It bears stressing that the RP government has already enforced the provisions of the VFA and has transferred custody of Lance Corporal Daniel Smith to U.S. authorities. The Philippine government has considered the VFA to be fully enforceable within our jurisdiction; yet, the U.S. does not look at the VFA as enforceable within its domestic jurisdiction. This dischotomy is evidently proscribed by the Constitution, for such dichotomy would render our**

jurisdiction. This dichotomy is evidently proscribed by the Constitution, for such dichotomy would render our sovereignty in tatters.

CARPIO, *J.*, *dissenting opinion*:

1. POLITICAL LAW; INTERNATIONAL LAW; TREATIES AND INTERNATIONAL AGREEMENTS; AN "EQUALLY BINDING" TREATY MEANS THAT THE TREATY IS ENFORCEABLE AS DOMESTIC LAW IN THE PHILIPPINES AND LIKEWISE ENFORCEABLE AS DOMESTIC LAW IN THE OTHER CONTRACTING STATE.— Section 25, Article XVIII of the Philippine Constitution requires that any agreement involving the presence of foreign troops in the Philippines must be **equally legally binding both on the Philippines and on the other contracting State.** This means the treaty must be enforceable under Philippine domestic law as well as under the domestic law of the other contracting State. Even Justice Adolfo S. Azcuna, the *ponente* of the majority opinion, and who was himself a member of the Constitutional Commission, **expressly admits** this when he states in his *ponencia*: The provision is thus designed to ensure that any agreement allowing the presence of foreign military bases, troops or facilities in Philippine territory shall be **equally binding on the Philippines and the foreign sovereign State involved. The idea is to prevent a recurrence of the situation where the terms and conditions governing the presence of foreign armed forces in our territory were binding on us but not upon the foreign State.** An "**equally binding**" treaty means exactly what it says — the treaty is enforceable as domestic law in the Philippines and likewise enforceable as domestic law in the other contracting State.

2. ID.; ID.; ID.; IT WOULD BE NAÏVE AND FOOLISH FOR THE PHILIPPINES, OR FOR ANY OTHER STATE FOR THAT MATTER, TO IMPLEMENT AS PART OF ITS DOMESTIC LAW A TREATY THAT THE UNITED STATES DOES NOT RECOGNIZE AS PART OF ITS OWN DOMESTIC LAW; IT WOULD ONLY GIVE THE UNITED STATES THE "UNQUALIFIED RIGHT" TO FREE ITSELF FROM LIABILITY FOR ANY BREACH OF ITS OWN OBLIGATION UNDER THE TREATY, DESPITE AN

ADVERSE RULING FROM THE INTERNATIONAL COURT OF JUSTICE.— The Philippines cannot take comfort that the VFA can still give rise to an obligation under international law on the part of the United States, even as the VFA does not constitute domestic law in the United States. Assuming that the United States will submit to the jurisdiction of the ICJ, the futility of relying on the Security Council to enforce the ICJ decision is apparent. In the chilling words of *Medellin*, "**the United States retained the unqualified right to exercise its veto of any Security Council resolution.**" The only way to avoid this veto of the United States is to make the treaty part of U.S. domestic law. It would be naïve and foolish for the Philippines, or for any other State for that matter, to implement as part of its domestic law a treaty that the United States does not recognize as part of its own domestic law. That would only give the United States the "**unqualified right**" to free itself from liability for any breach of its own obligation under the treaty, despite an adverse ruling from the ICJ. The wisdom of the framers in crafting Section 25, Article XVIII of the Philippine Constitution is now apparent. The other contracting State must "**recognize as a treaty**" any agreement on the presence of foreign troops in the Philippines, and such treaty must be **equally binding** on the Philippines and on the other contracting State. In short, if the treaty is part of domestic law of the Philippines, it must also be part of domestic law of the other contracting State. Otherwise, the treaty cannot take effect in the Philippines.

3. ID.; ID.; ID.; THE VFA IS NOT AMONG THE 70-ODD TREATIES AFFECTED BY THE *MEDELLIN* RULING BECAUSE THE UNITED STATES DOES NOT CONSIDER THE AGREEMENT AS A TREATY BUT MERELY AN EXECUTIVE AGREEMENT; AGREEMENTS; DISTINCTION BETWEEN TREATIES AND EXECUTIVE AGREEMENTS.— *Medellin* recognized that at least some 70-odd treaties of the United States would be affected by the ruling that a treaty, even if ratified by the U.S. Senate, is not self-executory. *Medellin* even proffered a solution — legislation by the U.S. Congress giving wholesale effect to such ratified treaties. The VFA is not among the 70-odd treaties because the United States does not even consider the VFA a treaty but merely an executive agreement. The U.S. Senate did not ratify the VFA because under the United States Constitution only treaties are required

to be ratified. The important difference between a treaty and an executive agreement is that a ratified treaty automatically repeals a prior inconsistent law, while an executive agreement cannot but must be consistent with existing laws. The U.S. State Department has explained the distinction between treaties and executive agreements in this manner: x x x it may be desirable to point out here the well-recognized distinction between an executive agreement and a treaty. In brief, it is that the former cannot alter the existing law and must conform to all statutory enactments, whereas a treaty, if ratified by and with the advice and consent of two-thirds of the Senate, as required by the Constitution, itself becomes the supreme law of the land and takes precedence over any prior statutory enactments. With *Medellin*, the treaty must not only be ratified, but must also be ratified as self-executory, or an implementing legislation must be adopted, before it can repeal a prior inconsistent law.

4. ID.; ID.; ID.; IF A RATIFIED TREATY DOES NOT AUTOMATICALLY BECOME PART OF U.S. DOMESTIC LAW UNDER *MEDELLIN*, WITH MORE REASON A MERELY NOTIFIED EXECUTIVE AGREEMENT DOES NOT FORM PART OF U.S. DOMESTIC LAW.— The Case-Zablocki Act mandates the notification to the U.S. Congress of executive agreements "**other than a treaty**." The purpose of the Case-Zablocki Act is "to address the lack of legal constraints over the President's choice of the form of an agreement," whether an executive agreement or a treaty. It allows the U.S. Congress to timely monitor if an agreement is mislabeled as an executive agreement when it should be a treaty subject to U.S. Senate ratification. The fact that the U.S. State Department notified the VFA to the U.S. Congress under the Case-Zablocki Act, and the U.S. Congress has not objected to the characterization of the VFA as an executive agreement, is incontrovertible proof that the VFA is not a treaty but merely an executive agreement as far as the United States Government is concerned. **In short, the United States does not recognize the VFA as a treaty.** It is also an admission that the VFA does not have the status of domestic law in the United States. Notification under the Case-Zablocki Act is obviously far less significant legally than ratification by the U.S. Senate of a treaty. If a ratified treaty does not automatically become part of U.S. domestic law under *Medellin*, with more reason a merely

notified executive agreement does not form part of U.S. domestic law.

5. ID.; ID.; ID.; THE VFA, AS AN EXECUTIVE AGREEMENT, CANNOT DEPEND ON FOR ITS LEGAL EFFICACY ON THE MUTUAL DEFENSE TREATY BECAUSE THE SAID TREATY ITSELF, UNDER THE *MEDELLIN* RULING, IS NOT BINDING AND ENFORCEABLE UNDER U.S. DOMESTIC LAW, JUST LIKE THE VIENNA CONVENTION.— The United States Government does not recognize the VFA as a treaty but merely as an executive agreement. For the VFA to be constitutional under Section 25, Article XVIII of the Philippine Constitution, the United States must first recognize the VFA as a treaty, and then ratify the VFA to form part of its domestic law. In the words of Father Bernas, the United States must "**[c]omplete the process by accepting [the VFA] as a treaty through ratification by [the U.S.] Senate as the United States Constitution requires.**" *Medellin* has now added the further requirement that the U.S. Congress must adopt an implementing legislation to the VFA, or the VFA must be renegotiated to make it self-executory and ratified as such by the U.S. Senate. Unless and until this is done, the VFA is not "recognized as a treaty" by the United States, and thus it cannot be given effect in the Philippines. Under *Medellin*, the 1952 RP-US Mutual Defense Treaty (MDT) is not part of the domestic law of the United States and the U.S. President has no power to enforce the MDT under U.S. domestic law. Based on the *Medellin* requirements for a treaty to be binding and enforceable under U.S. domestic law, the MDT suffers the same fate as the Vienna Convention on Consular Relations. Both the MDT and the Convention were ratified by the U.S. Senate. However, both the MDT and the Convention contain only the usual *ratification* and *entry into force* provisions found in treaties. **Both the MDT and the Convention do not contain any provision making them self-executory once ratified by the U.S. Senate. The U.S. Congress has also not adopted any implementing legislation for the MDT or the Convention.** Consequently, the VFA, as an executive agreement, cannot depend for its legal efficacy on the MDT because the MDT itself, under *Medellin*, is not binding and enforceable under U.S. domestic law, just like the Convention.

6. ID.; ID.; ID.; THE COURT SHOULD NOT ALLOW THE IMPLEMENTATION OF THE VFA BY THE PHILIPPINE GOVERNMENT UNLESS AND UNTIL THE UNITED STATES RECOGNIZES IT AS A TREATY; THE VFA FAILS TO COMPLY WITH SECTION 25, ARTICLE XVIII OF THE PHILIPPINE CONSTITUTION REQUIRING THE UNITED STATES "TO RECOGNIZE AS A TREATY" THE VFA.— The VFA fails to comply with Section 25, Article XVIII of the Philippine Constitution requiring the United States to "**recognize as a treaty**" the VFA. This Court cannot allow the implementation of the VFA by the Philippine Government unless and until the United States recognizes the VFA as a treaty. This means that the VFA must be ratified by the U.S. Senate and made part of U.S. domestic law in accordance with *Medellin.* Only when this process is completed can this Court allow the implementation of the VFA. In the meantime, the accused Lance Corporal Daniel Smith of the U.S. Armed Forces should be subject to the same Philippine laws governing an accused in similar cases, without the application of the VFA or its subsidiary agreements.

APPEARANCES OF COUNSEL

Evalyn G. Ursua for petitioner in G.R. No. 175888.

Roque and Butuyan Law Offices for petitioner in G.R. No. 176051.

Agabin Verzola Hermoso & Layaoen Law Offices for BAYAN, *et al.*

Antonio R. Bautista for S. Apostol.

Jose P. P. Justiniano for Lance Corporal D. Smith.

D E C I S I O N

AZCUNA, *J.*:

These are petitions for *certiorari, etc*. as special civil actions and/or for review of the Decision of the Court of Appeals in *Lance Corporal Daniel J. Smith v. Hon. Benjamin T. Pozon, et al.*, in CA-G.R. SP No. 97212, dated January 2, 2007.

The facts are not disputed.

Respondent Lance Corporal (L/CPL) Daniel Smith is a member of the United States Armed Forces. He was charged with the crime of rape committed against a Filipina, petitioner herein, sometime on November 1, 2005, as follows:

> The undersigned accused LCpl. Daniel Smith, Ssgt. Chad Brian Carpentier, Dominic Duplantis, Keith Silkwood and Timoteo L. Soriano, Jr. of the crime of Rape under Article 266-A of the Revised Penal Code, as amended by Republic Act 8353, upon a complaint under oath filed by Suzette S. Nicolas, which is attached hereto and made an integral part hereof as Annex "A", committed as follows:
>
> > "That on or about the First (1st) day of November 2005, inside the Subic Bay Freeport Zone, Olongapo City and within the jurisdiction of this Honorable Court, the above-named accused's (*sic*), being then members of the United States Marine Corps, except Timoteo L. Soriano, Jr., conspiring, confederating together and mutually helping one another, with lewd design and by means of force, threat and intimidation, with abuse of superior strength and taking advantage of the intoxication of the victim, did then and there willfully, unlawfully and feloniously sexually abuse and have sexual intercourse with or carnal knowledge of one Suzette S. Nicolas, a 22-year old unmarried woman inside a Starex Van with Plate No. WKF-162, owned by Starways Travel and Tours, with Office address at 8900 P. Victor St., Guadalupe, Makati City, and driven by accused Timoteo L. Soriano, Jr., against the will and consent of the said Suzette S. Nicolas, to her damage and prejudice.
>
> CONTRARY TO LAW."[1]

Pursuant to the Visiting Forces Agreement (VFA) between the Republic of the Philippines and the United States, entered into on February 10, 1998, the United States, at its request, was granted custody of defendant Smith pending the proceedings.

During the trial, which was transferred from the Regional Trial Court (RTC) of Zambales to the RTC of Makati for security reasons, the United States Government faithfully complied with its undertaking to bring defendant Smith to the trial court every time his presence was required.

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[1] Annex "B" of RTC Decision, CA *rollo*, p. 45.

On December 4, 2006, the RTC of Makati, following the end of the trial, rendered its Decision, finding defendant Smith guilty, thus:

> WHEREFORE, premises considered, for failure of the prosecution to adduce sufficient evidence against accused S/SGT. CHAD BRIAN CARPENTER, L/CPL. KEITH SILKWOOD AND L/CPL. DOMINIC DUPLANTIS, all of the US Marine Corps assigned at the USS Essex, are hereby ACQUITTED to the crime charged.
>
> The prosecution having presented sufficient evidence against accused L/CPL. DANIEL J. SMITH, also of the US Marine Corps at the USS Essex, this Court hereby finds him GUILTY BEYOND REASONABLE DOUBT of the crime of RAPE defined under Article 266-A, paragraph 1 (a) of the Revised Penal Code, as amended by R.A. 8353, and, in accordance with Article 266-B, first paragraph thereof, hereby sentences him to suffer the penalty of *reclusion perpetua* together with the accessory penalties provided for under Article 41 of the same Code.
>
> Pursuant to Article V, paragraph No. 10, of the Visiting Forces Agreement entered into by the Philippines and the United States, accused L/CPL. DANIEL J. SMITH shall serve his sentence in the facilities that shall, thereafter, be agreed upon by appropriate Philippine and United States authorities. Pending agreement on such facilities, accused L/CPL. DANIEL J. SMITH is hereby temporarily committed to the Makati City Jail.
>
> Accused L/CPL. DANIEL J. SMITH is further sentenced to indemnify complainant SUZETTE S. NICOLAS in the amount of ₱50,000.00 as compensatory damages plus ₱50,000.00 as moral damages.
>
> SO ORDERED.[2]

As a result, the Makati court ordered Smith detained at the Makati jail until further orders.

On December 29, 2006, however, defendant Smith was taken out of the Makati jail by a contingent of Philippine law enforcement agents, purportedly acting under orders of the Department of the Interior and Local Government, and brought to a facility

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[2] Annex "B" of CA *rollo*, pp. 36-96.

for detention under the control of the United States government, provided for under new agreements between the Philippines and the United States, referred to as the Romulo-Kenney Agreement of December 19, 2006 which states:

The Government of the Republic of the Philippines and the Government of the United States of America agree that, in accordance with the Visiting Forces Agreement signed between our two nations, Lance Corporal Daniel J. Smith, United States Marine Corps, be returned to U.S. military custody at the U.S. Embassy in Manila.

(Sgd.) KRISTIE A. KENNEY	(Sgd.) ALBERTO G. ROMULO
Representative of the	Representative of the
United States of America	Republic of the Philippines
DATE: 12-19-06	DATE: December 19, 2006

and the Romulo-Kenney Agreement of December 22, 2006 which states:

The Department of Foreign Affairs of the Republic of the Philippines and the Embassy of the United States of America agree that, in accordance with the Visiting Forces Agreement signed between the two nations, upon transfer of Lance Corporal Daniel J. Smith, United States Marine Corps, from the Makati City Jail, he will be detained at the first floor, Rowe (JUSMAG) Building, U.S. Embassy Compound in a room of approximately 10 x 12 square feet. He will be guarded round the clock by U.S. military personnel. The Philippine police and jail authorities, under the direct supervision of the Philippine Department of Interior and Local Government (DILG) will have access to the place of detention to ensure the United States is in compliance with the terms of the VFA.

The matter was brought before the Court of Appeals which decided on January 2, 2007, as follows:

WHEREFORE, all the foregoing considered, we resolved to DISMISS the petition for having become moot.[3]

Hence, the present actions.

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[3] *Rollo*, pp. 90-127.

The petitions were heard on oral arguments on September 19, 2008, after which the parties submitted their memoranda.

Petitioners contend that the Philippines should have custody of defendant L/CPL Smith because, first of all, the VFA is void and unconstitutional.

This issue had been raised before, and this Court resolved in favor of the constitutionality of the VFA. This was in *Bayan v. Zamora*,[4] brought by *Bayan*, one of petitioners in the present cases.

Against the barriers of *res judicata vis-à-vis Bayan*, and *stare decisis vis-à-vis* all the parties, the reversal of the previous ruling is sought on the ground that the issue is of primordial importance, involving the sovereignty of the Republic, as well as a specific mandate of the Constitution.

The provision of the Constitution is Art. XVIII, Sec. 25 which states:

> Sec. 25. After the expiration in 1991 of the Agreement between the Philippines and the United States of America concerning Military Bases, foreign military bases, troops, or facilities shall not be allowed in the Philippines except under a treaty duly concurred in by the Senate and, when the Congress so requires, ratified by a majority of the votes cast by the people in a national referendum held for that purpose, and recognized as a treaty by the other contracting State.

The reason for this provision lies in history and the Philippine experience in regard to the United States military bases in the country.

It will be recalled that under the Philippine Bill of 1902, which laid the basis for the Philippine Commonwealth and, eventually, for the recognition of independence, the United States agreed to cede to the Philippines all the territory it acquired from Spain under the Treaty of Paris, plus a few islands later added to its realm, except certain naval ports and/or military bases and facilities, which the United States retained for itself.

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[4] G.R. No. 138570, October 10, 2000, 342 SCRA 449.

This is noteworthy, because what this means is that Clark and Subic and the other places in the Philippines covered by the RP-US Military Bases Agreement of 1947 were not Philippine territory, as they were excluded from the cession and retained by the US.

Accordingly, the Philippines had no jurisdiction over these bases except to the extent allowed by the United States. Furthermore, the RP-US Military Bases Agreement was never advised for ratification by the United States Senate, a disparity in treatment, because the Philippines regarded it as a treaty and had it concurred in by our Senate.

Subsequently, the United States agreed to turn over these bases to the Philippines; and with the expiration of the RP-US Military Bases Agreement in 1991, the territory covered by these bases were finally ceded to the Philippines.

To prevent a recurrence of this experience, the provision in question was adopted in the 1987 Constitution.

The provision is thus designed to ensure that any agreement allowing the presence of foreign military bases, troops or facilities in Philippine territory shall be equally binding on the Philippines and the foreign sovereign State involved. The idea is to prevent a recurrence of the situation in which the terms and conditions governing the presence of foreign armed forces in our territory were binding upon us but not upon the foreign State.

Applying the provision to the situation involved in these cases, the question is whether or not the presence of US Armed Forces in Philippine territory pursuant to the VFA is allowed "under a treaty duly concurred in by the Senate xxx **and recognized as a treaty by the other contracting State**."

This Court finds that it is, for two reasons.

First, as held in *Bayan v. Zamora*,[5] the VFA was duly concurred in by the Philippine Senate and has been recognized as a treaty by the United States as attested and certified by the duly authorized representative of the United States government.

[5] *Supra* note 4.

The fact that the VFA was not submitted for advice and consent of the United States Senate does not detract from its status as a binding international agreement or treaty recognized by the said State. For this is a matter of internal United States law. Notice can be taken of the internationally known practice by the United States of submitting to its Senate for advice and consent agreements that are policymaking in nature, whereas those that carry out or further implement these policymaking agreements are merely submitted to Congress, under the provisions of the so-called Case–Zablocki Act, within sixty days from ratification.[6]

The second reason has to do with the relation between the VFA and the RP-US Mutual Defense Treaty of August 30, 1951. This earlier agreement was signed and duly ratified with the concurrence of both the Philippine Senate and the United States Senate.

The RP-US Mutual Defense Treaty states:[7]

MUTUAL DEFENSE TREATY BETWEEN THE REPUBLIC OF THE PHILIPPINES AND THE UNITED STATES OF AMERICA. Signed at Washington, August 30, 1951.

The Parties of this Treaty

Reaffirming their faith in the purposes and principles of the Charter of the United Nations and their desire to live in peace with all peoples

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[6] The Case-Zablocki Act, 1 U.S.C. 112b (a) (1976 ed., Supp IV). See also *Weinberger v. Rossi*, 456 U.S. 25 (1982), in which the U.S. Supreme Court sustained recognition as a "treaty" of agreements not concurred in by the U.S. Senate.

[7] The RP-US Mutual Defense Treaty was signed in Washington, D.C. on August 30, 1951. Its ratification was advised by the US Senate on March 20, 1952, and the US President ratified the Treaty on April 15, 1952.

The Treaty was concurred in by the RP Senate, S.R. No. 84, May 12, 1952. The Philippine instrument of ratification was signed by the RP President on August 27, 1952. The Agreement entered into force on August 27, 1952 upon the exchange of ratification between the Parties.

This Agreement is published in II DFA TS No. 1, p. 13; 177 UNTS, p. 133; 3 UST 3847-3952. The RP Presidential proclamation of the Agreement, Proc. No. 341, S. 1952, is published in 48 O.G. 4224 (Aug. 1952).

and all governments, and desiring to strengthen the fabric of peace in the Pacific area.

Recalling with mutual pride the historic relationship which brought their two peoples together in a common bond of sympathy and mutual ideals to fight side-by-side against imperialist aggression during the last war.

Desiring to declare publicly and formally their sense of unity and their common determination to defend themselves against external armed attack, so that no potential aggressor could be under the illusion that either of them stands alone in the Pacific area.

Desiring further to strengthen their present efforts for collective defense for the preservation of peace and security pending the development of a more comprehensive system of regional security in the Pacific area.

Agreeing that nothing in this present instrument shall be considered or interpreted as in any way or sense altering or diminishing any existing agreements or understandings between the Republic of the Philippines and the United States of America.

Have agreed as follows:

ARTICLE I. The parties undertake, as set forth in the Charter of the United Nations, to settle any international disputes in which they may be involved by peaceful means in such a manner that international peace and security and justice are not endangered and to refrain in their international relation from the threat or use of force in any manner inconsistent with the purposes of the United Nations.

ARTICLE II. In order more effectively to achieve the objective of this Treaty, the **Parties separately and jointly by self-help and mutual aid will maintain and develop their individual and collective capacity to resist armed attack.**

ARTICLE III. The Parties, through their Foreign Ministers or their deputies, will consult together from time to time regarding the implementation of this Treaty and whenever in the opinion of either of them the territorial integrity, political independence or security of either of the Parties is threatened by external armed attack in the Pacific.

ARTICLE IV. Each Party recognizes that an armed attack in the Pacific area on either of the parties would be dangerous to its own

peace and safety and declares that it would act to meet the common dangers in accordance with its constitutional processes.

Any such armed attack and all measures taken as a result thereof shall be immediately reported to the Security Council of the United Nations. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.

ARTICLE V. For the purpose of Article IV, an armed attack on either of the Parties is deemed to include an armed attack on the metropolitan territory of either of the Parties, or on the island territories under its jurisdiction in the Pacific Ocean, its armed forces, public vessels or aircraft in the Pacific.

ARTICLE VI. This Treaty does not affect and shall not be interpreted as affecting in any way the rights and obligations of the Parties under the Charter of the United Nations or the responsibility of the United Nations for the maintenance of international peace and security.

ARTICLE VII. This Treaty shall be ratified by the Republic of the Philippines and the United Nations of America in accordance with their respective constitutional processes and will come into force when instruments of ratification thereof have been exchanged by them at Manila.

ARTICLE VIII. This Treaty shall remain in force indefinitely. Either Party may terminate it one year after notice has been given to the other party.

IN WITHNESS (sic) WHEREOF the undersigned Plenipotentiaries have signed this Treaty.

DONE in duplicate at Washington this thirtieth day of August, 1951.

For the Republic of the Philippines:

(Sgd.) CARLOS P. ROMULO
(Sgd.) JOAQUIN M. ELIZALDE
(Sgd.) VICENTE J. FRANCISCO
(Sgd.) DIOSDADO MACAPAGAL

For the United States of America:

(Sgd.) DEAN ACHESON
(Sgd.) JOHN FOSTER DULLES
(Sgd.) TOM CONNALLY
(Sgd.) ALEXANDER WILEY[8]

Clearly, therefore, joint RP-US military exercises for the purpose of developing the capability to resist an armed attack fall squarely under the provisions of the RP-US Mutual Defense Treaty. The VFA, which is the instrument agreed upon to provide for the joint RP-US military exercises, is simply an implementing agreement to the main RP-US Military Defense Treaty. The Preamble of the VFA states:

The Government of the United States of America and the Government of the Republic of the Philippines,

Reaffirming their faith in the purposes and principles of the Charter of the United Nations and their desire to strengthen international and regional security in the Pacific area;

Reaffirming their obligations under the Mutual Defense Treaty of August 30, 1951;

Noting that from time to time elements of the United States armed forces may visit the Republic of the Philippines;

Considering that **cooperation between the United States and the Republic of the Philippines promotes their common security interests**;

Recognizing the desirability of defining the treatment of United States personnel visiting the Republic of the Philippines;

Have agreed as follows:[9]

Accordingly, as an implementing agreement of the RP-US Mutual Defense Treaty, it was not necessary to submit the VFA to the US Senate for advice and consent, but merely to the US Congress under the Case–Zablocki Act within 60 days of its ratification. It is for this reason that the US has certified that it recognizes the VFA as a binding international agreement,

[8] Emphasis supplied.

[9] Emphasis supplied.

i.e., a treaty, and this substantially complies with the requirements of Art. XVIII, Sec. 25 of our Constitution.[10]

The provision of Art. XVIII, Sec. 25 of the Constitution, is complied with by virtue of the fact that the presence of the US Armed Forces through the VFA is a presence "allowed under" the RP-US Mutual Defense Treaty. Since the RP-US Mutual Defense Treaty itself has been ratified and concurred in by both the Philippine Senate and the US Senate, there is no violation of the Constitutional provision resulting from such presence.

The VFA being a valid and binding agreement, the parties are required as a matter of international law to abide by its terms and provisions.

The VFA provides that in cases of offenses committed by the members of the US Armed Forces in the Philippines, the following rules apply:

Article V
Criminal Jurisdiction

xxx xxx xxx

6. The custody of any United States personnel over whom the Philippines is to exercise jurisdiction shall immediately reside with United States military authorities, if they so request, from the commission of the offense until completion of all judicial proceedings. United States military authorities shall, upon formal notification by the Philippine authorities and without delay, make such personnel available to those authorities in time for any investigative or judicial proceedings relating to the offense with which the person has been charged. In extraordinary cases, the Philippine Government shall present its position to the United States Government regarding custody, which the United States Government shall take into full account. In the event Philippine judicial proceedings are not completed within one year, the United States shall be relieved of any obligations under this paragraph. The one year period will not include the time necessary to appeal. Also, the one year period will not include any time during which scheduled trial procedures are delayed because United States authorities, after timely notification

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[10] See Letter of Ambassador Thomas C. Hubbard quoted in *Bayan*, 342 SCRA 449, 491.

by Philippine authorities to arrange for the presence of the accused, fail to do so.

Petitioners contend that these undertakings violate another provision of the Constitution, namely, that providing for the exclusive power of this Court to adopt rules of procedure for all courts in the Philippines (Art. VIII, Sec. 5[5]). They argue that to allow the transfer of custody of an accused to a foreign power is to provide for a different rule of procedure for that accused, which also violates the equal protection clause of the Constitution (Art. III, Sec. 1.).

Again, this Court finds no violation of the Constitution.

The equal protection clause is not violated, because there is a substantial basis for a different treatment of a member of a foreign military armed forces allowed to enter our territory and all other accused.[11]

The rule in international law is that a foreign armed forces allowed to enter one's territory is immune from local jurisdiction, except to the extent agreed upon. The Status of Forces Agreements involving foreign military units around the world vary in terms and conditions, according to the situation of the parties involved, and reflect their bargaining power. But the principle remains, *i.e.*, the receiving State can exercise jurisdiction over the forces of the sending State only to the extent agreed upon by the parties.[12]

As a result, the situation involved is not one in which the power of this Court to adopt rules of procedure is curtailed or violated, but rather one in which, as is normally encountered around the world, the laws (including rules of procedure) of one State do not extend or apply – **except to the extent agreed upon** – to subjects of another State due to the recognition of extraterritorial immunity given to such bodies as visiting foreign armed forces.

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[11] See, the summation of the rule on equal protection in ISAGANI A. CRUZ, *CONSTITUTIONAL LAW*, pp. 123-139 (2007), and the authorities cited therein.

[12] See Dieter Fleck, Ed., *The HANDBOOK OF THE LAW OF VISITING FORCES* , Oxford: 2001.

Nothing in the Constitution prohibits such agreements recognizing immunity from jurisdiction or some aspects of jurisdiction (such as custody), in relation to long-recognized subjects of such immunity like Heads of State, diplomats and members of the armed forces contingents of a foreign State allowed to enter another State's territory. On the contrary, the Constitution states that the Philippines adopts the generally accepted principles of international law as part of the law of the land. (Art. II, Sec. 2).

Applying, however, the provisions of VFA, the Court finds that there is a different treatment when it comes to detention as against custody. The moment the accused has to be detained, *e.g.*, after conviction, the rule that governs is the following provision of the VFA:

> Article V
> Criminal Jurisdiction
>
> xxx xxx xxx
>
> Sec. 10. The confinement or detention by Philippine authorities of United States personnel shall be carried out in facilities agreed on by appropriate Philippines and United States authorities. United States personnel serving sentences in the Philippines shall have the right to visits and material assistance.

It is clear that the parties to the VFA recognized the difference between custody during the trial and detention after conviction, because they provided for a specific arrangement to cover detention. And this specific arrangement clearly states not only that the detention shall be carried out in facilities agreed on by authorities of both parties, but also that the detention shall be "by Philippine authorities." Therefore, the Romulo-Kenney Agreements of December 19 and 22, 2006, which are agreements on the detention of the accused **in the United States Embassy**, are not in accord with the VFA itself because such detention is not "by Philippine authorities."

Respondents should therefore comply with the VFA and negotiate with representatives of the United States towards an

agreement on detention facilities under Philippine authorities as mandated by Art. V, Sec. 10 of the VFA.

Next, the Court addresses the recent decision of the United States Supreme Court in *Medellin v. Texas* (552 US ___ No. 06-984, March 25, 2008), which held that treaties entered into by the United States are not automatically part of their domestic law unless these treaties are self-executing or there is an implementing legislation to make them enforceable.

On February 3, 2009, the Court issued a Resolution, thus:

> "G.R. No. 175888 (*Suzette Nicolas y Sombilon v. Alberto Romulo, et al.*); G.R. No. 176051 (*Jovito R. Salonga, et al. v. Daniel Smith, et al.*); and G.R. No. 176222 (*Bagong Alyansang Makabayan [BAYAN], et al. v. President Gloria Macapagal-Arroyo, et al.*).

The parties, including the Solicitor General, are required to submit within three (3) days a Comment/Manifestation on the following points:

1. What is the implication on the RP-US Visiting Forces Agreement of the recent US Supreme Court decision in *Jose Ernesto Medellin v. Texas*, dated March 25, 2008, to the effect that treaty stipulations that are not self-executory can only be enforced pursuant to legislation to carry them into effect; and that, while treaties may comprise international commitments, they are not domestic law unless Congress has enacted implementing statutes or the treaty itself conveys an intention that it be "self-executory" and is ratified on these terms?
2. Whether the VFA is enforceable in the US as domestic law, either because it is self-executory or because there exists legislation to implement it.
3. Whether the RP-US Mutual Defense Treaty of August 30, 1951 was concurred in by the US Senate and, if so, is there proof of the US Senate advice and consent resolution? Peralta, *J.*, no part."

After deliberation, the Court holds, on these points, as follows:

First, the VFA is a self-executing Agreement, as that term is defined in *Medellin* itself, because the parties intend its provisions to be enforceable, precisely because the Agreement is intended to carry out obligations and undertakings under the RP-US Mutual Defense Treaty. As a matter of fact, the VFA has been implemented and executed, with the US faithfully complying with its obligation to produce L/CPL Smith before the court during the trial.

Secondly, the VFA is covered by implementing legislation, namely, the Case-Zablocki Act, USC Sec. 112(b), inasmuch as it is the very purpose and intent of the US Congress that executive agreements registered under this Act within 60 days from their ratification be immediately implemented. The parties to these present cases do not question the fact that the VFA has been registered under the Case-Zablocki Act.

In sum, therefore, the VFA differs from the Vienna Convention on Consular Relations and the *Avena* decision of the International Court of Justice (ICJ), subject matter of the *Medellin* decision. The Convention and the ICJ decision are not self-executing and are not registrable under the Case-Zablocki Act, and thus lack legislative implementing authority.

Finally, the RP-US Mutual Defense Treaty was advised and consented to by the US Senate on March 20, 1952, as reflected in the US Congressional Record, 82nd Congress, Second Session, Vol. 98 – Part 2, pp. 2594-2595.

The framers of the Constitution were aware that the application of international law in domestic courts varies from country to country.

As Ward N. Ferdinandusse states in his Treatise, DIRECT APPLICATION OF INTERNATIONAL CRIMINAL LAW IN NATIONAL COURTS, some countries require legislation whereas others do not.

It was not the intention of the framers of the 1987 Constitution, in adopting Article XVIII, Sec. 25, to require the other contracting State to convert their system to achieve alignment and parity with ours. It was simply required that the treaty be recognized

as a treaty by the other contracting State. With that, it becomes for both parties a binding international obligation and the enforcement of that obligation is left to the normal recourse and processes under international law.

Furthermore, as held by the US Supreme Court in *Weinberger v. Rossi*,[13] an executive agreement is a "treaty" within the meaning of that word in international law and constitutes enforceable domestic law *vis-à-vis* the United States. Thus, the US Supreme Court in *Weinberger* enforced the provisions of the executive agreement granting preferential employment to Filipinos in the US Bases here.

Accordingly, there are three types of treaties in the American system:

1. Art. II, Sec. 2 treaties — These are advised and consented to by the US Senate in accordance with Art. II, Sec. 2 of the US Constitution.
2. Executive–Congressional Agreements: These are joint agreements of the President and Congress and need not be submitted to the Senate.
3. Sole Executive Agreements. — These are agreements entered into by the President. They are to be submitted to Congress within sixty (60) days of ratification under the provisions of the Case-Zablocki Act, after which they are recognized by the Congress and may be implemented.

As regards the implementation of the RP-US Mutual Defense Treaty, military aid or assistance has been given under it and this can only be done through implementing legislation. The VFA itself is another form of implementation of its provisions.

WHEREFORE, the petitions are *PARTLY GRANTED*, and the Court of Appeals' Decision in CA-G.R. SP No. 97212 dated January 2, 2007 is *MODIFIED*. The Visiting Forces Agreement (VFA) between the Republic of the Philippines and the United States, entered into on February 10, 1998, is *UPHELD as constitutional*, but the Romulo-Kenney Agreements of December 19 and 22,

[13] *Supra* note 6.

2006 are *DECLARED not in accordance with the VFA*, and respondent Secretary of Foreign Affairs is hereby ordered to forthwith negotiate with the United States representatives for the appropriate agreement on detention facilities under Philippine authorities as provided in Art. V, Sec. 10 of the VFA, pending which the *status quo* shall be maintained until further orders by this Court.

The Court of Appeals is hereby directed to resolve without delay the related matters pending therein, namely, the petition for contempt and the appeal of L/CPL Daniel Smith from the judgment of conviction.

No costs.

SO ORDERED.

Quisumbing, Ynares-Santiago, Corona, Tinga, Chico-Nazario, Velasco, Jr., Leonardo-de Castro, and *Brion, JJ.,* concur.

Puno, C.J., dissenting opinion.

Carpio, J., dissenting opinion.

Austria-Martinez, J., joins the Chief Justice and Justice Carpio in their dissenting opinions.

Carpio Morales, J., joins the dissents of Chief Justice Puno and Justice Carpio.

Nachura, J., no part. Signed pleading as Solicitor General.

Peralta, J., no part.

DISSENTING OPINION

PUNO, *C.J.*:

The question of the constitutionality of the Visiting Forces Agreement (VFA) comes back to this Court as the custody over Lance Corporal Daniel J. Smith, a member of the US Armed Forces found guilty of rape by the Regional Trial Court (RTC) of Makati, is put at issue in the case at bar pending appeal of his conviction.

I strongly dissented in the case of ***Bayan v. Zamora***[1] proffering the view that the VFA falls short of the requirement set by Section 25, Article XVIII of the 1987 Constitution stating that the agreement allowing the presence of foreign military troops in the Philippines must be "recognized as a treaty by the other contracting state."[2] The circumstances present in the case at bar and recent case law in the United States' policy on treaty enforcement further expose the anomalous asymmetry in the legal treatment of the VFA by the United States (U.S.) as opposed to the Republic of the Philippines (RP) which I denounced in ***Bayan v. Zamora***. This slur on our sovereignty cannot continue, especially if we are the ones perpetuating it.

The present petitions challenge the transfer of custody of Daniel Smith from the Philippine government (under the Bureau of Jail Management and Penology) to the United States authorities.

On December 4, 2006, Respondent Daniel Smith was convicted of rape by RTC Makati Branch 139.[3] Smith's temporary confinement at the Makati City Jail was subsequently ordered by the trial court pending negotiations between the U.S. and RP governments. Respondent Smith filed a motion for reconsideration on December 5, 2006.[4]

On December 8, 2006, the public prosecutor filed a manifestation before the trial court submitting an agreement signed on the same day by Ambassador Kristie Kenney and Chief State Prosecutor Jovencito Zuno. The agreement provided for the transfer of custody over Smith from the Philippine government to the U.S. Embassy. A similar agreement was later submitted, but this time executed between the U.S. Ambassador and Secretary of Justice Raul Gonzalez and Secretary of Foreign Affairs Alberto Romulo.[5]

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[1] *See* G.R. No. 138570, October 10, 2000, 342 SCRA 449, 497-521.

[2] CONSTITUTION, Sec. 25, Art. XVIII.

[3] Presided over by Petitioner Benjamin Pozon; *rollo*, pp. 10, 53.

[4] *Rollo*, p. 10.

[5] *Rollo*, p. 11.

On December 12, 2006, the trial court denied Respondent Smith's motion for reconsideration.[6] He filed a petition for *certiorari* with prayer for Temporary Restraining Order before the Court of Appeals on December 14, 2006.[7]

A petition in intervention and a series of manifestations[8] were filed by the Department of Foreign Affairs, all appending copies of the Romulo-Kenney agreement. The Solicitor General adopted the position of the Department of Foreign Affairs in a manifestation filed on December 28, 2006.[9] The next day, Smith's custody was turned over to the U.S. authorities and Smith was physically transferred to the U.S. Embassy.[10]

On January 3, 2007, the Court of Appeals[11] issued a decision holding as moot the petition filed before it by respondent Smith.[12]

Hence, the present petitions, which assail anew the non-recognition by the U.S. of the VFA as a treaty.

Respondent Sergio Apostol and the Solicitor General raise the defense of *stare decisis*[13] and *res judicata*[14] as against the petitioners' attempt to assail the validity of the VFA, citing ***Bayan v. Zamora*** and ***Lim v. Executive Secretary***.

An examination of *Bayan v. Zamora*, which upheld the validity of the VFA, is necessary in light of a recent change in U.S. policy on treaty enforcement. Of significance is the case of *Medellin v. Texas*,[15] where it was held by the U.S.

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[6] *Rollo*, pp. 11, 54.

[7] *Rollo*, pp. 12, 54.

[8] Dated respectively, December 18, 2006 and December 20, 2006.

[9] *Rollo*, p. 56.

[10] *Rollo*, pp. 14, 56.

[11] Through its Special 16th Division.

[12] *Rollo*, pp. 14, 56. The Decision is dated January 2, 2007.

[13] *Rollo*, p. 238. Relying on *Bayan v. Zamora*.

[14] *Rollo*, pp. 64-6.

[15] 522 U.S. [Not yet numbered for citation purposes], March 25, 2008; 128 S. Ct. 1346 (2008).

Supreme Court that while treaties entered into by the President with the concurrence of the Senate are binding international commitments, they are not domestic law unless Congress enacts implementing legislation or unless the treaty itself is "self-executing."[16]

An Examination of Medellin v. Texas

In ***Medellin v. Texas***, Jose Ernesto Medellin (Medellin), a Mexican national, was convicted of capital murder and sentenced to death in Texas for the gang rape and brutal murders of two Houston teenagers. His conviction and sentence were affirmed on appeal.

Medellin then filed an application for post-conviction relief and claimed that the Vienna Convention on Consular Relations (Vienna Convention) accorded him the right to notify the Mexican consulate of his detention; and because the local law enforcement officers failed to inform him of this right, he prayed for the grant of a new trial.

The trial court, as affirmed by the Texas Court of Criminal Appeals, rejected the Vienna Convention claim. It was ruled that Medellin failed to show that any non-notification of the Mexican authorities impacted on the validity of his conviction or punishment. Medellin then filed his first *habeas corpus* petition in the Federal District Court, which also rejected his petition. It held that Medellin failed to show prejudice arising from the Vienna Convention.

While Medellin's petition was pending, the International Court of Justice (ICJ) issued its decision in the **Case Concerning Avena and Other Mexican Nationals (Avena)**. The ICJ held that the U.S. violated Article 36(1)(b) of the Vienna Convention by failing to inform 51 named Mexican nationals, including

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[16] The label "self-executing" pertains to the automatic domestic effect of a treaty as federal law upon ratification. Conversely, a "non-self-executing" treaty does not by itself give rise to domestically enforceable federal law. Whether such a treaty has domestic effect depends upon implementing legislation passed by Congress [522 U.S. (Not yet numbered for citation purposes), p. 15, March 25, 2008].

Medellin, of their Vienna Convention rights. The ICJ ruled that those named individuals were entitled to a review and reconsideration of their U.S. state court convictions and sentences regardless of their failure to comply with generally applicable state rules governing challenges to criminal convictions.

In ***Sanchez-Llamas v. Oregon***[17] — issued after **Avena** but involving individuals who were not named in the **Avena** judgment, contrary to the ICJ's determination — the U.S. Federal Supreme Court held that the Vienna Convention did not preclude the application of state default rules. The U.S. President, George W. Bush, then issued a Memorandum (President's Memorandum) stating that the United States would discharge its international obligations under **Avena** by having State courts give effect to the decision.

Relying on **Avena** and the President's Memorandum, Medellin filed a second Texas state-court *habeas corpus* application, challenging his state capital murder conviction and death sentence on the ground that he had not been informed of his Vienna Convention rights. The Texas Court of Criminal Appeals dismissed Medellin's application as an abuse of the writ, since under Texas law, a petition for *habeas corpus* may not be filed successively, and neither **Avena** nor the President's Memorandum was binding federal law that could displace the State's limitations on filing successive *habeas* applications.

Medellin repaired to the U.S. Supreme Court. In his petition, Medellin contends that the Optional Protocol, the United Nations Charter, and the ICJ Statute supplied the "relevant obligation"[18] to give the **Avena** judgment binding effect in the domestic courts of the United States.

The Supreme Court of the United States ruled that neither **Avena** nor the President's Memorandum constitutes directly enforceable federal law that pre-empts state limitations on the filing of successive *habeas corpus* petitions. It held that while

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[17] 548 U.S. 331(2006).

[18] 522 U.S. [Not yet numbered for citation purposes], p. 10, March 25, 2008.

an international treaty may constitute an international commitment, it is not binding domestic law unless Congress has enacted statutes implementing it or unless the treaty itself is "self-executing." It further held that decisions of the ICJ are not binding domestic law; and that, absent an act of Congress or Constitutional authority, the U.S. President lacks the power to enforce international treaties or decisions of the ICJ.

Requirements for Domestic Enforceability of Treaties in the U.S.

The new ruling is clear-cut: "while a treaty may constitute an international commitment, it is not binding domestic law unless Congress has enacted statutes implementing it or the treaty itself conveys an intention that it be "self-executing" and is ratified on that basis."[19]

The **Avena** judgment creates an international law obligation on the part of the United States, **but it is not automatically binding** domestic law because none of the relevant treaty sources—the Optional Protocol, the U.N. Charter, or the ICJ Statute—creates binding federal law in the absence of implementing legislation, and no such legislation has been enacted.

The Court adopted a **textual approach** in determining whether the relevant treaty sources are self-executory. The obligation to comply with ICJ judgments is derived from Article 94 of the U.N. Charter, which provides that "each x x x Member x x x undertakes to comply with the ICJ's decision x x x in any case to which it is a party." The phrase "undertakes to comply" is simply a commitment by member states to take future action through their political branches. The language does not indicate that the Senate, in ratifying the Optional Protocol, intended to vest ICJ decisions with immediate effect in domestic courts.

This is buttressed by Article 94(2) of the U.N. Charter, which provides that:

If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may

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[19] 522 US [Not yet numbered for citation purposes], p. 2 (Syll.), March 25, 2008; 128 S. Ct. 1346 (2008).

have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.[20]

Article 94 confirms that the U.N. Charter does not contemplate the automatic enforceability of ICJ decisions in domestic courts. The **sole remedy** for non-compliance is referral to the U.N. Security Council by an aggrieved state. Since the remedy was non-judicial, but diplomatic, the U.S. Supreme Court concluded that ICJ judgments were not meant to be enforceable in domestic courts.[21] The reasons were, first, the Security Council deems as necessary the issuance of a recommendation or measure to effectuate the judgment; and second, the President and the Senate were undoubtedly aware that the U.S. retained the unqualified right to veto any Security Council resolution.

The **interpretative or textual approach** in determining whether a treaty is self-executory has previously been used by the U.S. Supreme Court. The Court cites ***Foster v. Neilson***,[22] where the treaty in question was first determined by the Court to be non-self-executing; after four years, another claim was made based on the same treaty and the Supreme Court concluded that it was self-executory, based on the wording of a Spanish translation, which was for the first time brought to the attention of the Court. The self-executory nature was reflected in the words: "by force of the instrument itself."[23] General principles of interpretation would confirm that any intent of the ratifying parties to the relevant treaties to give ICJ judgments binding effect in their domestic courts should be clearly stated in the treaty.

In fine, the U.S. President's authority to enter into treaties that are enforceable within its domestic sphere was severely limited by **Medellin**. In **Medellin**, the United States posited

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[20] 59 Stat. 1051.

[21] 522 U.S. [Not yet numbered for citation purposes] at 13, March 25, 2008.

[22] 2 Pet. 253, 314.

[23] *United States v. Percheman*, 7 Pet. 87 (1833).

the theory that the President's constitutional role uniquely qualifies him to resolve the sensitive foreign policy decisions that bear on compliance with an ICJ decision. In said case, the U.S. President, through the issuance of the Memorandum, sought to vindicate the United States interest in ensuring the reciprocal observance of the Vienna Convention, protecting relations with foreign governments, and demonstrating commitment to the role of international law. Though these interests were compelling, the Supreme Court held that "the president's authority to act, as with the exercise of any governmental power, must stem from an act of Congress or from the Constitution itself."[24]

The United States contended that the President's Memorandum was grounded on the first category of the **Youngstown** framework,[25] *i.e.*, the President has acted pursuant to an express or implied authorization by Congress, and his authority is at its maximum. In rejecting the argument, the U.S. Supreme Court held:

> **The President has an array of political and diplomatic means available to enforce international obligations, but unilaterally converting a non-self-executing treaty into a self-executing one is not among them.** The responsibility for transforming an international obligation into domestic law falls to Congress. x x x As this court has explained, when treaty stipulations are "not self-executing they can only be enforced pursuant to legislation to carry them into effect." x x x Moreover, "[u]ntil such act shall be passed,

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[24] *Medellin v. Texas*, 522 U.S. [Not yet numbered for citation purposes], p. 28, March 25, 2008; citing *Youngstown Steel Tubing Co*; 128 S. Ct. 1346 (2008).

[25] In *Youngstown Sheet & Tube Company v. Sawyer* [343 U.S. 579 (1952)] a tripartite scheme was used as a framework for evaluating executive action. First, when the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum. Second, when the President acts in absence of either congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and congress have concurrent authority, or which its distribution is uncertain. In such a circumstance, Presidential authority can derive support from congressional inertia, indifference or quiescence. Finally, when the President takes measures incompatible with the express or implied will of Congress, his power is at its lowest ebb. [343 U.S. 579, 637-638 (1952)]

the Court is not at liberty to disregard the existing laws on the subject." x x x

The requirement that Congress, rather than the President, implement a non-self executing treaty derives from the text of the Constitution, which divides the treaty-making power between the President and the Senate. The Constitution vests the President with the authority to "make" a treaty. x x x If the Executive determines that a treaty should have domestic effect of its own force, the determination may be implemented "in [m]aking" the treaty, by ensuring that it contains language plainly providing for domestic enforceability. If the treaty is to be self-executing in this respect, the Senate must consent to the treaty by the requisite two-thirds vote, consistent with all other constitutional restraints.[26]

Clearly, the President's Memorandum was not enough reason to support the enforcement of any treaty granting Medellin a new trial because of the failure of the local enforcement officers to inform him of his right to notify the Mexican consulate of his detention. The Court categorically held that while a treaty may constitute an international commitment, it is not binding domestic law unless Congress has enacted statutes implementing it, or the treaty itself conveys an intention that it be "self-executing" and is ratified on that basis.

The U.S. Court ruled that President George W. Bush's Memorandum, which stated that the ICJ's **Avena** decision should be given effect by domestic courts, fell within the last category of the **Youngstown** Framework.

In sum, the non-self-executing character of the relevant treaties not only refutes the notion that the ratifying parties vest the President with authority to unilaterally make treaty obligations binding on domestic courts, but also prohibits him from doing so. The responsibility to transform an international obligation arising from a non-self-executing treaty into domestic law falls on Congress, not the Executive.

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[26] *Medellin v. Texas*, 522 U.S. [Not yet numbered for citation purposes], pp. 30-31, March 25, 2008; 128 S. Ct. 1346 (2008).

Implication of Medellin v. Texas on the VFA

With **Medellin**, the case law is now settled that acknowledgement by the U.S. President that an agreement is a treaty, even with the concurrence of the U.S. Senate, is not sufficient to make a treaty enforceable in its domestic sphere, unless the words of the treaty itself clearly express the intention to make the treaty self-executory, or unless there is corresponding legislative enactment providing for its domestic enforceability. **The VFA does not satisfy either of these requirements and cannot thus be enforced within the U.S.**

I **reiterate** my dissent in ***Bayan v. Zamora*** that the VFA failed to meet the constitutional requirement of recognition by the U.S. as a treaty.

The 1987 Constitution provides in Sec. 25, Art. XVIII, *viz.*:

> After the expiration in 1991 of the Agreement between the Republic of the Philippines and the United States of America concerning Military Bases, foreign military bases, troops, or facilities shall not be allowed in the Philippines except under a treaty duly concurred in by the Senate and, when the Congress so requires, ratified by a majority of the votes cast by the people in a national referendum held for that purpose, and **recognized as a treaty by the other contracting State.** (Emphasis supplied)

Among the three constitutional requisites that must be complied with before foreign military bases, troops, or facilities can be allowed in Philippine territory, the **third requirement**, that any such agreement should be recognized as a treaty by the other contracting party, lies at the very heart of this case.

In ***Bayan v. Zamora***, the majority of the Court anchored the validity of the VFA on the flabby conclusion that it was recognized as a treaty by the U.S. The Court held that the phrase "recognized as a treaty" means that the other contracting party accepts or acknowledges the agreement as a treaty. It was held that "it is inconsequential whether the United States treats the VFA only as an executive agreement because, under international law, an executive agreement is binding as a treaty. To be sure, as long as the VFA possesses the elements of an

agreement under international law, the said agreement is to be taken equally as a treaty."[27]

To justify its tortuous conclusion, the majority of the Court in *Bayan v. Zamora* did not accord strict meaning to the phrase, "recognized as a treaty"[28] and declared that "words used in the Constitution are to be given their ordinary meaning except where technical terms are employed, in which case the significance thus attached to them prevails. Its language should be understood in the sense they have in common use."[29] Thus, the Court held that **it was sufficient** that the other contracting party accepts or acknowledges the agreement as a treaty.

In obvious error, the majority of the Court gave undue deference to the statement of the former Ambassador of the United States to the Philippines, Thomas C. Hubbard, that Senate advice and consent was not needed to consider a treaty binding on the U.S., on the premise that the President alone had the power to conclude the VFA, deriving from his responsibilities for the conduct of foreign relations and his constitutional powers as the Commander-in-Chief of the Armed Forces, to conclude that the U.S. accepted or acknowledged the agreement as a treaty. The majority then jumped to the conclusion that the U.S. recognized the VFA as a treaty, and that the constitutional requirements had been satisfied.

It can be deduced from the posture of the former US Ambassador that the VFA is an executive agreement, entered into by the President under his responsibility for the conduct of foreign relations and his constitutional powers as Commander-in-Chief of the Armed Forces. It can be further deduced that the VFA is not recognized as a treaty by the U.S., but it is akin to a sole or presidential executive agreement, which would be valid if concluded on the basis of the U.S. President's exclusive power under the U.S. Constitution.[30] In other words, it does

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[27] *Bayan v. Zamora*, G.R. No. 138570, October 10, 2000, 342 SCRA 449, 488.

[28] CONSTITUTION, Art. XVIII, Sec. 25.

[29] *Id*.

[30] *Supra* note 26 at 509.

not fall under the category of an executive agreement entered into by the President pursuant to the authority conferred in a prior treaty because, although the VFA makes reference to the Mutual Defense Treaty in its Preamble, the Mutual Defense Treaty itself does not confer authority upon the U.S. President to enter into executive agreements in the implementation of the Treaty.[31] Neither does the VFA fall under the category of Congressional Executive Agreement, as it was not concluded by the U.S. President pursuant to Congressional authorization or enactment, nor has it been confirmed by the U.S. Congress.[32]

Prescinding from these premises, the following are the implications of the ruling in **Medellin** on the RP-U.S. VFA:

(1) It must be clear from the text of the VFA itself that the VFA is self-executory in order that it may be reciprocally enforced.

Medellin is straightforward in ruling that the domestic enforceability of the treaty should be reflected in the text of the treaty itself; it cannot simply be inferred from a multitude of factors, nor can it be derived from the context in which the agreement was entered into.

In **Medellin**, the U.S. Court ruled that the Supremacy Clause does not require Texas to enforce the ICJ judgment. The President alone cannot require Texas to comply with a non-self-executing treaty absent congressional implementation. **Medellin** now imposes a **"clear statement requirement"** of the self-executory nature of a treaty, before judgments based on that treaty could overrule state law and be enforced domestically. The Court now looks into the language of the treaty, parsing the treaty's text to determine whether the treaty was intended to be self-executory or not. If the text of the treaty does not clearly indicate the intention of the signatories to make it executory in the domestic sphere, Congress has the responsibility to transform an

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[31] *Id.* at pp. 509-510.

[32] *Id.* at p. 511.

international obligation arising from a non-self-executory treaty into domestic law.

An examination of the text of the VFA does not show any provision that would satisfy the "clear statement requirement" within the text of the treaty to show that the United States intended it to be reciprocally enforced in the domestic sphere. Absent such clear wording in the VFA itself that it is to be self-executory, and without the concurrence of the Senate, the VFA remains an international obligation of the U.S., but it does not have the corresponding mechanism to have the rights and obligations found therein enforced against the U.S. This is especially true when the enforcement of such rights would cause a violation of U.S. domestic laws, whether substantive or procedural.

(2) The recognition of the President through the former U.S. Ambassador that the VFA is a treaty is insufficient to make this international obligation executory in the domestic sphere.

Previously, a multi-factor, context-specific approach could be employed in judging the reciprocal enforceability of treaties. This gave the U.S. a window to regard the VFA in the same manner and with the same force as the Philippines does. In **Bayan**, the letter of the former United States Ambassador made the assumption that the VFA did not *per se* change U.S. domestic law, and as such, it did not require the concurrence of Senate. Nevertheless, it must be noted that neither do the Vienna Convention, the Optional Protocol, the ICJ Charter and the UN Charter, *per se*, change U.S. domestic law. But when the right of Medellin to be informed that he may notify the Mexican Consulate of his detention was not accorded to him, the U.S. courts did not grant him a new trial, despite the ruling of the ICJ in **Avena**, because that move would have been a violation of the domestic procedural laws of the U.S. The circumstances in **Medellin** show that recognition by the U.S. Executive official alone that the VFA is binding on the U.S. is ineffective in actually enforcing rights sourced from the Agreement. Congressional law is necessary to enforce these rights in the U.S.

In **Bayan**, the majority of this Court held that the phrase "recognized as a treaty"[33] means that the other contracting party accepts or acknowledges the agreement as a treaty. **The salient question is: who has the authority to acknowledge it as a treaty?** Previously, it could have been argued that the President's recognition alone is sufficient; but all that is now changed with the categorical pronouncement in **Medellin** that Congress must enact statutes implementing the treaty, or the treaty itself must convey an intention that it be "self-executing" and is ratified on that basis, in order for the treaty to be enforced in the domestic sphere.

It must be noted that Article II, Section 2, Clause 2 of the U.S. Constitution provides that the President "shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur." In the U.S., a "treaty" is only one of four types of international agreements, namely: Article II treaties, executive agreements pursuant to treaty, congressional executive agreements, and sole executive agreements.[34] The VFA is classified as a sole executive agreement.

Medellin, citing the **Youngstown** Framework, affirmed the tripartite scheme for evaluating executive action in this area:

> First, "[w]hen the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate."[35] Second, "[w]hen the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain."[36] In this circumstance, Presidential authority can derive support from "congressional inertia, indifference or acquiescence."[37] Finally, "[w]hen the President takes measures

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[33] CONSTITUTION, Art. XVIII, Sec. 25.

[34] *Id.* at p. 506.

[35] *Youngstown,* 343 U.S., at 635.

[36] *Id.* at 637.

[37] *Id.*

incompatible with the express or implied will of Congress, his power is at its lowest ebb," and the Court can sustain his actions "only by disabling the Congress from acting upon the subject."[38]

The VFA is an executive agreement that does not derive any support from a treaty, or prior Congressional authorization or enactment. The VFA falls within the third category of the **Youngstown** Framework and, thus, **Presidential power is at its lowest ebb**. The President's actions cannot be sustained and enforced in the domestic sphere without congressional enactment or in the light of contrary legislation.

In **Medellin**, the Court also classified the Optional Protocol, the United Nations Charter, and the ICJ Statute as falling within the third and lowest category of the **Youngstown** Framework. The Court concluded, "given the absence of congressional legislation, that the non-self executing treaties at issue here did not 'express[ly] or implied[ly]' vest the President with the unilateral authority to make them self-executing. x x x Non-self executing character of the relevant treaties not only refutes the notion that the ratifying parties vested the President with authority to unilaterally make treaty obligations binding on domestic courts, but also implicitly prohibits him from doing so. x x x His assertion of authority, insofar as it is based on the pertinent non-self-executing treaties, is therefore within Justice Jackson's third category, not the first or even the second."[39]

(3) Congressional act is necessary to transform the international obligations brought about by the VFA.

At best, the VFA can be considered as an international commitment by the U.S., but "the responsibility of transforming an international obligation arising from a non-self-executing treaty into domestic law falls to Congress."[40] It is therefore an error to perpetuate the ruling of the majority of this Court in **Bayan**

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[38] *Id.* at 637-638.

[39] 522 U.S. [Not yet numbered for citation purposes], pp. 31-32, March 25, 2008.

[40] 522 U.S. [Not yet numbered for citation purposes], p. 30, March 25, 2008.

that it is inconsequential whether the United States treats the VFA only as an executive agreement because, under international law, an executive agreement is binding as a treaty. **Medellin** has held that the binding effect of a treaty as an international obligation does not automatically mean that the treaty is enforceable in the domestic sphere.

Medellin tells us that the binding effect of the treaty is mutually exclusive from the actual enforcement of the rights and obligations sourced from it.

Though the VFA attaches international obligations to the parties to the agreement, it is irrelevant in the enforcement of a non-self-executory treaty in the domestic courts of the U.S. As long as the text of the VFA does not clearly show that it is self-executory and as long as U.S. Congress has not made it enforceable in the domestic sphere, it does not have obligatory force in U.S. domestic courts.

4) There is an "asymmetry in the legal treatment" of the VFA.

The Philippine Senate has concurred in the ratification of the VFA by a two-thirds vote of its members. The Romulo-Kenny Agreement was entered into in implementation of Article V(6) of the VFA, and the custody over Daniel Smith was transferred from the Philippine Government to the U.S. Embassy.

The ruling in **Medellin** is proof that the U.S. cannot yet reciprocally enforce the provisions of the VFA. It highlights the obvious disparity in treatment of the VFA on the part of the United States.

I reiterate my dissent in ***Bayan v. Zamora***, about the clear intention of the framers of the Constitution in imposing the requirement that the agreement must be "recognized by the other state as a treaty."[41] Recognition as a treaty by the other contracting state does not merely concern the procedure by which it is ratified, or whether or not it is concurred in by the Senate. The decisive mark to show that the agreement is

[41] CONSTITUTION, Article XVIII, Section 25.

considered as a treaty by the other contracting state is whether the agreement or treaty has obligatory effects and may be used as a source of rights enforceable in the domestic sphere of the other contracting party.

Medellin evidently shows us that the wording of the VFA does not bear this mark. Though considered as a treaty by the Executive, it may not create obligatory effects in the U.S.'s domestic sphere absent a clear statement in the text of the Agreement that it is self-executory, or without a congressional act implementing it.

Regardless of whether there is concurrence by the U.S. Senate in the RP-U.S. Mutual Defense Treaty, the disparity in the legal treatment of the VFA by the U.S. is clear, considering the **Medellin** ruling. Indeed, even assuming there is a Senate concurrence in the RP-U.S. Mutual Defense Treaty, the VFA still cannot be given domestic effect in the United States. It is up to the Court to decide whether the terms of a treaty reflect a determination by the President who negotiated it and the Senate that confirmed it if the treaty has domestic effect.[42] To repeat, any treaty becomes enforceable within the U.S. only when the Court has determined it to be so, based on the clear terms of the treaty or through Congressional enactment to implement the provisions of the treaty.

It bears stressing that the RP government has already enforced the provisions of the VFA and has transferred custody of Lance Corporal Daniel Smith to U.S. authorities. The Philippine government has considered the VFA to be fully enforceable within our jurisdiction; yet, the U.S. does not look at the VFA as enforceable within its domestic jurisdiction. This dichotomy is evidently proscribed by the Constitution, for such dichotomy would render our sovereignty in tatters.

I vote to grant the petitions. Let the custody over Lance Corporal Daniel Smith be transferred from the U.S. Embassy

[42] 522 U.S. [Not yet numbered for citation purposes], p. 29, March 25, 2008.

in Manila to the New Bilibid Prison in Muntinlupa, pending final resolution of his appeal from conviction for the crime of rape.

DISSENTING OPINION

CARPIO, *J.*:

I dissent because of a supervening event that took place after this Court decided *Bayan v. Zamora*[1] on 10 October 2000. In *Bayan*, this Court ruled that the Visiting Forces Agreement (VFA) between the Philippines and the United States of America was constitutional, having complied with Section 25, Article XVIII of the Philippine Constitution.

On 25 March 2008, the United States Supreme Court, in *Medellin v. Texas*,[2] ruled that a treaty, even if ratified by the United States Senate, is not enforceable as domestic federal law in the United States, unless the U.S. Congress enacts the implementing legislation, or the treaty by its terms is self-executory and ratified by the U.S. Senate as such.

Under *Medellin*, the VFA is indisputably not enforceable as domestic federal law in the United States. On the other hand, since the Philippine Senate ratified the VFA, the VFA constitutes domestic law in the Philippines. This unequal legal status of the VFA violates Section 25, Article XVIII of the Philippine Constitution, which specifically requires that a treaty involving the presence of foreign troops in the Philippines must be equally binding on the Philippines and on the other contracting State.

In short, the Philippine Constitution bars the efficacy of such a treaty that is enforceable as domestic law only in the Philippines but unenforceable as domestic law in the other contracting State. The Philippines is a sovereign and independent State. It is no longer a colony of the United States. This Court should not countenance an unequal treaty that is not only contrary to the express mandate of the Philippine Constitution, but also an affront

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[1] 396 Phil. 623 (2000).

[2] 128 S.Ct. 1346; 170 L.Ed.2d 190.

to the sovereignty, dignity and independence of the Philippine State.

There is no dispute that Section 25, Article XVIII of the Philippine Constitution governs the constitutionality of the VFA. Section 25 states:

> Section 25. After the expiration in 1991 of the Agreement between the Republic of the Philippines and the United States of America concerning Military Bases, foreign military bases, troops, or facilities shall not be allowed in the Philippines except under a treaty duly concurred in by the Senate and, when the Congress so requires, ratified by a majority of the votes cast by the people in a national referendum held for that purpose, and **recognized as a treaty by the other contracting State**. (Emphasis supplied)

The clear intent of the phrase "**recognized as a treaty by the other contracting State**" is to insure that the treaty has the same legal effect on the Philippines as on the other contracting State. This requirement is unique to agreements involving the presence of foreign troops in the Philippines, along with the requirement, if Congress is so minded, to hold a national referendum for the ratification of such a treaty.

The deliberations of the Constitutional Commission reveal the sensitivity of the framers to the "unacceptable asymmetry" of the then existing military bases agreement between the Philippines and the United States. The Philippine Senate had ratified the military bases agreement but the United States Government refused to submit the same to the U.S. Senate for ratification. Commissioner Blas Ople explained this "unacceptable asymmetry" in this manner:

> x x x But I think we have acknowledged starting at the committee level that the bases agreement was ratified by our Senate; **it is a treaty under Philippine law. But as far as the Americans are concerned, the Senate never took cognizance of this and, therefore, it is an executive agreement. That creates a wholly unacceptable asymmetry between the two countries**. Therefore, in my opinion, the right step to take, if the government of our country will deem it in the national interest to terminate this agreement or even to renegotiate it, is that we must begin with a clean slate; we

should not be burdened by the flaws of the 1947 Military Bases Agreement. I think that is a very important point. I am glad to be reassured by the two Gentlemen that there is nothing in these proposals that will bar the Philippine government at the proper time from exercising the option of abrogation or termination.[3] (Emphasis supplied)

Eventually, the Constitutional Commission required that any agreement involving the presence of foreign troops in the Philippines must be "**recognized as a treaty by the other contracting State**." This means that the other contracting State must recognize the agreement as a treaty, as distinguished from any other agreement, and if its constitutional processes require, submit the agreement to its proper legislative body for ratification as a treaty. As explained by Commissioner Father Joaquin Bernas, S.J., during the deliberations of the Constitutional Commission:

Third, on the last phrase "AND RECOGNIZED AS A TREATY BY THE OTHER CONTRACTING NATION," **we enter into a treaty and we want the other contracting party to respect that document as a document possessing force in the same way that we respect it**. The present situation we have is that the bases agreement is a treaty as far as we are concerned, but it is only an executive agreement as far as the United States is concerned, because the treaty process was never completed in the United States because the agreement was not ratified by the Senate.

So, for these reasons, I oppose the deletion of this section because, first of all, as I said, it does not prevent renegotiation. Second, it respects the sovereignty of our people and the people will be in a better position to judge whether to accept the treaty or not, because then they will be voting not just on an abstraction but they will be voting after examination of the terms of the treaty negotiated by our government. And third, **the requirement that it be recognized as a treaty by the other contracting nation places us on the same level as any other contracting party**.[4] (Emphasis supplied)

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[3] Vol. 4, Records of the Constitutional Commission, p. 780.

[4] *Id.* at 774.

The following exchanges in the Constitutional Commission explain further the meaning of the phrase "**recognized as a treaty by the other contracting State**":

FR. BERNAS: Let me be concrete, Madam President, in our circumstances. Suppose they were to have this situation where our government were to negotiate a treaty with the United States, and then the two executive departments in the ordinary course of negotiation come to an agreement. As our Constitution is taking shape now, if this is to be a treaty at all, it will have to be submitted to our Senate for its ratification. Suppose, therefore, that what was agreed upon between the United States and the executive department of the Philippines is submitted and ratified by the Senate, then it is further submitted to the people for its ratification and subsequently, we ask the United States: "**Complete the process by accepting it as a treaty through ratification by your Senate as the United States Constitution requires," would such an arrangement be in derogation of sovereignty**?

MR. NOLLEDO: Under the circumstances the Commissioner just mentioned, Madam President, on the basis of the provision of Section 1 that "sovereignty resides in the Filipino people," then we would not consider that a derogation of our sovereignty on the basis and expectation that there was a plebiscite.[5]

xxx xxx xxx

FR. BERNAS: As Commissioner Romulo indicated, since this certainly would refer only to the United States, because it is only the United States that would have the possibility of being allowed to have treaties here, then we would have to require that the Senate of the United States concur in the treaty because under American constitutional law, there must be concurrence on the part of the Senate of the United States to conclude treaties.

MR. SUAREZ: Thank you for the clarification.

Under the 1935 Constitution, if I recall it correctly, treaties and agreements entered into require an exchange of ratification. I remember that is how it was worded. We do not have in mind here an exchange of ratification by the Senate of the United States and

[5] *Id.* at 662.

by the Senate of the Philippines, for instance, but only an approval or a recognition by the Senate of the United States of that treaty.

FR. BERNAS: **When I say that the other contracting state must recognize it as a treaty, by that I mean it must perform all the acts required for that agreement to reach the status of a treaty under their jurisdiction**.[6] (Emphasis supplied)

Thus, Section 25, Article XVIII of the Philippine Constitution requires that any agreement involving the presence of foreign troops in the Philippines must be **equally legally binding both on the Philippines and on the other contracting State.** This means the treaty must be enforceable under Philippine domestic law as well as under the domestic law of the other contracting State. Even Justice Adolfo S. Azcuna, the *ponente* of the majority opinion, and who was himself a member of the Constitutional Commission, **expressly admits** this when he states in his *ponencia*:

The provision is thus designed to ensure that any agreement allowing the presence of foreign military bases, troops or facilities in Philippine territory shall be **equally binding on the Philippines and the foreign sovereign State involved**. **The idea is to prevent a recurrence of the situation where the terms and conditions governing the presence of foreign armed forces in our territory were binding on us but not upon the foreign State**. (Emphasis supplied)

An "**equally binding**" treaty means exactly what it says— the treaty is enforceable as domestic law in the Philippines and likewise enforceable as domestic law in the other contracting State.

Medellin has stunned legal scholars in the United States and there is no escaping its legal effect on the VFA here in the Philippines. Even U.S. President George W. Bush had to bow to the ruling that he had no authority to enforce the Vienna Convention on Consular Relations in the United States in the absence of any implementing legislation by the U.S. Congress, **despite the fact that the U.S. Senate had ratified the Convention**. *Medellin* tersely states:

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[6] *Id.* at 781.

In sum, while treaties "may comprise international commitments . . . they are not domestic law unless Congress has either enacted implementing statutes or the treaty itself conveys an intention that it be 'self-executing' and is ratified on these terms." (Emphasis supplied)

To drive home the point that the U.S. President cannot enforce the Convention in the United States, *Medellin* states that the "President's authority to act, as with the exercise of any governmental power, 'must stem either from an act of Congress or from the Constitution itself.'"

Medellin acknowledges that even if the treaty is not enforceable under U.S. domestic law, it may still give rise to an obligation under international law on the part of the United States. The remedy of the other contracting State in case of breach of the treaty by the United States is to file an action before the International Court of Justice (ICJ). However, the United States will have to give its consent to the ICJ's jurisdiction because, as stated in *Medellin*, the United States had withdrawn in 1985 its advance consent to the general compulsory jurisdiction of the ICJ.

Assuming the United States consents to the ICJ's jurisdiction, any adverse decision against the United States would still be unenforceable under U.S. domestic law for the two reasons stated in *Medellin*. First, consent to the ICJ's jurisdiction is not consent to be bound by any decision of the ICJ. As *Medellin* puts it, "submitting to jurisdiction and agreeing to be bound are two different things."

Second, decisions of the ICJ have no immediate legal effect on U.S. domestic courts. ICJ decisions are not directives to domestic courts but matters addressed to the political branches of the State. As *Medellin* explains it:

The obligation on the part of signatory nations to comply with ICJ judgments derives not from the Optional Protocol, but rather from Article 94 of the United Nations Charter — the provision that specifically addresses the effect of ICJ decisions. Article 94(1) provides that "[e]ach Member of the United Nations *undertakes to*

comply with the decision of the [ICJ] in any case to which it is a party." x x x (emphasis added). The Executive Branch contends that the phrase "undertakes to comply" is not "an acknowledgement that an ICJ decision will have immediate legal effect in the courts of U.N. members," but rather "a *commitment* on the part of U.N. Members to take *future* action through their political branches to comply with an ICJ decision." x x x.

We agree with this construction of Article 94. The Article is not a directive to domestic courts. It does not provide that the United States "shall" or "must" comply with an ICJ decision, nor indicate that the Senate that ratified the U.N. Charter intended to vest ICJ decisions with immediate legal effect in domestic courts. Instead, "[t]he words of Article 94 ... call upon governments to take certain action." x x x.

How then should the other contracting State enforce the ICJ decision against the United States if the political branches of the United States refuse to enforce the ICJ decision? *Medellin* points to Article 94(2) of the United Nations Charter, which provides that ICJ decisions shall be referred to the United Nations Security Council for enforcement if the losing State refuses to be bound by the ICJ decision. *Medellin* states:

The U.N. Charter's provision of an express diplomatic — that is, nonjudicial — remedy is itself evidence that ICJ judgments were not meant to be enforceable in domestic courts. x x x First, the Security Council must "dee[m] necessary" the issuance of a recommendation or measure to effectuate the judgment. x x x. Second, as the President and Senate were undoubtedly aware in subscribing to the U.N. Charter and Optional Protocol, **the United States retained the unqualified right to exercise its veto of any Security Council resolution**.

This was the understanding of the Executive Branch when the President agreed to the U.N. Charter and the declaration accepting general compulsory ICJ jurisdiction. x x x ("[I]f a state fails to perform its obligations under a judgment of the [ICJ], the other party may have recourse to the Security Council"); x x x ("[W]hen the Court has rendered a judgment and one of the parties refuses to accept it, then the dispute becomes political rather than legal. It is as a political dispute that the matter is referred to the Security Council"); x x x (while parties that accept ICJ jurisdiction have "a moral obligation"

to comply with ICJ decisions, Article 94(2) provides the exclusive means of enforcement). (Emphasis supplied)

Obviously, the Philippines cannot take comfort that the VFA can still give rise to an obligation under international law on the part of the United States, even as the VFA does not constitute domestic law in the United States. Assuming that the United States will submit to the jurisdiction of the ICJ, the futility of relying on the Security Council to enforce the ICJ decision is apparent. In the chilling words of *Medellin*, "**the United States retained the unqualified right to exercise its veto of any Security Council resolution.**" The only way to avoid this veto of the United States is to make the treaty part of U.S. domestic law.

It would be naïve and foolish for the Philippines, or for any other State for that matter, to implement as part of its domestic law a treaty that the United States does not recognize as part of its own domestic law. That would only give the United States the "**unqualified right**" to free itself from liability for any breach of its own obligation under the treaty, despite an adverse ruling from the ICJ.

The wisdom of the framers in crafting Section 25, Article XVIII of the Philippine Constitution is now apparent. The other contracting State must "**recognize as a treaty**" any agreement on the presence of foreign troops in the Philippines, and such treaty must be **equally binding** on the Philippines and on the other contracting State. In short, if the treaty is part of domestic law of the Philippines, it must also be part of domestic law of the other contracting State. Otherwise, the treaty cannot take effect in the Philippines.

Medellin recognized that at least some 70-odd treaties of the United States would be affected by the ruling that a treaty, even if ratified by the U.S. Senate, is not self-executory. *Medellin* even proffered a solution — legislation by the U.S. Congress giving wholesale effect to such ratified treaties. *Medellin* explains:

The dissent worries that our decision casts doubt on some 70-odd treaties under which the United States has agreed to submit disputes

to the ICJ according to "roughly similar" provisions. x x x Again, under our established precedent, some treaties are self-executing and some are not, depending on the treaty. That the judgment of an international tribunal might not automatically become domestic law hardly means the underlying treaty is "useless." x x x Such judgments would still constitute international obligations, the proper subject of political and diplomatic negotiations. x x x **And Congress could elect to give them wholesale effect (rather than the judgment-by-judgment approach hypothesized by the dissent, x x x) through implementing legislation, as it regularly has**. x x x (Emphasis supplied)

The VFA is not among the 70-odd treaties because the United States does not even consider the VFA a treaty but merely an executive agreement. The U.S. Senate did not ratify the VFA because under the United States Constitution only treaties are required to be ratified. The important difference between a treaty and an executive agreement is that a ratified treaty automatically repeals a prior inconsistent law, while an executive agreement cannot but must be consistent with existing laws. The U.S. State Department has explained the distinction between treaties and executive agreements in this manner:

> x x x it may be desirable to point out here the well-recognized distinction between an executive agreement and a treaty. In brief, it is that the former cannot alter the existing law and must conform to all statutory enactments, whereas a treaty, if ratified by and with the advice and consent of two-thirds of the Senate, as required by the Constitution, itself becomes the supreme law of the land and takes precedence over any prior statutory enactments.[7]

With *Medellin*, the treaty must not only be ratified, but must also be ratified as self-executory, or an implementing legislation must be adopted, before it can repeal a prior inconsistent law.

Executive agreements are not ratified by the U.S. Senate but merely notified to the U.S. Congress under the Case-Zablocki

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[7] Prof. Edwin Borchard (Justus S. Hotchkiss Professor of Law, Yale Law School), *Treaties and Executive Agreements — A Reply*, Yale Law Journal, June 1945, citing Current Information Series, No. 1, 3 July 1934, quoted in 5 Hackworth, *Digest of International Law* (1943) pp. 425-6.

Act, **which does not apply to treaties**. Notification under the Case-Zablocki Act does not enact the executive agreement into domestic law of the United States. On the other hand, "the failure to transmit to Congress under the Case-Zablocki Act x x x does not alter the legal effect of an (executive) agreement."[8] The Case-Zablocki Act operates merely as a timely notification to the U.S. Congress of the executive agreements, "**other than a treaty**," that the U.S. President has entered into with foreign States. This is clear from the provisions of the Case-Zablocki Act:

Section 112b. United States international agreements; transmission to Congress

(a) The Secretary of State shall transmit to the Congress the text of any international agreement (including the text of any oral international agreement, which agreement shall be reduced to writing), **other than a treaty**, to which the United States is a party as soon as practicable after such agreement has entered into force with respect to the United States but in no event later than sixty days thereafter. However, any such agreement the immediate public disclosure of which would, in the opinion of the President, be prejudicial to the national security of the United States shall not be so transmitted to the Congress but shall be transmitted to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives under an appropriate injunction of secrecy to be removed only upon due notice from the President. Any department or agency of the United States Government which enters into any international agreement on behalf of the United States shall transmit to the Department of State the text of such agreement not later than twenty days after such agreement has been signed.

(b) Not later than March 1, 1979, and at yearly intervals thereafter, the President shall, under his own signature, transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report with respect to each international agreement which, during the preceding year, was transmitted to the Congress after the expiration of the 60-day period

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[8] Dr. Richard J. Erickson, *The Making of Executive Agreements by the United States Department of Defense: An Agenda for Progress*, Boston University International Law Journal, Spring 1995.

referred to in the first sentence of subsection (a), describing fully and completely the reasons for the late transmittal.

(c) Notwithstanding any other provision of law, an international agreement may not be signed or otherwise concluded on behalf of the United States without prior consultation with the Secretary of State. Such consultation may encompass a class of agreements rather than a particular agreement.

(d) The Secretary of State shall determine for and within the executive branch whether an arrangement constitutes an international agreement within the meaning of this section.

(e) The President shall, through the Secretary of State, promulgate such rules and regulations as may be necessary to carry out this section.[9] (Emphasis supplied)

The Case-Zablocki Act mandates the notification to the U.S. Congress of executive agreements "**other than a treaty**." The purpose of the Case-Zablocki Act is "to address the lack of legal constraints over the President's choice of the form of an agreement,"[10] whether an executive agreement or a treaty. It allows the U.S. Congress to timely monitor if an agreement is mislabeled as an executive agreement when it should be a treaty subject to U.S. Senate ratification. As one commentator explained:

If Congress is dissatisfied with the character or lack of consultation on the form of an agreement, or with the content of the agreement itself, it has other means of making its displeasure known. In the exercise of its oversight power, Congress could hold hearings, as it did in 1976 on the United States-Turkish Defense Cooperation Agreement, to consider the merits of concluding such an agreement at a time of tension involving one or more nations relevant to the agreement. At any time Congress can also modify an executive agreement, as it can a treaty, by enacting subsequent contrary legislation. Congress has taken such action in the past, regrettably placing the United States in the position of breaching the agreement under international law. Finally, Congress could withhold funding for an executive agreement. To date, Congress has not exercised its "spending power" in this manner, except as to isolated issues.

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[9] Case-Zablocki Act of 22 August 1972 — 1 USC 112b.

[10] See Note 8.

"Spending power" is likely to be used by Congress only as a last resort.[11]

The fact that the U.S. State Department notified the VFA to the U.S. Congress under the Case-Zablocki Act, and the U.S. Congress has not objected to the characterization of the VFA as an executive agreement, is incontrovertible proof that the VFA is not a treaty but merely an executive agreement as far as the United States Government is concerned. **In short, the United States does not recognize the VFA as a treaty**. It is also an admission that the VFA does not have the status of domestic law in the United States. Notification under the Case-Zablocki Act is obviously far less significant legally than ratification by the U.S. Senate of a treaty. If a ratified treaty does not automatically become part of U.S. domestic law under *Medellin*, with more reason a merely notified executive agreement does not form part of U.S. domestic law.

Clearly, the United States Government does not recognize the VFA as a treaty but merely as an executive agreement. For the VFA to be constitutional under Section 25, Article XVIII of the Philippine Constitution, the United States must first recognize the VFA as a treaty, and then ratify the VFA to form part of its domestic law. In the words of Father Bernas, the United States must "**[c]omplete the process by accepting [the VFA] as a treaty through ratification by [the U.S.] Senate as the United States Constitution requires."** *Medellin* has now added the further requirement that the U.S. Congress must adopt an implementing legislation to the VFA, or the VFA must be renegotiated to make it self-executory and ratified as such by the U.S. Senate. Unless and until this is done, the VFA is not "recognized as a treaty" by the United States, and thus it cannot be given effect in the Philippines.

Under *Medellin*, the 1952 RP-US Mutual Defense Treaty (MDT) is not part of the domestic law of the United States and the U.S. President has no power to enforce the MDT under U.S. domestic law. Based on the *Medellin* requirements for a

[11] *Id.*

treaty to be binding and enforceable under U.S. domestic law, the MDT suffers the same fate as the Vienna Convention on Consular Relations. Both the MDT and the Convention were ratified by the U.S. Senate. However, both the MDT and the Convention contain only the usual *ratification* and *entry into force* provisions found in treaties. Thus:

Vienna Convention on Consular Relations

Article 75
Ratification

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

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Article 77
Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

RP-US Mutual Defense Treaty

Article VII. This Treaty shall be ratified by the Republic of the Philippines and the United States of America in accordance with their respective constitutional processes and will come into force when instruments of ratification thereof have been exchanged by them in Manila.

Both the MDT and the Convention do not contain any provision making them self-executory once ratified by the U.S. Senate. The U.S. Congress has also not adopted any implementing legislation for the MDT or the Convention. Consequently, the VFA, as an executive agreement, cannot depend

for its legal efficacy on the MDT because the MDT itself, under *Medellin*, is not binding and enforceable under U.S. domestic law, just like the Convention.

In summary, the VFA fails to comply with Section 25, Article XVIII of the Philippine Constitution requiring the United States to "**recognize as a treaty**" the VFA. This Court cannot allow the implementation of the VFA by the Philippine Government unless and until the United States recognizes the VFA as a treaty. his means that the VFA must be ratified by the U.S. Senate and made part of U.S. domestic law in accordance with *Medellin*. Only when this process is completed can this Court allow the implementation of the VFA. In the meantime, the accused Lance Corporal Daniel Smith of the U.S. Armed Forces should be subject to the same Philippine laws governing an accused in similar cases, without the application of the VFA or its subsidiary agreements.

Accordingly, I vote to (1) **DECLARE** the Visiting Forces Agreement incomplete and ineffective and thus **UNENFORCEABLE**, and to (2) **ORDER** the Director-General of the Philippine National Police, as well as the Secretary of Foreign Affairs, to immediately cause the transfer of the accused Lance Corporal Daniel Smith from the custody of the U.S. Embassy in Manila to the New Bilibid prison in Muntinlupa pending final resolution of his appeal from conviction for the crime of rape.

FIRST DIVISION

[A.M. No. P-07-2304. February 12, 2009]

EMILIA MARIÑAS, *complainant, vs.* **TERENCIO G. FLORENDO, Sheriff V, Regional Trial Court (RTC), Branch 21, Vigan City, Ilocos Sur,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; SHERIFFS; NEGLECT OF DUTY; RESPONDENT DID NOT COMPLY WITH THE MANDATE OF SECTION 14, RULE 39 OF THE RULES OF COURT ON PERIODIC REPORTING OF STATUS OF WRITS UNTIL RETURNED FULLY SATISFIED.— A review of the record at hand shows that respondent did not comply with the mandate of Section 14, Rule 39 of the Rules of Court. Under the said rule, a sheriff is mandated to execute and make a return on the writ of execution within the period provided by the Rules. In addition, he must make periodic reports on partially satisfied or unsatisfied writs in accordance with the above-cited rule, in order that the court as well as the litigants may be apprised of the proceedings undertaken in connection therewith. The periodic reporting on the status of the writs must be done by the sheriff every 30 days regularly and consistently until they are returned fully satisfied. Here, no evidence was presented to prove that respondent complied with the requirements mandated by the rule. Respondent cannot evade liability by claiming that the duty of enforcing the subject writ was already transferred to the RTC, Dagupan City when the said writ was officially endorsed by the RTC, Vigan City Branch Clerk of Court Raqueno to Clerk of Court Favia of the RTC, Dagupan City. As the sheriff assigned to the case, he should implement the writ personally. Even if the subject writ is to be executed outside his territorial jurisdiction, respondent can seek the assistance of the sheriff of the place where the writ of execution shall take place but the responsibility for its implementation still remains with respondent.

2. ID.; ID.; ID.; ID.; ID.; ANY AMOUNT RECEIVED BY SHERIFFS IN EXCESS OF THE LAWFUL FEES

ALLOWED BY THE RULES OF COURT IS AN UNLAWFUL EXACTION AND RENDERS HIM LIABLE FOR GRAVE MISCONDUCT AND GROSS DISHONESTY.— Respondent disregarded Section 10, Rule 141 of the Rules of Court. Under the said rule, the sheriff and other persons serving processes are authorized to collect certain amounts from parties while in the performance of their functions. However, the Rules also require the Sheriff to estimate his expenses in the execution of the decision. The prevailing party will then deposit the said amount to the Clerk of Court who will disburse the amount to the Sheriff, subject to liquidation. Any unspent amount will have to be returned to the prevailing party. Thus, any amount received by the Sheriff in excess of the lawful fees allowed by the Rules of Court is an unlawful exaction and renders him liable for grave misconduct and gross dishonesty. In this case, the fact that the ₱1,000.00 was offered to him by complainant to defray expenses of execution is of no moment. It makes no difference if the money, in whole or in part, had indeed been spent in the implementation of the writ. The sheriff may receive only the court-approved sheriff's fees and the acceptance of any other amount is improper, even if applied for lawful purposes.

3. ID.; ID.; ID.; ID.; SHERIFFS PLAY AN IMPORTANT ROLE IN THE ADMINISTRATION OF JUSTICE AND ARE DUTY-BOUND TO KNOW AND TO COMPLY WITH THE VERY BASIC RULES RELATIVE TO THE IMPLEMENTATION OF WRITS OF EXECUTION.— Sheriffs play an important role in the administration of justice and as agents of the law, high standards are expected of them. They are duty-bound to know and to comply with the very basic rules relative to the implementation of writs of execution. It is undisputed that the most difficult phase of any proceeding is the execution of judgment. The officer charged with this delicate task is the sheriff. The sheriff, as an officer of the court upon whom the execution of a final judgment depends, must necessarily be circumspect and proper in his behavior. Execution is the fruit and end of the suit and is the life of the law. He is to execute the directives of the court therein strictly in accordance with the letter thereof and without any deviation therefrom.

4. ID.; ID.; ID.; ID.; A FINE EQUIVALENT TO RESPONDENT'S ONE-MONTH SALARY IMPOSED IN LIEU OF THE

RECOMMENDED PENALTY OF ONE MONTH SUSPENSION; RESPONDENT MAY USE HIS SUSPENSION AS ANOTHER EXCUSE TO JUSTIFY HIS INACTION AND EFFICIENCY IN OTHER MATTERS PENDING BEFORE HIS OFFICE.— Respondent departed from the directive of the court by failing to make periodic reports on the implementation of the writ and to fully implement the said writ. He failed to observe the degree of dedication to the duties and responsibilities required of him as a sheriff. He breached his sworn duty to uphold the majesty of the law and the integrity of the justice system. The Court cannot countenance such dereliction of duty, as it erodes the faith and trust of the citizenry in the judiciary. Thus, following the prevailing jurisprudence for dereliction of duty, a one-month suspension must be imposed on respondent. While the recommended penalty of one-month suspension is reasonable, the same is not practical at this point, considering that his work would be left unattended by reason of his absence. Furthermore, he may use his suspension as another excuse to justify his inaction and inefficiency in other matters pending before his office. Instead of suspension, we impose a fine equivalent to his one-month salary, so that he can finally implement the subject writs and perform the other duties of his office.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

In a Complaint-Affidavit[1] dated March 7, 2006, Emilia Mariñas charged Terencio G. Florendo, Sheriff V, Regional Trial Court (RTC), Branch 21, Vigan City, Ilocos Sur, with neglect of duty relative to the implementation of the writ of execution issued by the RTC, Branch 21, Vigan City, in Civil Case No. 5238-V entitled *Emilia Mariñas v. Cesar Zaplan*.

Complainant alleged that the decision in Civil Case No. 5238-V was promulgated on November 18, 2002 and the same became final and executory for failure of defendant therein to file his appeal. Thus, on May 19, 2003, the RTC issued a writ of execution and respondent sheriff was assigned to implement

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

the same. Respondent assured complainant that the writ would be implemented and demanded from her seven thousand pesos (₱7,000.00) for sheriff's expenses which she readily gave to the respondent. Complainant repeatedly followed-up the execution of the writ of execution. However, respondent failed to implement the writ for about three (3) years at the time of the filing of her complaint. Hence, complainant was constrained to file this complaint for neglect of duty against respondent.

In his 1st Indorsement dated September 20, 2005, Court Administrator Jose P. Perez referred the matter to Executive Judge Alipio V. Flores of the RTC of Vigan City, Ilocos Sur for appropriate action.[2]

In a Letter[3] dated October 25, 2005, Judge Flores reported that complainant failed to appear for a confrontation with respondent despite several invitations. On December 16, 2005, complainant executed an affidavit explaining that her failure to appear before Judge Flores was due to the fact that she was never informed nor notified of the same.[4]

In his comment, respondent denied having solicited, much less, received ₱7,000.00 from complainant. He, however, admitted that he received ₱1,000.00 from complainant, but only because complainant herself offered the said amount as, "*pandagdag gastos man lang . . . kasi nakakahiya na*!" Respondent claims that he asked the assistance of Sheriff Fernando Austria of the RTC, Lingayen in conducting surveillance on Cesar Zaplan's (defendant in Civil Case No. 5238-V) residence for two (2) days but the latter found nothing to report. On November 27, 2003, Clerk of Court and *Ex-Officio* Sheriff Alex R. Raqueno of the RTC, Vigan, officially endorsed the subject writ of execution for further proceedings to his counterpart, Clerk of Court Alicia Favia of the RTC, Dagupan City, Pangasinan. According to respondent he transmitted, via postal money order, the ₱1,000.00 given to him by complainant to the Office of the

[2] *Id.* at 7.

[3] *Id.* at 8.

[4] *Id.* at 11.

Clerk of Court, Dagupan City, for sheriff's operational expenses. In fine, respondent contended that the referral of the said writ transferred the task of enforcing the same to the RTC, Dagupan City.

Respondent belied complainant's allegation that the latter made numerous follow-ups between 2004 and 2005. According to him, aside from the complainant's visit in January 2004, when he informed the latter that he had not received any feedback from the RTC, Dagupan City, complainant visited his office only twice. Respondent also disclosed that on October 4, 2005, the parties were summoned for a conference with Executive Judge Alipio V. Flores, but the complainant did not show up for the scheduled dialogue.

Finally, respondent claimed that the search for the vehicle of the defendant in the case proved futile and budgetary constraints prevented a longer stay in Dagupan City.

In its Memorandum Report[5] dated February 14, 2007, the Office of the Court Administrator made the following evaluation:

EVALUATION: Respondent was negligent in the performance of his duty as sheriff.

A review of the records of this case reveals that the Writ of Execution was issued on May 19, 2003 and has not yet been implemented up to this day, more than three (3) years after the date of issuance. It is the duty of the sheriff to enforce the writ of execution without delay once it is given to him unless restrained. Section 14 of Rule 39 of the Rules of Court provides the manner by which the execution is to be implemented as follows:

> Sec. 14. Return of writ of execution. The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty days (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefore. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every

[5] *Id.* at 55-58.

> thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.

Pursuant to the rule, respondent sheriff should report to the court within thirty (30) days from receipt of the writ of execution dated May 19, 2003, the reasons why the judgment obligation has not been satisfied. Moreover, he should submit reports every thirty (30) days thereafter until such time that the judgment obligation has been fully satisfied. It does not appear that respondent rendered these reports. Instead, respondent sought to avoid administrative liability by commissioning the services of Sheriff Viñez A. Hortaleza, RTC, Dagupan City, to conduct surveillance on the judgment defendant's assets. Respondent sheriff cannot rely solely on the surveillance he requested to be conducted by Sheriff Hortaleza as respondent is tasked to personally implement the writ. It is almost trite to say that execution is the fruit and end of the suit and is the life of law. A judgment, if left unexecuted, would be nothing but an empty victory for the prevailing party. Evidently, respondent was not only remiss in his implementation of the writ, but likewise derelict in his submission of the returns thereon.

Likewise, respondent grievously failed to comply with the requirements of Section 10, Rule 141 of the Rules of Court, as follows:

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> With regard to sheriff's expenses in executing writ issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, the interested party shall pay said expenses in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and *ex-officio* sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation with the same period for rendering a return on the process. THE LIQUIDATION SHALL BE APPROVED BY THE COURT. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the

> deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor.

Despite the plain meaning of the above-quoted procedure, respondent failed to comply therewith. His act of receiving an amount for expenses to be incurred in the implementation of the writ of execution, without him having made an estimate thereof and securing prior approval of the court issuing the writ is clearly proscribed by the rule. Whether the amount was just given to respondent is beside the point, his mere acceptance of the amount without the prior approval of the court and without him issuing a receipt thereof is clearly a misconduct in office [*Danao vs. Franco, Jr.*, 440 Phil. 181, 185-186 (2002); *Commendador vs. Canabe*, 438 Phil. 99, 107 (2002)].

It is clear that under the rule, the sheriff has to estimate the expenses to be incurred and upon the court's approval of the estimated expenses the interested party has to deposit the amount with the Clerk of Court. These expenses shall then be disbursed to the executing sheriff subject to his liquidation. Any unspent amount shall be refunded to the party who made the deposit.

Clearly, in the implementation of a writ of execution, sheriffs are not allowed to receive any voluntary payments from parties in the course of the performance of their duties. To do so would be inimical to the best interest of the service because even assuming *arguendo* such payments are indeed given and received in good faith, this fact alone would not dispel the suspicion that such payments are made for less than noble purposes. In short, sheriffs cannot, as in this case, receive gratuities or voluntary payments from parties they are ordered to assist.

Indeed the assailed conduct of respondent sheriff cannot be countenanced. He has admitted having received the amount of One Thousand Pesos (₱1,000.00) from complainant. The fact that this money was allegedly used for the implementation of the writ is of no moment. Respondent Sheriff ignored the procedures set forth in the Rules of Court. The money was not deposited with the Clerk of Court and there was no showing that this amount was subjected to court's prior approval. He should have waited for the money to be officially disbursed by him if indeed due or required for expenses. He should not accept money from a party, much less ask for it. The respondent's failure to faithfully comply with the provisions of Rule 141 of the Rules of Court constitutes dereliction of duty and negligence, which warrants the imposition of disciplinary measures

(*Andal vs. Tonga*, A.M. No. P-02-1581, 28 October 2003, 414 SCRA 524, citing *Tiongco vs. Molina*, 416 Phil. 676).

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RECOMMENDATION: Respectfully submitted for the consideration of the Honorable Court are our recommendations that:

1. The instant administrative complaint be RE-DOCKETED as a regular administrative matter; and

2. That respondent sheriff be SUSPENDED for one (1) month and one (1) day without pay with a warning that the commission of a similar act in the future will be dealt with more severely.

As recommended, this complaint was re-docketed as a regular administrative matter pursuant to the Resolution dated March 7, 2007. We shall now resolve this administrative matter on the basis of the pleadings already filed by the parties.

A review of the record at hand shows that respondent did not comply with the mandate of Section 14, Rule 39 of the Rules of Court. Under the said rule, a sheriff is mandated to execute and make a return on the writ of execution within the period provided by the Rules. In addition, he must make periodic reports on partially satisfied or unsatisfied writs in accordance with the above-cited rule, in order that the court as well as the litigants may be apprised of the proceedings undertaken in connection therewith. The periodic reporting on the status of the writs must be done by the sheriff every 30 days regularly and consistently until they are returned fully satisfied.[6] Here, no evidence was presented to prove that respondent complied with the requirements mandated by the rule. Respondent cannot evade liability by claiming that the duty of enforcing the subject writ was already transferred to the RTC, Dagupan City when the said writ was officially endorsed by the RTC, Vigan City Branch Clerk of Court Raqueno to Clerk of Court Favia of the RTC, Dagupan City. As the sheriff assigned to the case, he should implement the writ personally. Even if the subject writ is to be executed outside his territorial jurisdiction, respondent

[6] *Garcia v. Yared*, A.M. No. P-01-1492, March 20, 2003, 399 SCRA 331, 338.

can seek the assistance of the sheriff of the place where the writ of execution shall take place[7] but the responsibility for its implementation still remains with respondent.

Respondent disregarded Section 10, Rule 141 of the Rules of Court. Under the said rule, the sheriff and other persons serving processes are authorized to collect certain amounts from parties while in the performance of their functions. However, the Rules also require the Sheriff to estimate his expenses in the execution of the decision. The prevailing party will then deposit the said amount to the Clerk of Court who will disburse the amount to the Sheriff, subject to liquidation. Any unspent amount will have to be returned to the prevailing party. Thus, any amount received by the Sheriff in excess of the lawful fees allowed by the Rules of Court is an unlawful exaction and renders him liable for grave misconduct and gross dishonesty.[8]

In this case, the fact that the ₱1,000.00 was offered to him by complainant to defray expenses of execution is of no moment. It makes no difference if the money, in whole or in part, had indeed been spent in the implementation of the writ. The sheriff may receive only the court-approved sheriff's fees and the acceptance of any other amount is improper, even if applied for lawful purposes.

Sheriffs play an important role in the administration of justice and as agents of the law, high standards are expected of them. They are duty-bound to know and to comply with the very basic rules relative to the implementation of writs of execution.[9]

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[7] Administrative Circular No. 12 dated October 1, 1985 on the Guidelines and Procedure in the Service and Execution of Court Writs and Processes in the Reorganized Courts.

5. No sheriff or Deputy Sheriff shall execute a court writ outside his territorial jurisdiction without first notifying in writing, and seeking the assistance of the Sheriff of the place where the writ of execution shall take place;

[8] *Villarico v. Javier*, A.M. No. P-04-1828, February 14, 2005, 451 SCRA 218, 223-224; *Tan v. Dela Cruz*, A.M. No. P-04-1892, September 30, 2004, 439 SCRA 555, 562.

[9] *Lopez v. Ramos*, A.M. No. P-05-2017, June 29, 2005, 462 SCRA 26, 34.

It is undisputed that the most difficult phase of any proceeding is the execution of judgment. The officer charged with this delicate task is the sheriff. The sheriff, as an officer of the court upon whom the execution of a final judgment depends, must necessarily be circumspect and proper in his behavior. Execution is the fruit and end of the suit and is the life of the law. He is to execute the directives of the court therein strictly in accordance with the letter thereof and without any deviation therefrom.[10]

Respondent departed from the directive of the court by failing to make periodic reports on the implementation of the writ and to fully implement the said writ. He failed to observe the degree of dedication to the duties and responsibilities required of him as a sheriff. He breached his sworn duty to uphold the majesty of the law and the integrity of the justice system. The Court cannot countenance such dereliction of duty, as it erodes the faith and trust of the citizenry in the judiciary. Thus, following the prevailing jurisprudence for dereliction of duty, a one-month suspension must be imposed on respondent.[11]

While the recommended penalty of one-month suspension is reasonable, the same is not practical at this point, considering that his work would be left unattended by reason of his absence. Furthermore, he may use his suspension as another excuse to justify his inaction and inefficiency in other matters pending before his office. Instead of suspension, we impose a fine equivalent to his one-month salary, so that he can finally implement the subject writs and perform the other duties of his office.[12]

WHEREFORE, respondent is found guilty of neglect of duty, and a *FINE* equivalent to his one-month salary is hereby imposed upon him. Likewise, upon receipt of this Decision, respondent sheriff is hereby *DIRECTED* to immediately implement the 223-

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[10] *Pesongco v. Estoya*, A.M. No. P-06-2131, March 10, 2006, 484 SCRA 239, 254.

[11] *Ibid*.

[12] *Aquino v. Lavadia*, A.M. No. P-01-1483, September 20, 2001, 365 SCRA 441, 447.

subject writ. He is warned that the commission of the same offense or a similar act in the future will be dealt with more severely.

SO ORDERED.

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

FIRST DIVISION

[A.M. No. P-07-2391. February 12, 2009]

JENNIFER B. DOMINGO, *complainant, vs.* **SILVINO R. MALANA, JR. and CIPRIANO B. VERBO, JR., both Sheriff IV, Regional Trial Court, Office of the Clerk of Court, Tuguegarao City,** *respondents*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; COURT PERSONNEL; DELAY IN THE PERFORMANCE OF DUTIES; RESPONDENT'S FAILURE TO EXECUTE THE SUBJECT WRIT OF DEMOLITION WITHIN A REASONABLE PERIOD WAS TANTAMOUNT TO A "FAILURE TO ATTEND TO ANYONE WHO WANTS TO AVAIL HIMSELF OF THE SERVICES OF THE OFFICE OR TO ACT PROMPTLY AND EXPEDITIOUSLY ON PUBLIC TRANSACTIONS."— We agree with the findings of the Investigating Judge and the OCA that respondents are guilty of delay in the performance of their duty in failing to promptly execute the writ of demolition. The writ of demolition was referred to respondents sometime in November 2000. The houses of Candido Peralta and Moises Antonio were demolished on 24 January 2001 while the house of Victoriano Cadoma was demolished on 25 January 2001. Demolition could have been continued on 26 January 2001, a Friday. But, the

house of Willie de Guzman was demolished only on 9 March 2001, more than a month after the initial implementation. Respondents claim that they scheduled the continuation of the demolition on 8 and 9 March 2001 because of "heavy load of cases assigned to us for execution coming from the different Municipal Trial Courts of Cagayan within our jurisdiction." As aptly pointed out by the OCA, respondents' accomplishment report belies their allegation that they had a heavy load of cases assigned for execution. The bulk of their accomplishments was merely preparing, posting, and serving notices in Tuguegarao City. Time and again, we have reminded court personnel to perform their assigned tasks promptly and with great care and diligence considering the important role they play in the administration of justice. With respect to sheriffs, they are to implement writs of execution and similar processes mindful that litigations do not end merely with the promulgation of judgments. Being the final stage in the litigation process, execution of judgments ought to be carried out speedily and efficiently since judgments left unexecuted or indefinitely delayed are rendered inutile and the parties are prejudiced thereby, reflecting adversely on the entire judicial system. As court employees, sheriffs are obliged to conduct themselves with propriety and decorum and to ensure that their actions are above suspicion at all times. The Court cannot countenance – it in fact condemns – any conduct, act or omission that violates the norm of public accountability and diminishes, or even just tends to diminish, the faith of the people in the judiciary. As correctly found by the OCA and the Investigating Judge, respondents' failure to execute the writ of demolition within a reasonable period was tantamount to a "failure to attend to anyone who wants to avail himself of the services of the office or to act promptly and expeditiously on public transactions."

2. ID.; ID.; ID.; ID.; A WRIT OR PROCESS LEFT UNEXECUTED OR DELAYED DUE TO THEIR INEFFICIENCY IS RENDERED INUTILE, AND WORSE, THE PARTIES WHO ARE PREJUDICED TEND TO CONDEMN THE ENTIRE JUDICIAL SYSTEM.— Sheriffs must exert every effort to see to it that execution of judgment is carried out in order to ensure a speedy and efficient administration of justice. A writ or process left unexecuted or delayed due to their inefficiency is rendered inutile, and worse, the parties who are prejudiced tend to condemn the entire judicial system.

APPEARANCES OF COUNSEL

Rolando C. Acacio for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

Sheriffs must exert every effort to see to it that execution of judgment is carried out in order to ensure a speedy and efficient administration of justice. A writ or process left unexecuted or delayed due to their inefficiency is rendered inutile, and worse, the parties who are prejudiced tend to condemn the entire judicial system.

The Facts

In a letter-complaint dated 8 February 2001,[1] complainant Jennifer B. Domingo (Domingo) charged respondents Sheriff Silvino R. Malana, Jr. (Malana) and Cipriano B. Verbo, Jr. (Verbo), both Sheriff IV of the Regional Trial Court, Office of the Clerk of Court of Tuguegarao City (RTC-OCC), for failure to fully implement the writ of demolition in Civil Case No. 079.

Domingo alleged that the writ of demolition was referred to respondents for implementation in November 2000 but the latter informed Domingo that the implementation would have to wait until 24 January 2001 because the schedule for the month of November was full and the court would not implement demolitions during the month of December. Respondents further requested Domingo to provide a service vehicle from Tuguegarao to Centro Baggao, Cagayan, where the demolition was to take place. Domingo agreed. Domingo's brother Emil Baleva brought a service vehicle to fetch respondents in Tuguegarao City going to Centro Baggao.

The parties arrived at their destination where the hired laborers were already waiting. Before the demolition, Willie de Guzman,

[1] *Rollo*, pp. 013-015.

a defendant in Civil Case No. 079 and a policeman assigned at Baggao Police Station, requested for additional three days within which to vacate the place. Domingo refused considering that the defendants in the case had been given sufficient time to vacate the place and were notified of the demolition since November 2000.

The demolition started at around 10:00 in the morning and lasted until 3:00 in the afternoon when respondent Verbo directed its discontinuance. The house of Willie de Guzman was left undemolished. Respondent Verbo allegedly informed Domingo that the operation would continue on 27 January 2001, despite the objection of the latter.

On the agreed date, Domingo's brother Emil Baleva went to see respondent Verbo to follow-up the scheduled demolition. He was told that respondents could not go back to Baggao because of previous commitments. Respondents further assured Domingo's brother that the demolition would continue on 8 or 9 February 2001. But, two days before the date, respondents informed him that they would complete the demolition in March 2001 with no exact date.

In the 1st Indorsement dated 6 March 2001,[2] then Acting Court Administrator Zenaida N. Elepaño referred to respondents the letter-complaint for comment.

In their Letter dated 5 April 2001,[3] respondents admitted that when the writ of demolition was referred to them, they told Domingo that the writ could be implemented on 24 January 2001 considering the full schedule in November and the usual no-demolition policy in December. Respondents further averred that defendant Willie de Guzman and his wife presented to them a letter bearing the signature of their lawyer and attaching a third party claim. Willie de Guzman allegedly told respondents that they could not demolish their house due to a pending case in the Regional Trial Court, Branch 2, Tuguegarao, but respondents informed him that in the absence of any restraining

[2] *Id.* at 012.

[3] *Id.* at 004-007.

order, they would implement the demolition. Respondents explained that they did not commit to go back and continue the demolition in Baggao on the 27th of January 2001. Neither did they promise Domingo's brother that the continuation of the demolition would be on 8 or 9 February 2001. Respondents clarified that they set the completion of the demolition on 8 or 9 March 2001. The writ of demolition was fully implemented on 9 March 2001 and the subject property was turned over to Domingo on the same date.

In the Resolution dated 11 November 2002, the Court referred the case to Judge Jimmy Henry Luczon, Jr., the Executive Judge of the Regional Trial Court, Tuguegarao City, Cagayan, Branch 1 (Investigating Judge), for investigation, report and recommendation.[4]

Report of the Investigating Judge

In the Investigation Report and Recommendation dated 14 March 2005,[5] the Investigating Judge recommended the dismissal of the administrative case for lack of merit. But, this Court issued a resolution directing the Investigating Judge to require the Clerk of Court of the RTC-OCC to submit the accomplishment report of respondents covering the period from November 2000 to 9 March 2001, attaching copies of the Sheriff's Report/ Sheriff's Return. The entire records of the case were returned to the Investigating Judge for further investigation, report and recommendation.[6]

In his Supplemental Report and Recommendation,[7] the Investigating Judge found that respondents were remiss in the performance of their duties as sheriffs for failure to execute the lawful orders of the court. The Investigating Judge recommended that respondents be imposed a fine of ₱3,000 each.

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[4] *Id.* at 22.

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

[6] *Id.* at 78.

[7] *Id.* at 226-229.

This report was referred to the Office of the Court Administrator (OCA) for evaluation, report and recommendation.[8]

OCA Report and Recommendation

The OCA, in its Report and Recommendation,[9] agreed with the findings of the Investigating Judge that respondents are guilty of delay in the performance of their duty but modified the recommended penalty to be imposed. The OCA stated that in A.M. No. P-07-2290 for simple neglect of duty, respondent Malana was suspended for one month and one day and he was sternly warned that a repetition of the same or similar offense shall be dealt with more severely. The OCA recommended that respondent Malana be suspended for two months without pay and sternly warned for any repetition of the same or similar offense. As for respondent Verbo, the OCA recommended that since this is his first offense, reprimand would be proper.

The Court's Ruling

We agree with the findings of the Investigating Judge and the OCA that respondents are guilty of delay in the performance of their duty in failing to promptly execute the writ of demolition.

The writ of demolition was referred to respondents sometime in November 2000. The houses of Candido Peralta and Moises Antonio were demolished on 24 January 2001 while the house of Victoriano Cadoma was demolished on 25 January 2001. Demolition could have been continued on 26 January 2001, a Friday. But, the house of Willie de Guzman was demolished only on 9 March 2001, more than a month after the initial implementation.

Respondents claim that they scheduled the continuation of the demolition on 8 and 9 March 2001 because of "heavy load of cases assigned to us for execution coming from the different Municipal Trial Courts of Cagayan within our jurisdiction."[10]

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[8] *Id.* at 247.

[9] *Id.* at 248-258.

[10] *Id.* at 006.

As aptly pointed out by the OCA, respondents' accomplishment report[11] belies their allegation that they had a heavy load of cases assigned for execution. The bulk of their accomplishments was merely preparing, posting, and serving notices in Tuguegarao City.

Time and again, we have reminded court personnel to perform their assigned tasks promptly and with great care and diligence considering the important role they play in the administration of justice. With respect to sheriffs, they are to implement writs of execution and similar processes mindful that litigations do not end merely with the promulgation of judgments. Being the final stage in the litigation process, execution of judgments ought to be carried out speedily and efficiently since judgments left unexecuted or indefinitely delayed are rendered inutile and the parties are prejudiced thereby, reflecting adversely on the entire judicial system. As court employees, sheriffs are obliged to conduct themselves with propriety and decorum and to ensure that their actions are above suspicion at all times. The Court cannot countenance – it in fact condemns – any conduct, act or omission that violates the norm of public accountability and diminishes, or even just tends to diminish, the faith of the people in the judiciary.[12]

As correctly found by the OCA and the Investigating Judge, respondents' failure to execute the writ of demolition within a reasonable period was tantamount to a "failure to attend to anyone who wants to avail himself of the services of the office or to act promptly and expeditiously on public transactions."[13]

The penalty for failure to attend to anyone who wants to avail himself of the services of the office or act promptly and expeditiously on public transactions is reprimand for the first offense; suspension of one to thirty days for the second offense;

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[11] *Id.* at 230-233.

[12] *De Leon-Dela Cruz v. Recacho,* A.M. No. P-06-2122, 17 July 2007, 527 SCRA 622.

[13] Rule IV, Section 52, C.15, Uniform Rules on Administrative Cases in the Civil Service (took effect on 27 September 1999).

and dismissal for the third offense.[14] Considering that this is not the first administrative case of respondent Malana having been previously suspended for one month and one day for simple neglect of duty in A.M. No. P-07-2290 and sternly warned that a repetition of the same or similar offense would be dealt with more severely, the penalty of suspension of two months without pay, as recommended by the OCA, is in order.

As regards respondent Verbo, reprimand, as recommended by the OCA, could no longer be imposed in view of his death on 10 May 2008.

WHEREFORE, we find respondents guilty of delay in the performance of their duty. We *SUSPEND* respondent Silvino R. Malana, Jr., Sheriff IV, Regional Trial Court, Office of the Clerk of Court, Tuguegarao City, for two months without pay, and sternly warn him that a repetition of the same or similar offense shall be dealt with more severely. As regards respondent Cipriano B. Verbo, Jr., the case, as to him, is dismissed and considered closed and terminated.

SO ORDERED.

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

EN BANC

[A.M. No. P-09-2598. February 12, 2009]
(Formerly A.M. No. 08-3-65-MCTC)

REPORT ON THE FINANCIAL AUDIT CONDUCTED IN THE MCTC-MADDELA, QUIRINO

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[14] *Id.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; CLERKS OF COURT; DUTIES AND RESPONSIBILITIES; LIABILITY FOR ANY LOSS, SHORTAGE, DESTRUCTION OR IMPAIRMENT OF COURT FUNDS.— The Clerk of Court is an important officer in our judicial system. His office is the nucleus of all court activities, adjudicative and administrative. His administrative functions are as vital to the prompt and proper administration of justice as his judicial duties. Supreme Court Circulars No. 13-92 and No. 5-93 provide the guidelines for the proper administration of court funds. SC Circular No. 13-92 mandates that all fiduciary collections "shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized depository bank." In SC Circular No. 5-93, the Land Bank was designated as the authorized government depository. The Clerk of Court performs a very delicate function. He or she is the custodian of the court's funds and revenues, records, property and premises. Being the custodian thereof, the Clerk of Court is liable for any loss, shortage, destruction or impairment of said funds and property. Hence, Clerks of Court have always been reminded of their duty to immediately deposit the various funds received by them to the authorized government depositories, for they are not supposed to keep funds in their custody. The same should be deposited immediately upon receipt thereof with the City, Municipal or Provincial Treasurer where the court is located.

2. ID.; ID.; ID.; ID.; ID.; DELAYED REMITTANCE OF CASH COLLECTIONS BY CLERKS OF COURT AND CASH CLERKS CONSTITUTES GROSS NEGLECT OF DUTY.— Delayed remittance of cash collections by Clerks of Court and cash clerks constitutes gross neglect of duty. The failure of a public officer to remit funds upon demand by an authorized officer shall be *prima facie* evidence that the public officer has put such missing funds or property to personal use. In *Office of the Court Administrator v. Fortaleza*, we stressed the responsibility and accountability of Clerks of Court for the collected legal fees in their custody, thus: Clerks of Courts are the chief administrative officers of their respective courts; with regard to the collection of legal fees, they perform a delicate

function as judicial officers entrusted with the correct and effective implementation of regulations thereon. Even the undue delay in the remittances of amounts collected by them at the very least constitutes misfeasance. On the other hand, a vital administrative function of a judge is the effective management of his court and this includes control of the conduct of the court's ministerial officers. It should be brought home to both that the safekeeping of funds and collections is essential to the goal of an orderly administration of justice and no protestation of good faith can override the mandatory nature of the Circulars designed to promote full accountability for government funds." In *Navallo v. Sandiganbayan*, we held that an accountable officer may be convicted of malversation even in the absence of direct proof of misappropriation as long as there is evidence of shortage in his accounts which he is unable to explain.

3. ID.; ID.; ID.; ID.; ID.; ACTS AND OMISSIONS COMMITTED BY RESPONDENT CLERK OF COURT CONSTITUTE DISHONESTY AND GROSS MISCONDUCT WHICH ARE GRAVE OFFENSES WARRANTING THE PENALTY OF DISMISSAL.— Those who work in the judiciary, such as Mrs. Dueñas, must adhere to high ethical standards to preserve the court's good name and standing. They should be examples of responsibility, competence and efficiency, and they must discharge their duties with due care and utmost diligence since they are officers of the court and agents of the law. Indeed, any conduct, act or omission on the part of those who would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary shall not be countenanced. The conduct required of court personnel, from the presiding judge to the lowliest clerk, must always be beyond reproach and circumscribed with a heavy burden of responsibility. As forerunners in the administration of justice, they ought to live up to the strictest standards of honesty and integrity, considering that their positions primarily involve service to the public. Given the results of the audit and investigation, Mrs. Dueñas has evidently failed to live up to the high ethical standards expected of court employees. She violated the trust reposed in her as Clerk of Court and disbursement officer of the judiciary as shown by the following incidents: (1) shortages in the Fiduciary Fund, Judiciary Development Fund and Special Allowances for the Judiciary

Fund; (2) missing booklets of official receipts; (3) belated deposit of the JDF collection; (4) delayed remittances of collections; (5) failure to submit reports of collections and deposits of funds; and (6) delayed reporting of collected cash bonds. The Court, therefore, is left with no other recourse but to declare Mrs. Dueñas guilty of dishonesty and gross misconduct, which are grave offenses punishable by dismissal. In *Re: Report on the Judicial and Financial Audit of RTC-Br. 4, Panabo, Davao Del Norte,* we held that failure of the Clerk of Court to remit the court funds collected by the Municipal Treasurer constitutes gross neglect of duty, dishonesty and grave misconduct prejudicial to the best interest of the service. Under Rule IV, Section 52-A of the Civil Service Uniform Rules on Administrative Cases in the Civil Service, these are grave offenses punishable by dismissal even when committed for the first time.

D E C I S I O N

***PER CURIAM*:**

This administrative case arose from a letter dated 19 May 2006 of Hon. Josephine B. Gayagay, then Acting Presiding Judge of the Municipal Circuit Trial Court (MCTC), Maddela-Nagtipunan, Quirino, addressed to the Court Administrator, informing the Court of the continuous absence without leave (AWOL) of Mrs. Francisca B. Dueñas, Clerk of Court II, of the same court, since 19 April 2006. Also, Judge Gayagay requested an immediate audit of Mrs. Dueñas's accountabilities since no report of her financial transactions have been submitted since 2005.

On 14 March 2007, the First Division of this Court issued a Resolution dropping Mrs. Dueñas from the rolls and declaring her position vacant, thus:

It appearing from the records that Ms. Francisca B. Dueñas failed to submit her daily time records (DTRs)/bundy cards since April 2006 up to present and did not file any application for leave, the Court resolves:

(1) to DROP Ms. Francisca B. Dueñas from the rolls effective 19 April 2006 for having been on Absence Without Official Leave [AWOL] since said date pursuant to Sec. 63, Rule XVI of the Omnibus Rules on Leave, as amended by Resolution No. 99-1885 dated August 23, 1999;

(2) to INFORM Ms. Dueñas of her separation from the service at the address appearing on her 201 file, that is, Diduyon, Maddela, Quirino; and

(3) to declare her position as Clerk of Court VACANT.

On 26 June 2006, Deputy Court Administrator Jose P. Perez confirmed the designation of Mrs. Evelyn P. Cadavis, Court Interpreter I, as Officer-in-Charge effective 19 April 2006.

A checklist of requirements dated 16 June 2006 was sent to Mrs. Dueñas, along with a directive for her to submit the documents needed to update her records as an accountable officer of the MCTC. Accordingly, a financial audit team was formed to examine all the records/documents for all funds of the MCTC for the period 1 January 1997 up to 31 January 2007.

During the internal control evaluation, the financial audit team asked for summation of the duties and responsibilities of the personnel involved in the collection and disbursement of funds of the MCTC.

In her compliance, Mrs. Cadavis informed the team that after her designation as Officer-in-Charge, she only issued receipts for the Judiciary Development Fund (JDF) and Special Allowance for the Judiciary Fund (SAJF) collections. The cash bonds for the Fiduciary Fund were duly deposited with and receipted by the Municipal Treasurer's Office of Maddela, Quirino. No disbursement/withdrawal of collections was made from the Fiduciary Fund during Mrs. Cadavis's period of accountability, from 19 April 2006 up to 31 January 2007.

Based on the documents presented, the financial audit team submitted the following report on the result of the audit it conducted on the books of accounts of Mrs. Dueñas (for the period 1 January 1997 to 18 April 2006) and Mrs. Cadavis (for the period 19 April 2006 to 31 January 2007):

A. Cash Count Examination

As of examination date, the court has unremittted collections amounting to One Hundred Pesos (₱100.00) broken down to these funds: a) Judiciary Development Fund – ₱19.20; and b) Special allowance for the Judiciary Fund – ₱80.80. Both amounts were deposited to their respective accounts on 5 March 2007.

B. Missing Booklets of Official Receipts

The inventory of used and unused official receipts revealed that two (2) booklets of official receipts remain unaccounted. The following official receipts were not presented to the team as of audit date, to wit:

SERIAL NUMBERS	FUND USED	PERIOD COVERED
17509251-300	JDF	1/7/03-1/28/03
12883201-250	Fiduciary Fund	2/20/01-2/21/06

The following official receipts were unused as of cash count examination:

SERIAL NUMBERS	QUANTITY
4912601-4913000	7 booklets
4913601-4914000	8 booklets
4912571-4912600	30 pcs.
4913561-4913600	40 pcs.
TOTAL	**15 bklts. & 70 pcs.**

It was observed that aside from the official receipts requisitioned from the Property Division, [Office of the Court Administrator (OCA)], the court also made use of twenty (20) booklets of official receipts from the Municipal Treasurer's Office for JDF and SAJF collections covering the period February 2005 to January 2006. Also, one (1) booklet bearing serial numbers 4912901-4912950 was borrowed and properly turned-over to the Regional Trial Court, Maddela, Quirino.

C. JUDICIARY DEVELOPMENT FUND

Mrs. Dueñas (1/1/97 to 4/18/06)

Total Collections ----------	₱ 135,241.90
Less: Total Remittances ----------	131,033.40
Shortage ----------	₱ 4,208.50

i. Delayed remittance of collections

Audit findings revealed that Mrs. Dueñas belatedly deposited the collections for JDF to its account. Starting year 2003, remittances were made several months after the date of collection, thus depriving the court of interests that should have been earned had the collections been deposited prudently. Also, collections were not remitted in full, indicating that Mrs. Dueñas misappropriated the collections for her personal use. Below is the summary of the delayed remittances:

PERIOD COVERED	AMOUNT COLLECTED	DATE REMITTED	AMOUNT REMITTED
July-Sept 2003	₱ 8,406.00	9/15/03 & 9/30/03	₱ 8,279.00
Jan-May 2004	15,407.00	5/18/04 & 5/27/04	15,293.00
June-Aug 2004	9,446.00	8/4/04	7,922.00
Nov 2005-Feb 2006	3,986.60	2/2/06	980.00

Although, Mrs. Dueñas submitted monthly reports during the periods mentioned, it did not reflect any deposit for the said months. Instead, an accumulated deposit was made months after, which include collections for the previous months.

Mrs. Cadavis (4/19/06 to 1/31/07)

Total Collections ---------- ₱16,615.00
Less: Total Remittances ---------- 16,813.20
Over-remittance ---------- ₱ (198.20)

Over-remittance of collections amounting to ₱198.20 shall accrue to the account of the National Government.

D. GENERAL FUND

Mrs. Dueñas (1/1/97 to 11/10/03)

Total Collections ---------- ₱47,629.90
Less: Total Remittances ---------- 47,741.90
Over-remittance ---------- ₱ (112.00)

The over-remittance amounting to ₱112.00 shall accrue to the account of the National Government.

E. SPECIAL ALLOWANCE FOR THE JUDICIARY FUND

Mrs. Dueñas (11/11/03 to 4/18/06)

Total Collections ---------- ₱ 62,425.40
Less: Total Remittances ---------- 48,222.60
Shortage ---------- ₱ 14,202.80

i. Delayed remittance of collections

Similarly, delayed remittances were evidently observed in this fund. Collections accumulated and were deposited months after. Likewise, collections were not remitted in full, indicative of misappropriation of collections. Below is the summary of the delayed remittances.

PERIOD COVERED	AMOUNT COLLECTED	DATE REMITTED	AMOUNT REMITTED
Jan-May 2004	2,238.00	5/24/04 & 5/27/04	2,207.00
June-Aug 2004	1,205.00	8/4/04	830.00
Jan-Apr 2006	13,536.80	5/12/06	2,181.60

ii. Non-submission of Monthly Reports

Aside from the considerable delays in the remittances of collections, Mrs. Dueñas did not submit reports of collections and deposits for the said fund. The subsidiary ledger maintained by the Accounting Division, Financial Management Office, OCA shows that no monthly reports were submitted for the period December 2005 to March 2006.

Mrs. Cadavis (4/19/06 to 1/31/07)

Total Collections ---------- ₱ 44,285.00
Less: Total Remittances ---------- 44,324.00
Over-remittance---------- ₱ (39.00)

Over-remittance of collections amounting to ₱39.00 shall accrue to the account of the National Government.

F. FIDUCIARY FUND

Mrs. Dueñas (1/1/97 to 4/18/06)

The court's Fiduciary Fund was last audited on 31 December 1996 and found no shortages and overages. For this audit period, the determination of collections was based solely on the cash books and monthly reports, since the triplicate copies of official receipts (for the period 20 February 2001 to 21 February 2006, or a period

of 5 years) were found to be missing. To determine the withdrawals, the team was left with no choice but to base it on the available records of lawful court orders and acknowledgement receipts. Some withdrawals made on this account were not duly supported by court orders.

After examining and verifying evidential documents/records gathered by the team, initial audit findings revealed a shortage amounting to FOUR HUNDRED FOURTEEN THOUSAND ONE HUNDRED SIXTY FOUR PESOS & 82/100 (₱414,164.82), computed as follows:

Total Collections (inclusive of the cash Withdrawn from MTO and deposited at the LBP, Cabarroguis Branch amounting to ₱44,700.00) ----------	₱ 880,000.00
Less: Lawful withdrawals ----------	465,600.00
Balance of Unwithdrawn Fiduciary Fund -----	**414,400.00**
Balance of Unwithdrawn Fiduciary Fund --------	414,400.00
Balance per bank as of 4/30/06 under LBP SA #0731-0345-16 ----------	235.18
Shortage ----------	₱ **414,164.82**

Of the said shortage, the following amounts can be deducted upon presentation/submission of the supporting documents, *i.e.*, lawful court orders and acknowledgement receipts to support the withdrawals of the cash bonds reported as withdrawn. In case the said documents will be submitted, the balance of Unwithdrawn Fiduciary Fund would amount to ONE HUNDRED FORTY NINE THOUSAND NINE HUNDRED PESOS (₱149,900.00), broken down as follows:

Balance of Unwithdrawn Fiduciary Fund ----------		₱ 414,400.00
Less: Withdrawals with NO supporting documents (subject for compliance)		
Withdrawn cash bonds with no court orders -------	₱ 7,000.00*	
Withdrawn cash bonds with no acknowledgment receipts --	247,500.00**	
Withdrawn cash bonds with no court order & acknowledgment receipts -----	10,000.00***	₱ 264,500.00
Unwithdrawn Fiduciary Fund 4/18/06 -------		**₱149,900.00**

As a result, the shortage would now amount to:

Balance of Unwithdrawn Fiduciary Fund ---------- ₱ 149,900.00
Balance per bank as of 4/30/06 under
LBP SA # 0731-0345-16---------- ₱ 235.18
Shortage---------- **₱ 149,664.82**

Note:

* see Schedule 1
** see Schedule 2
*** see Schedule 3

Hereunder are the respective schedules:

Schedule 1
Withdrawn cash bonds with NO attached court order

Date of Collection	OR No.	Date Deposited	Case No.	Name of Litigant	Date Withdrawn	Amount
02/19/01	12883201	02/20/01	1579	Rogelio Laggui	06/05/02	2,000.00
03/08/02	12883210	03/13/02	1672	Leonito Apostol	06/20/02	5,000.00
TOTAL						**7,000.00**

Schedule 2
Withdrawn cash bonds with NO attached acknowledgement receipts

Date of Collection	OR No.	Date Deposited	Case No.	Name of Litigant	Date Withdrawn	Amount
	244954	02/02/96	1357-A	Enrique Martinez	date of co - 8/31/2005	3,500.00
03/03/97	5100670	03/13/97	3114	Rolieta Udani	08/19/97	1,000.00
04/22/99	5100682	06/25/99	56848-56852	Marilyn Ramirez	01/16/04	5,000.00
05/31/99	5100683	07/07/99	1608	Eddie Dacanay	04/05/04	3,000.00
10/01/99	5100686	10/26/99	1631	Wilmar Tamayo	10/20/05	10,000.00
06/30/00	5100693	07/05/00	1633	Jaime Nicolas	11/17/03	2,000.00
02/13/01	5100700	02/16/01	21-N	Nestor Matias	09/27/05	10,000.00
09/20/01	12883208	09/26/01	1729	Enrique Adviento	07/08/04	2,000.00
10/25/02	12883215	10/30/02	1722	Alberto Quejada	07/08/04	1,000.00
06/23/03	12883219	-	1777	Mario Pili	08/04/03	6,000.00

06/24/03	12883220	-	1786	Mark Gregory Ladia	date of co - 6/26/2003	5,000.00
06/24/03	12883221	-	1786	Mark Gregory Ladia	date of co - 6/26/2003	5,000.00
05/20/04	12883223	05/27/04	1818	Jose Tugatog	07/08/04	5,000.00
09/10/04	12883228	09/15/04	1861	Sohang Guhadna	01/21/05	12,000.00
09/10/04	12883229	09/15/04	1821	Mario Barcelo	11/26/04	500.00
09/10/04	12883230	09/15/04	1822	Mario Barcelo	11/26/04	1,500.00
10/01/04	12883231	10/06/04	1865	Daniel Obtial	date of co - 6/26/2006	12,000.00
01/07/05	12883233	01/14/05	1885	Junie Baculanta	01/21/05	3,000.00
01/21/05	12883234	01/24/05	1882	Lorena dela Cruz	09/28/05	5,000.00
01/21/05	12883235	01/24/05	1882	Rodolfo dela Cruz	09/28/05	5,000.00
02/08/05	12883236	02/14/05	1893	Jesus Respicio	date of co - 3/16/2006	12,000.00
03/02/05	12883237	03/03/05	1881	Richard Roque	date of co - 11/22/2005	20,000.00
03/03/05	12883238	03/04/05	1891	Zeny Fernandez	09/28/05	6,000.00
03/09/05	12883239	03/09/05	1897	Conrado Reyes	date of co - 3/22/2006	7,000.00
04/20/05	12883241	04/20/05	1880	Lyn Lyn Duran	09/30/05	3,000.00
08/12/05	12883242	08/17/05	1930	Joseph Dulnuan	date of co - 3/6/2006	60,000.00
09/21/05	12883243	09/22/05	1780	Rodrigo Camcam	10/19/05	4,000.00
09/27/05	12883244	Not deposited	1921	Samuel Ramiscal	10/05/05	8,000.00
10/20/05	12883245	10/24/05	1749	Jayflor Blanco	date of co - 10/26/2005	10,000.00
11/21/05	12883247	Not deposited	1801	Zaldy Cristobal	11/22/05	10,000.00
11/21/05	12883249	Not deposited	1915	Arman Gaspar	01/10/06	10,000.00
TOTAL						**247,500.00**

Date of co-date of court order

Schedule 3

Withdrawn cash bond with NO attached court order & acknowledgement receipt

Date of Collection	OR No.	Date Deposited	Case No.	Nameof Litigant	Date Withdrawn	Amount
05/27/02	12883213	06/05/02	1272	Johnson Galduen	08/05/04	10,000.00
TOTAL						**10,000.00**

Aside from the shortage incurred and withdrawn cash bonds with no attached supporting documents, the team also had the following observations:

i. Balance per bank as of May 31, 2006 amounted to ₱135.18

When the team requested for the passbooks used by Mrs. Dueñas during her incumbency, Mrs. Cadavis surrendered two (2) LBP passbooks under Savings Account No. 0731-0345-16 covering the periods: 02 February 1996 to 21 February 2001 and 19 March 2001 to 20 October 2005. The team was informed that the current passbook used by the court was not turned-over by Mrs. Dueñas and is still in her possession. Hon. Andrew P. Dulnuan, incumbent Presiding Judge, had retrieved copies of the bank statements/account history from the LBP, Cabarroguis Branch and upon scrutiny of the documents, it was discovered that Mrs. Dueñas made numerous withdrawals from October 20, 2005 to March 16, 2006, or a period of less than five (5) months, amounting to TWO HUNDRED FIFTY TWO THOUSAND FIVE HUNDRED PESOS (₱252,500.00), hence depleting the balance.

ii. Undeposited collections

It was established that there were instances that Mrs. Dueñas did not deposit her collections for this fund. Although some cash bonds listed hereunder were withdrawn with notations of "not deposited in bank due to early settlement" or "refunded to parties due to amicable settlement," there was no proof that the cash bond was acknowledged by the parties of the case.

Date of Collection	OR No.	Date Deposited	Case No.	Name of Litigant	Amount
06/20/03	12883218	Not deposited	1775-1776	Julia Gaspar	3,200.00
06/23/03	12883219	Not deposited	1777	Mario Pili	6,000.00
06/24/03	12883220	Not deposited	1786	Mark Gregory Ladia	5,000.00
06/24/03	12883221	Not deposited	1786	Mark Gregory Ladia	5,000.00
09/08/03	12883222	Not deposited	1752	Junie Casar	3,000.00

09/27/05	12883244	Not deposited	1921	Samuel Ramiscal	8,000.00
11/21/05	12883247	Not deposited	1801	Zaldy Cristobal	10,000.00
10/20/05	12883248	Not deposited	368	Eliseo Sagabaen	30,000.00
11/21/05	12883249	Not deposited	1915	Arman Gaspar	10,000.00
02/21/06	12883250	Not deposited	1943	Roland Colobong	20,000.00
TOTAL					**100,200.00**

iii. Delayed reporting of collected cash bonds

Aside from the undeposited collections, Mrs. Dueñas also delayed the reporting of the cash bonds collected. This clearly points out that Mrs. Dueñas used her collections for her benefit before reporting and depositing the same.

Date of Collection	Date Reported	No. of days Delayed	OR No.	Case No.	Name of Litigant	Amount
05/03/02	05/07/02	4 days	12883212	1745	Edwin Zabala	2,000.00
03/13/03	06/23/03	102 days	12883219	1777	Mario Pili	6,000.00
05/08/03	06/24/03	47 days	12883220	1786	Mark Gregory Ladia	5,000.00
05/08/03	06/24/03	47 days	12883221	1786	Mark Gregory Ladia	5,000.00
08/08/03	09/08/03	31 days	12883222	1752	Junie Casar	3,000.00
01/05/04	05/20/04	135 days	12883223	1818	Jose Tugatog	5,000.00
01/08/04	05/21/04	133 days	12883224	1790	Mario Rapisura	2,000.00
01/08/04	05/21/04	133 days	12883225	1790	Flordeliza Rapisura	2,000.00
01/08/04	05/21/04	133 days	12883226	1791	Sharone Vicitacion Rapisura	2,000.00
08/27/04	09/10/04	14 days	12883228	1861	Sohang Guhadna	12,000.00
08/27/04	09/10/04	14 days	12883229	1821	Mario Barcelo	500.00
08/27/04	09/10/04	14 days	12883230	1822	Mario Barcelo	1,500.00

iv. Request to release cash bond issued under OR# 12883248 dated 10/20/05 amounting to ₱30,000.00

In a letter addressed to Judge Dulnuan dated February 2, 2007, Mr. Eliseo M. Sagabaen notified the court of the supersedeas bond filed on October 20, 2005 amounting to ₱30,000.00 deposited with the court. Now that an order has been handed down by the court, Mr. Sagabaen requested for the release of the cash bond. Judge

Dulnuan informed the team that since the bank account has been depleted, he has no recourse as to what action to take regarding the said request.

v. Unwithdrawn interest earned and bank charges

As of March 31, 2006, unwithdrawn interest amounting to THREE THOUSAND FIVE HUNDRED THIRTY TWO PESOS & 36/100 (₱3,532.36) was not withdrawn and deposited to the JDF account. Also, since the outstanding balance was below the maintaining balance set by the bank, service charges were also deducted to the said account starting April 2006.

Mrs. Cadavis (4/19/06 to 1/31/07)

During this period, cash bonds were duly receipted and directly deposited to the Municipal Treasurer's Office, Maddela, Quirino. A certification to that effect was issued on March 2, 2007 by Gloria J. Fontanilla, Municipal Treasurer and Froilan R. Barroga, OIC-Municipal Accountant. The outstanding balance amounted to THIRTY SEVEN THOUSAND PESOS (₱37,000.00) broken down as follows:

Name	OR No.	Date	Amount
Ronald P. Corpuz	9835801	5/9/06	₱25,000.00
Ariel Patricio and/or Leopoldo Patricio	3607721	10/19/06	12,000.00

G. RECAPITULATION

Fund	Mrs. Dueñas	Mrs. CADAVIS
JDF	4,208.50	(198.20)
General Fund	(112.00)	n/a
SAJ Fund	14,202.80	(39.00)
Fiduciary Fund	414,164.82	- 0 -

The equivalent money value of the total earned leave credits of Mrs. Dueñas as certified by Ms. Florence J. Bautista, SC Chief Judicial Staff Officer, Finance Division, Financial Management Office, OCA dated December 11, 2007 is TWO HUNDRED TWENTY EIGHT THOUSAND SEVEN HUNDRED SEVENTY EIGHT PESOS and 95/100 (₱228,778.95), computed as follows:

TLB (Terminal Leave Benefits) = No. of accumulated leave x highest monthly salary received x .0478087 (constant factor)

267.007 days x ₱17,922.00 x .0478087 = ₱228,778.95

In view of its foregoing findings, the financial audit team recommended that:

1. Mrs. FRANCISCA B. DUEÑAS, Clerk of Court II, Municipal Circuit Trial Court, Maddela-Nagtipunan, Quirino be DISMISSED from the service for gross dishonesty, grave misconduct and continuous absence without leave with forfeiture of all her benefits, including her accrued leave credits, and be DISQUALIFIED for reemployment in any government agency, including government owned and controlled corporation;

2. The money value of the leave credits of Mrs. Dueñas amounting to TWO HUNDRED TWENTY EIGHT THOUSAND SEVEN HUNDRED SEVENTY EIGHT PESOS and 95/100 (₱228,778.95) be applied as partial restitution of the computed shortages during her period of accountability as Clerk of Court of the Municipal Circuit Trial Court, Maddela-Nagtipunan, Quirino;

3. The Financial Management Office, OCA be DIRECTED to: a) apply the money value of the terminal leave pay to the shortage in the Fiduciary Fund of Mrs. Dueñas dispensing with the usual documentary requirements; b) release the said amount to the Officer-in-Charge, MCTC, Maddela-Nagtipunan, Quirino for deposit to the Fiduciary Fund;

4. Mrs. FRANCISCA B. DUEÑAS, Clerk of Court II, Municipal Circuit Trial Court, Maddela-Nagtipunan, Quirino be DIRECTED to RESTITUTE within thirty (30) days from notice, the amount of TWO HUNDRED THREE THOUSAND SEVEN HUNDRED NINETY SEVEN PESOS and 17/100 (₱203,797.17) representing the balance of her shortages after deducting the money value of her leave credits and SUBMIT to the Fiscal Monitoring Division, Court Management Office (CMO), OCA the machine validated deposit slips and certified photocopy of the passbook reflecting the deposit;

Hereunder are the shortages for the following funds:

a) Fiduciary Fund ₱414,164.82
Less: Amount of TLP

applied to her accountabilities	₱228,778.95	₱185,385.87

b) Judiciary Development Fund	₱4,208.50
c) Special Allowance for the Judiciary Fund	₱14,202.80
TOTAL	₱203,797.17

5. Hon. ANDREW P. DULNUAN, Presiding Judge, Municipal Circuit Trial Court, Maddela-Nagtipunan, Quirino be DIRECTED to:

   (a) LOCATE the whereabouts of Mrs. Dueñas and personally serve a copy of the resolution directing Mrs. Dueñas to restitute her shortages; and

   (b) MONITOR the Officer-in-Charge in the strict adherence to the issuances of the Court, particularly the handling of judiciary funds;

6. The National Bureau of Investigation be DIRECTED to cause the arrest of Mrs. Francisca B. Dueñas and to detain her until she complies with the directive in #4 hereof.

On 20 February 2008, the Office of the Court Administrator (OCA) adopted and endorsed the recommendation of the financial audit team for the approval of this Court.

We agree in the recommendation of the financial audit team, as adopted by the OCA.

Before being on AWOL, Mrs. Dueñas served as the Clerk of Court II of the MCTC.

The Clerk of Court is an important officer in our judicial system. His office is the nucleus of all court activities, adjudicative and administrative. His administrative functions are as vital to the prompt and proper administration of justice as his judicial duties.[1]

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[1] *Re: Report on the Financial Audit Conducted in the RTC, Br. 34, Balaoan, La Union*, A.M. No. 02-1-66-RTC, August 19, 2004, 437 SCRA 72, 78, citing *Dizon v. Bawalan*, 453 Phil. 125, 133 (2003).

Supreme Court Circulars No. 13-92 and No. 5-93 provide the guidelines for the proper administration of court funds. SC Circular No. 13-92 mandates that all fiduciary collections "shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized depository bank." In SC Circular No. 5-93, the Land Bank was designated as the authorized government depository.

The Clerk of Court performs a very delicate function. He or she is the custodian of the court's funds and revenues, records, property and premises. Being the custodian thereof, the Clerk of Court is liable for any loss, shortage, destruction or impairment of said funds and property.[2] Hence, Clerks of Court have always been reminded of their duty to immediately deposit the various funds received by them to the authorized government depositories, for they are not supposed to keep funds in their custody.[3] The same should be deposited immediately upon receipt thereof with the City, Municipal or Provincial Treasurer where the court is located.

Delayed remittance of cash collections by Clerks of Court and cash clerks constitutes gross neglect of duty.[4] The failure of a public officer to remit funds upon demand by an authorized officer shall be *prima facie* evidence that the public officer has put such missing funds or property to personal use.[5]

In *Office of the Court Administrator v. Fortaleza*,[6] we stressed the responsibility and accountability of Clerks of Court for the collected legal fees in their custody, thus:

Clerks of Courts are the chief administrative officers of their respective courts; with regard to the collection of legal fees, they

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[2] *Office of the Court Administrator v. Fortaleza*, 434 Phil. 511, 522 (2002), citing *Office of the Court Administrator v. Bawalan*, A.M. No. P-93-945, 24 March 1994, 231 SCRA 408, 411.

[3] *Office of the Court Administrator v. Fortaleza*, *id.*, citing *Office of the Court Administrator v. Galo*, 373 Phil. 483, 491 (1999).

[4] *Soria v. Oliveros*, A.M. No. P-00-1372, 16 May 2005, 458 SCRA 410, 423.

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

[6] *Supra* note 2 at 522.

perform a delicate function as judicial officers entrusted with the correct and effective implementation of regulations thereon. Even the undue delay in the remittances of amounts collected by them at the very least constitutes misfeasance. On the other hand, a vital administrative function of a judge is the effective management of his court and this includes control of the conduct of the court's ministerial officers. It should be brought home to both that the safekeeping of funds and collections is essential to the goal of an orderly administration of justice and no protestation of good faith can override the mandatory nature of the Circulars designed to promote full accountability for government funds."

In *Navallo v. Sandiganbayan,*[7] we held that an accountable officer may be convicted of malversation even in the absence of direct proof of misappropriation as long as there is evidence of shortage in his accounts which he is unable to explain.[8]

Those who work in the judiciary, such as Mrs. Dueñas, must adhere to high ethical standards to preserve the court's good name and standing.[9] They should be examples of responsibility, competence and efficiency, and they must discharge their duties with due care and utmost diligence since they are officers of the court and agents of the law.[10] Indeed, any conduct, act or omission on the part of those who would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary shall not be countenanced.[11]

The conduct required of court personnel, from the presiding judge to the lowliest clerk, must always be beyond reproach and circumscribed with a heavy burden of responsibility.[12] As forerunners in the administration of justice, they ought to live

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[7] G.R. No. 97214, July 18, 1994, 234 SCRA 175*; People v. Hipol*, 454 Phil. 679, 690 (2003).

[8] *Sollesta v. Mission*, A.M. No. P-03-1755, 29 April 2005, 457 SCRA 519, 536.

[9] *Gutierrez v. Quitalig*, 448 Phil. 469, 478 (2003).

[10] *Id.* at 478-479.

[11] *Id.*

[12] *Tudtud v. Caayon*, A.M. No. P-02-1567, 28 March 2005, 454 SCRA 10, 14.

up to the strictest standards of honesty and integrity, considering that their positions primarily involve service to the public.[13]

Given the results of the audit and investigation, Mrs. Dueñas has evidently failed to live up to the high ethical standards expected of court employees. She violated the trust reposed in her as Clerk of Court and disbursement officer of the judiciary as shown by the following incidents: (1) shortages in the Fiduciary Fund, Judiciary Development Fund and Special Allowances for the Judiciary Fund; (2) missing booklets of official receipts; (3) belated deposit of the JDF collection; (4) delayed remittances of collections; (5) failure to submit reports of collections and deposits of funds; and (6) delayed reporting of collected cash bonds.

The Court, therefore, is left with no other recourse but to declare Mrs. Dueñas guilty of dishonesty and gross misconduct, which are grave offenses punishable by dismissal.[14]

In *Re: Report on the Judicial and Financial Audit of RTC-Br. 4, Panabo, Davao Del Norte,*[15] we held that failure of the Clerk of Court to remit the court funds collected by the Municipal Treasurer constitutes gross neglect of duty, dishonesty and grave misconduct prejudicial to the best interest of the service. Under Rule IV, Section 52-A of the Civil Service Uniform Rules on Administrative Cases in the Civil Service, these are grave offenses punishable by dismissal even when committed for the first time.

WHEREFORE, the Court finds respondent Francisca B. Dueñas, Clerk of Court II, MCTC, Maddela-Nagtipunan, Quirino, *GUILTY* of gross dishonesty, grave misconduct, and continuous

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[13] *Id.*

[14] Rule IV of the Uniform Rules on Administrative Cases in the Civil Service (Resolution No. 9-1936, which took effect on September 27, 1999) provides:

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

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

1. Dishonesty – 1st Offense – Dismissal
2. Gross Neglect of Duty – 1st Offense – Dismissal
3. Grave Misconduct – 1st Offense – Dismissal

[15] 351 Phil. 1 (1998).

absence without leave; and imposes on her the penalty of *DISMISSAL* from the service with forfeiture of all her leave credits and retirement benefits, with prejudice to re-employment in any government agency, including government-owned and controlled corporations. The Civil Service Commission is ordered to cancel her civil service eligibility, if any, in accordance with Section 9, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292.

The Court further orders:

1. That the money value of the leave credits of Mrs. Dueñas amounting to TWO HUNDRED TWENTY-EIGHT THOUSAND SEVEN HUNDRED SEVENTY-EIGHT PESOS and 95/100 (₱228,778.95) be applied to the partial restitution of the computed shortages during her period of accountability as Clerk of Court II of the MCTC, Maddela-Nagtipunan, Quirino;

2. The Financial Management Office, OCA to: (a) apply the money value of the terminal leave pay to the shortage in the Fiduciary Fund of Mrs. Dueñas, dispensing with the usual documentary requirements; and (b) release the said amount to the Officer-in-Charge, MCTC, Maddela-Nagtipunan, Quirino for deposit to the Fiduciary Fund;

3. Mrs. Dueñas to restitute within thirty (30) days from notice, the amount of TWO HUNDRED THREE THOUSAND SEVEN HUNDRED NINETY-SEVEN PESOS and 17/100 (₱203,797.17) representing the balance of her shortages after deducting the money value of her leave credits and submit to the Fiscal Monitoring Division, Court Management Office, OCA, the machine validated deposit slips and certified photocopy of the passbook reflecting the deposit;

4. Hon. ANDREW P. DULNUAN, Presiding Judge, MCTC, Maddela-Nagtipunan, Quirino, to:

    a. Locate the whereabouts of Mrs. Dueñas and personally serve a copy of this Decision directing Mrs. Dueñas to restitute her shortages; and

b. Monitor the Officer-in-Charge in the strict adherence to the issuances of the Court, particularly the handling of judiciary funds;

5. The National Bureau of Investigation to cause the arrest of Mrs. Dueñas and to detain her until she complies with the directive in No. 3 hereof; and

6. The OCA to coordinate with the prosecution arm of the government to ensure the expeditious prosecution of the criminal liability of Mrs. Dueñas.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 150141. February 12, 2009]

AGENCIA EXQUISITE OF BOHOL, INCORPORATED, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

[G.R. No. 157359. February 12, 2009]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **AGENCIA EXQUISITE OF BOHOL, INCORPORATED,** *respondent.*

[G.R. No. 158644. February 12, 2009]

EXQUISITE PAWNSHOP and JEWELRY, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent*.

SYLLABUS

TAXATION; NATIONAL INTERNAL REVENUE CODE; PERCENTAGE TAXES; PURSUANT TO THE COURT'S PREVIOUS RULINGS IN *LHUILLIER AND TRUSTWORTHY* PAWNSHOPS ARE NOT INCLUDED IN THE TERM LENDING INVESTORS FOR THE PURPOSE OF IMPOSING THE 5% PERCENTAGE TAX UNDER THEN SECTION 116 OF THE CODE, AS AMENDED BY EXECUTIVE ORDER NO. 273.— The Court agrees with the contentions of AEBI and EPJI, the issue herein not being a novel one. In *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*, this Court held that pawnshops are not included in the term *lending investors* for the purpose of imposing the 5% percentage tax under then Section 116 of the National Internal Revenue Code of 1977, as amended by Executive Order No. 273. Thus, while pawnshops are indeed engaged in the business of lending money, they cannot be deemed "lending investors" for the purpose of imposing the 5% lending investor's tax. Again, in *Commissioner of Internal Revenue v. Trustworthy Pawnshop, Inc.*, this Court reiterated its ruling in *Lhuillier* that pawnshops are not included in the term *lending investors* for the purpose of imposing the 5% percentage tax. Under the doctrine of *stare decisis et not quieta movere* it behooves the Court to apply its previous ruling in *Lhuillier* and *Trustworthy* to the cases under consideration. Once a case has been decided one way, any other case involving exactly the same point at issue, as in the present consolidated cases, should be decided in the same manner. Consequently, this Court finds in G.R. No. 157359 that the CA committed no reversible error in dismissing the appeal and affirming the decision of the CTA. However, in G.R. No. 150141 and G.R. No. 158644, pursuant to *Lhuillier* and *Trustworthy*, the decisions and resolutions of the CA should be reversed and set aside.

APPEARANCES OF COUNSEL

Dumon & Fernandez for Agencia Exquisite of Bohol, Inc. and Exquisite Pawnshop and Jewelry, Inc.

The Solicitor General for respondent.

D E C I S I O N

AZCUNA, *J.*:

Before this Court are three consolidated petitions for review. The first, docketed as G.R. No. 150141, assails the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 59282 dated March 23, 2001 reversing and setting aside the Decision[2] of the Court of Tax Appeals (CTA) in CTA Case No. 5774, and the CA's Resolution[3] dated September 25, 2001 denying the motion for reconsideration.

The second, docketed as G.R. No. 157359, assails the Decision[4] dated February 6, 2003 of the CA in CA-G.R. SP No. 64117 affirming the Decision[5] of the CTA in CTA Case No. 5990.

Lastly, G.R. No. 158644 assails the Decision[6] of the CA in CA-G.R. SP No. 59401 dated September 30, 2002 reversing and setting aside the Decision[7] and Resolution of the CTA in CTA Case No. 5741, and the CA's Resolution[8] denying the motion for reconsideration.

On March 11, 1991, then Commissioner of Internal Revenue Jose U. Ong issued Revenue Memorandum Order (RMO)

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[1] Penned by Associate Justice Renato C. Dacudao with Associate Justices Bienvenido L. Reyes and Perlita J. Tria Tirona concurring; *rollo* (G.R. No. 150141), pp. 43-52.

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

[3] *Id.* at 53.

[4] Penned by Associate Justice Edgardo P. Cruz with Associate Justices Portia Aliño-Hormachuelos and Danilo B. Pine concurring; *rollo* (G.R. No. 157359), pp. 35-43.

[5] *Id.* at 44-50.

[6] Penned by Associate Justice Bernardo P. Abesamis with Associate Justices Cancio C. Garcia (later Supreme Court Associate Justice) and Rebecca De Guia-Salvador concurring; *rollo* (G.R. No. 158644), pp. 44-54.

[7] *Id.* at 58-70.

[8] *Id.* at 57.

No. 15-91 classifying the pawnshop business as akin to the lending investor's business activity "which is broad enough to encompass the business of lending money at interest by any person whether natural or juridical" and imposing on both a 5% lending investor's tax based on their gross income, pursuant to then Section 116 of the National Internal Revenue Code of 1977, as amended. The RMO reads:

> A restudy of P.D. [No.] 114 shows that the principal activity of pawnshops is lending money at interest and incidentally accepting a "pawn" of personal property delivered by the pawner to the pawnee as security for the loan.(Sec. 3, *Ibid.*). Clearly, this makes pawnshop business akin to lending investor's business activity which is broad enough to encompass the business of lending money at interest by any person whether natural or juridical. Such being the case, pawnshops shall be subject to the 5% lending investor's tax based on their gross income pursuant to Section 116 of the Tax Code, as amended.

The RMO was later clarified by Revenue Memorandum Circular (RMC) No. 43-91 dated May 27, 1991, which reads:

> 1. RM[O] 15-91 dated March 11, 1991.
>
> This Circular subjects to the 5% lending investor's tax the gross income of pawnshops pursuant to Section 116 of the Tax Code, and it thus revokes BIR Ruling No. 6-90, and VAT Ruling Nos. 22-90 and 67-90. In order to have a uniform cut-off date, avoid unfairness on the part of taxpayers if they are required to pay the tax on past transactions, and so as to give meaning to the express provisions of Section 246 of the Tax Code, pawnshop owners or operators shall become liable to the lending investor's tax on their gross income beginning January 1, 1991. Since the deadline for the filing of percentage tax return (BIR Form No. 2529A-0) and the payment of the tax on lending investors covering the first calendar quarter of 1991 has already lapsed, taxpayers are given up to June 30, 1991 within which to pay the said tax without penalty. If the tax is paid after June 30, 1991, the corresponding penalties shall be assessed and computed from April 21, 1991.
>
> Since pawnshops are considered as lending investors effective January 1, 1991, they also become subject to documentary stamp taxes prescribed in Title VII of the Tax Code. BIR Ruling No. 325-88 dated July 13, 1988 is hereby revoked.

Pursuant to these issuances, the Bureau of Internal Revenue (BIR) issued Assessment Notice No. 84-PT-13-95-98-5-0-63, dated April 20, 1998, against Agencia Exquisite of Bohol, Inc. (AEBI) demanding payment in the sum of ₱106,538.59 representing the 5% lending investors' tax for 1995, plus interest and charges.[9]

On June 28, 1998, AEBI filed its Administrative Protest which the BIR Revenue Regional Director denied in a Letter-Decision dated February 3, 1999.[10]

Consequently, AEBI filed with the CTA a Petition for Review, docketed as CTA Case No. 5774. On June 7, 2000, the CTA rendered its Decision in favor of AEBI cancelling Assessment Notice No. 84-PT-13-95-98-5-0-63 and declaring RMO No. 15-91 and RMC No. 43-91, in so far as they classify pawnshops as lending investors subject to 5% lending investors' tax, null and void.

The BIR then sought recourse before the CA in a Petition for Review, docketed as CA-G.R. SP No. 59282. On March 23, 2001, the CA rendered a Decision reversing and setting aside the decision of the CTA, the dispositive portion of which reads:

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(1) REVERSING AND SETTING ASIDE the Decision of the Tax Court in CTA Case No. 5774, and,

(2) Condemning the respondent to pay the amount of Pesos: One Hundred Six Thousand Five Hundred Thirty Eight and Fifty-nine Centavos (₱106,538.59), in concept of deficiency percentage tax/lending investor's tax for the year 1995.

Without costs in this instance.

SO ORDERED.[11]

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[9] *Rollo* (G.R. No. 150141), p. 230.

[10] *Id.*

[11] *Id.* at 51-52.

AEBI filed a motion for reconsideration but it was denied in the Resolution dated September 25, 2001.

Aggrieved, AEBI filed the present Petition for Review on *Certiorari,* docketed as G.R. No. 150141.

As regards G.R. No. 157359, pursuant to RMO No. 15-91 and RMC No. 43-91, on September 25, 1999, the BIR Revenue Regional Director issued Assessment Notice No. 84-PT-13-94-99-9-081 against AEBI demanding the payment of deficiency percentage tax in the sum of ₱66,373.49 for the year 1994, inclusive of interest and surcharge.[12]

AEBI filed a protest.

In a Letter-Resolution dated November 12, 1999, the Commissioner denied AEBI's protest. Consequently, AEBI filed a petition for review before the CTA, docketed as CTA Case No. 5990, reiterating the arguments it raised in its protest.[13]

On March 14, 2001, the CTA rendered a Decision[14] in favor of AEBI cancelling Assessment Notice No. 84-PT-13-94-99-9-081 and declaring RMO No. 15-91 and RMC No. 43-91 null and void, in so far as they classify pawnshops as lending investors subject to lending investor's tax.[15]

The Commissioner filed a petition for review before the CA, docketed as CA-G.R. SP No. 64117, arguing that the CTA erred in ruling that pawnshops are not subject to the lending investor's tax. He also invoked the decision of the CA in CA-G.R. SP No. 59282, which held that the definition of the term "pawnshop" is broad enough to encompass lending investors.[16]

On February 6, 2003, the CA rendered a Decision[17] in favor of AEBI and against the Commissioner of Internal Revenue

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[12] *Rollo* (G.R. No. 157359), p. 225.

[13] *Id.* at 226.

[14] *Id.* at 44-50.

[15] *Id.* at 50.

[16] *Id.* at 15.

[17] *Id.* at 35-43.

dismissing the appeal and affirming the decision of the CTA. Hence, the present petition.

As regards G.R. No. 158644, pursuant to RMO No. 15-91 and RMC No. 43-91, on May 25, 1998, the BIR Revenue Regional Director issued Assessment Notice No. 80-PT-13-96-98-5-0 against Exquisite Pawnshop and Jewelry, Inc. (EPJI) demanding payment of the sum of ₱649,255.49, inclusive of interest and surcharge, representing the 5% lending investors' tax for the year 1995.[18]

On June 17, 1998, EPJI filed its Protest[19] but it was denied by the BIR Revenue Regional Director in a Letter[20] dated February 3, 1999.

On March 12, 1999, EPJI filed its petition for review before the CTA, docketed as CTA Case No. 5741, arguing *inter alia* that: there is no specific provision in the Tax Code and the VAT law which imposes a 5% tax on pawnshops; that pawnshops are different from lending investors; that pawn tickets are not subject to documentary stamp tax; and that RMO No. 15-91 and RMC No. 43-91 are null and void.[21]

On April 24, 2000, the CTA rendered a Decision[22] granting the petition in favor of EPJI and consequently cancelling Assessment Notice No. 80-PT-13-96-98-5-0 and declaring RMO No. 15-91 and RMC No. 43-91 null and void, in so far as they classify pawnshops as lending investors subject to lending investor's tax.[23] The Commissioner filed a Motion for Reconsideration but it was denied in the Resolution dated June 9, 2000.[24]

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[18] *Rollo* (G.R. No. 158644), p. 238.

[19] *Id.* at 31-34.

[20] *Id.* at 21-22.

[21] *Id.* at 61.

[22] *Id.* at 58-70.

[23] *Id.* at 70.

[24] *Id.* at 44.

Aggrieved, the Commissioner sought recourse before the CA in a petition for review,[25] docketed as CA-G.R. SP No. 59401.

On September 30, 2002, the CA rendered a Decision, granting the petition in favor of the Commissioner. The decretal portion of which reads:

> WHEREFORE, premises considered, the instant petition for review is **GIVEN DUE COURSE** and hereby **GRANTED**. The decision of the Court of Tax Appeals dated April 24, 2000 and Resolution dated June 9, 2000 of the Tax Court are hereby **REVERSED and SET ASIDE**. Respondent is hereby ordered to pay the amount of ₱649,255.49 as 5% deficiency lending investor's tax for the year 1995, plus 25% surcharge and 20% annual interest from June 24, 1998 until fully paid pursuant to Sections 248 and 249 of the Tax Code.
>
> SO ORDERED.[26]

Thus, this petition.

In a Resolution[27] dated August 13, 2003, G.R. No. 150141, G.R. No. 157359 and G.R. No. 158644 were consolidated.

The sole issue for the Court's determination is whether or not pawnshops are liable for the payment of the 5% lending investor's tax.

AEBI and EPJI argue that there are no specific provisions in the Tax Code that subject pawnshops to 5% lending investor's tax. They claim that there is a big difference between the nature of a pawnshop business and that of a lending investor. They also contend that RMO No. 15-91 and RMC No. 43-91 violate the Constitutional guarantees of due process and equal protection of the laws and that they are unconstitutional as they encroached on the legislative prerogative.[28]

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[25] *Id.* at 71-85.

[26] *Id.* at 54.

[27] *Rollo* (G.R. No. 158644), p. 127.

[28] *Rollo* (G.R. No. 150141), p. 240.

Moreover, AEBI and EPJI argue that applying the principles of *stare decisis*, this Court in the case of *Commissioner of Internal Revenue v. Lhuillier*[29] has already held that pawnshops are not considered lending investors for the purpose of imposing the 5% percentage tax. Pursuant to the ruling in the *Lhuillier* case, the BIR through the Commissioner of Internal Revenue has issued RMC No. 36-2004 ordering the cancellation of all lending investor's tax assessments on pawnshops.[30]

The Court agrees with the contentions of AEBI and EPJI, the issue herein not being a novel one.

In *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*,[31] this Court held that pawnshops are not included in the term *lending investors* for the purpose of imposing the 5% percentage tax under then Section 116 of the National Internal Revenue Code of 1977, as amended by Executive Order No. 273. Thus, while pawnshops are indeed engaged in the business of lending money, they cannot be deemed "lending investors" for the purpose of imposing the 5% lending investor's tax.

Again, in *Commissioner of Internal Revenue v. Trustworthy Pawnshop, Inc.*,[32] this Court reiterated its ruling in *Lhuillier* that pawnshops are not included in the term *lending investors* for the purpose of imposing the 5% percentage tax.

The rulings are buttressed by the following reasons:

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[29] 453 Phil. 1043, 1054-1059 (2003).

[30] *Id.*

[31] *Id. at* 1043. The subject of the case was Assessment Notice No. 81-PT-13-94-97-9-118 dated September 11, 1997, issued by the Bureau of Internal Revenue against Michel Lhuillier Pawnshop, demanding payment of deficiency percentage tax in the sum of ₱3,360,335.11 for 1994, inclusive of interest and surcharges.

[32] G.R. No. 149834, May 2, 2006, 488 SCRA 538. The subject of the case was Assessment Notice No. 81-PT-13-94-97-6-73 dated June 13, 1997, issued by the Bureau of Internal Revenue against Trustworthy Pawnshop, Inc., demanding payment of deficiency percentage tax in the sum of ₱2,108,335.19 for 1994, inclusive of interest and surcharges and the additional amount of ₱93,000.00 as compromise penalty.

First. Under Section 192, paragraph 3, sub-paragraphs (dd) and (ff) of the NIRC of 1997, prior to its amendment by E.O. No. 273, as well as Section 161, paragraph 2, sub-paragraphs (dd) and (ff) of the NIRC of 1986, **pawnshops and lending investors were subjected to different tax treatments, thus**:

> (3) *Other Fixed Taxes*. — The following fixed taxes shall be collected as follows, the amount stated being for the whole year, when not otherwise specified:
>
> xxx xxx xxx
>
> (dd) **Lending Investors** —
>
> 1. In chartered cities and first class municipalities, one thousand pesos;
> 2. In second and third class municipalities, five hundred pesos;
> 3. In fourth and fifth class municipalities and municipal districts, two hundred fifty pesos: *Provided*, That lending investors who do business as such in more than one province shall pay a tax of one thousand pesos.
>
> xxx xxx xxx
>
> (ff) **Pawnshops**, one thousand pesos.

Second. **Congress never intended pawnshops to be treated in the same way as lending investors.** Section 116 of the NIRC of 1977, as renumbered and rearranged by E.O. No. 273, was basically lifted from Section 175 (formerly Sec. 209, NIRC of 1977, as amended by P.D. 1739, Sept. 17, 1980) of the NIRC of 1986, **which treated both tax subjects differently**. Section 175 of the latter Code reads as follows:

> Sec. 175. *Percentage tax on dealers in securities, **lending investors***. — Dealers in securities shall pay a tax equivalent to six percent (6%) of their gross income. **Lending investors** shall pay a tax equivalent to five percent (5%) of their gross income. (As amended by P.D. No. 1739, P.D. No. 1959, and P.D. No. 1994).

We note that the definition of *lending investors* found in Section 157 (u) of the NIRC of 1986 is not found in the NIRC of 1977, as amended by E.O. No. 273, where Section 116 invoked

by the CIR is found. However, as emphasized earlier, both the NIRC of 1986 and NIRC of 1977 dealt with pawnshops and lending investors differently. Verily then, it was the intent of Congress to deal with both subjects differently. Hence, we must likewise interpret the statute to conform to such legislative intent.

Third. **Section 116 of the NIRC of 1977, as amended by E.O. No. 273, subjects to percentage tax dealers in securities and lending investors only. There is no mention of pawnshops. Under the maxim *expressio unius est exclusio alterius*, the mention of one thing implies the exclusion of another thing not mentioned. Thus, if a statute enumerates the things upon which it is to operate, everything else must necessarily and by implication be excluded from its operation and effect** (*Vera v. Fernandez*, L-31364, March 30, 1979, 89 SCRA 199, 203). **This rule, as a guide to probable legislative intent, is based upon the rules of logic and natural workings of the human mind** (*Republic v. Estenzo*, L-35376, September 11, 1980, 99 SCRA 651, 656).

Fourth. **The BIR had ruled several times prior to the issuance of RMO No. 15-91 and RMC No. 43-91 that pawnshops were not subject to the 5% percentage tax imposed by Section 116 of the NIRC of 1977, as amended by E.O. No. 273. This was even admitted by the CIR in RMO No. 15-91 itself. Considering that Section 116 of the NIRC of 1977, as amended, was practically lifted from Section 175 of the NIRC of 1986, as amended, and there being no change in the law, the interpretation thereof should not have been altered.**

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R.A. No. 7716 (*An Act Restructuring the Value-added Tax (VAT) System, Widening Its Tax Base and Enhancing Its Administrative, and for These Purposes Amending and Repealing the Relevant Provisions of the National Internal Revenue Code, as amended, and for Other Purposes.*) **repealed Section 116 of NIRC of 1977, as amended, which was the basis of RMO No. 15-91 and RMC No. 43-91**, thus:

xxx xxx xxx

Since Section 116 of the NIRC of 1977, which breathed life on the questioned administrative issuances, had already been repealed, RMO 15-91 and RMC 43-91, which depended upon it, are deemed automatically repealed. Hence, even granting

that pawnshops are included within the term *lending investors*, the assessment from May 27, 1994 onward would have no leg to stand on.

Adding to the invalidity of RMC No. 43-91 and RMO No. 15-91 is the absence of publication. While the rule-making authority of the CIR is not doubted, like any other government agency, the CIR may not disregard legal requirements or applicable principles in the exercise of quasi-legislative powers.

xxx xxx xxx

RMO No. 15-91 and RMC No. 43-91 cannot be viewed simply as implementing rules or corrective measures revoking in the process the previous rulings of past Commissioners. Specifically, they would have been amendatory provisions applicable to pawnshops. xxx. The due observance of the requirements of notice, hearing, and publication should not have been ignored.

xxx xxx xxx

In view of the foregoing, RMO No. 15-91 and RMC No. 4391 are hereby declared null and void. Consequently, Lhuillier is not liable to pay the 5% lending investor's tax.[33] (Emphasis added)

Under the doctrine of *stare decisis et not quieta movere*[34] it behooves the Court to apply its previous ruling in *Lhuillier* and *Trustworthy* to the cases under consideration. Once a case has been decided one way, any other case involving exactly the same point at issue, as in the present consolidated cases, should be decided in the same manner.[35]

Consequently, this Court finds in G.R. No. 157359 that the CA committed no reversible error in dismissing the appeal and

[33] *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*, *supra* note 29.

[34] *Commissioner of Internal Revenue v. Trustworthy Pawnshop, Inc.*, *supra* note 32.

[35] *Manila Electric Company, Inc. v. Lualhati*, G.R. No. 166769, December 6, 2006, 510 SCRA 455, 471; *Pines City Educational Center v. National Labor Relations Commission*, G.R. No. 96779, November 10, 1993, 227 SCRA 655, 665; *Associated Sugar, Inc. v. Commissioner of Customs*, G.R. No. L-30391, November 25, 1982, 118 SCRA 657, 663.

affirming the decision of the CTA. However, in G.R. No. 150141 and G.R. No. 158644, pursuant to *Lhuillier* and *Trustworthy*, the decisions and resolutions of the CA should be reversed and set aside.

WHEREFORE, the petitions of Agencia Exquisite of Bohol, Inc. and Exquisite Pawnshop and Jewelry, Inc. in G.R. No. 150141 and G.R. No. 158644, respectively, are *GRANTED*. The Decisions and Resolutions of the Court of Appeals in CA-G.R. SP Nos. 59282 and 59401 are *REVERSED and SET ASIDE*, and the Decisions of the Court of Tax Appeals in CTA Case Nos. 5774 and 5741 are *REINSTATED*.

The petition of the Commissioner of Internal Revenue in G.R. No. 157359 is hereby *DENIED*. The Decision of the Court of Appeals in CA-G.R. SP No. 64117 is *AFFIRMED*.

No pronouncement as to costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 164687. February 12, 2009]

SM PRIME HOLDINGS, INC., *petitioner, vs.* **ANGELA V. MADAYAG,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; NONE OF THE CIRCUMSTANCES THAT WOULD JUSTIFY THE STAY OF PROCEEDINGS IS PRESENT IN CASE AT BAR.—

The power to stay proceedings is an incident to the power inherent in every court to control the disposition of the cases in its dockets, with economy of time and effort for the court, counsel and litigants. But courts should be mindful of the right of every party to a speedy disposition of his case and, thus, should not be too eager to suspend proceedings of the cases before them. Hence, every order suspending proceedings must be guided by the following precepts: it shall be done in order to avoid multiplicity of suits and prevent vexatious litigations, conflicting judgments, confusion between litigants and courts, or when the rights of parties to the second action cannot be properly determined until the questions raised in the first action are settled. Otherwise, the suspension will be regarded as an arbitrary exercise of the court's discretion and can be corrected only by a petition for *certiorari*. None of the circumstances that would justify the stay of proceedings is present. In fact, to await the resolution of the petition for cancellation would only delay the resolution of the land registration case and undermine the purpose of land registration.

2. CIVIL LAW; LAND REGISTRATION; AS AN INCIDENT TO ITS AUTHORITY TO SETTLE ALL QUESTIONS OVER THE TITLE TO THE SUBJECT PROPERTY, THE LAND REGISTRATION COURT MAY RESOLVE THE UNDERLYING ISSUE OF WHETHER THE SUBJECT PROPERTY OVERLAPS PETITIONER'S PROPERTIES WITHOUT NECESSARILY HAVING TO DECLARE THE SURVEY PLAN AS VOID.— Without delving into the jurisdiction of the DENR to resolve the petition for cancellation, we hold that, as an incident to its authority to settle all questions over the title of the subject property, the land registration court may resolve the underlying issue of whether the subject property overlaps the petitioner's properties without necessarily having to declare the survey plan as void. It is well to note at this point that, in its bid to avoid multiplicity of suits and to promote the expeditious resolution of cases, Presidential Decree (P.D.) No. 1529 eliminated the distinction between the general jurisdiction vested in the RTC and the latter's limited jurisdiction when acting merely as a land registration court. Land registration courts, as such, can now hear and decide even controversial and contentious cases, as well as those involving substantial issues. When the law confers jurisdiction upon a court, the latter is deemed to have all the necessary powers to

exercise such jurisdiction to make it effective. It may, therefore, hear and determine all questions that arise from a petition for registration.

3. ID.; ID.; A LAND REGISTRATION COURT HAS THE DUTY TO DETERMINE WHETHER THE ISSUANCE OF A NEW CERTIFICATE OF TITLE WILL ALTER A VALID AND EXISTING CERTIFICATE OF TITLE CONSIDERING THE FACT THAT AN APPLICATION FOR REGISTRATION OF AN ALREADY TITLED LAND CONSTITUTES A COLLATERAL ATTACK ON THE EXISTING TITLE WHICH IS NOT ALLOWED BY LAW.— In view of the nature of a Torrens title, a land registration court has the duty to determine whether the issuance of a new certificate of title will alter a valid and existing certificate of title. An application for registration of an already titled land constitutes a collateral attack on the existing title, which is not allowed by law. But the RTC need not wait for the decision of the DENR in the petition to cancel the survey plan in order to determine whether the subject property is already titled or forms part of already titled property. The court may now verify this allegation based on the respondent's survey plan *vis-à-vis* the certificates of title of the petitioner and its predecessors-in-interest. After all, a survey plan precisely serves to establish the true identity of the land to ensure that it does not overlap a parcel of land or a portion thereof already covered by a previous land registration, and to forestall the possibility that it will be overlapped by a subsequent registration of any adjoining land. Should the court find it difficult to do so, the court may require the filing of additional papers to aid in its determination of the propriety of the application, based on Section 21 of P.D. No. 1529: SEC. 21. *Requirement of additional facts and papers; ocular inspection.* — The court may require facts to be stated in the application in addition to those prescribed by this Decree not inconsistent therewith and may require the filing of any additional papers. The court may also directly require the DENR and the Land Registration Authority to submit a report on whether the subject property has already been registered and covered by certificates of title, like what the court did in *Carvajal v. Court of Appeals.* In that case, we commended such move by the land registration court for being "in accordance with the purposes of the Land Registration Law."

APPEARANCES OF COUNSEL

Borcelis and Associates for petitioner.
Fidel B. Escario, Jr. for respondent.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari* of the Decision[1] of the Court of Appeals (CA) dated March 19, 2004 and Resolution dated July 15, 2004, which set aside the lower court's order to suspend the proceedings on respondent's application for land registration.

On July 12, 2001, respondent Angela V. Madayag filed with the Regional Trial Court (RTC) of Urdaneta, Pangasinan an application for registration of a parcel of land with an area of 1,492 square meters located in Barangay Anonas, Urdaneta City, Pangasinan.[2] Attached to the application was a tracing cloth of Survey Plan Psu-01-008438, approved by the Land Management Services (LMS) of the Department of Environment and Natural Resources (DENR), Region 1, San Fernando City.

On August 20, 2001, petitioner SM Prime Holdings, Inc., through counsel, wrote the Chief, Regional Survey Division, DENR, Region I, demanding the cancellation of the respondent's survey plan because the lot encroached on the properties it recently purchased from several lot owners and that, despite being the new owner of the adjoining lots, it was not notified of the survey conducted on June 8, 2001.[3]

Petitioner then manifested its opposition to the respondent's application for registration. The Republic of the Philippines,

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[1] Penned by Associate Justice Eliezer R. de los Santos, with Associate Justices Delilah Vidallon-Magtolis and Jose C. Mendoza, concurring; *rollo*, pp. 39-42.

[2] CA *rollo*, pp. 33-34.

[3] *Rollo*, pp. 44-46.

through the Office of the Solicitor General, and the heirs of Romulo Visperas also filed their respective oppositions.

On February 6, 2002, petitioner filed its formal opposition. Petitioner alleged that it had recently bought seven parcels of land in Barangay Anonas, Urdaneta, delineated as Lots B, C, D, E, G, H and I in Consolidation-Subdivision Plan No. (LRC) Pcs-21329, approved by the Land Registration Commission on August 26, 1976, and previously covered by Survey Plan No. Psu-236090 approved by the Bureau of Lands on December 29, 1970. These parcels of land are covered by separate certificates of title, some of which are already in the name of the petitioner while the others are still in the name of the previous owners.

On February 20, 2002, the RTC declared a general default, except as to the petitioner, the Republic, and the heirs of Romulo Visperas. Thereafter, respondent commenced the presentation of evidence.

Meanwhile, acting on petitioner's request for the cancellation of the respondent's survey plan, DENR Assistant Regional Executive Director for Legal Services and Public Affairs, Allan V. Barcena, advised the petitioner to file a petition for cancellation in due form so that the DENR could properly act on the same.[4] Accordingly, petitioner formally filed with the DENR a petition[5] for cancellation of the survey plan sometime in March 2002, alleging the following grounds:

I.

THERE IS NO SUCH THING AS ALIENABLE OR DISPOSABLE PROPERTY WHICH IS THE SUBJECT LOT IN THIS CASE.

II.

NO NOTICE WAS MADE UPON PETITIONER (AS ADJOINING LANDOWNER AND WHO BEARS INTEREST OVER THE SUBJECT LOT) MUCH LESS THE OWNERS OF ADJOINING LANDS.

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[4] *Id.* at 49.

[5] *Id.* at 252-258.

III.

THE CIRCUMSTANCES EVIDENTLY SHOW THAT BAD FAITH AND/OR MALICE ATTENDED THE APPROVAL OF (PLAN WITH PSU NO. 01-008438).[6]

On July 17, 2002, petitioner filed an Urgent Motion to Suspend Proceedings[7] in the land registration case, alleging that the court should await the DENR resolution of the petition for the cancellation of the survey plan "as the administrative case is prejudicial to the determination" of the land registration case.

On October 8, 2002, the RTC issued an Order granting the motion, thus:

> WHEREFORE, PREMISES CONSIDERED, the Court hereby GRANTS the instant motion and suspends the proceedings herein. In the meantime, and until receipt by this Court of a copy of the resolution of the petition for cancellation by the DENR, the instant case is hereby ARCHIVED.
>
> SO ORDERED.[8]

Emphasizing that a survey plan is one of the mandatory requirements in land registration proceedings, the RTC agreed with the petitioner that the cancellation of the survey plan would be prejudicial to the petition for land registration.[9]

On February 13, 2003, the RTC denied the respondent's motion for reconsideration of its order.[10] Respondent thereafter filed a petition for *certiorari* with the CA assailing the order suspending the proceedings.

On March 19, 2004, finding that the RTC committed grave abuse of discretion in suspending the proceedings, the CA granted the petition for *certiorari*, thus:

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[6] *Id.* at 253.

[7] *Id.* at 87-91.

[8] *Id.* at 95.

[9] *Id.*

[10] *Id.* at 107-110.

WHEREFORE, premises considered, the instant petition is hereby GRANTED. The challenged Orders dated October 8, 2002 and February 13, 2003 of the respondent Court are declared NULL and VOID.

The Court *a quo* is directed to continue the proceedings until its final determination. No pronouncement as to costs.

SO ORDERED.[11]

The CA ratiocinated that the survey plan which was duly approved by the DENR should be accorded the presumption of regularity, and that the RTC has the power to hear and determine all questions arising from an application for registration.[12]

On July 15, 2004, the CA issued a Resolution[13] denying the petitioner's motion for reconsideration. Petitioner was, thus, compelled to file this petition for review, ascribing the following errors to the CA:

I. THE COURT OF APPEALS COMMITTED MANIFEST ERROR IN NOT FINDING THAT THE SUSPENSION OF THE PROCEEDINGS IN THE LAND REGISTRATION CASE IS LEGAL AND PROPER PENDING THE DETERMINATION AND RESOLUTION OF THE ADMINISTRATIVE CASE BEFORE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES-REGION 1.

II. THE COURT OF APPEALS COMMITTED MANIFEST ERROR IN FAILING TO FIND THAT THE ASSAILED ORDERS OF THE LOWER COURT HAVE PROPER AND SUFFICIENT BASES IN FACT AND IN LAW.

III. THE COURT OF APPEALS COMMITTED MANIFEST ERROR IN HOLDING THAT THE LOWER COURT HAS ACTED WITH GRAVE ABUSE OF DISCRETION IN SUSPENDING THE PROCEEDINGS AND ARCHIVING THE CASE.

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[11] *Id.* at 42.

[12] *Id.* at 41.

[13] *Id.* at 43.

IV. THE COURT OF APPEALS COMMITTED MANIFEST ERROR IN FAILING TO FIND THAT THE FILING OF THE PETITION FOR *CERTIORARI*, UNDER RULE 65 OF THE REVISED RULES OF CIVIL PROCEDURE, IS NOT THE ONLY PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW ON THE PART OF HEREIN RESPONDENT.[14]

The petition has no merit.

Petitioner contends that, since the respondent's cause of action in the land registration case depends heavily on the survey plan, it was only prudent for the RTC to suspend the proceedings therein pending the resolution of the petition for cancellation of the survey plan by the DENR.[15] It, therefore, insists that recourse to a petition for *certiorari* was not proper considering that respondent was not arbitrarily deprived of her right to prosecute her application for registration.[16]

Undeniably, the power to stay proceedings is an incident to the power inherent in every court to control the disposition of the cases in its dockets, with economy of time and effort for the court, counsel and litigants. But courts should be mindful of the right of every party to a speedy disposition of his case and, thus, should not be too eager to suspend proceedings of the cases before them. Hence, every order suspending proceedings must be guided by the following precepts: it shall be done in order to avoid multiplicity of suits and prevent vexatious litigations, conflicting judgments, confusion between litigants and courts,[17] or when the rights of parties to the second action cannot be properly determined until the questions raised in the first action are settled.[18] Otherwise, the suspension will be regarded as an

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[14] *Id.* at 25.

[15] *Id.* at 234-237.

[16] *Id.* at 238.

[17] *Security Bank Corporation v. Victorio,* G.R. No. 155099, August 31, 2005, 468 SCRA 609, 628.

[18] *Quiambao v. Osorio,* No. L-48157, March 16, 1988, 158 SCRA 674, 679.

arbitrary exercise of the court's discretion and can be corrected only by a petition for *certiorari*.

None of the circumstances that would justify the stay of proceedings is present. In fact, to await the resolution of the petition for cancellation would only delay the resolution of the land registration case and undermine the purpose of land registration.

The fundamental purpose of the Land Registration Law (Presidential Decree No. 1529) is to finally settle title to real property in order to preempt any question on the legality of the title – except claims that were noted on the certificate itself at the time of registration or those that arose subsequent thereto. Consequently, once the title is registered under the said law, owners can rest secure on their ownership and possession.[19]

Glaringly, the petition for cancellation raises practically the very same issues that the herein petitioner raised in its opposition to the respondent's application for registration. Principally, it alleges that the survey plan should be cancelled because it includes portions of the seven properties that it purchased from several landowners, which properties are already covered by existing certificates of title.

Petitioner posits that it is the DENR that has the sole authority to decide the validity of the survey plan that was approved by the LMS.[20] It cites Section 4(15), Chapter 1, Title XIV, Administrative Code of 1987 which provides that the DENR shall

> (15) Exercise (of) exclusive jurisdiction on the management and disposition of all lands of the public domain and serve as the sole agency responsible for classification, sub-classification, surveying and titling of lands in consultation with appropriate agencies.

However, respondent argues that the land registration court is clothed with adequate authority to resolve the conflicting

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[19] *Tichangco v. Enriquez,* G.R. No. 150629, June 30, 2004, 433 SCRA 324, 333-334.

[20] *Rollo,* pp. 230-232.

claims of the parties, and that even if the DENR cancels her survey plan, the land registration court is not by duty bound to dismiss the application for registration based solely on the cancellation of the survey plan.[21]

Without delving into the jurisdiction of the DENR to resolve the petition for cancellation, we hold that, as an incident to its authority to settle all questions over the title of the subject property, the land registration court may resolve the underlying issue of whether the subject property overlaps the petitioner's properties without necessarily having to declare the survey plan as void.

It is well to note at this point that, in its bid to avoid multiplicity of suits and to promote the expeditious resolution of cases, Presidential Decree (P.D.) No. 1529 eliminated the distinction between the general jurisdiction vested in the RTC and the latter's limited jurisdiction when acting merely as a land registration court. Land registration courts, as such, can now hear and decide even controversial and contentious cases, as well as those involving substantial issues.[22] When the law confers jurisdiction upon a court, the latter is deemed to have all the necessary powers to exercise such jurisdiction to make it effective.[23] It may, therefore, hear and determine all questions that arise from a petition for registration.

In view of the nature of a Torrens title, a land registration court has the duty to determine whether the issuance of a new certificate of title will alter a valid and existing certificate of title.[24] An application for registration of an already titled land constitutes a collateral attack on the existing title, [25] which is not allowed by law.[26] But the RTC need not wait for the decision

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[21] *Id.* at 376-377.

[22] *Talusan v. Tayag*, 408 Phil. 373, 386 (2001).

[23] *Carvajal v. Court of Appeals*, 345 Phil. 582, 591 (1997).

[24] *Id.* at 592.

[25] *Fil-Estate Management, Inc. v. Trono*, G.R. No. 130871, February 17, 2006, 482 SCRA 578, 584.

[26] Section 48 of Presidential Decree No. 1529 provides:

of the DENR in the petition to cancel the survey plan in order to determine whether the subject property is already titled or forms part of already titled property. The court may now verify this allegation based on the respondent's survey plan *vis-à-vis* the certificates of title of the petitioner and its predecessors-in-interest. After all, a survey plan precisely serves to establish the true identity of the land to ensure that it does not overlap a parcel of land or a portion thereof already covered by a previous land registration, and to forestall the possibility that it will be overlapped by a subsequent registration of any adjoining land.[27]

Should the court find it difficult to do so, the court may require the filing of additional papers to aid in its determination of the propriety of the application, based on Section 21 of P.D. No. 1529:

> SEC. 21. *Requirement of additional facts and papers; ocular inspection.* — The court may require facts to be stated in the application in addition to those prescribed by this Decree not inconsistent therewith and may require the filing of any additional papers.

The court may also directly require the DENR and the Land Registration Authority to submit a report on whether the subject property has already been registered and covered by certificates of title, like what the court did in *Carvajal v. Court of Appeals.*[28] In that case, we commended such move by the land registration court for being "in accordance with the purposes of the Land Registration Law."[29]

WHEREFORE, premises considered, the petition is *DENIED.* The Court of Appeals Decision dated March 19, 2004 and Resolution dated July 15, 2004 are *AFFIRMED*. The Regional Trial Court of Urdaneta, Pangasinan is *DIRECTED* to continue

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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.

[27] *Del Rosario v. Republic*, 432 Phil. 824, 834 (2002).

[28] *Supra* note 24.

[29] *Id.* at 591.

with the proceedings in L.R.C. Case No. U-1134 and to resolve the same with dispatch.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 170349. February 12, 2009]

SPS. IGLECERIO MAHINAY and FIDELA MAHINAY, *petitioners, vs.* **THE HON. ENRIQUE C. ASIS, Presiding Judge, Branch 16, Naval, Biliran; SHERIFF LUDENILO S. ADOR, DANILO VELASQUEZ III, VIRGILIO VELASQUEZ, MERLE VELASQUEZ, ETHEL VELASQUEZ, CIELO VELASQUEZ, DR. GERTRUDEZ VELASQUEZ, and LINO REDOBLADO, represented by ATTY. GABINO A. VELASQUEZ, JR.,** *respondents.*

SPS. SIMEON NARRIDO and GLORIA E. NARRIDO, *petitioners, vs.* **THE HON. ENRIQUE C. ASIS, Presiding Judge, Branch 16, Naval, Biliran; SHERIFF LUDENILO S. ADOR, DANILO VELASQUEZ III, VIRGILIO VELASQUEZ, LOLITA VELASQUEZ, MARIA CIELO VELASQUEZ, DR. GERTRUDEZ VELASQUEZ, GABINO VELASQUEZ IV, and LINO REDOBLADO, represented by ATTY. GABINO A. VELASQUEZ, JR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; A TRIAL COURT MAY NOT GRANT A RELIEF NOT ORDERED BY THE APPELLATE COURT; CASE AT BAR.— The RTC, in executing the December 5, 2001 CA decision, may not grant a relief not ordered by the said appellate court. To stress, the December 5, 2001 Decision of the CA only ordered the remand of the case to the RTC for the determination and computation of the amount of damages due private respondents. More importantly, possession over the lands in dispute was not awarded by the CA to private respondents. Thus, on remand, the RTC was only expected to compute the amount of damages and award the same to respondents. However, in its January 8, 2004 Order, the RTC ordered the sheriff to place respondents in possession of the lands declaring them to be the registered owners thereof. The RTC justified its Order of awarding possession of the lands in dispute to respondents by relying on the April 11, 2002 Resolution of the CA. The RTC ratiocinated in its Order that the CA had modified its stand on the issue of possession. The RTC misapprehended the CA's Resolution dated April 11, 2002. A simple perusal of the Resolution shows that no such modification was made. Had the RTC considered the entire paragraph from which the quoted sentences were taken, it would have readily seen that possession was not awarded by the CA. Based on the December 5, 2001 Decision of the CA wherein possession was not awarded to private respondents, just damages, it is clear that the RTC was mistaken when it ruled that the CA had modified the latter's December 5, 2001 Decision.

2. ID.; ID.; ID.; A WRIT OF EXECUTION SHOULD CONFORM TO THE DISPOSITIVE PORTION OF THE DECISION TO BE EXECUTED; THE TRIAL COURT SERIOUSLY ERRED IN AWARDING POSSESSION TO RESPONDENTS SINCE POSSESSION IS NOT A RELIEF GRANTED BY THE COURT OF APPEALS' DECISION.— It is a general rule that the writ of execution should conform to the dispositive portion of the decision to be executed, and that the execution is void if it is in excess of and beyond the original judgment or award, for it is a settled general principle that a writ of execution must conform strictly to every essential particular

of the judgment promulgated. Where the judgment of an appellate court has become final and executory and has been returned to the lower court, the only function of the latter is the ministerial act of carrying out the decision and issuing the writ of execution. In addition, a final and executory judgment can no longer be amended by adding thereto a relief not originally included. Thus, this Court finds that it was improper for the RTC to award to respondents possession over the lands in dispute, as the December 5, 2001 CA Decision it sought to execute and the April 11, 2002 CA Resolution clearly did not award possession to respondents, but instead held that the owner of the subject lands is the State. **Possession was not a relief granted by the aforementioned CA Decisions. It is therefore not a relief which the RTC may grant on execution.** Accordingly, the CA seriously erred in issuing its June 6, 2005 Resolution affirming the assailed RTC Order awarding possession to respondents.

3. ID.; ID.; ID.; A WRIT OF EXECUTION AWARDING POSSESSION IS NOT APPLICABLE IN CASE AT BAR SINCE RESPONDENTS ARE NOT THE OWNERS OF THE LAND IN DISPUTE, BUT THE STATE.—This Court is not unmindful of a number of decisions wherein the Court affirmed writs of execution awarding possession of land, notwithstanding that the decisions sought to be executed did not order its delivery to the parties. In *Perez v. Evite,* the Court ruled that where the ownership of a parcel of land was decreed in the judgment, the delivery of possession of the land should be considered included in the decision, it appearing that the defeated party's claim to the possession thereof is based on his claim of ownership. Moreover, in *Baluyut v. Guiao*, the Court held that a judgment is not confined to what appears on the face of the decision, but also covers those necessarily included therein or necessary thereto. The foregoing ruling, however, find no application to the case at bar, as it is necessary that the decision sought to be executed must have at the very least awarded ownership of the lands to the parties. To reiterate, respondents are not the owners of the land in dispute, but the State.

4. ID.; ID.; ID.; ALLEGED INACTION OF THE STATE DOES NOT DETRACT FROM THE FACT THAT IT IS THE OWNER OF THE LANDS IN DISPUTE AND RESPONDENTS HAVE NO STANDING OR RIGHT TO

DEMAND THEIR RETURN.— Respondents insist that possession should be awarded to them, as they allege that the government has slept on their rights and has not moved to execute the CA judgment, which declared the disputed lands part of the public domain. Such argument deserves scant consideration, considering that the inaction of the State does not detract from the fact that it is the owner of the lands in dispute and, therefore, respondents have no standing or right to demand their return. Thus, as far as the December 5, 2001 Decision of the CA is concerned, the Court upholds the pronouncement that the subject lands are State-owned and inalienable, and possession is not to be awarded to private respondents.

APPEARANCES OF COUNSEL

Clemencio C. Sabitsana, Jr. for petitioners.

Gabino A. Velasquez, Jr. for private respondents.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to set aside the June 6, 2005 Decision[1] and October 20, 2005 Resolution[2] of the Court of Appeals (CA) in CA-G.R. S.P. No. 84045 which affirmed the January 28, 2004 Order[3] and April 26, 2004 Order[4] of the Regional Trial Court (RTC) of Naval, Biliran.

The facts of the case:

On February 24, 1987, Danilo Gabino III; Ethel, Virgilio, Lolito, Gabino IV, Gertudes, Merle, Maria Cielo, Jose, all surnamed Velasquez; Lino Redoblado, Leo Redoblado (Leo),

[1] Penned by Associate Justice Pampio A. Abarintos with the concurrence of Executive Justice Mercedes Gozo-Dadole and Associate Justice Ramon M. Bato, Jr., *rollo*, pp. 71-81.

[2] *Id.* at 82-83.

[3] *Id.* at 103-105.

[4] *Id.* at 111-113.

Jose Redoblado, and Marilyn Tansingco (Marilyn), all represented by Gabino A. Velasquez Jr. (Gabino, Jr.), collectively referred to as respondents, filed with the RTC of Naval, Biliran, Branch 16 a complaint for recovery of possession of parcels of lands against spouses Iglecerio and Fidela Mahinay (petitioners). This case was docketed as Civil Case No. B-0647 (Mahinay Case).[5]

On January 6, 1988, respondents, with the exception of Ethel, Jose, Gertudes, Leo, Marilyn and Jose Redoblado, likewise represented by Gabino, Jr., filed with the same RTC a complaint for recovery of possession of parcels of lands against spouses Simeon and Gloria Narrido (petitioners). This case was docketed as Civil Case No. B-0682 (Narrido Case).[6]

In both cases, respondents claimed that they were the absolute owners of the subject parcels of lands, as evidenced by the certificates of title issued in their names.

Meanwhile, on May 30, 1989, while the two cases were being tried by the RTC, the Republic of the Philippines (State) filed twelve separate complaints against respondents for the cancellation of their titles and for the reversion of the disputed lands to the mass of the public domain. These complaints were docketed as Civil Cases Nos. B-0735 to B-0746 (Reversion Cases).[7]

On August 7, 1989, the RTC rendered its Decision[8] in the Mahinay and Narrido Cases awarding to respondents the properties in dispute. Petitioners appealed the RTC decision to the CA.

In the meantime, on June 11, 1990, the RTC rendered its Decision[9] in the Reversion Cases, dismissing all twelve cases, declaring the certificates of title issued to respondents as valid, and upholding respondents as lawful owners of the parcels of

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[5] *Id.* at 86.

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

[7] *Rollo,* p. 88.

[8] CA *rollo,* pp. 245-249.

[9] *Id.* at 239-244.

lands covered by the said titles. The State appealed the RTC decision to the CA.[10]

While the appeal[11] of the State in the Reversion Cases was pending, petitioners filed with the CA a "Motion to Suspend Proceedings" in the appeal of their case until after the appeal of the Reversion Cases shall have been resolved. The CA granted said motion.[12]

On July 30, 1993, the CA in the Reversion Cases reversed[13] the ruling of the RTC. The CA ruled that the lands in dispute were within public forest and thus declared that the certificates of title of respondents were null and void. The CA considered the lands to have reverted to the public domain.[14] Respondents filed a Motion for Reconsideration,[15] but the same was denied[16] by the CA. Respondents appealed to this Court on a petition for review on *certiorari*[17] but the same was denied since it was not seasonably filed. Thereafter, on December 5, 2001, the CA, taking notice of the result of the Reversion Cases, promulgated its Decision[18] in the Mahinay and Narrido Cases. The pertinent portions of the decision reads:

xxx xxx xxx

While indisputably, the state owns the property, still the only entity that can question plaintiffs-appellees' [herein respondents]

[10] *Rollo,* p. 88.

[11] Docketed as CA-G.R. CV Nos. 28745-28756.

[12] *Rollo,* pp. 88-89.

[13] *Id.* at 109-123, G.R. No. 123081-82. Penned by Associate Justice Eubulo G. Verzola with the concurrence of Associate Justices Antonio M. Martinez and Serafin V.C. Guingona.

[14] *Rollo,* p. 89.

[15] *Id.* at 124-126, G.R. Nos. 123081-82.

[16] *Id.* at 147-152, G.R. Nos. 123081-82.

[17] *Id.* at 36-58, G.R. Nos. 123081-82.

[18] Penned by Associate Justice Romeo A. Brawner with the concurrence of Associate Justices Elvi John S. Asuncion and Juan Q. Enriquez, Jr., *id.* at 84-93.

colorable title to it is the State. While the issuance of a certificate of title does not give the owner any better title than what he actually has, it is a rule long standing that 'in case where the State had granted free composition title to a parcel of land in favor of certain individuals, and there were other persons who tried to show that such land was cultivated by them for many years prior to the registration thereof in the name of grantees, the Supreme Court held that such persons who have not obtained title from the State cannot question the titles legally issued by the State.'

However, since it is the State that has dominion over the property, and it is not impleaded herein as a party, We believe it not within Our province to order defendants-appellants [herein petitioners] to return the property to plaintiffs-appellees, as the same property should be given back to the State. Yet, considering the damage inflicted upon plaintiffs-appellees by reason of their dispossession of the subject lands, it is but fair that damages should be awarded to them for their inability to utilize the property for their own gain.

WHEREFORE, the Decision of the lower court is hereby MODIFIED, in that plaintiffs-appellees [herein respondents] are declared not the owner of the subject lands but the State. Plaintiffs-appellees, however, are declared to be better entitled to possession thereof, and as such entitled to actual damages owing to their inability to use them. Considering the paucity of evidence before Us on the value of damage sustained by plaintiffs-appellees, We resolve to hereby remand this case to the trial court for determination and computation of correct amount of damages due plaintiffs-appellees.

SO ORDERED.[19] (Emphasis and underscoring supplied)

On January 30, 2002, respondents filed with the CA a motion for the delivery of possession of the lands in dispute pending determination of ownership. In a Resolution[20] dated April 11, 2002, the CA denied the motion. Thus, pursuant to the December 5, 2001 Decision of the CA, the case was remanded to the RTC for determination of the amount of damages due the respondents.

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[19] *Id.* at 91-92.

[20] *Rollo*, pp. 94-99.

On October 7, 2002, respondents filed with the RTC a "Motion for the Issuance of a Writ of Execution Upon Determination and Computation of the Correct Amount of Award of Damages by the Honorable Court, in Favor of Plaintiffs."[21]

On January 28, 2004, the RTC issued the herein assailed Order[22] awarding the possession of the disputed lands to the respondents, to wit:

xxx xxx xxx

Finding the motion for execution to be with merit, the same is hereby GRANTED.

WHERFORE, issue a writ of execution in favor of plaintiffs and against the defendants in accordance with the above computation **and further directing the Sheriff to place the plaintiffs [herein respondents] in possession of the land immediately being the registered owner (sic) thereof.**

SO ORDERED.[23] (Emphasis supplied)

Petitioners filed a Motion for Reconsideration[24] of the RTC Order. Petitioners argued that the Order varied the decision of the CA it sought to execute when it ordered the sheriff to place the respondents in possession of the lands. The RTC denied the motion for reconsideration.[25]

Petitioners then appealed[26] the RTC Order to the CA.

On June 6, 2005, the CA issued a Decision[27] denying petitioner's appeal, the dispositive portion of which reads:

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[21] *Id.* at 100-102.

[22] *Id.* at 103-105.

[23] *Id.* at 105.

[24] *Id.* at 106-110.

[25] *Id.* at 111-113.

[26] Docketed as CA-G.R. SP No. 84045.

[27] Penned by Associate Justice Pampio A. Abarintos with the concurrence of Executive Justice Mercedes Gozo-Dadole and Associate Justice Ramon M. Bato, Jr., *rollo*, pp. 71-81.

IN LIGHT OF THE FOREGOING, we hold that public respondent Judge was correct when he issued the questioned orders dated January 28, 2004 and April 26, 2004, wherein he ordered for the issuance of a writ of execution to deliver the possession of the above-mentioned properties to the private respondents.

However, the trial court is ordered to conduct further proceedings to determine the amount of expenses, duly supported by evidence that the petitioners allegedly spent for the preservation and cultivation of the land. These expenses should be deducted from the total amount of damages petitioners are liable to pay the private respondents.

The amount of Php1,800.00, representing the excess payment for the docket and other legal fees is again ordered returned to the petitioners, as contained in Our Resolution dated June 3, 2004.

Costs against the petitioners.

SO ORDERED.[28]

The CA likewise denied petitioner's motion for reconsideration through a Resolution[29] dated October 20, 2005.

Petitioner filed with this Court the present petition.

On February 13, 2006, this Court issued a Temporary Restraining Order[30] enjoining the public respondents from implementing the June 6, 2005 Decision and October 20, 2005 Resolution of the CA.

The Petition assigns a single assignment of error of the CA, to wit:

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE RESPONDENT JUDGE ENRIQUE C. ASIS WAS CORRECT WHEN, IN EXECUTING THE DECISION (ANNEX "C") AND RESOLUTION (ANNEX "D") OF THE COURT OF APPEALS, HE ISSUED THE QUESTIONED ORDERS (ANNEXES "F" AND "H") WHEREIN HE DIRECTED THE RESPONDENT SHERIFF TO PLACE THE PRIVATE RESPONDENTS IN POSSESSION OF THE LANDS SUBJECT

[28] *Id.* at 80-81.

[29] *Id.* at 82-83.

[30] *Id.* at 151-152.

MATTER OF THE CASES THEY "BEING THE REGISTERED OWNER [SIC] THEREOF"[31]

The petition is meritorious.

The RTC, in executing the December 5, 2001 CA decision, may not grant a relief not ordered by the said appellate court.

To stress, the December 5, 2001 Decision of the CA only ordered the remand of the case to the RTC for the determination and computation of the amount of damages due private respondents.[32] More importantly, possession over the lands in dispute was not awarded by the CA to private respondents. Thus, on remand, the RTC was only expected to compute the amount of damages and award the same to respondents. However, in its January 8, 2004 Order, the RTC ordered the sheriff to place respondents in possession of the lands declaring them to be the registered owners thereof.[33]

The RTC justified its Order of awarding possession of the lands in dispute to respondents by relying on the April 11, 2002 Resolution[34] of the CA. The RTC ratiocinated in its Order that the CA had modified its stand on the issue of possession, thus:

xxx xxx xxx

Most importantly, on April 11, 2002, the Court of Appeals, that rendered the decision of December 5, 2001, <u>modified</u> its stand, thus:

> **"At the time the Titles of Plaintiffs subsisted, there was color of title in favor of Appellees [herein respondents], and the same was an operative fact which granted them a better right to possess the property, as against Appellants [herein petitioners] who, being are practically squatters, do not have any possessory rights**."

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[31] *Rollo*, p. 64.

[32] *Id.* at 92.

[33] *Id.* at 105.

[34] *Id.* at 94-99.

This Order of the Court of Appeals, clearly supports the Order of execution of this Court, to include delivery of possession. Since the Rules of Procedure, are the same in all Courts, the rule in *Malolos vs. Dy*, 325 SCRA 827, finds appropriate applicability "that the Court, who ordered the execution exercises general supervisory control over its processes of execution and this power carries with it the right to determine every question of fact and law involved in the execution." x x x

> "The finality of the decision with respect to possession de facto cannot be affected by the pendency on appeal of a case where ownership of the property is being contested. *Carreon vs. Court of Appeals*, 291 SCRA 78; Moreover, it is now a musty principle of justice that a right cannot arise from a wrong. (*San Miguel vs. Sandiganbayan*, 340 SCRA 289)

WHEREFORE, premises considered, the Motion for Reconsideration and the Supplemental Motion of Defendants praying for a Modification of the award for damages cannot be granted, for Defendants admitted the areas they have occupied in their Comment to the Commissioner's Report and that the computation of this Court of the palay harvest was based on Government records from the Bureau of Agriculture and from the National Food Authority. **The order of the Court of Appeals, of December 5, 2001, was modified by the same Court on April 11, 2002, as follows:**

> **As a Court of Justice, we cannot allow Appellants (Defendants herein) to take full advantage of their illegal occupancy of the land be it private or of the public domain—without being liable therefor; otherwise it would be unjust enrichment of the worst kind."**

Moreover, the prayer for the stay of execution is DENIED by reason of law and jurisprudence. Therefore, the Provincial Sheriff is directed to proceed with the Execution by delivering possession to the Plaintiffs, notwithstanding appeal on the matter of damages, on the part of the Defendants.

SO ORDERED.[35]

The RTC misapprehended the CA's Resolution dated April 11, 2002. A simple perusal of the Resolution shows that no such

[35] *Rollo*, pp. 112-113.

modification was made. Had the RTC considered the entire paragraph from which the quoted sentences were taken, it would have readily seen that possession was not awarded by the CA. Quoted in bolder print are the portions which the RTC omitted:

> **While true it is that the title of appellees [herein respondents] were subsequently annulled by the Supreme Court,** nevertheless, at the time the Titles of Plaintiffs subsisted, there was color of title in favor of Appellees, and the same was an operative fact which granted them a better right to possess the property, as against Appellants [herein petitioners] who, being are practically squatters, do not have any possessory rights.
>
> **Since the basis of appellees in exercising possession over the property in question are Torrens titles, which should not be taken lightly, appellants violated the rights of appellees when they, and not appellees, took and held the property, depriving the appellees, who were the registered owners, of the use and fruits of the property. In other words, before the title to the property reverted to the Republic, appellees were the putative owners thereof, entitled to all rights which are the full accouterments of dominion, including possession.** As a Court of Justice, we cannot allow Appellants (Defendants herein) to take full advantage of their illegal occupancy of the land be it private or of the public domain— without being liable therefore; otherwise it would be unjust enrichment of the worst kind. **Thus, it would only be fair, since possession was wrested by appellants [petitioners] from the appellees [respondents], to make the former liable for whatever damages may have been occasioned appellees for the unlawful usurpation their possession of the land.**[36]
>
> xxx xxx xxx
>
> **4. For the same reasons as those stated in the discussion of the Motion to implead the Republic, the Motion of appellees for possession to be turned-over to them whilst the instant case is pending, also cannot be granted. Briefly, it had already been decided with finality that the title of appellees over the same are null and void as of 11 August 1997; therefore, to award the appellees possession of the same would not only be inconsistent with the 'becoming modesty' on the part of this Court as only**

[36] *Rollo,* p. 96.

an appellate Court, but may be downright contumacious of a final decision of the highest court in the land. It is for these reasons that said motion must be denied.[37] **(Emphasis and underscoring supplied)**

Based on the December 5, 2001 Decision of the CA wherein possession was not awarded to private respondents, just damages, it is clear that the RTC was mistaken when it ruled that the CA had modified the latter's December 5, 2001 Decision.

However, in the assailed Resolution dated June 6, 2005, the CA affirmed the RTC Order dated January 28, 2004 insofar as the Order awarded possession to the respondents, rationalizing, thus:

xxx xxx xxx

Again, we are stressing that Our decision is confined to the mere question of the right of possession of said land by the petitioners as against the private respondents and the proper amount of damages ought to be awarded to the latter.

It bears emphasis that the private respondents had been in quiet, peaceable and uninterrupted enjoyment of the possession of the land in question since 1946, when Gabino Velasquez, Sr. bought the same from the parents of Rodrigo Arche and Panfila Arche. When the land occupied by the petitioners was sold to them, it was already previously disposed and sold to private respondents. In effect, the second sale to the petitioners was a patent nullity and transmits no rights. On this score, possession is [sic] ougth to be with the private respondents.

Furthermore, Article 1477 provides that the ownership of the thing sold shall be transferred to the vendee upon the actual or constructive delivery thereof. The execution of a public instrument is equivalent to the delivery of the realty sold and its possession by the vendee. Because after the sale of a realty by means of a public instrument, the vendor, who resells it to another, does not transmit anything to the second vendee and if the latter, by virtue of this second sale, takes material possession of the thing, he does it as a mere detainer, and it would be unjust to protect this detention against the rights to the thing lawfully acquired by the first vendee.

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[37] *Id.* at 98.

Hence, this Court is convinced that possession should also be awarded to the private respondents to harmonize the decision of the court in granting the award of damages to them. In the first place, had the petitioners been entitled to the possession of the property, they should not be required to pay damages to the private respondents. We are of the considered opinion that justice dictates for us to award also the possession to the private respondents. It will be an empty judgment if the petitioners will be just required to pay damages and yet continue possessing the property. *Possession of a piece of a property may be wholly precarious or unrighteous, yet if the possessor has in his favor priority of time, he has this security, that he is entitled to stay upon the property until he is put off lawfully by a person having a better right.* The fact remains that respondents were first to possess the property and in fact titles were issued in their favor as evidenced by Original Certificates of Titles Nos. x x x. Despite the fact that their titles were nullified, between two contending parties, possession should be given to one who had priority in time. Petitioners are not the lawful possessors that can dispossess the respondents for they are mere usurpers of the land.[38] (Emphasis supplied)

It is a general rule that the writ of execution should conform to the dispositive portion of the decision to be executed, and that the execution is void if it is in excess of and beyond the original judgment or award, for it is a settled general principle that a writ of execution must conform strictly to every essential particular of the judgment promulgated.[39] Where the judgment of an appellate court has become final and executory and has been returned to the lower court, the only function of the latter is the ministerial act of carrying out the decision and issuing the writ of execution.[40] In addition, a final and executory judgment

[38] *Rollo,* pp. 79-80.

[39] See *Ex-Bataan Veteran Security Agency, Inc. v. National Labor Relations Commission,* G.R. No. 121428, November 29, 1995, 250 SCRA 418; *Equatorial Realty Development, Inc. v. Mayfair Theater, Inc.*, G.R. No. 136221, May 12, 2000, 332 SCRA 139; *Philippine Veterans Bank of Communications v. Court of Appeals*, G.R. No. 126158, September 28, 1997, 279 SCRA 364.

[40] *Sia v. Villanueva,* G.R. No. 152921, October 9, 2006, 504 SCRA 43.

can no longer be amended by adding thereto a relief not originally included.[41]

Thus, this Court finds that it was improper for the RTC to award to respondents possession over the lands in dispute, as the December 5, 2001 CA Decision it sought to execute and the April 11, 2002 CA Resolution clearly did not award possession to respondents, but instead held that the owner of the subject lands is the State. **Possession was not a relief granted by the aforementioned CA Decisions. It is therefore not a relief which the RTC may grant on execution**. Accordingly, the CA seriously erred in issuing its June 6, 2005 Resolution affirming the assailed RTC Order awarding possession to respondents.

This Court is not unmindful of a number of decisions[42] wherein the Court affirmed writs of execution awarding possession of land, notwithstanding that the decisions sought to be executed did not order its delivery to the parties. In *Perez v. Evite*,[43] the Court ruled that where the ownership of a parcel of land was decreed in the judgment, the delivery of possession of the land should be considered included in the decision, it appearing that the defeated party's claim to the possession thereof is based on his claim of ownership. Moreover, in *Baluyut v. Guiao*,[44] the Court held that a judgment is not confined to what appears on the face of the decision, but also covers those necessarily included therein or necessary thereto. The foregoing ruling, however, find no application to the case at bar, as it is necessary that the decision sought to be executed must have at the very least awarded ownership of the lands to the parties. To reiterate, respondents are not the owners of the land in dispute, but the State.

Respondents insist that possession should be awarded to them, as they allege that the government has slept on their rights and

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[41] CIVIL PROCEDURE ANNOTATED, Justice Jose Feria and Maria Concepcion Noche, 2001 Edition, p.13.

[42] *Perez v. Evite*, No. L-16003, March 29, 1961, 1 SCRA 949; *Tiro v. Court of Appeals*, No. L-47341, October 20, 1978, 85 SCRA 554; *Baluyut v. Guaio*, G.R. No. 136294, September 28, 1999, 315 SCRA 396.

[43] *Supra* note 42.

[44] *Supra* note 42.

has not moved to execute[45] the CA judgment, which declared the disputed lands part of the public domain. Such argument deserves scant consideration, considering that the inaction of the State does not detract from the fact that it is the owner of the lands in dispute and, therefore, respondents have no standing or right to demand their return.

Thus, as far as the December 5, 2001 Decision of the CA is concerned, the Court upholds the pronouncement that the subject lands are State-owned and inalienable, and possession is not to be awarded to private respondents.

WHEREFORE, the Petition is *GRANTED*. The Decision dated June 6, 2005 and Resolution dated October 20, 2005 of the Court of Appeals in C.A.-G.R. S.P. No. 84045 are hereby *REVERSED* and *SET ASIDE*, only insofar as it affirmed the Order dated January 28, 2004 of the Regional Trial Court of Naval, Biliran (Branch 16) directing the Sheriff to place the respondents in possession of the subject land in Civil Case No. B-0647.

The Temporary Restraining Order issued by the Court on February 13, 2006, is converted to a permanent writ of preliminary injunction.

Let the original records be remanded to the said Regional Trial Court for further proceedings to determine the amount of expenses, as directed by the Court of Appeals in its Resolution dated June 6, 2004, within ten (10) days from the date of finality of this Decision.

Costs against respondents.

SO ORDERED.

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

[45] *Rollo,* p. 293.

SECOND DIVISION

[G.R. No. 171702. February 12, 2009]

MANILA MINING CORPORATION, *petitioner, vs.* **MIGUEL TAN, doing business under the name and style of MANILA MANDARIN MARKETING,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; NO COMPELLING REASON TO OVERTURN THE FINDINGS AND CONCLUSIONS OF THE TRIAL COURT AND APPELLATE COURT.— Petitioner poses a question of fact which is beyond this Court's power to review. This Court's jurisdiction is generally limited to reviewing errors of law that may have been committed by the Court of Appeals. We reiterate the oft-repeated and fully established rule that findings of fact of the Court of Appeals, especially when they are in agreement with those of the trial court, are accorded not only respect but even finality, and are binding on this Court. Barring a showing that the findings complained of were devoid of support, they must stand. For this Court is not expected or required to examine or refute anew the oral and documentary evidence submitted by the parties. The trial court, having heard the witnesses and observed their demeanor and manner of testifying, is admittedly in a better position to assess their credibility. We cannot weigh again the merits of their testimonies. Having thoroughly reviewed the records of this case, we find no persuasive much less compelling reason to overturn the findings and conclusions of the trial court and appellate court. We hereby sustain their findings and conclusions.

2. ID.; ID.; BEST EVIDENCE RULE; RESPONDENT'S FAILURE TO PRESENT ORIGINAL DOCUMENTS IS IMMATERIAL; RULE APPLIES ONLY IF THE CONTENTS OF THE WRITING ARE DIRECTLY IN ISSUE.— As regards respondent's failure to present the original documents, suffice it to say that the best evidence rule applies only if the contents of the writing are directly in issue. Where the existence of the writing or its general purport is all that is in issue, secondary evidence may be introduced in proof. MMC did not deny the

contents of the invoices and purchase orders. Its lone contention was that Tan did not submit the original copies to facilitate payment. But we are in agreement that photocopies of the documents were admissible in evidence to prove the contract of sale between the parties.

3. CIVIL LAW; SPECIAL CONTRACTS; SALES; PERFECTION OF CONTRACTS; THE PURCHASE ORDERS CONSTITUTED ACCEPTED OFFERS AND THE INVOICES FURNISHED THE DETAILS OF THE TRANSACTIONS.— Worth stressing, Article 1475 of the Civil Code provides the manner by which a contract of sale is perfected: ART. 1475. The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price. From that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts. In this case, the purchase orders constituted accepted offers when Tan supplied the electrical materials to MMC. Hence, petitioner cannot evade its obligation to pay by claiming lack of consent to the perfected contracts of sale. The invoices furnished the details of the transactions.

4. ID.; ID.; NO *LACHES* WHEN NO REASON TO GO TO COURT.— Neither is there merit to petitioner's contention that respondent was guilty of delay in filing the collection case. A careful examination of the records shows that Tan brought suit against MMC less than a year after the latter stopped making partial payments. Tan is, therefore, not guilty of *laches*. *Laches* is the neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in a court of equity. Here, Tan had no reason to go to court while MMC was paying its obligation, even if partially, under the contracts of sale.

APPEARANCES OF COUNSEL

Ronald Rex S. Recidoro for petitioner.

Bernardo V. Atienza for respondent.

D E C I S I O N

QUISUMBING, *J.*:

Assailed in this petition for review on *certiorari* are the Decision[1] dated December 20, 2005 and the Resolution[2] dated February 24, 2006 of the Court of Appeals in CA-G.R. CV No. 84385. The Court of Appeals had affirmed the Decision[3] dated October 27, 2004 of the Regional Trial Court (RTC), Branch 55, Manila, in Civil Case No. 01-101786.

The facts of the case are as follows:

Miguel Tan, doing business under the name and style of Manila Mandarin Marketing, was engaged in the business of selling electrical materials.

From August 19 to November 26, 1997, Manila Mining Corporation (MMC) ordered and received various electrical materials from Tan valued at ₱2,347,880. MMC agreed to pay the purchase price within 30 days from delivery, or be charged interest of 18% per annum, and in case of suit to collect the same, to pay attorney's fees equal to 25% of the claim.[4]

MMC made partial payments in the amount of ₱464,636. But despite repeated demands, it failed to give the remaining balance of ₱1,883,244, which was covered by nine invoices.[5]

On September 3, 2001, Tan filed a collection suit against MMC at the Manila RTC.[6]

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[1] *Rollo*, pp. 9-14. Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Conrado M. Vasquez, Jr. and Vicente Q. Roxas concurring.

[2] *Id.* at 15-16.

[3] *Id.* at 124-127. Penned by Acting Presiding Judge Manuel M. Barrios.

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

[5] *Id.* at 57-65.

[6] *Id.* at 53-56.

After Tan completed presenting evidence, MMC filed a Demurrer to Evidence.[7] On December 18, 2003, the RTC issued an Order, denying the demurrer and directing MMC to present evidence.[8]

MMC offered as sole witness Rainier Ibarrola, its accountant from year 2000 to 2002. Ibarrola confirmed that it was standard office procedure for a supplier to present the original sales invoice and purchase order when claiming to be paid. He testified that the absence of stamp marks on the invoices and purchase orders negated receipt of said documents by MMC's representatives.[9]

On rebuttal, Tan presented Wally de los Santos, his sales representative in charge of MMC's account. De los Santos testified that he delivered the originals of the invoices and purchase orders to MMC's accounting department. As proof, he showed three customer's acknowledgment receipts bearing the notation:

> I/We signed below to signify my/our receipt of your statement of account with you for the period and the amount stated below, together with the corresponding original copies of the invoices, purchase order and requisition slip attached for purpose of verification, bearing acknowledgment of my/our receipt of goods.[10]

On October 27, 2004, the RTC ruled for Tan. Its ruling stated as follows:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff, and against the defendant, ordering the defendant to pay the principal amount of ONE MILLION EIGHT HUNDRED EIGHTY-THREE THOUSAND TWO HUNDRED FORTY-FOUR PESOS (₱1,883,244.00), with interest thereon at the rate of eighteen [percent] (18%) per annum starting after thirty (30) days from each date of delivery of the merchandise sold until finality hereof, and thereafter, at the rate of twelve percent (12%) per annum, and the further sum equal to [twenty five percent] (25%) of the principal amount as liquidated damages.

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[7] *Id.* at 102-107.

[8] *Id.* at 11.

[9] *Id.*

[10] *Id.* at 12.

SO ORDERED.[11]

On November 30, 2004, MMC moved for reconsideration, but its motion was denied by the RTC in an Order dated January 5, 2005.

On appeal, the Court of Appeals affirmed the RTC's decision. The decretal portion of the Court of Appeals Decision dated December 20, 2005 reads:

WHEREFORE, premises considered, the appeal is **DENIED**. The Decision of the RTC dated October 27, 2004 is hereby **AFFIRMED**.

SO ORDERED.[12]

Hence, this petition, which raises as sole issue:

WHETHER OR NOT PETITIONER'S OBLIGATION TO PAY HAD ALREADY LEGALLY ACCRUED CONSIDERING THAT RESPONDENT HAS NOT FULLY COMPLIED WITH ALL THE PREREQUISITES FOR PAYMENT IMPOSED UNDER PETITIONER'S PURCHASE ORDERS, THERE BEING NO PROOF THAT RESPONDENT HAD ACTUALLY DONE SO.[13]

Simply stated, we are now called upon to address the question of whether MMC should pay for the electrical materials despite its allegation that Tan failed to comply with certain requisites for payment.

Petitioner contends that respondent's claim for payment was premature inasmuch as the original invoices and purchase orders were not sent to its accounting department. Consequently, Tan's claims were not verified and processed. MMC believes that mere delivery of the goods did not automatically give rise to its obligation to pay. It relies on Article 1545 of the Civil Code to justify its refusal to pay:

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[11] *Id.* at 127.

[12] *Id.* at 14.

[13] *Id.* at 27-28.

ART. 1545. Where the obligation of either party to a contract of sale is subject to any condition which is not performed, such party may refuse to proceed with the contract or he may waive performance of the condition.…

Petitioner also assails the probative value of the documentary evidence presented during trial. MMC claims that the unauthenticated photocopies of invoices and purchase orders did not satisfy the Best Evidence Rule,[14] which requires the production of the original writing in court. It adds that by Tan's failure to yield the original documents, he was presumed to have suppressed evidence under Section 3(e),[15] Rule 131 of the Rules of Court.

In its Memorandum dated February 20, 2007,[16] petitioner refutes any liability altogether, denying that it consented to the sale. MMC maintains that the unmarked documents indicated a mere offer to sell, which it did not act upon. MMC also charges Tan with *laches* for filing his claim nearly four years after the transaction.

In his Memorandum dated January 30, 2007,[17] respondent Tan counters that the petition presents a factual issue which has already been settled by the Court of Appeals. He stresses that findings of fact by the appellate court are conclusive on the Supreme Court and only questions of law may be entertained by it.

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[14] RULES OF COURT, Rule 130,

SEC. 3. *Original document must be produced; exceptions*. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, …

xxx xxx xxx

[15] SEC. 3. *Disputable presumptions*.— The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

xxx xxx xxx

(e) That evidence willfully suppressed would be adverse if produced;

xxx xxx xxx

[16] *Rollo*, pp. 259-276.

[17] *Id.* at 279-291.

After serious consideration, we are in agreement that the petition lacks merit.

Petitioner poses a question of fact which is beyond this Court's power to review. This Court's jurisdiction is generally limited to reviewing errors of law that may have been committed by the Court of Appeals. We reiterate the oft-repeated and fully established rule that findings of fact of the Court of Appeals, especially when they are in agreement with those of the trial court, are accorded not only respect but even finality, and are binding on this Court. Barring a showing that the findings complained of were devoid of support, they must stand. For this Court is not expected or required to examine or refute anew the oral and documentary evidence submitted by the parties. The trial court, having heard the witnesses and observed their demeanor and manner of testifying, is admittedly in a better position to assess their credibility.[18] We cannot weigh again the merits of their testimonies.

Having thoroughly reviewed the records of this case, we find no persuasive much less compelling reason to overturn the findings and conclusions of the trial court and appellate court. We hereby sustain their findings and conclusions.

Worth stressing, Article 1475 of the Civil Code provides the manner by which a contract of sale is perfected:

> ART. 1475. The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.
>
> From that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts.

In this case, the purchase orders constituted accepted offers when Tan supplied the electrical materials to MMC.[19] Hence, petitioner cannot evade its obligation to pay by claiming lack of

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[18] *Amante v. Serwelas*, G.R. No. 143572, September 30, 2005, 471 SCRA 348, 351-352.

[19] H. BLACK, *BLACK'S LAW DICTIONARY* 1235 (6th ed., 1990).

consent to the perfected contracts of sale. The invoices furnished the details of the transactions.

As regards respondent's failure to present the original documents, suffice it to say that the best evidence rule applies only if the contents of the writing are directly in issue. Where the existence of the writing or its general purport is all that is in issue, secondary evidence may be introduced in proof.[20] MMC did not deny the contents of the invoices and purchase orders. Its lone contention was that Tan did not submit the original copies to facilitate payment. But we are in agreement that photocopies of the documents were admissible in evidence to prove the contract of sale between the parties.

Neither is there merit to petitioner's contention that respondent was guilty of delay in filing the collection case. A careful examination of the records shows that Tan brought suit against MMC less than a year after the latter stopped making partial payments. Tan is, therefore, not guilty of *laches*.

Laches is the neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in a court of equity.[21] Here, Tan had no reason to go to court while MMC was paying its obligation, even if partially, under the contracts of sale.

WHEREFORE, the petition is *DENIED* for lack of merit. The Decision dated December 20, 2005 and Resolution dated February 24, 2006 of the Court of Appeals in CA-G.R. CV No. 84385 are *AFFIRMED*.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and *Brion, JJ.*, concur.

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[20] S. APOSTOL, *ESSENTIALS OF EVIDENCE* 66 (1991 ed.).

[21] H. BLACK, *BLACK'S LAW DICTIONARY* 875 (6th ed., 1990).

EN BANC

[G.R. No. 175220. February 12, 2009]

WILLIAM C. DAGAN, CARLOS H. REYES, NARCISO MORALES, BONIFACIO MANTILLA, CESAR AZURIN, WEITONG LIM, MA. TERESA TRINIDAD, and MA. CARMELITA FLORENTINO, *petitioners, vs.* **PHILIPPINE RACING COMMISSION, MANILA JOCKEY CLUB, INC., and PHILIPPINE RACING CLUB, INC.,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; VALIDITY OF ADMINISTRATIVE ISSUANCES; ELEMENTS; COMPLIED WITH IN CASE AT BAR.—The validity of an administrative issuance, such as the assailed guidelines, hinges on compliance with the following requisites: 1. Its promulgation must be authorized by the legislature; 2. It must be promulgated in accordance with the prescribed procedure; 3. It must be within the scope of the authority given by the legislature; 4. It must be reasonable. All the prescribed requisites are met as regards the questioned issuances. Philracom's authority is drawn from P.D. No. 420. The delegation made in the presidential decree is valid. Philracom did not exceed its authority. And the issuances are fair and reasonable.

2. ID.; ID.; ID.; ID.; PRINCIPLE OF NON-DELEGATION OF POWERS; BASIS; RULE; RECOGNIZED EXCEPTIONS.— The rule is that what has been delegated cannot be delegated, or as expressed in the Latin maxim: *potestas delegate non delegare potest*. This rule is based upon the ethical principle that such delegated power constitutes not only a right but a duty to be performed by the delegate by the instrumentality of his own judgment acting immediately upon the matter of legislation and not through the intervening mind of another. This rule however admits of recognized exceptions such as the grant of rule-making power to administrative agencies. They have been granted by Congress with the authority to issue rules to regulate the implementation of a law entrusted to them.

Delegated rule-making has become a practical necessity in modern governance due to the increasing complexity and variety of public functions.

3. ID.; ID.; ID.; ID.; TESTS IN DETERMINING WHETHER DELEGATION OF POWERS IS VALID OR NOT; COMPLETENESS TEST AND SUFFICIENCY OF STANDARD TEST.—In every case of permissible delegation, there must be a showing that the delegation itself is valid. It is valid only if the law (a) is complete in itself, setting forth therein the policy to be executed, carried out, or implemented by the delegate; and (b) fixes a standard—the limits of which are sufficiently determinate and determinable—to which the delegate must conform in the performance of his functions. A sufficient standard is one which defines legislative policy, marks its limits, maps out its boundaries and specifies the public agency to apply it. It indicates the circumstances under which the legislative command is to be effected.

4. ID.; ID.; ID.; ID.; P.D. NO. 420 HURDLES THE TEST OF COMPLETENESS AND STANDARDS SUFFICIENCY.— P.D. No. 420 hurdles the tests of completeness and standards sufficiency. Philracom was created for the purpose of carrying out the declared policy in Section 1 which is "to promote and direct the accelerated development and continued growth of horse racing not only in pursuance of the sports development program but also in order to insure the full exploitation of the sport as a source of revenue and employment." Furthermore, Philracom was granted exclusive jurisdiction and control over every aspect of the conduct of horse racing, including the framing and scheduling of races, the construction and safety of race tracks, and **the security of racing**. P.D. No. 420 is already complete in itself. Section 9 of the law fixes the standards and limitations to which Philracom must conform in the performance of its functions. Clearly, there is a proper legislative delegation of rule-making power to Philracom. Clearly too, for its part Philracom has exercised its rule-making power in a proper and reasonable manner. More specifically, its discretion to rid the facilities of MJCI and PRCI of horses afflicted with EIA is aimed at preserving the security and integrity of horse races.

5. ID.; ID.; ID.; ID.; NO DELEGATION OF POWER TO SPEAK OF BETWEEN PHILIPPINE RACING COMMISSION (PHILRACOM), AS THE DELEGATOR AND MANILA JOCKEY CLUB INCORPORATED (MCJI) AND PHILIPPINE RACING CLUB INCORPORATED (PRCI) AS DELEGATES SINCE THE PHILRACOM DIRECTIVE IS MERELY INSTRUCTIVE IN CHARACTER.—There is no delegation of power to speak of between Philracom, as the delegator and MJCI and PRCI as delegates. The Philracom directive is merely instructive in character. Philracom had instructed PRCI and MJCI to "immediately come up with Club's House Rule to address the problem and rid their facilities of horses infected with EIA." PRCI and MJCI followed-up when they ordered the racehorse owners to submit blood samples and subject their race horses to blood testing. Compliance with the Philracom's directive is part of the mandate of PRCI and MJCI under Sections 1 of R.A. No. 7953 and Sections 1 and 2 of 8407. As correctly proferred by MJCI, its duty is not derived from the delegated authority of Philracom but arises from the franchise granted to them by Congress allowing MJCI "to do and carry out all such acts, deeds and things as may be necessary to give effect to the foregoing." As justified by PRCI, "obeying the terms of the franchise and abiding by whatever rules enacted Philracom is its duty."

6. ID.; ID.; ID.; ID.; THE BELATED ISSUANCE OF THE GUIDELINES DOES NOT RENDER THE DIRECTIVE VOID; THE DIRECTIVE'S VALIDITY AND EFFECTIVITY ARE NOT DEPENDENT ON ANY SUPPLEMENTAL GUIDELINES AND PHILRACOM HAS EVERY RIGHT TO ISSUE DIRECTIVES TO MJCI AND PRCI WITH RESPECT TO THE CONDUCT OF HORSE RACING WITH OR WITHOUT IMPLEMENTING GUIDELINES.—As to the second requisite, petitioners raise some infirmities relating to Philracom's guidelines. They question the supposed belated issuance of the guidelines, that is, only after the collection of blood samples for the *Coggins Test* was ordered. While it is conceded that the guidelines were issued a month after Philracom's directive, this circumstance does not render the directive nor the guidelines void. The directive's validity and effectivity are not dependent on any supplemental guidelines. Philracom has every right to issue directives to MJCI and PRCI

with respect to the conduct of horse racing, with or without implementing guidelines.

7. ID.; ID.; ID.; ID.; THE ISSUANCE OF RULES OR REGULATIONS IN THE EXERCISE OF AN ADMINISTRATIVE AGENCY OF ITS QUASI-LEGISLATIVE POWER DOES NOT REQUIRE NOTICE AND HEARING.—As a rule, the issuance of rules and regulations in the exercise of an administrative agency of its quasi-legislative power does not require notice and hearing. In *Abella, Jr. v. Civil Service Commission*, this Court had the occasion to rule that prior notice and hearing are not essential to the validity of rules or regulations issued in the exercise of quasi-legislative powers since there is no determination of past events or facts that have to be established or ascertained.

8. ID.; ID.; ID.; ID.; THE ASSAILED GUIDELINES ARE WITHIN THE LIMITS OF THE POWERS GRANTED TO PHILRACOM.— The third requisite for the validity of an administrative issuance is that it must be within the limits of the powers granted to it. The administrative body may not make rules and regulations which are inconsistent with the provisions of the Constitution or a statute, particularly the statute it is administering or which created it, or which are in derogation of, or defeat, the purpose of a statute. The assailed guidelines prescribe the procedure for monitoring and eradicating EIA. These guidelines are in accord with Philracom's mandate under the law to regulate the conduct of horse racing in the country.

9. ID.; ID.; ID.; ID.; THE ASSAILED GUIDELINES ARE NOT UNREASONABLE AND DISCRIMINATORY; THE GUIDELINES BEAR A REASONABLE RELATION TO THE PURPOSE SOUGHT TO BE ACCOMPLISHED WHICH IS THE RIDDANCE OF HORSES INFECTED WITH DISEASES.—Anent the fourth requisite, the assailed guidelines do not appear to be unreasonable or discriminatory. In fact, all horses stabled at the MJCI and PRCI's premises underwent the same procedure. The guidelines implemented were undoubtedly reasonable as they bear a reasonable relation to the purpose sought to be accomplished, *i.e.*, the complete riddance of horses infected with EIA. It also appears from the records that MJCI properly notified the racehorse owners before the test was conducted. Those who failed to comply were

repeatedly warned of certain consequences and sanctions. Furthermore, extant from the records are circumstances which allow respondents to determine from time to time the eligibility of horses as race entries. The lease contract executed between petitioner and MJC contains a proviso reserving the right of the lessor, MJCI in this case, the right to determine whether a particular horse is a qualified horse. In addition, Philracom's rules and regulations on horse racing provide that horses must be free from any contagious disease or illness in order to be eligible as race entries. All told, we find no grave abuse of discretion on the part of Philracom in issuing the contested guidelines and on the part MJCI and PRCI in complying with Philracom's directive.

APPEARANCES OF COUNSEL

Kapunan Tamanao Villadolid and Associates for petitioners.
Manalo Puno Jocson & Guerson Law Offices for Phil. Racing Club, Inc.
Reyno Tiu Domingo & Santos Law Offices for Manila Jockey Club, Inc.

D E C I S I O N

TINGA, *J.*:

The subject of this petition for *certiorari* is the decision[1] of the Court of Appeals in CA-G.R. SP No. 95212, affirming *in toto* the judgment[2] of the Regional Trial Court of Makati in Civil Case No. 04-1228.

The controversy stemmed from the 11 August 2004 directive[3] issued by the Philippine Racing Commission (Philracom) directing the Manila Jockey Club, Inc. (MJCI) and Philippine Racing Club, Inc. (PRCI) to immediately come up with their respective

[1] *Rollo*, pp. 46-62; penned by Associate Justice Rebecca De Guia-Salvador, concurred in by Associate Justices Magdangal M.De Leon and Ramon R. Garcia.

[2] Records (Vol. II), pp. 482-487; presided by Zenaida T. Galapate-Laguilles.

[3] Records (Vol. 1), p. 32.

Clubs' House Rule to address Equine Infectious Anemia (EIA)[4] problem and to rid their facilities of horses infected with EIA. Said directive was issued pursuant to Administrative Order No. 5[5] dated 28 March 1994 by the Department of Agriculture declaring it unlawful for any person, firm or corporation to ship, drive, or transport horses from any locality or place except when accompanied by a certificate issued by the authority of the Director of the Bureau of Animal Industry (BAI).[6]

In compliance with the directive, MJCI and PRCI ordered the owners of racehorses stable in their establishments to submit the horses to blood sampling and administration of the *Coggins Test* to determine whether they are afflicted with the EIA virus. Subsequently, on 17 September 2004, Philracom issued copies of the guidelines for the monitoring and eradication of EIA.[7]

Petitioners and racehorse owners William Dagan (Dagan), Carlos Reyes, Narciso Morales, Bonifacio Montilla, Cezar Azurin, Weitong Lim, Ma. Teresa Trinidad and Ma. Carmelita Florentino refused to comply with the directive. First, they alleged that there had been no prior consultation with horse owners. Second, they claimed that neither official guidelines nor regulations had been issued relative to the taking of blood samples. And third, they asserted that no documented case of EIA had been presented to justify the undertaking.[8]

Despite resistance from petitioners, the blood testing proceeded. The horses, whose owners refused to comply were banned from

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[4] *Rollo*, p. 18. Equine Infectious Anemia (EIA) is an infectious and potentially fatal viral disease of members of the horse family. The equine infectious anemia virus (EIAV) is categorized as a lentivirus: it contains genetic RNA material, which it uses to produce DNA. This DNA is then incorporated into the genetic makeup of infected cells. Identified in France in 1843 and first tentatively diagnosed in the United States in 1888, EIA has commanded a great deal of attention over the years. No vaccine or treatment exists for the disease. EIAV is the first lentivirus-induced disease proven to be transmitted by insects. (http://www.aphis.usda.gov/lpa/pubs/fsheet_faq_notice/fs_aheia.html)

[5] *Id*. at 33.

[6] *Id*. at 19.

[7] Records (Vol. 1), pp. 178-181.

[8] See petitioners' letter dated 8 October 2004; *rollo*, pp. 33-35.

the races, were removed from the actual day of race, prohibited from renewing their licenses or evicted from their stables.

When their complaint went unheeded, the racehorse owners lodged a complaint before the Office of the President (OP) which in turn issued a directive instructing Philracom to investigate the matter.

For failure of Philracom to act upon the directive of the OP, petitioners filed a petition for injunction with application for the issuance of a temporary restraining order (TRO). In an order[9] dated 11 November 2004, the trial court issued a TRO.

Dagan refused to comply with the directives because, according to him, the same are unfair as there are no implementing rules on the banning of sick horses from races. Consequently, his horses were evicted from the stables and transferred to an isolation area. He also admitted that three of his horses had been found positive for EIA.[10]

Confronted with two issues, namely: whether there were valid grounds for the issuance of a writ of injunction and whether respondents had acted with whim and caprice in the implementation of the contested guideline, the trial court resolved both queries in the negative.

The trial court found that most racehorse owners, except for Dagan, had already subjected their racehorses to EIA testing. Their act constituted demonstrated compliance with the contested guidelines, according to the trial court. Hence, the acts sought to be enjoined had been rendered moot and academic.

With respect to the subject guidelines, the trial court upheld their validity as an exercise of police power, thus:

> The Petitioner's submission that the subject guidelines are oppressive and hence confiscatory of proprietary rights is likewise viewed by this Court to be barren of factual and legal support. The horseracing industry, needless to state, is imbued with public interest deserving of utmost concern if not constant vigilance. The Petitioners

[9] Records (Vol. 1), pp. 210-214; presided by Pairing Judge Oscar B. Pimentel.

[10] Records (Vol. 2), p. 484.

do not dispute this. It is because of this basic fact that respondents are expected to police the concerned individuals and adopt measures that will promote and protect the interests of all the stakeholders starting from the moneyed horse-owners, gawking bettors down to the lowly maintainers of the stables. This is a clear and valid exercise of police power with the respondents acting for the State. Participation in the business of horseracing is but a privilege; it is not a right. And no clear acquiescence to this postulation can there be than the Petitioners' own undertaking to abide by the rules and conditions issued and imposed by the respondents as specifically shown by their contracts of lease with MCJI.[11]

Petitioners appealed to the Court of Appeals. In its Decision dated 27 October 2006, the appellate court affirmed *in toto* the decision of the trial court.

The appellate court upheld the authority of Philracom to formulate guidelines since it is vested with exclusive jurisdiction over and control of the horse-racing industry per Section 8 of Presidential Decree (P.D.) No. 8. The appellate court further pointed out that P.D. No. 420 also endows Philracom with the power to prescribe additional rules and regulations not otherwise inconsistent with the said presidential decree[12] and to perform such duties and exercise all powers incidental or necessary to the accomplishment of its aims and objectives.[13] It similarly concluded that the petition for prohibition should be dismissed on the ground of mootness in light of evidence indicating that petitioners had already reconsidered their refusal to have their horses tested and had, in fact, subsequently requested the administration of the test to the horses.[14]

Aggrieved by the appellate court's decision, petitioners filed the instant *certiorari* petition[15] imputing grave abuse of discretion

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[11] *Id.* at 486.

[12] Presidential Decree No. 420 (1974), Sec. 9(b).

[13] Presidential Decree No. 420 (1974), Sec. 10(e).

[14] *Rollo*, pp. 55 and 60.

[15] *Id.* at 3-17.

on the part of respondents in compelling petitioners to subject their racehorses to blood testing.

In their amended petition,[16] petitioners allege that Philracom's unsigned and undated implementing guidelines suffer from several infirmities. They maintain that the assailed guidelines do not comply with due process requirements. Petitioners insist that racehorses already in the MJCI stables were allowed to be so quartered because the individual horse owners had already complied with the Philracom regulation that horses should not bear any disease. There was neither a directive nor a rule that racehorses already lodged in the stables of the racing clubs should again be subjected to the collection of blood samples preparatory to the conduct of the EIA tests,[17] petitioners note. Thus, it came as a surprise to horse owners when told about the administration of a new *Coggins Tests* on old horses since the matter had not been taken up with them.[18] No investigation or at least a summary proceeding was conducted affording petitioners an opportunity to be heard.[19] Petitioners also aver that the assailed guidelines are *ultra vires* in that the sanctions imposed for refusing to submit to medical examination are summary eviction from the stables or arbitrary banning of participation in the races, notwithstanding the penalties prescribed in the contract of lease.[20]

In its Comment,[21] the PRCI emphasizes that it merely obeyed the terms of its franchise and abided by the rules enacted by Philracom.[22] For its part, Philracom, through the Office of the

[16] *Id*. at 78-131.

[17] *Id*. at 95.

[18] *Id*. at 97.

[19] *Id*. at 109.

[20] *Id*. at 111. Under the Contract of Lease, failing or refusing to submit to medical examination or drug testing is considered a minor offense punishable by reprimand for the first offense, fine and/or suspension for the second offense and expulsion for the third offense. *Id*. at 30.

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

[22] *Id*. at 290.

Solicitor-General (OSG), stresses that the case has become moot and academic since most of petitioners had complied with the guidelines by subjecting their race horses to EIA testing. The horses found unafflicted with the disease were eventually allowed to join the races.[23] Philracom also justified its right under the law to regulate horse racing.[24] MJCI adds that Philracom need not delegate its rule-making power to the former since MJCI's right to formulate its internal rules is subsumed under the franchise granted to it by Congress.[25]

In their Reply,[26] petitioners raise for the first time the issue that Philracom had unconstitutionally delegated its rule-making power to PRCI and MJCI in issuing the directive for them to come up with club rules. In response to the claim that respondents had merely complied with their duties under their franchises, petitioners counter that the power granted to PRCI and MJCI under their respective franchises is limited to: (1) the construction, operation and maintenance of racetracks; (2) the establishment of branches for booking purposes; and (3) the conduct of horse races.

It appears on record that only Dagan had refused to comply with the orders of respondents. Therefore, the case subsists as regards Dagan.

Petitioners essentially assail two issuances of Philracom; namely: the Philracom directive[27] and the subsequent guidelines addressed to MJCI and PRCI.

The validity of an administrative issuance, such as the assailed guidelines, hinges on compliance with the following requisites:

1. Its promulgation must be authorized by the legislature;

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[23] *Id*. at 332-333.

[24] *Id*. at 334.

[25] *Id*. at 350-351.

[26] *Id*. at 361-400.

[27] *Id*. at 18.

2. It must be promulgated in accordance with the prescribed procedure;

3. It must be within the scope of the authority given by the legislature;

4. It must be reasonable.[28]

All the prescribed requisites are met as regards the questioned issuances. Philracom's authority is drawn from P.D. No. 420. The delegation made in the presidential decree is valid. Philracom did not exceed its authority. And the issuances are fair and reasonable.

The rule is that what has been delegated cannot be delegated, or as expressed in the Latin maxim: *potestas delegate non delegare potest*. This rule is based upon the ethical principle that such delegated power constitutes not only a right but a duty to be performed by the delegate by the instrumentality of his own judgment acting immediately upon the matter of legislation and not through the intervening mind of another.[29] This rule however admits of recognized exceptions[30] such as the grant of rule-making power to administrative agencies. They have been granted by Congress with the authority to issue rules to regulate the implementation of a law entrusted to them. Delegated rule-making has become a practical necessity in modern governance due to the increasing complexity and variety of public functions.[31]

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[28] *Hon. Executive Secretary, et al. v. Southwing Heavy Industries, Inc.*, G.R. No. 164171, 20 February 2006, 482 SCRA 673, 686.

[29] *Abakada Guro Party-list v. Ermita*, G.R. No. 168056, 1 September 2005, 469 SCRA 115-116; *Sandoval v. Pagcor*, 400 Phil. 307 (2000).

[30] The other exceptions are:

a. Delegation of tariff powers to the President under Section 28(2) of Article VI of the Constitution;

b. Delegation of emergency powers to the President under Section 23(2) of Article VI of the Constitution;

c. Delegation to the people at large;

d. Delegation to local governments. See *Santiago v. Comelec*, 336 Phil. 848, 898 (1998), citing *People v. Vera*, 65 Phil. 56 (1937).

[31] *Department of Agrarian Reform v. Sutton*, G.R. No. 162070, 19 October 2005, 473 SCRA 392.

However, in every case of permissible delegation, there must be a showing that the delegation itself is valid. It is valid only if the law (a) is complete in itself, setting forth therein the policy to be executed, carried out, or implemented by the delegate; and (b) fixes a standard—the limits of which are sufficiently determinate and determinable—to which the delegate must conform in the performance of his functions. A sufficient standard is one which defines legislative policy, marks its limits, maps out its boundaries and specifies the public agency to apply it. It indicates the circumstances under which the legislative command is to be effected.[32]

P.D. No. 420 hurdles the tests of completeness and standards sufficiency.

Philracom was created for the purpose of carrying out the declared policy in Section 1 which is "to promote and direct the accelerated development and continued growth of horse racing not only in pursuance of the sports development program but also in order to insure the full exploitation of the sport as a source of revenue and employment." Furthermore, Philracom was granted exclusive jurisdiction and control over every aspect of the conduct of horse racing, including the framing and scheduling of races, the construction and safety of race tracks, and **the security of racing**. P.D. No. 420 is already complete in itself.

Section 9 of the law fixes the standards and limitations to which Philracom must conform in the performance of its functions, to wit:

Section 9. Specific Powers. Specifically, the Commission shall have the power:

a. **To enforce all laws, decrees and executive orders relating to horse-racing** that are not expressly or implied repealed or modified by this Decree, including all such existing rules and regulations until otherwise modified or amended by the Commission;

b. To prescribe additional rules and regulations not otherwise inconsistent with this Decree;

[32] *Supra* note 23.

c. **To register race horses, horse owners or associations or federations thereof**, and to regulate the construction of race tracks and **to grant permit for the holding of races;**

d. **To issue, suspend or revoke permits and licenses** and to impose or collect fees for the issuance of such licenses and permits to persons required to obtain the same;

e. To review, modify, approve or disapprove the rules and regulations issued by any person or entity concerning the conduct of horse races held by them;

f. To supervise all such race meeting to assure integrity at all times. It can **order the suspension of any racing event in case of violation of any law, ordinance or rules and regulations**;

g. **To prohibit the use of improper devices, drugs, stimulants or other means to enhance or diminish the speed of horse or materially harm their condition;**

h. To approve the annual budget of the omission and such supplemental budgets as may be necessary;

i. To appoint all personnel, including an Executive Director of the Commission, as it may be deem necessary in the exercise and performance of its powers and duties; and

j. To enter into contracts involving obligations chargeable to or against the funds of the Commission. (Emphasis supplied)

Clearly, there is a proper legislative delegation of rule-making power to Philracom. Clearly too, for its part Philracom has exercised its rule-making power in a proper and reasonable manner. More specifically, its discretion to rid the facilities of MJCI and PRCI of horses afflicted with EIA is aimed at preserving the security and integrity of horse races.

Petitioners also question the supposed delegation by Philracom of its rule-making powers to MJCI and PRCI.

There is no delegation of power to speak of between Philracom, as the delegator and MJCI and PRCI as delegates. The Philracom directive is merely instructive in character. Philracom had instructed PRCI and MJCI to "immediately come up with Club's House

Rule to address the problem and rid their facilities of horses infected with EIA." PRCI and MJCI followed-up when they ordered the racehorse owners to submit blood samples and subject their race horses to blood testing. Compliance with the Philracom's directive is part of the mandate of PRCI and MJCI under Sections 1[33] of R.A. No. 7953[34] and Sections 1[35] and

[33] Sec. 1. The Philippine Racing Club, Inc., a corporation duly organized and registered under the laws of the Republic of the Philippines, hereinafter called the grantee or its successors is hereby granted the right, notwithstanding any provision of law to the contrary, privilege and authority to construct, operate and maintain, one race track in the Municipality of Makati, Metro Manila, or anywhere within the provinces of Rizal, Laguna and Cavite, establish such branches thereof for booking purposes anywhere in the country, and hold or conduct horse races therein with bettings whether on the results of the races or other forms of gaming derived therefrom, and either directly or by means of mechanical, electric and/or computerized totalizator and to do and carry out all such acts, deeds and things as may be necessary to give effect to the foregoing: provided, that in case of transfer of the race track from Makati, Metro Manila, such shall be subject to the approval of the host province or city/municipality to where it would transfer, through a public hearing to be conducted by the local government unit concerned.

The races to be conducted by the grantee shall be under the supervision and regulation of the Philippine Racing Commission, which shall enforce the laws, rules and regulations governing horse racing, including the framing and scheduling of races, the construction and safety of the race track, the allocation of prizes of winning horses, and the security of racing as provided in Presidential Decree No. 420, as amended: Provided, That the Games and Amusement Board shall continue to supervise and regulate betting in horse races as provided in Section 6, 8, 11, 15 and 24 of Republic Act Numbered Three hundred and nine, as amended, and all the racing officials and personnel to be employed by the grantee shall be duly licensed as such by the said Games and Amusements Board in accordance with Section 5 of the same Act. (Emphasis supplied)

[34] ENTITLED "AN ACT AMENDING R.A. NO. 6632 ENTITLED 'AN ACT GRANTING THE PHILIPPINE RACING CLUB, INC. A FRANCHISE TO OPERATE AND MAINTAIN A RACE TRACK FOR HORSE RACING IN THE PROVINCE OF RIZAL' AND EXTENDING THE SAID FRANCHISE BY TWENTY-FIVE (25) YEARS FROM THE EXPIRATION OF THE TERM THEREOF."

[35] Section 1. *Nature and Scope of Franchise*.—Any provision of law to the contrary notwithstanding, there is hereby granted to Manila Jockey Club, Inc., a corporation duly organized and registered under the laws of the Philippines, hereinafter called the grantee or its assigns or its successors, for

2[36] of 8407.[37]

As correctly proferred by MJCI, its duty is not derived from the delegated authority of Philracom but arises from the franchise granted to them by Congress allowing MJCI "to do and carry out all such acts, deeds and things as may be necessary to give effect to the foregoing."[38] As justified by PRCI, "obeying the terms of the franchise and abiding by whatever rules enacted by Philracom is its duty."[39]

More on the second, third and fourth requisites.

As to the second requisite, petitioners raise some infirmities relating to Philracom's guidelines. They question the supposed

a period of twenty-five (25) years from the approval of this Act, the right, privilege and authority to construct, operate and maintain one racetrack in any place within the City of Manila or any place within the provinces of Bulacan, Cavite or Rizal, establish such branches thereof for booking purposes anywhere in the country, and hold or conduct horse races therein with bettings either directly or indirectly by means of mechanical, electric and/or computerized totalizator and to do and carry out all such acts, deeds and things as may be necessary to give effect to the foregoing: provided, that in case of transfer of the racetrack from the City of Manila, such transfer shall be subject to the approval of the host province or city/municipality to where it would transfer, through a public hearing to be conducted by the local government unit concerned.

[36] Section 2. *Authority of the Philippine Racing Commission and the Games and Amusement Board*.—**The races to be conducted by the grantee shall be under the supervision and regulation of the Philippine Racing Commission, which shall enforce the laws, rules and regulations governing horse racing,** including the framing and scheduling of races, the construction and safety of the racetrack, the allocation of prizes of winning horses, and the security of racing as provided in Presidential Decree No. 420, as amended: Provided, That the Games and Amusement Board shall continue to supervise and regulate betting in horse races as provided in Sections 6, 8, 11, 15 and 24 of Republic Act No. 309, as amended. (Emphasis supplied)

[37] ENTITLED "AN ACT AMENDING R.A. NO. 6631 ENTITLED 'AN ACT GRANTING MANILA JOCKEY CLUB, INC. A FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A RACETRACK FOR HORSE RACING IN THE CITY OF MANILA OR ANY PLACE WITHIN THE PROVINCES OF BULACAN, CAVITE OR RIZAL' AND EXTENDING THE SAID FRANCHISE BY TWENTY-FIVE (25) YEARS FROM THE EXPIRATION OF THE TERM THEREOF."

[38] *Rollo*, p. 350.

[39] *Id.* at 230.

belated issuance of the guidelines, that is, only after the collection of blood samples for the *Coggins Test* was ordered. While it is conceded that the guidelines were issued a month after Philracom's directive, this circumstance does not render the directive nor the guidelines void. The directive's validity and effectivity are not dependent on any supplemental guidelines. Philracom has every right to issue directives to MJCI and PRCI with respect to the conduct of horse racing, with or without implementing guidelines.

Petitioners also argue that Philracom's guidelines have no force and effect for lack of publication and failure to file copies with the University of the Philippines (UP) Law Center as required by law.

As a rule, the issuance of rules and regulations in the exercise of an administrative agency of its quasi-legislative power does not require notice and hearing.[40] In *Abella, Jr. v. Civil Service Commission*,[41] this Court had the occasion to rule that prior notice and hearing are not essential to the validity of rules or regulations issued in the exercise of quasi-legislative powers since there is no determination of past events or facts that have to be established or ascertained.[42]

The third requisite for the validity of an administrative issuance is that it must be within the limits of the powers granted to it. The administrative body may not make rules and regulations which are inconsistent with the provisions of the Constitution or a statute, particularly the statute it is administering or which created it, or which are in derogation of, or defeat, the purpose of a statute.[43]

The assailed guidelines prescribe the procedure for monitoring and eradicating EIA. These guidelines are in accord with Philracom's mandate under the law to regulate the conduct of horse racing in the country.

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[40] AGPALO, RUBEN E., *PHILIPPINE ADMINISTRATIVE LAW*, 2004 Edition, p. 156.

[41] G.R. No. 152574, 17 November 2004, 442 SCRA 507.

[42] *Id.* at 530.

[43] *Smart Communications, Inc. v. National Telecommunications Commission*, 456 Phil. 145 (2003).

Anent the fourth requisite, the assailed guidelines do not appear to be unreasonable or discriminatory. In fact, all horses stabled at the MJCI and PRCI's premises underwent the same procedure. The guidelines implemented were undoubtedly reasonable as they bear a reasonable relation to the purpose sought to be accomplished, *i.e.*, the complete riddance of horses infected with EIA.

It also appears from the records that MJCI properly notified the racehorse owners before the test was conducted.[44] Those who failed to comply were repeatedly warned of certain consequences and sanctions.

Furthermore, extant from the records are circumstances which allow respondents to determine from time to time the eligibility of horses as race entries. The lease contract executed between petitioner and MJC contains a proviso reserving the right of the lessor, MJCI in this case, the right to determine whether a particular horse is a qualified horse. In addition, Philracom's rules and regulations on horse racing provide that horses must be free from any contagious disease or illness in order to be eligible as race entries.

All told, we find no grave abuse of discretion on the part of Philracom in issuing the contested guidelines and on the part MJCI and PRCI in complying with Philracom's directive.

WHEREFORE, the petition is *DISMISSED*. Costs against petitioner William Dagan.

SO ORDERED.

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

[44] *Rollo,* p. 230.

SECOND DIVISION

[G.R. No. 175978. February 12, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SAMUEL ALGARME *y* BONDA @ "Stingray" (deceased) and RIZALDY GELLE *y* BISCOCHO,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S FACTUAL FINDINGS AND ASSESSMENT OF CREDIBILITY OF WITNESSES ARE ACCORDED GREAT RESPECT AND EVEN CONCLUSIVE EFFECT.— An established rule in appellate review is that the trial court's factual findings – including its assessment of the credibility of the witnesses, the probative weight of their testimonies, and the conclusions drawn from the factual findings – are accorded great respect and even conclusive effect. In our review of cases, these factual findings and conclusions assume greater weight if they are affirmed by the CA. Despite this enhanced persuasive effect, we nevertheless fully scrutinize the records (as we did in this case), since the penalty of *reclusion perpetua* that the CA imposed on the appellant demands no less than this kind of careful and deliberate consideration.

2. ID.; ID.; ID.; ABSENCE OF ILL MOTIVE ON THE PART OF WITNESSES TO FALSELY TESTIFY AGAINST THE APPELLANTS ENTITLES THEIR TESTIMONIES TO FULL FAITH AND CREDIT.— Rudy's testimony was clear and straightforward; he never wavered in pointing to the appellants as the persons who held and stabbed Loreto in the morning of September 19, 1995. Significantly, the testimony of another prosecution witness – Norman – supported Rudy's story with respect to the ***presence*** of the appellants at the crime scene. Although Norman did not say anything categorical about the actual stabbing, he saw the appellants – whom he had known for a long time – in the same vicinity as the victim *before the stabbing* and *after the stabbing* walking near the victim's lifeless body and carrying the latter's belt bag. These testimonies,

when considered together, lead to no conclusion other than the appellants' direct participation in the stabbing that led to the victim's death. To reiterate, the appellants and the victim were in the same vicinity before the stabbing; soon after, the appellants were seen holding and stabbing the victim; immediately thereafter, they were also seen walking away, carrying the victim's bag. In considering these testimonies, we find it very significant that the defense failed to refute the testimonies of Rudy and Norman through evidence showing motive that could lead them to falsely testify against the appellants. In the absence of such evidence, we can conclude that their testimonies are worthy of full faith and credit.

3. ID.; ID.; IDENTIFICATION OF ACCUSED; WITNESS' OUT-OF-COURT IDENTIFICATION OF APPELLANTS', UPHELD; PROCEDURE FOR OUT-OF-COURT IDENTIFICATION AND TEST TO DETERMINE ITS ADMISSIBILITY.— Rizaldy challenges the reliability and integrity of the positive identification Rudy made. He claims that his "in-court identification was facilitated by a highly suggestive and irregular out-of-court identification process." He harps on the fact that the out-of-court identification was not made in a police line up but in a mere show-up. We find this challenge to be baseless as we fail to see any flaw that would invalidate Rudy's out-of-court identification of the appellants. We see no basis, too, to support the conclusion that the in-court identification – an identification made independently of the out-of court identification – is itself tainted with invalidity. In *People v. Teehankee, Jr.*, we explained the procedure for out-of-court identification and the test to determine its admissibility: Out-of-court identification is conducted by the police in various ways. It is done thru *show-ups* where the suspect alone is brought face-to-face with the witness for identification. It is done thru *mug shots* where photographs are shown to the witness to identify the suspect. It is also done thru *line-ups* where a witness identifies the suspect from a group of persons lined up for the purpose xxx In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the ***totality of circumstances test*** where they consider the following factors, *viz*: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description, given by the

witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure.

4. ID.; ID.; ID.; OUT-OF-COURT IDENTIFICATION OF WITNESS FOUND RELIABLE AND ADMISSIBLE; TOTALITY OF CIRCUMSTANCES TEST, APPLIED.— Applying the totality-of-circumstances test, we find Rudy's out-of-court identification to be reliable and thus admissible. ***First***, Rudy testified that the tricycle he was riding passed "very near" the place where the victim was stabbed, and that the park at that time was "very bright." ***Second***, Rudy was simply riding a tricycle when the stabbing, a very startling incident, happened; no competing incident took place to draw his attention away from the incident; and the event, being startling, consumed his full attention and gave him the chance to see clearly the features of the person stabbed, the manner he was stabbed, and the appearance of the assailants. ***Third***, he stated with certainty that he could identify the assailants' faces when he reported the incident to *barangay tanod* Cesar. ***Fourth***, the identification took place within two (2) days from the stabbing incident; he explained fully why it took him two days to come forward and report the stabbing. ***Finally***, there was nothing "suggestive" or irregular about Rudy's out-of-court identification of the appellants; it was not even a *show-up* – as Rizaldy suggests where the suspects, tagged as the persons to be identified, are brought face-to-face with the witness for confirmation of identification. When Rudy arrived at the police station, he was asked to point to the assailants from among the ***many*** prisoners inside the cell; he was not compelled to focus his attention on any specific person or persons. There was also no evidence that the police had supplied or even suggested to Rudy that the appellants were the suspected perpetrators. Thus, Rudy's identification was spontaneous, independent, and untainted by any improper suggestion.

5. ID.; ID.; ID.; NO LAW OR POLICE REGULATION REQUIRES A POLICE LINE UP FOR PROPER IDENTIFICATION IN EVERY CASE.— We do not agree that an identification is unreliable simply because it was not conducted in a police line up. No law or police regulation requires a police line up for proper identification in every case. There can still be a

proper and reliable identification even in the absence of a line up, for as long as the identification is unaffected by prior or contemporaneous improper suggestions that point out the suspect to the witness as the perpetrator to be identified. Granting *arguendo* that the out-of-court identification was irregular as the appellants claim, this identification did not foreclose the admissibility of Rudy's ***independent*** in-court identification. It must be stressed that in convicting the appellants for the crime charged, the courts *a quo* did not rely solely on Rudy's identification at the city jail or on an in-court identification *based on the city jail identification*. Rudy's November 27, 1995 court testimony clearly shows that he positively identified Samuel and Rizaldy independently of the previous identification he made at the city jail. His testimony, including his identification of the appellants, was positive, straightforward, and categorical. In *People v. Timon* where the appellants likewise questioned the reliability of their in-court identification *vis-à-vis* their out-of-court identification, this Court ruled: Even assuming *arguendo* the appellants' out-of-court identification was defective, their subsequent identification in court cured any flaw that may have initially attended it. We emphasize that the "inadmissibility of a police line-up identification x x x should not necessarily foreclose the admissibility of an independent in-court identification." We also stress that all the accused-appellants were positively identified by the prosecution eyewitnesses during the trial.

6. ID.; ID.; DEFENSE OF ALIBI; PHYSICAL IMPOSSIBILITY NEGATED BY APPELLANT'S OWN TESTIMONY; ALIBI LIKEWISE NEGATED BY POSITIVE IDENTIFICATION OF APPELLANT BY A CREDIBLE WITNESS.— In stark contrast with the prosecution's case is Rizaldy's weak and uncorroborated defense. He claimed he was in front of his house watching a billiard game in the early morning of September 19, 1995. On cross-examination, he retracted this statement and insisted that he slept at the house of the spouses Apuhin located on Cabahug Street on September 19, 1995. These inconsistencies impact on a basic component that the defense of alibi requires – that there be *physical impossibility* for the accused to be at the scene of the crime or its immediate vicinity at the time of its commission. If the appellant cannot be consistent about his whereabouts, then he cannot hope to prove the physical impossibility that the defense of alibi requires in

order to merit serious consideration. At any rate, the physical impossibility for the appellant to be at the scene of the crime on the date of its commission is negated by his own testimony that the Apuhin house is a mere two-minute walk from the city park. More importantly, the appellant was positively identified by Rudy. The settled rule in weighing contradictory statements is that alibi cannot prevail over the positive identification of the appellant by a credible witness, as in this case.

7. CRIMINAL LAW; ROBBERY WITH HOMICIDE; ROBBERY IS THE MAIN PURPOSE AND OBJECTIVE OF THE MALEFACTOR AND THE KILLING IS MERELY INCIDENTAL TO THE ROBBERY; THE INTENT TO ROB MUST PRECEDE THE TAKING OF HUMAN LIFE AND THE KILLING MAY OCCUR BEFORE DURING OR AFTER THE ROBBERY.— A special complex crime of robbery with homicide takes place when a homicide is committed either by reason, or on the occasion, of the robbery. To sustain a conviction for robbery with homicide, the prosecution must prove the following elements: (1) the taking of personal property belonging to another; (2) with intent to gain; (3) with the use of violence or intimidation against a person; and (4) on the occasion or by reason of the robbery, the crime of homicide, as used in its generic sense, was committed. A conviction requires certitude that the **robbery is the main purpose, and objective of the malefactor and the killing is merely incidental to the robbery.** The intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery.

8. ID.; ID.; APPELLANTS' PRIMARY INTENT REMAINS A MYSTERY; FACT THAT THEY WERE IN POSSESSION OF THE VICTIM'S BELT BAG AFTER THE KILLING DOES *IPSO FACTO* GIVE RISE TO THE CONCLUSION THAT THEIR OVERRIDING INTENTION WAS TO ROB THE VICTIM.— To sustain a conviction for the special complex crime of robbery with homicide, the prosecution must establish with certitude that the killing was a mere incident to the robbery, the latter being the perpetrators' main purpose and objective. It is not enough to suppose that the purpose of the author of the homicide was to rob; a mere presumption of such fact is not sufficient. In the case before us, the testimonies of Norman and Alicia merely established two (2) facts: that

the victim carried a belt bag containing money on that fateful morning of September 19, 1995; and the appellants were seen carrying the said belt bag walking near the victim's body. From these established facts, we hold that the prosecution failed to establish the linkage required by law between a robbery and a homicide to characterize the crime as the special complex crime of robbery with homicide; there was no showing of the appellants' intention – determined by their acts, prior to, contemporaneous with and subsequent to the commission of the crime – to commit robbery. There was likewise no testimony to show whether the appellants intended to kill the victim in order to steal the belt bag, or whether the killing was merely an afterthought. Thus, the appellants' primary intent remains a mystery. The fact that they were in possession of the victim's belt bag after the killing does not *ipso facto* give rise to the conclusion that their overriding intention was to rob the victim.

9. ID.; ID.; SINCE THE ORIGINAL CRIMINAL DESIGN TO COMMIT ROBBERY WAS NOT DULY PROVEN, ACCUSED-APPELLANT SHOULD BE HELD LIABLE FOR THE SEPARATE CRIMES OF HOMICIDE OR MURDER AND THEFT AND NOT FOR THE SPECIAL COMPLEX CRIME OF ROBBERY WITH HOMICIDE.— We have held in several cases that where the evidence satisfactorily establishes that the appellant did kill and unlawfully take the personal property of the victim, but the original criminal design to commit robbery was ***not duly proven*** – the accused-appellant should be held liable for the separate crimes of homicide or murder **(**as the case may be) and theft, and not for the special complex crime of robbery with homicide. This Court recognizes that the Information accused the appellants of the crime of "robbery with homicide." The established rule, however, is that the nature and character of the crime charged are determined, not by the given designation of the specific crime, but by the facts alleged in the Information. In this case, all the elements relevant to the killing and the taking of property were properly stated in the Information; only the statement of the specific crime committed – a conclusion of law – remained to be correctly made. This, we do in this Decision.

10. ID.; ID.; ID.; APPELLANT SHOULD BE HELD LIABLE ONLY FOR THE CRIME OF HOMICIDE IN THE ABSENCE OF ANY CIRCUMSTANCE WHICH WOULD

QUALIFY THE VICTIM'S KILLING TO MURDER.— The Information alleged the aggravating circumstance of treachery. However, we cannot appreciate this circumstance as the prosecution failed to show proof that the appellants made some preparation to kill the victim in a manner that would ensure the execution of the crime or make it impossible or difficult for the person attacked to defend himself. The Information likewise alleged the aggravating circumstance of evidence premeditation. For this aggravating circumstance to be appreciated, the following must be proven: 1) the time when the accused decided to commit the crime; 2) an overt act manifestly indicating that the accused clung to such determination; and 3) between the decision and the execution, a sufficient lapse of time that allowed for reflection on the consequences of the act contemplated. None of these elements have been established in the case before us. In the absence of any circumstance which would qualify the victim's killing to murder, we hold that the appellant should be held liable only for the crime of homicide.

11. ID.; ID.;PROPER PENALTIES.— The penalty for homicide under Article 249 of the Revised Penal Code is *reclusion temporal*. In the absence of any modifying circumstance proven by the prosecution or by the defense, the penalty shall be imposed in its medium period. Applying the *Indeterminate Sentence Law*, the appellant can be sentenced to an indeterminate penalty whose minimum shall be within the range of *prision mayor* (the penalty next lower in degree to that provided in Article 249) and whose maximum shall be within the range of *reclusion temporal* in its medium period. Article 309 of the Revised Penal Code provides the following penalties for the crime of theft: Art. 309. *Penalties.* — Any person guilty of theft shall be punished by: xxx 3. The penalty of *prision correccional* in its minimum and medium periods, if the value of the property stolen is more than 200 pesos but does not exceed 6,000 pesos. In the absence of any mitigating or aggravating circumstance, the maximum term of the indeterminate penalty, which is *prision correccional* in its minimum and medium periods, should be imposed in the medium period or one (1) year, eight (8) months and twenty-one (21) days, to two (2) years, eleven (11) months and ten (10) days. The minimum of the indeterminate penalty is anywhere within the range of the penalty next lower, or *arresto mayor*, in its medium

and maximum periods which is two (2) months and one (1) day to six (6) months.

12. ID.; ID.; CIVIL INDEMNITY FOR THE SEPARATE CRIMES OF HOMICIDE AND THEFT.— The award for *civil indemnity* is mandatory and is granted to the heirs of the victim without need of proof other than the commission of the crime. Pursuant to current jurisprudence, an award of ₱50,000.00 to the victim's heirs is in order. *Moral damages* are mandatory in cases of murder and homicide without need of allegation and proof other than the death of the victim. Consistent with this rule, we award the amount of ₱50,000.00 as moral damages in accordance with prevailing jurisprudence. We likewise award *loss of earning capacity* to the victim's heirs. As a rule, documentary evidence should be presented to substantiate a claim for loss of earning capacity. By way of exception, damages may be awarded despite the absence of documentary evidence, provided testimony exists that the victim was either (1) self-employed, earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that no documentary evidence is usually available in the victim's line of work; or (2) employed as a daily wage worker, earning less than the minimum wage under current labor laws. Given Alicia's testimony that her husband was a *tricycle driver earning ₱200.00 a day,* we hold that the heirs are entitled to an award representing the loss of the victim's earning capacity computed under the following formula: Net Earning Capacity = 2/3 *x* (80 less the age of the victim at the time of death) *x* (Gross Annual Income less the Reasonable and Necessary Living Expenses) The records show that Loreto's annual gross income was ₱72,000.00 per annum computed from his monthly rate of ₱6,000.00 (or ₱200.00 per day). His reasonable and necessary living expenses are estimated at 50% of this gross income, leaving a balance of ₱36,000.00. His life expectancy, on the other hand is assumed to be 2/3 of the age 80 less 62, his age at the time of death. Applying the formula yields the net earning capacity of ₱432,000.00. We can only award actual damages to the extent actually proven by evidence, *i.e.*, upon competent proof and the best evidence obtainable by the injured party. In this case, the prosecution failed to present any receipt to prove the claim for expenses incurred in relation with the victim's death. Nevertheless, we can award ₱25,000.00 as temperate damages pursuant to our ruling in *People v. Abrazaldo* that temperate damages of ₱25,000.00

may be awarded in place of actual damages, where the amount of actual damages for funeral expenses cannot be determined with certainty under the rules of evidence. The only evidence of the amount stolen from the victim is the belt bag that, according to Alicia contained ₱1,200.00, more or less. No valuation was ever made on the cost of the belt bag. While the victim also had a Seiko watch when he left home before he died, no proof exists that the appellants took the watch. Hence, we can only order the heirs indemnified to the extent of ₱1,200.00.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BRION, *J.*:

We review in this appeal the September 7, 2006 decision of the Court of Appeals[1] (*CA*) in CA-G.R. CEB-CR-HC No. 00239, affirming with modification the June 25, 2002 decision of the Regional Trial Court (*RTC*),[2] Branch 60, Cadiz City. The RTC decision found accused-appellants Samuel Algarme *y* Bonda (*Samuel*) and Rizaldy Gelle *y* Biscocho (*Rizaldy*) guilty of the crime of robbery with homicide, and sentenced them to suffer the death penalty.

ANTECEDENT FACTS

The prosecution charged the appellants before the RTC with the special complex crime of robbery with homicide under an Information that states:

That on or about 2:45 a.m. of September 19, 1995 at Cadiz City Park, Cadiz City, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused

[1] Penned by Associate Justice Agustin S. Dizon, and concurred in by Associate Justice Pampio A. Abarintos and Associate Justice Priscilla Baltazar-Padilla; *rollo*, pp. 3-9.

[2] Penned by Judge Renato D. Muñez; CA *rollo*, pp. 64-72.

conspiring, confederating and helping one another with evident premeditation and treachery and with intent to kill, did then and there, willfully, unlawfully and feloniously assault, attack and stab to death one Loreto Batarilan *y* Ladiona, a tricycle driver, in order to rob, steal, and take away a belt bag containing money and the wrist watch Seiko 5; and inflicting upon the person of Loreto Batarilan the following injuries, to wit:

Penetrating to perforating stab wounds:

*2 cm. at epigastric area
*1-2 cm. in the following areas of the back

= 11th rib scapular line, right
= 4 wounds at right scapular area
= 4 wounds at left scapular area
= 1wound at interscapular area, left
= 2 wounds infrascapular area, left

*1 wound supraclavicular area, left
*1 wound infra-suricular area, left

CAUSE OF DEATH: Cardio-pulmonary arrest due to hypovolemic shock secondary to Multiple Stab wounds, which directly caused the death of the said victim Loreto Batarilan, to the damage and prejudice of the heirs of the said victim in the amount, to wit:

₱50,000.00 – as indemnity for the death of the victim.

ACT CONTRARY TO LAW.[3]

The appellants pleaded not guilty to the charge. The prosecution presented the following witnesses in the trial on the merits that followed: Rudy Pepito (*Rudy*); Dr. Jimmily Aguiling (*Dr. Aguiling*); Norman Palma (*Norman*); Police Officer 3 Landolfo Acita (*PO3 Acita*); and Alicia Batarilan (*Alicia*). Rizaldy was the lone defense witness.

Rudy narrated that he slept at the Maricom Detachment Office located in Punta Cabahug, Cadiz City and rode a tricycle bound for Ceres Bus Terminal at around 2:45 a.m. of September 19, 1995 because his service vehicle broke down.[4] As the tricycle

[3] Records, pp. 1-2.

[4] TSN, November 27, 1995, p. 5.

passed by the Cadiz City Park, he saw a parked empty tricycle and an old man being stabbed by three (3) persons. Two (2) persons held the victim while the third one stabbed him. Rudy described the person who stabbed the victim to be "white and tall," while the other two (2) who held the victim were "short."[5]

He further narrated that the victim was stabbed several times in front and at the back and cried for help as he was being stabbed. The driver of the tricycle he was riding, apparently afraid, increased the vehicle's speed as they passed the stabbing scene. When they reached the Ceres Bus Terminal, he (Rudy) immediately boarded a bus bound for Sagay.[6] He returned to Cadiz on September 21, 1995 and told Cesar Ladiona (*Cesar*), a *barangay tanod*, that he saw a person being stabbed at the park in the morning of September 19. Cesar brought him to the Cadiz City Jail where he was asked whether he could recognize the assailants. He identified the person who stabbed the victim from among the prisoners in jail.[7]

He testified on cross-examination that the tricycle he was riding was "very near" the scene of the stabbing incident,[8] and that the park was very brightly lit that night.[9] He stated that he did not immediately report the stabbing incident upon arriving at the Ceres Bus Terminal because he was afraid and because the Ceres bus bound for Sagay was already leaving.[10] When he reported the stabbing incident to Cesar on September 21, 1995, Cesar asked him if he could identify the assailants. He replied that he could, but only through their faces. Cesar then brought him to the city jail[11] where the Chief of Police asked him to point out the persons responsible for the stabbing he reported. He recognized two (2) of the assailants from among the many

[5] *Id.*, pp. 4-6.

[6] *Id.*, pp. 7-8.

[7] *Id.*, pp. 8-10.

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

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

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

[11] *Id.*, pp. 25-26.

prisoners inside the jail. He recalled that the prisoners were not brought out of their cell when he was asked to identify the assailants.[12]

Dr. Aguiling, Medical Officer III at the Cadiz City Emergency Clinic, testified that he went to Cabahug Street near the City Hall in the morning of September 19, 1995 at the request of the police. At the place, he saw the body of an elderly male person sprawled on the ground, about 10 meters away from a parked empty tricycle.[13] He found that of the 12 wounds inflicted on the victim's body, four (4) were fatal. The wounds could have been caused by a bladed weapon.[14] According to Dr. Aguiling, the victim's cause of death was "cardio-pulmonary arrest due to hypovolemic shock secondary to multiple stab wounds."[15]

Norman, a tricycle driver residing in Cadiz City, narrated that he brought his passengers to Ester Pharmacy and *Villa* Consing, respectively, in the early morning of September 19, 1995; afterwards, he went to Cabahug Street and saw Melanie, the wife of a co-driver. Melanie asked him to look for her (Melanie's) husband. Melanie boarded his tricycle and requested to be brought to the Ester Pharmacy.[16] On the way there, he saw Loreto Batarilan (*Loreto*) driving his own tricycle and trailing his; he also saw three (3) persons walking towards the direction of the Emergency Clinic. He identified two of them as Rizaldy and "Stingray" both of whom he had known for a long time. He went back towards the direction of the City Hall after Melanie alighted at the Ester Pharmacy.[17] He saw Loreto's parked tricycle as he passed by the City Hall on Cabahug Street; he then saw Loreto's body full of blood lying on the street. He also saw Rizaldy, "Stingray," and a certain John Doe, about "two (2) extended arms length" away from the victim's body, walking

[12] *Id.*, pp. 28-31.

[13] TSN, February 6, 1996, pp. 4-7.

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

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

[16] TSN, June 6, 1996, pp. 4-5.

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

towards the park carrying a belt bag.[18] He recalled that there were no other persons in the park during that time. He went to the police headquarters to report the incident, but the headquarters was closed. He then went to the Ester Pharmacy and requested the security guard to call the police.[19]

PO3 Acita, Duty Investigator at the Cadiz City Police Station, testified that at around 3:00 a.m. of September 19, 1995, the desk officer received a telephone call informing the police about a dead person found near the City Hall. Together with five (5) members of the Cadiz Police, he immediately went to Cabahug Street to verify the report. At the reported place, he saw the body of a person lying on the ground, full of blood. He likewise saw a tricycle parked near the City Park along Cabahug Street. He inspected the tricycle and saw blood stains on the driver's seat. Thereafter, he and the other members of the police requested Dr. Aguiling and a photographer to come to the crime scene.[20]

Alicia, the victim's wife, declared on the witness stand that her husband was a tricycle driver; that her husband wore a Seiko watch when he left to ply his route in the early morning of September 19, 1995. He also carried a belt bag containing ₱1,200.00 plus loose change; the money was intended for the purchase of spare parts for the tricycle.[21] She further narrated that she only learned of the death of her husband from her daughter in the morning of September 19, 1995. Only her children went to the crime scene. She added that her husband earned ₱200.00 a day.[22]

The defense presented appellant Rizaldy who gave a different version of events.

Rizaldy testified that he did not know his co-accused, Samuel, prior to their arrest on September 21, 1995. At around 2:45 a.m.

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

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

[20] TSN, August 27, 1996, pp. 4-6.

[21] *Id.*, pp. 16-18.

[22] *Id.*, pp. 18-20.

of September 19, 1995, he was watching a billiard game in front of his house on Mabini Street, Cadiz City.[23] Police Officer Boy Cañedo (*PO Cañedo*) arrested him at around 9:00 a.m. of September 21, 1995. He was brought to the police station where PO Cañedo showed him a shirt and a black shorts, and asked whether he owned them. When he answered in the negative, PO Cañedo told him to go home. Thereafter, he was surprised to receive a notice from the prosecutor's office informing him that he was one of the accused in the killing of Loreto. He and Samuel were brought to the City Prosecutor's Office where they were asked to secure the services of a lawyer and to file their counter-affidavits within 10 days. A certain Atty. Del Pilar came to him and advised him not to make a counter-affidavit.[24] He insisted that he had slept in the house of the spouses Mercedes and Manuel Apuhin (*spouses Apuhin*) in the morning of September 19, 1995, and that Mercedes told him at around 7 a.m. that an old man had been killed in the park.[25]

He admitted on cross-examination that Norman identified him at the police headquarters as one of the persons who had robbed and killed the victim.[26] He stated that he had been staying since 1994 at the house of the spouses Apuhin as a household helper. He likewise stated that the Apuhin house was a two-minute walk from the Cadiz City Park.[27]

The RTC convicted appellants Samuel and Rizaldy of the special complex crime of robbery with homicide in its decision of June 25, 2002, as follows:

> WHEREFORE, in view of all the foregoing, this Court finds accused Samuel Algarme *y* Bonda and Rizaldy Gelle *y* Biscocho (all detained) GUILTY beyond reasonable doubt of the crime of Robbery with Homicide as charged in the Information and there being an aggravating circumstance of treachery attendant thereto without

[23] TSN, October 12, 1999, p. 2.

[24] *Id.*, pp. 3-4.

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

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

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

any mitigating circumstance to offset the same, hereby sentences the accused to the penalty of DEATH.

The two accused are all hereby ordered immediately committed to the National Penitentiary for the execution of their sentence, and the Clerk of Court of this Court is hereby directed to immediately forward the entire records of this case to the Supreme Court for automatic review.

The two accused are further ordered to jointly and solidarily pay the heirs of the victim the amount of FIFTY THOUSAND PESOS (₱50,000.00) by way of indemnity for the death of LORETO BATARILAN, together with the amount of THREE THOUSAND PESOS (₱3,000.00) representing the cash amount and the value of the wrist watch of the victim by way of reparation, and the amount of THREE HUNDRED SEVENTY-FOUR THOUSAND FOUR HUNDRED PESOS (₱374,400.00) by way of the loss of the earning capacity of the victim, Loreto Batarilan, plus the amount of FIFTY THOUSAND PESOS (₱50,000.00) as moral damages, and the further amount of TWENTY THOUSAND PESOS (₱20,000.00) as exemplary damages. The award for the loss of earning capacity together with the moral and exemplary damages for which docket fees and legal fees, the Clerk of Court of this Court is hereby directed to charge as liens on the award of damages the said docket and other legal fees.

The case against *alias* "Stingray" who is still at-large is hereby ordered ARCHIVED to be immediately revived upon his arrest.

Costs against accused Samuel Algarme and Rizaldy Gelle.

SO ORDERED.[28]

The RTC, after receiving an information that one of the appellants had escaped confinement and subsequently been killed in a shoot-out with the police, issued an Order directing the counsels for both the prosecution and defense, as well as the BJMP Warden and Chief of Police of PNP Cadiz City, to submit a report on the incident.[29] They reported and confirmed that Samuel had indeed been killed on February 29, 1996 in a police shoot-out. Based on this confirmed development, the trial court issued an Order dated October 17, 2002 modifying the dispositive

[28] CA *rollo*, pp. 64-72.

[29] Records, p. 141.

portion of its June 25, 2002 decision and dismissing the case against Samuel.[30]

On appeal, we endorsed this case to the CA for appropriate action and disposition[31] pursuant to our ruling in *People v. Mateo*.[32] The CA, in its decision of September 7, 2006, affirmed the RTC decision with the modification that the death penalty imposed on Rizaldy be reduced to *reclusion perpetua*.

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

1. **in giving credence to the positive identification by the two (2) prosecution witnesses pointing to him as the perpetrator of the crime charged;**
2. **in finding that a conspiracy existed between him and his co-accused Samuel;**
3. **in imposing the death penalty even if treachery had not been proven; and**
4. **in convicting him of the crime charged even if its elements had not been proven beyond reasonable doubt.**

THE COURT'S RULING

We resolve to *deny* the appellant's appeal as his guilt has been proven beyond reasonable doubt, but we modify the lower courts' decision with respect to the crime committed, the penalty imposed, and the awarded indemnities.

Sufficiency of the Prosecution Evidence

An established rule in appellate review is that the trial court's factual findings – including its assessment of the credibility of the witnesses, the probative weight of their testimonies, and the conclusions drawn from the factual findings – are accorded great respect and even conclusive effect. In our review of cases,

[30] *Id.*, p. 150.

[31] Per our Resolution dated January 11, 2005.

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

[33] CA *rollo*, pp. 41-62.

these factual findings and conclusions assume greater weight if they are affirmed by the CA. Despite this enhanced persuasive effect, we nevertheless fully scrutinize the records (as we did in this case), since the penalty of *reclusion perpetua* that the CA imposed on the appellant demands no less than this kind of careful and deliberate consideration.[34]

A distinguishing feature of the present case is the presence of a witness – Rudy – who, in his November 27, 1995 testimony, positively identified the appellants as the perpetrators. To directly quote from the records:

PROSECUTOR FRANCES V. GUANZON

Q: So when you were on board the tricycle and you were passing the City Park, has [*sic*] there any unusual incident that transpired?

RUDY PEPITO

A: I saw a tricycle.

Q: Aside from the tricycle, **what other things did you see?**

A: **An old man was stabbed.**

xxx xxx xxx

Q: You said that an old man was stabbed? **Did you see the person who stabbed the old man?**

A: **I saw.**

Q: How many persons stabbed the old man?

A: **Three persons.**

Q: How was the old man stabbed by these three (3) persons?

A: **The old man was held by two persons while the other one stabbed him.**

Q: Can you describe the person, the one who actually stabbed the victim?

A: Yes, ma'am.

[34] *People v. Ballesteros*, G.R. No. 172696, August 11, 2008 citing *People v. Garalde*, G.R. No. 173055, April 13, 2007, 521 SCRA 327, 340.

Q: How does he look?

A: He was the one who stabbed the old man. He was white and tall.

Q: You said there were two persons who held the person while this white tall person stabbed the old man. Can you describe the person who held the old man, their appearance, their height, if you can recall?

A: The two persons were short.

xxx xxx xxx

Q: When you arrived on September 21, 1995 from Sagay to Cadiz, was there anything that transpired?

A: When I arrived, I told Cesar that somebody was stabbed at the park.

Q: Who is this Cesar?

A: A Barangay Tanod.

Q: So, when you told him about what you saw on September 19, 1995, what did this Cesar, who is a *barangay tanod*, do?

A: Cesar brought me to the Jail and asked me to identify the person.

Q: So, in other words, you were brought by *barangay tanod* Cesar to the Cadiz City Jail to look at the persons who were inside the jail, is that what you mean?

A: Yes.

Q: So, at the City Jail, were you able to identify the person who stabbed Loreto Batarilan on the evening of September 19, 1995?

A: Yes, ma'm.

Q: How many were they did you see inside the Cadiz City Jail? [*sic*]

A: Three persons.

Q: **When you said that there were three and the one who actually stabbed was tall and white? If they are present in Court, can you identify him?** [*sic*]

A: Yes, ma'am.

Q: **Please look around and point to the person who you described as tall and white?**

A: **(Witness pointing to a person inside the courtroom who when asked answer** *[sic]* **to the name Samuel Algarme)**

Q: **You mentioned also that out of these two other persons who are short held the old man while he was being stabbed by a white man.** [*sic*] **If one of these short men who held Loreto Batarilan on September 19, 1995 is present in this courtroom, can you identify him?**

A: Yes, ma'am.

Q: **Please look around and point to one of these two persons who held Loreto Batarilan on the evening of September 19, 1995 while he was stabbed by Samuel Algarme?**

A: **(Witness pointing to a person sitting inside the Courtroom who when asked answered to the name Rizaldy Gelle)**

Q: You said that there were three? What about the other persons who held Loreto Batarilan when he was stabbed by Samuel Algarme, if he is present in court, can you identify him?

A; Yes, ma'am.

Q: Is he present in Court today?

A: He is not here, ma'am.[35] [*Emphasis ours*]

Rudy's testimony was clear and straightforward; he never wavered in pointing to the appellants as the persons who held and stabbed Loreto in the morning of September 19, 1995. Significantly, the testimony of another prosecution witness – Norman – supported Rudy's story with respect to the ***presence*** of the appellants at the crime scene. Although Norman did not say anything categorical about the actual stabbing, he saw the

[35] TSN, November 27, 1995, pp. 4-12.

appellants – whom he had known for a long time – in the same vicinity as the victim *before the stabbing* and *after the stabbing* walking near the victim's lifeless body and carrying the latter's belt bag.

These testimonies, when considered together, lead to no conclusion other than the appellants' direct participation in the stabbing that led to the victim's death. To reiterate, the appellants and the victim were in the same vicinity before the stabbing; soon after, the appellants were seen holding and stabbing the victim; immediately thereafter, they were also seen walking away, carrying the victim's bag. In considering these testimonies, we find it very significant that the defense failed to refute the testimonies of Rudy and Norman through evidence showing motive that could lead them to falsely testify against the appellants. In the absence of such evidence, we can conclude that their testimonies are worthy of full faith and credit.[36]

Admissibility of Identification

Rizaldy challenges the reliability and integrity of the positive identification Rudy made. He claims that his "in-court identification was facilitated by a highly suggestive and irregular out-of-court identification process." He harps on the fact that the out-of-court identification was not made in a police line up but in a mere show-up.

We find this challenge to be baseless as we fail to see any flaw that would invalidate Rudy's out-of-court identification of the appellants. We see no basis, too, to support the conclusion that the in-court identification – an identification made independently of the out-of court identification – is itself tainted with invalidity.[37]

In *People v. Teehankee, Jr.*,[38] we explained the procedure for out-of-court identification and the test to determine its admissibility:

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[36] See *People v. Laurente*, G.R. No. 116734, March 29, 1996, 255 SCRA 543.

[37] *People v. Navales*, G.R. No. 135230, August 8, 2000, 337 SCRA 436.

[38] G.R. Nos. 111206-08, October 6, 1995, 249 SCRA 54.

Out-of-court identification is conducted by the police in various ways. It is done thru *show-ups* where the suspect alone is brought face-to-face with the witness for identification. It is done thru *mug shots* where photographs are shown to the witness to identify the suspect. It is also done thru *line-ups* where a witness identifies the suspect from a group of persons lined up for the purpose x x x In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the ***totality of circumstances test*** where they consider the following factors, *viz*: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description, given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure.

Applying the totality-of-circumstances test, we find Rudy's out-of-court identification to be reliable and thus admissible. ***First***, Rudy testified that the tricycle he was riding passed "very near" the place where the victim was stabbed, and that the park at that time was "very bright." ***Second***, Rudy was simply riding a tricycle when the stabbing, a very startling incident, happened; no competing incident took place to draw his attention away from the incident; and the event, being startling, consumed his full attention and gave him the chance to see clearly the features of the person stabbed, the manner he was stabbed, and the appearance of the assailants. ***Third***, he stated with certainty that he could identify the assailants' faces when he reported the incident to *barangay tanod* Cesar. ***Fourth***, the identification took place within two (2) days from the stabbing incident; he explained fully why it took him two days to come forward and report the stabbing. ***Finally***, there was nothing "suggestive" or irregular about Rudy's out-of-court identification of the appellants; it was not even a *show-up* – as Rizaldy suggests where the suspects, tagged as the persons to be identified, are brought face-to-face with the witness for confirmation of identification. When Rudy arrived at the police station, he was asked to point to the assailants from among the ***many*** prisoners inside the cell; he was not compelled to focus his attention on any specific person or persons. There was also no evidence that the police

had supplied or even suggested to Rudy that the appellants were the suspected perpetrators. Thus, Rudy's identification was spontaneous, independent, and untainted by any improper suggestion.

We do not agree that an identification is unreliable simply because it was not conducted in a police line up. No law or police regulation requires a police line up for proper identification in every case. There can still be a proper and reliable identification even in the absence of a line up, for as long as the identification is unaffected by prior or contemporaneous improper suggestions that point out the suspect to the witness as the perpetrator to be identified.[39]

Granting *arguendo* that the out-of-court identification was irregular as the appellants claim, this identification did not foreclose the admissibility of Rudy's ***independent*** in-court identification.[40] It must be stressed that in convicting the appellants for the crime charged, the courts *a quo* did not rely solely on Rudy's identification at the city jail or on an in-court identification *based on the city jail identification*. Rudy's November 27, 1995 court testimony clearly shows that he positively identified Samuel and Rizaldy independently of the previous identification he made at the city jail. His testimony, including his identification of the appellants, was positive, straightforward, and categorical. In *People v. Timon*[41] where the appellants likewise questioned the reliability of their in-court identification *vis-à-vis* their out-of-court identification, this Court ruled:

> Even assuming *arguendo* the appellants' out-of-court identification was defective, their subsequent identification in court cured any flaw that may have initially attended it. We emphasize that the "inadmissibility of a police line-up identification x x x should not necessarily foreclose the admissibility of an independent in-court

[39] See *People v. Escote, Jr.*, G.R. No. 140756, April 4, 2003, 400 SCRA 603.

[40] See *People v. Almanzor*, G.R. No. 124916, July 11, 2002, 384 SCRA 311.

[41] G.R. Nos. 97841-42, November 12, 1997, 281 SCRA 577.

identification." We also stress that all the accused-appellants were positively identified by the prosecution eyewitnesses during the trial.[42]

The Appellant's Alibi

In stark contrast with the prosecution's case is Rizaldy's weak and uncorroborated defense.

He claimed he was in front of his house watching a billiard game in the early morning of September 19, 1995. On cross-examination, he retracted this statement and insisted that he slept at the house of the spouses Apuhin located on Cabahug Street on September 19, 1995.

These inconsistencies impact on a basic component that the defense of alibi requires – that there be *physical impossibility* for the accused to be at the scene of the crime or its immediate vicinity at the time of its commission. If the appellant cannot be consistent about his whereabouts, then he cannot hope to prove the physical impossibility that the defense of alibi requires in order to merit serious consideration.

At any rate, the physical impossibility for the appellant to be at the scene of the crime on the date of its commission is negated by his own testimony that the Apuhin house is a mere two-minute walk from the city park. More importantly, the appellant was positively identified by Rudy. The settled rule in weighing contradictory statements is that alibi cannot prevail over the positive identification of the appellant by a credible witness, as in this case.[43]

The Crime Committed

Article 294, paragraph 1 of the Revised Penal Code provides:

Art. 294. *Robbery with violence against or intimidation of persons – Penalties.*— Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

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[42] *Id.*, p. 592.

[43] *People v. Navales*, *supra* note 37.

1. The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

A special complex crime of robbery with homicide takes place when a homicide is committed either by reason, or on the occasion, of the robbery.[44] To sustain a conviction for robbery with homicide, the prosecution must prove the following elements: (1) the taking of personal property belonging to another; (2) with intent to gain; (3) with the use of violence or intimidation against a person; and (4) on the occasion or by reason of the robbery, the crime of homicide, as used in its generic sense, was committed.[45] A conviction requires certitude that the **robbery is the main purpose, and objective of the malefactor and the killing is merely incidental to the robbery.**[46] The intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery.[47]

In *People v. Salazar,*[48] this Court expounded on the concept of robbery with homicide under Article 294(1) of the Revised Penal Code, thus:

The Spanish version of Article 294 (1) of the Revised Penal Code reads: "1.0—*Con la pena de reclusion perpetua a muerte, cuando con motivo o con ocasion del robo resultare homicidio*." Chief Justice Ramon C. Aquino explains that the use of the words "*con motivo…del robo*" permits of no interpretation other than that the intent of the actor must supply the connection between the homicide and the robbery in order to constitute the complex offense. If that intent comprehends the robbery, it is immaterial that the homicide may in point of time immediately precede instead of follow the

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[44] *People v. Mendoza*, G.R. No. 115809, January 23, 1998, 284 SCRA 705.

[45] *People v. Barreta*, G.R. No. 120367, October 16, 2000, 343 SCRA 199.

[46] *People v. Daniela*, G.R. No. 139230, April 24, 2003, 401 SCRA 519, 534.

[47] *People v. Escote, Jr., supra* note 39, p. 630.

[48] G.R. No. 99355, August 11, 1997, 227 SCRA 67.

robbery. Where the original design comprehends robbery, and homicide is perpetrated by reason or on the occasion of the consummation of the former, the crime committed is the special complex offense, even if homicide precedes the robbery by an appreciable interval of time. On the other hand, **if the original criminal design does not clearly comprehend robbery, but robbery follows the homicide as an afterthought or as a minor incident of the homicide, the criminal acts should be viewed as constitutive of two offenses and not of a single complex offense. Robbery with homicide arises only when there is a direct relation, an intimate connection, between the robbery and the killing, even if the killing is prior to, concurrent with, or subsequent to the robbery.** [*Emphasis ours*]

In the case before us, the RTC convicted the appellants of robbery with homicide based on the testimonies of Rudy, Alicia, and Norman. The CA affirmed this finding without any explanation on how the crime came to be the special complex crime of robbery with homicide. To be sure, Rudy's testimony clinched the case against the appellants with respect to the victim's stabbing and resulting death. The lower courts apparently deduced the intent to rob from the testimonies of Alicia and Norman.

Alicia, in her testimony of August 27, 1996, testified that her husband had a belt bag containing ₱1,200.00, more or less, and wore a Seiko watch when he left to ply his route in the early morning of September 19, 1995. To directly quote from the records:

PROSECUTOR FRANCES V. GUANZON

Q: So on September 19, 1995 at about 12:00 midnight he was still alive, did he not go out to drive a tricycle at that time?

ALICIA BATARILAN:

A: Yes, ma'am. He went out to drive his tricycle.

xxx xxx xxx

Q: When he left your house was he carrying anything or did he have anything in his possession?

A: He was [*sic*] with him a belt bag and a watch.

Q: What was the content of the belt bag if you know?

A: His money.

Q: Did you know how much his money was?

A: ₱1,200.00 and loose change.

Q: Why do you know that he had with him ₱1,200.00 and loose change at that time.

A: He had with him ₱1,200.00 because he was intending to buy spare parts of the tricycle.[49]

Norman, in his testimony dated June 6, 1996, testified that he saw the appellants, together with a John Doe, carrying a belt bag and walking away from the victim's body. We quote the pertinent portions of his testimony:

PROSECUTOR FRANCES V. GUANZON

Q: While you were at Cabahug Street somewhere at the City Park, was there anything that you had noticed?

NORMAN PALMA

A: Yes ma'am.

Q: What was that?

A: I saw the tricycle of the old man without anybody on it.

Q: Who is this old man you are referring to?

A: I am referring to Loreto Batarilan.

Q: Where was the tricycle located?

A: Beside the City Park near the globe.

Q: And then what other things did you see?

A: I saw the old man lying down with blood.

Q: And where was the old man situated?

A: Beside the City Hall.

Q: And what else did you see?

[49] TSN, August 27, 1996, pp. 17-18.

A: **I saw the three (3) persons walking towards the park with belt bag.**

Q: And who were these (3) persons you saw going towards the park carrying a belt bag?

A: Stingray.

Q: Who else?

A: **Gelle.**

Q: And you said there were three, who was the other one?

A: I do not know his name but I can recognize his face.

Q: What was the distance of these three persons when you saw them from the body of the old man you said?

A: Maybe about two (2) extended arms length away.

Q: Were there other persons walking also towards the park at that time aside from these three (3) persons?

A: No more.

xxx xxx xxx

Q: You mentioned that you saw three (3) persons and you mentioned Stingray. If this Stingray is present in Court, can you identify him?

A: Yes, ma'am.

Q: Please look around and point to Stingray?

A: He is not around.

Q: You said the other one is named Rizaldy Gelle. Is he present in Court?

A: Yes, ma'am.

Q: Please look around and point to Rizaldy Gelle.

COURT:

Witness pointing to a person sitting inside the courtroom who when asked answered to the name of Rizaldy Gelle. x x x[50] [*Emphasis ours*]

[50] TSN, June 6, 1996, pp. 7-10.

Based on these testimonies, the RTC concluded that the appellants' primary criminal intent was to rob the victim. Thus it held:

> Likewise, witness Alicia Batarilan also testified that her husband, the victim herein, went out from their houses for his usual schedule of driving, the victim had with him a belt bag containing the amount of One Thousand Two Hundred Pesos (₱1,200.00) plus loose change and the victim was wearing a wrist watch valued at One Thousand Eight Hundred Pesos (₱1,800.00), and this fact was proven by the prosecution that a robbery took place before the killing of the victim considering that after the incident the belt bag containing cash and the wrist watch of the victim was seen being worn by one of the three persons who perpetrated the crime, since as testified to by witness Norman Palma that when he saw the three persons walking towards the park with a belt bag, no other persons were seen in the vicinity of the crime immediately before or after the commission of the crime, thus it is logical to conclude that the three persons indeed perpetrated the robbery and the killing of the victim x x x

To sustain a conviction for the special complex crime of robbery with homicide, the prosecution must establish with certitude that the killing was a mere incident to the robbery, the latter being the perpetrators' main purpose and objective.[51] It is not enough to suppose that the purpose of the author of the homicide was to rob; a mere presumption of such fact is not sufficient.

In the case before us, the testimonies of Norman and Alicia merely established two (2) facts: that the victim carried a belt bag containing money on that fateful morning of September 19, 1995; and the appellants were seen carrying the said belt bag walking near the victim's body. From these established facts, we hold that the prosecution failed to establish the linkage required by law between a robbery and a homicide to characterize the crime as the special complex crime of robbery with homicide; there was no showing of the appellants' intention – determined by their acts, prior to, contemporaneous with and subsequent to the commission of the crime – to commit robbery. There

[51] See *People v. Lara*, G.R. No. 171449, October 23, 2006, 505 SCRA 137; *People v. Concepcion*, G.R. No. 131477, April 20, 2001, 357 SCRA 168; *People v. Robante*, G.R. No. 69307, October 16, 1989, 178 SCRA 552.

was likewise no testimony to show whether the appellants intended to kill the victim in order to steal the belt bag, or whether the killing was merely an afterthought. Thus, the appellants' primary intent remains a mystery. The fact that they were in possession of the victim's belt bag after the killing does not *ipso facto* give rise to the conclusion that their overriding intention was to rob the victim.

We have held in several cases[52] that where the evidence satisfactorily establishes that the appellant did kill and unlawfully take the personal property of the victim, but the original criminal design to commit robbery was ***not duly proven*** – the accused-appellant should be held liable for the separate crimes of homicide or murder **(**as the case may be) and theft, and not for the special complex crime of robbery with homicide.

This Court recognizes that the Information accused the appellants of the crime of "robbery with homicide." The established rule, however, is that the nature and character of the crime charged are determined, not by the given designation of the specific crime, but by the facts alleged in the Information.[53] In this case, all the elements relevant to the killing and the taking of property were properly stated in the Information; only the statement of the specific crime committed – a conclusion of law – remained to be correctly made. This, we do in this Decision.

***Homicide or Murder*?**

The Information alleged the aggravating circumstance of treachery. However, we cannot appreciate this circumstance as the prosecution failed to show proof that the appellants made some preparation to kill the victim in a manner that would ensure the execution of the crime or make it impossible or difficult for the person attacked to defend himself.[54]

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[52] *People v. Concepcion,* G.R. No. 131477, April 20, 2001, 357 SCRA 168; *People v. Sanchez*, G.R. No. 120655, October 14, 1998, 298 SCRA 48; *People v. Salazar, supra* note 48.

[53] *People v. Salazar, id.*

[54] *People v. Ilo*, G.R. No. 140731, November 21, 2002, 392 SCRA 326.

The Information likewise alleged the aggravating circumstance of evidence premeditation. For this aggravating circumstance to be appreciated, the following must be proven: 1) the time when the accused decided to commit the crime; 2) an overt act manifestly indicating that the accused clung to such determination; and 3) between the decision and the execution, a sufficient lapse of time that allowed for reflection on the consequences of the act contemplated.[55] None of these elements have been established in the case before us.

In the absence of any circumstance which would qualify the victim's killing to murder, we hold that the appellant should be held liable only for the crime of homicide.

The Proper Penalties

The penalty for homicide under Article 249 of the Revised Penal Code is *reclusion temporal.* In the absence of any modifying circumstance proven by the prosecution or by the defense, the penalty shall be imposed in its medium period. Applying the *Indeterminate Sentence Law*, the appellant can be sentenced to an indeterminate penalty whose minimum shall be within the range of *prision mayor* (the penalty next lower in degree to that provided in Article 249) and whose maximum shall be within the range of *reclusion temporal* in its medium period.

Article 309 of the Revised Penal Code provides the following penalties for the crime of theft:

> Art. 309. *Penalties.* — Any person guilty of theft shall be punished by:
>
> xxx xxx xxx
>
> 3. The penalty of *prision correccional* in its minimum and medium periods, if the value of the property stolen is more than 200 pesos but does not exceed 6,000 pesos.

In the absence of any mitigating or aggravating circumstance, the maximum term of the indeterminate penalty, which is *prision*

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[55] *People v. Catbagan*, G.R. Nos. 149430-32, February 23, 2004, 423 SCRA 535.

correccional in its minimum and medium periods, should be imposed in the medium period or one (1) year, eight (8) months and twenty-one (21) days, to two (2) years, eleven (11) months and ten (10) days. The minimum of the indeterminate penalty is anywhere within the range of the penalty next lower, or *arresto mayor*, in its medium and maximum periods which is two (2) months and one (1) day to six (6) months.

Civil Indemnity

a. Homicide

The award for *civil indemnity* is mandatory and is granted to the heirs of the victim without need of proof other than the commission of the crime.[56] Pursuant to current jurisprudence,[57] an award of ₱50,000.00 to the victim's heirs is in order.

Moral damages are mandatory in cases of murder and homicide without need of allegation and proof other than the death of the victim. Consistent with this rule, we award the amount of ₱50,000.00 as moral damages in accordance with prevailing jurisprudence.[58]

We likewise award *loss of earning capacity* to the victim's heirs. As a rule, documentary evidence should be presented to substantiate a claim for loss of earning capacity. By way of exception, damages may be awarded despite the absence of documentary evidence, provided testimony exists that the victim was either (1) self-employed, earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that no documentary evidence is usually available in the victim's line of work; or (2) employed as a daily wage worker, earning less than the minimum wage under current labor laws.[59] Given Alicia's testimony that her husband was a *tricycle*

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[56] *People v. Villa, Jr.*, G.R. No. 179278, March 28, 2008, 550 SCRA 480.

[57] *People v. Tabuelog*, G.R. No. 178059, January 22, 2008, 542 SCRA 301.

[58] *People v. Eling*, G.R. No. 178546, April 30, 2008.

[59] *People v. Agudez*, G.R. Nos. 138386-87, May 20, 2004, 428 SCRA 692.

driver earning ₱200.00 a day, we hold that the heirs are entitled to an award representing the loss of the victim's earning capacity computed under the following formula:

Net Earning Capacity = 2/3 *x* (80 less the age of the victim at the time of death) *x* (Gross Annual Income less the Reasonable and Necessary Living Expenses)

The records show that Loreto's annual gross income was ₱72,000.00 per annum computed from his monthly rate of ₱6,000.00 (or ₱200.00 per day). His reasonable and necessary living expenses are estimated at 50% of this gross income, leaving a balance of ₱36,000.00. His life expectancy, on the other hand is assumed to be 2/3 of the age 80 less 62, his age at the time of death. Applying the formula yields the net earning capacity of ₱432,000.00.

We can only award actual damages to the extent actually proven by evidence, *i.e.*, upon competent proof and the best evidence obtainable by the injured party. In this case, the prosecution failed to present any receipt to prove the claim for expenses incurred in relation with the victim's death. Nevertheless, we can award ₱25,000.00 as temperate damages pursuant to our ruling in *People v. Abrazaldo*[60] that temperate damages of ₱25,000.00 may be awarded in place of actual damages, where the amount of actual damages for funeral expenses cannot be determined with certainty under the rules of evidence.

b. Theft

The only evidence of the amount stolen from the victim is the belt bag that, according to Alicia contained ₱1,200.00, more or less. No valuation was ever made on the cost of the belt bag. While the victim also had a Seiko watch when he left home before he died, no proof exists that the appellants took the watch. Hence, we can only order the heirs indemnified to the extent of ₱1,200.00.

[60] G.R. No. 124392, February 7, 2003, 397 SCRA 137.

WHEREFORE, in view of these considerations, the Decision of the Court of Appeals in CA-G.R. CEB-CR-HC No. 00239 is *MODIFIED* as follows:

(1) Appellant Rizaldy Gelle is found *GUILTY* of the separate crimes of homicide and theft.

(2) For the crime of homicide, the appellant is *SENTENCED* to suffer the indeterminate penalty of imprisonment of twelve (12) years of *prision mayor*, as minimum**,** to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum; he is likewise *ORDERED* to *PAY* the victim's heirs the following amounts: (a) ₱50,000.00 as civil indemnity; (b) ₱50,000.00 as moral damages; (c) ₱25,000.00 as temperate damages; and (d) ₱432,000.00 as indemnity for loss of earning capacity.

(3) For the crime of theft, the appellant is *SENTENCED* to suffer the indeterminate penalty of imprisonment of six (6) months of *arresto mayor*, as minimum, to two (2) years, eleven (11) months and ten (10) days of *prision correccional*, as maximum; he is likewise *ORDERED* to *PAY* the victim's heirs the amount of ₱1,200.00 representing the value of the money stolen.

Costs against appellant Rizaldy Gelle *y* Biscocho.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 178913. February 12, 2009]

MANILA ELECTRIC COMPANY, *petitioner, vs.* **HSING NAN TANNERY PHILS., INC.,** *respondent*.

SYLLABUS

1. MERCANTILE LAW; PUBLIC UTILITIES; REPUBLIC ACT NO. 7832 (ANTI-PILFERAGE OF ELECTRICITY AND THEFT OF ELECTRIC TRANSMISSION LINES/ MATERIALS ACT OF 1994); REQUIREMENT THAT BEFORE IMMEDIATE DISCONNECTION MAY BE ALLOWED, THE DISCOVERY OF THE ILLEGAL USE OF ELECTRICITY MUST HAVE BEEN PERSONALLY WITNESSED AND ATTESTED TO BY AN OFFICER OF THE LAW OR BY AN AUTHORIZED ENERGY REGULATORY BOARD (ERB) REPRESENTATIVE WAS NOT COMPLIED WITH IN CASE AT BAR.—It is clear that for an allegation of tampering to be the basis for the disconnection of a customer's electric supply, the discovery of such must be personally witnessed and attested to by an officer of the law *or* an ERB representative. This requirement can not be dispensed with. *Quisumbing v. Manila Electric Company* so instructs: **The law says that *before* immediate disconnection may be allowed, the discovery of the illegal use of electricity must have been personally witnessed and attested to by an officer of the law or by an authorized ERB representative**. In this case, the disconnection was effected immediately after the discovery of the alleged meter tampering, which was witnessed only by Meralco's employees. **That the ERB representative was allegedly present when the meter was examined in the Meralco laboratory will not cure the defect.** xxx The presence of government agents who may authorize immediate disconnections go into the essence of due process. Indeed, we cannot allow respondent to act virtually as prosecutor and judge in imposing the penalty of disconnection due to alleged meter tampering. That would not sit well in a democratic country. After all, Meralco is a monopoly that derives its power from the government. Clothing

it with unilateral authority to disconnect would be equivalent to giving it a license to tyrannize its hapless customers. In the present case, it is admitted that no police officer or ERB representative was present during the inspection, removal and subsequent replacement of the electric meters alleged to have been tampered with, hence, the requirement of the law was not complied with — a lapse fatal to MERALCO's cause.

2. ID.; ID.; ID.; ALLEGATIONS OF METER TAMPERING ARE UNSUBSTANTIATED AND TO GRANT PETITIONER'S CLAIMS DESPITE THE INSUFFICIENCY OF PROOF IS ANATHEMA TO EQUITY AND JUSTICE.—MERALCO's argument that Section 4 of Republic Act No. 7832 applies only to criminal proceedings does not lie. Under said provision, which was earlier quoted, the investigation by the prosecutor, as well as the subsequent filing of the appropriate information if warranted, is only one of the courses of action to be taken once any of the therein enumerated circumstances establishing a *prima facie* case for illegal use of electricity is discovered. Compounding MERALCO's *faux pas* was its failure to present the allegedly tampered meters. By such failure, the allegations of meter tampering are unsubstantiated. To grant MERALCO's claims, insufficient proof thereof notwithstanding, is anathema to equity and justice. xxx To be sure, in enacting Republic Act No. 7832 and Republic Act No. 9136, the legislature did not intend to relax the rules in deciding cases of tampered electric meters. In no way can this Court grant a favorable judgment to the petitioner solely because of the benefit that the public will gain. **To do so would result in unjust enrichment at the expense of the consumer accused of committing acts of tampering. Courts cannot and will not in any way blindly grant a public utility's claim for differential billing if there is no sufficient evidence to prove such entitlement.**

APPEARANCES OF COUNSEL

Horatio Enrico Bona Jose Reny Albarico and Rommel M. Gorospe for petitioner.

Adriano S. Javier, Sr. for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

On October 8, 1999, employees of the Manila Electric Co. (MERALCO) conducted an inspection of the electric meters bearing serial numbers 91SA12293 and 91GDQ1476 installed in the office premises of Hsing Nan Tannery Phils., Inc. (respondent). The inspection was witnessed by respondent's representative. The MERALCO employees found that the active and reactive meters bore fake cover seals showing tampering, hence, the employees removed and replaced the meters with new ones and brought the replaced meters to the laboratory for testing. MERALCO thereafter issued a differential billing to respondent by demand letter dated November 17, 1999 and invited respondent to a conference which did not push through, however. MERALCO thus issued another demand letter dated February 15, 2000 to respondent.

On February 16, 2000, respondent filed with the Regional Trial Court (RTC) of Malolos, Bulacan a Complaint[1] for damages with application for the issuance of a temporary restraining order and/or writ of preliminary injunction against MERALCO.

In its Complaint, respondent alleged that, *inter alia,* the assessment of electric consumption reflected in the differential billing "is not only unlawful and baseless, but arbitrary and despotic, because the same was based on mere assumption and conjecture"; and unless the notice of disconnection based on the unlawful differential billing is restrained, it would suffer irreparable damages and injury. Accordingly, respondent prayed for the award to it of ₱1,000,000 for actual damages and ₱200,000 for attorney's fees, plus costs of the suit.

Branch 83 of the Malolos RTC issued the temporary restraining order prayed for by respondent.

Justifying the inspection of respondent's premises which was witnessed by respondent's representative, MERALCO

[1] Annex "C" of Petition, *rollo,* pp. 38-42.

counterclaimed for the payment of ₱7,421,397.70 as differential billing, ₱200,000 for attorney's fees, and ₱200,000 for exemplary damages.

For failure of respondent to move for the setting of the case for pre-trial, Branch 83 of the Malolos RTC dismissed its complaint without prejudice, by Order[2] dated December 18, 2000 reconsideration by respondent of which was denied.

MERALCO thus presented evidence on its counterclaims.

By Decision[3] of November 7, 2003, the trial court held respondent liable for manipulating the electric meters and ordered it to pay the differential billing in the above-stated amount, and attorney's fees and exemplary damages in the amounts of ₱50,000 and ₱100,000, respectively, observing that as respondent benefited from consuming the electricity, it could not be allowed to unjustly enrich itself at MERALCO's expense.

Respondent appealed to the Court of Appeals, maintaining that it was denied due process when MERALCO disconnected its electrical supply and removed its meters.

By Decision[4] of March 8, 2007, the appellate court reversed the trial court's Decision, finding that MERALCO failed to satisfactorily prove that it is entitled to its counterclaims.

In reversing the trial court's decision, the appellate court noted that only sample meters, and not the allegedly tampered meters, were presented during the trial to demonstrate the alleged manipulation of the meters.

The appellate court also noted that the inspection by MERALCO left much to be desired "in terms of transparency and fairness," as it was conducted in the absence of any officer of the law or

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[2] Annex "E" of the Petition, *rollo*, pp. 56-57. Penned by Judge Guillermo P. Agloro.

[3] Annex "G" of the Petition, *rollo*, pp. 59-62. Penned by Judge Guillermo P. Agloro.

[4] *Rollo*, pp. 28-35. Penned by Associate Justice Estela M. Perlas-Bernabe and concurred in by Associate Justices Rodrigo V. Cosico and Lucas P. Bersamin.

a duly authorized representative of the Energy Regulatory Board (ERB), which is now Energy Regulatory Commission, whose presence and participation are required, to constitute *prima facie* presumption of illegal use of electricity under Sec. 4 of Republic Act No. 7832 or the "ANTI-PILFERAGE OF ELECTRICITY AND THEFT OF ELECTRIC TRANSMISSION LINES/ MATERIALS ACT OF 1994."

Because of MERALCO's failure to observe the requirement of the law, the appellate court found the testimony of MERALCO's Polyphase Inspector, Emmanuel Bautista, on the alleged meter tampering, self-serving; and while the laboratory testing was alleged to have been made in the presence of one Engineer Albano as ERB representative, he was not presented in court to attest to the veracity thereof.

The appellate court added that while the inspection was consented to and witnessed by respondent's representative, Chito Bañez, MERALCO's findings were not necessarily accurate.

Its motion for reconsideration of the appellate court's Decision having been denied, MERALCO filed the present recourse.

MERALCO maintains that the inspection was proper and lawful and in accordance with the "Terms and Conditions of Service,"[5] as approved by the Board of Energy in BOE Case No. 85-121, which governs its relationship with customers; and that under the said contract, its employees or representatives are permitted by its customers to enter the latter's premises in order to inspect, install, read, remove, test and replace its apparatus for any cause – acts which could be done without the presence of a police officer or ERB representative.

MERALCO adds that even if Sec. 4 of Republic Act No. 7832 is made applicable to the questioned inspection, the absence of a police officer or ERB representative does not *ipso facto* render the inspection illegal, for the provision only requires the presence of said officers for the purpose of creating a *prima facie* evidence of tampering in the determination of probable cause to indict a

[5] Exhibit "1", folder of exhibits.

respondent; and that the allegation of tampering had been sufficiently proven even if the questioned meters were not submitted in evidence, given the documentary and testimonial evidence adduced during the trial.

The petition is bereft of merit.

Section 4 of Republic Act No. 7832 reads:

Section 4. *Prima Facie Evidence.*— **(a) The presence of any of the following circumstances shall constitute** *prima facie* **evidence of illegal use of electricity, as defined in this Act, by the person benefited thereby, and shall be the basis for: (1) the immediate disconnection by the electric utility to such person after due notice,** (2) the holding of a preliminary investigation by the prosecutor and the subsequent filing in court of the pertinent information, and (3) the lifting of any temporary restraining order or injunction which may have been issued against a private electric utility or rural electric cooperative: (i) The presence of a bored hole on the glass cover of the electric meter, or at the back or any other part of said meter; (ii) The presence inside the electric meter of salt, sugar and other elements that could result in the inaccurate registration of the meter's internal parts to prevent its accurate registration of consumption of electricity; (iii) The existence of any wiring connection which affects the normal operation or registration of the electric meter; **(iv) The presence of a tampered, broken, or fake seal on the meter, or mutilated, altered or tampered meter recording chart or graph, or computerized chart, graph, or log;** (v) The presence in any part of the building or its premises which is subject to the control of the consumer or on the electric meter, of a current reversing transformer, jumper, shorting and/or shunting wire, and/or loop connection or any other similar device; (vi) The mutilation, alteration, reconnection, disconnection, bypassing or tampering of instruments, transformers, and accessories; (vii) The destruction of, or attempt to destroy, any integral accessory of the metering device box which encases an electric meter, or its metering accessories; and (viii) The acceptance of money and/or other valuable consideration by any officer of employee of the electric utility concerned or the making of such an offer to any such officer or employee for not reporting the presence of any of the circumstances enumerated in subparagraphs (i), (ii), (iii), (iv), (v), (vi), or (vii) hereof: **Provided, however, That the discovery of any of the foregoing circumstances, in order to constitute *prima facie* evidence, must**

be personally witnessed and attested to by an officer of the law *or* a duly authorized representative of the Energy Regulatory Board (ERB). (b) The possession or custody of electric power transmission line/material by any person, natural or juridical, not engaged in the transformation, transmission or distribution of electric power, or in the manufacture of such electric power transmission line/material shall be *prima facie* evidence that such line/material is the fruit of the offense defined in Section 3 hereof and therefore such line/material may be confiscated from the person in possession, control or custody thereof. (Emphasis, italics and underscoring supplied)

It is thus clear that for an allegation of tampering to be the basis for the disconnection of a customer's electric supply, the discovery of such must be personally witnessed and attested to by an officer of the law *or* an ERB representative. This requirement can not be dispensed with. *Quisumbing v. Manila Electric Company*[6] so instructs:

The law says that *before* immediate disconnection may be allowed, the discovery of the illegal use of electricity must have been personally witnessed and attested to by an officer of the law or by an authorized ERB representative. In this case, the disconnection was effected immediately after the discovery of the alleged meter tampering, which was witnessed only by Meralco's employees. **That the ERB representative was allegedly present when the meter was examined in the Meralco laboratory will not cure the defect.**

xxx xxx xxx

The presence of government agents who may authorize immediate disconnections go into the essence of due process. Indeed, we cannot allow respondent to act virtually as prosecutor and judge in imposing the penalty of disconnection due to alleged meter tampering. That would not sit well in a democratic country. After all, Meralco is a monopoly that derives its power from the government. Clothing it with unilateral authority to disconnect would be equivalent to giving it a license to tyrannize its hapless customers. (Emphasis supplied)

In the present case, it is admitted that no police officer or ERB representative was present during the inspection, removal and subsequent replacement of the electric meters alleged to

[6] G.R. No. 142943, April 3, 2002, 380 SCRA 195, 207-208.

have been tampered with, hence, the requirement of the law was not complied with – a lapse fatal to MERALCO's cause.

MERALCO's argument that Section 4 of Republic Act No. 7832 applies only to criminal proceedings does not lie. Under said provision, which was earlier quoted, the investigation by the prosecutor, as well as the subsequent filing of the appropriate information if warranted, is only one of the courses of action to be taken once any of the therein enumerated circumstances establishing a *prima facie* case for illegal use of electricity is discovered.

Compounding MERALCO's *faux pas* was its failure to present the allegedly tampered meters. By such failure, the allegations of meter tampering are unsubstantiated.[7]

To grant MERALCO's claims, insufficient proof thereof notwithstanding, is anathema to equity and justice.

x x x To be sure, in enacting Republic Act No. 7832 and Republic Act No. 9136, the legislature did not intend to relax the rules in deciding cases of tampered electric meters. In no way can this Court grant a favorable judgment to the petitioner solely because of the benefit that the public will gain. **To do so would result in unjust enrichment at the expense of the consumer accused of committing acts of tampering. Courts cannot and will not in any way blindly grant a public utility's claim for differential billing if there is no sufficient evidence to prove such entitlement**.[8] (Emphasis and underscoring supplied)

WHEREFORE, the petition is *DISMISSED*.

SO ORDERED.

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

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[7] *Vide Manila Electric Company v. Macro Textile Mills Corporation*, G.R. No. 126243, January 18, 2002, 374 SCRA 69.

[8] *Manila Electric Company v. Wilcon Builders' Supply*, G.R. No. 171534, June 30, 2008, 556 SCRA 742, 756-757.

SECOND DIVISION

[G.R. No. 179462. February 12, 2009]

PEDRO C. CONSULTA, *appellant, vs.* **PEOPLE OF THE PHILIPPINES,** *appellee.*

SYLLABUS

1. CRIMINAL LAW; ROBBERY; ELEMENTS OF THE CRIME; THE TAKING OF COMPLAINANT'S NECKLACE DOES NOT INDICATE PRESENCE OF INTENT TO GAIN ON APPELLANT'S PART GIVEN THE UNDENIED SOUR RELATIONSHIP BETWEEN THEM.— The elements of robbery are thus: 1) there is a taking of personal property; 2) the personal property belongs to another; 3) the taking is with *animus lucrandi*; and 4) the taking is with violence against or intimidation of persons or with force upon things. *Animus lucrandi* or intent to gain is an internal act which can be established through the overt acts of the offender. It may be presumed from the furtive taking of useful property pertaining to another, unless special circumstances reveal a different intent on the part of the perpetrator. The Court finds that under the above-mentioned circumstances surrounding the incidental encounter of the parties, the taking of Nelia's necklace does not indicate presence of intent to gain on appellant's part. That intent to gain on appellant's part is difficult to appreciate gains light given his undenied claim that his relationship with Nelia is rife with ill-feelings, manifested by, among other things, the filing of complaints against him by Nelia and her family which were subsequently dismissed or ended in his acquittal.

2. ID.; GRAVE COERCION; WHILE ROBBERY DOES NOT LIE DUE TO THE ABSENCE OF INTENT TO GAIN ON THE PART OF APPELLANT, HIS EMPLOYMENT OF THREATS, INTIMIDATION AND VIOLENCE MADE HIM GUILTY OF THE CRIME OF GRAVE COERCION.— Absent intent to gain on the part of appellant, robbery does not lie against him. He is not necessarily scot-free, however. From the pre-existing sour relations between Nelia and her family on one hand, and appellant and family on the other, and under the circumstances related above attendant to the incidental

encounter of the parties, appellant's taking of Nelia's necklace could not have been animated with *animus lucrandi*. Appellant is, however, just the same, criminally liable. For "[w]hen there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved." Rule 120, of the Rules of Court provides: SEC. 5. "When an offense includes or is included in another. — An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter." Grave coercion, like robbery, has violence for one of its elements. Thus Article 286 of the Revised Penal Code provides: "Art. 286. *Grave coercions*. – The penalty of *prision correccional* and a fine not exceeding six thousand pesos shall be imposed upon any person who, without authority of law, shall, by means of violence, threats or intimidation, prevent another from doing something not prohibited by law or compel him to do something against his will, whether it be right or wrong. If the coercion be committed in violation of the exercise of the right of suffrage or for the purpose of compelling another to perform any religious act or to prevent him from exercising such right or from doing such act, the penalty next higher in degree shall be imposed." The difference in robbery and grave coercion lies in the *intent* in the commission of the act. The motives of the accused are the prime criterion: "The distinction between the two lines of decisions, the one holding to robbery and the other to coercion, is deemed to be the intention of the accused. Was the purpose with intent to gain to take the property of another by use of force or intimidation? Then, conviction for robbery. Was the purpose, without authority of law but still believing himself the owner or the creditor, to compel another to do something against his will and to seize property? Then, conviction for coercion under Article 497 of the Penal Code. The motives of the accused are the prime criterion. And there was no common robber in the present case, but a man who had fought bitterly

for title to his ancestral estate, taking the law into his own hands and attempting to collect what he thought was due him. *Animus furandi* was lacking." The Court finds that by appellant's employment of threats, intimidation and violence consisting of, *inter alia,* uttering of invectives, driving away of the tricycle driver, and kicking of the tricycle, Nelia was prevented from proceeding to her destination.

APPEARANCES OF COUNSEL

Edgardo A. Arandia for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

The Court of Appeals having, by Decision of April 23, 2007,[1] affirmed the December 9, 2004 Decision of the Regional Trial Court of Makati City, Branch 139 convicting Pedro C. Consulta (appellant) of Robbery with Intimidation of Persons, appellant filed the present petition.

The accusatory portion of the Information against appellant reads:

That on or about the 7th day of June, 1999, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent of gain, and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously take, steal and carry away complainant's NELIA R. SILVESTRE gold necklace worth ₱3,500.00, belonging to said complainant, to the damage and prejudice of the owner thereof in the aforementioned amount of ₱3,500.00.

CONTRARY TO LAW.[2] (Emphasis in the original, underscoring supplied)

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[1] Penned by Associate Justice Estela M. Perlas-Bernabe, with the concurrence of Associate Justices Marina L. Buzon and Lucas P. Bersamin; CA *rollo*, pp. 166-176.

[2] Records, p. 1.

From the evidence for the prosecution, the following version is gathered:

At about 2:00 o'clock in the afternoon of June 7, 1999, private complainant Nelia R. Silvestre (Nelia), together with Maria Viovicente (Maria) and Veronica Amar (Veronica), boarded a tricycle on their way to Pembo, Makati City. Upon reaching Ambel Street, appellant and his brother Edwin Consulta (Edwin) blocked the tricycle and under their threats, the driver alighted and left. Appellant and Edwin at once shouted invectives at Nelia, saying *"Putang ina mong matanda ka, walanghiya ka, kapal ng mukha mo, papatayin ka namin."* Appellant added *"Putang ina kang matanda ka, wala kang kadala dala, sinabihan na kita na kahit saan kita matiempuhan, papatayin kita."*

Appellant thereafter grabbed Nelia's 18K gold necklace with a crucifix pendant which, according to an "alajera" in the province, was of 18k gold, and which was worth ₱3,500, kicked the tricycle and left saying *"Putang ina kang matanda ka! Kayo mga nurses lang, anong ipinagmamalaki niyo, mga nurses lang kayo. Kami, marami kaming mga abogado. Hindi niyo kami maipapakulong kahit kailan!"*

Nelia and her companions immediately went to the Pembo barangay hall where they were advised to undergo medical examination. They, however, repaired to the Police Station, Precinct 8 in Comembo, Makati City and reported the incident. They then proceeded to Camp Crame where they were advised to return in a few days when any injuries they suffered were expected to manifest.

Nine days after the incident or on June 16, 1999, Nelia submitted a medico-legal report and gave her statement before a police investigator.

Denying the charge, appellant branded it as fabricated to spite him and his family in light of the following antecedent facts:

He and his family used to rent the ground floor of Nelia's house in Pateros. Nelia is his godmother. The adjacent house was occupied by Nelia's parents with whom she often quarreled

as to whom the rental payments should be remitted. Because of the perception of the parents of Nelia that his family was partial towards her, her parents disliked his family. Nelia's father even filed a case for maltreatment against him which was dismissed and, on learning of the maltreatment charge, Nelia ordered him and his family to move out of their house and filed a case against him for grave threats and another for light threats which were dismissed or in which he was acquitted.

Appellant went on to claim that despite frequent transfers of residence to avoid Nelia, she would track his whereabouts and cause scandal.

Appellant's witness Darius Pacaña testified that on the date of the alleged robbery, Nelia, together with her two companions, approached him while he was at Ambel Street in the company of Michael Fontanilla and Jimmy Sembrano, and asked him (Pacaña) if he knew a bald man who is big/stout with a big tummy and with a sister named Maria. As he replied in the affirmative, Nelia at once asked him to accompany them to appellant's house, to which he acceded. As soon as the group reached appellant's house, appellant, on his (Pacaña's) call, emerged and on seeing the group, told them to go away so as not to cause trouble. Retorting, Nelia uttered "*Mga hayop kayo, hindi ko kayo titigilan.*"

Another defense witness, Thelma Vuesa, corroborated Pacaña's account.

The trial court, holding that intent to gain on appellant's part "is presumed from the unlawful taking" of the necklace, and brushing aside appellant's denial and claim of harassment, convicted appellant of Robbery, disposing as follows:

> WHEREFORE, premises considered, this Court finds accused PEDRO C. CONSULTA guilty beyond reasonable doubt, as principal of the felony of Robbery with Intimidation of Persons defined and penalized under Article 294, paragraph No. 5, in relation to Article 293 of the Revised Penal Code and hereby sentences him to suffer the penalty of imprisonment from one (1) year, seven (7) months and eleven (11) days of *arresto mayor*, as minimum, to eight (8) years, eight (8) months and one (1) day of *prision mayor*, as

maximum, applying the Indeterminate Sentence Law, there being no mitigating or aggravating circumstances which attended the commission of the said crime.

The said accused is further ordered to pay unto the complainant Nelia Silvestre the amount of ₱3,500.00 representing the value of her necklace taken by him and to pay the costs of this suit.

SO ORDERED. (Italics in the original, underscoring supplied)

The appellate court affirmed appellant's conviction with modification on the penalty.

In his present appeal, appellant raises the following issues:

(1) Whether or not appellant was validly arraigned;

(2) Whether or not appellant was denied due process having been represented by a fake lawyer during arraignment, pre-trial and presentation of principal witnesses for the prosecution;

(3) Whether or not appellant has committed the crime of which he was charged; and

(4) Whether or not the prosecution was able to prove the guilt of the appellant beyond reasonable doubt. (Underscoring supplied)

The first two issues, which appellant raised before the appellate court only when he filed his Motion for Reconsideration of said court's decision, were resolved in the negative in this wise:

On the matter of accused-appellant's claim of having been denied due process, an examination of the records shows that while accused-appellant was represented by Atty. Jocelyn P. Reyes, who "seems not a lawyer," during the early stages of trial, the latter withdrew her appearance with the conformity of the former as early as July 28, 2000 and subsequently, approved by the RTC in its Order dated August 4, 2000. Thereafter, accused-appellant was represented by Atty. Rainald C. Paggao from the Public Defender's (Attorney's) Office of Makati City. Since the accused-appellant was already represented by a member of the Philippine Bar who principally handled his defense, albeit unsuccessfully, then he cannot now be

heard to complain about having been denied of due process.[3] (Underscoring supplied)

That appellant's first counsel may not have been a member of the bar does not dent the proven fact that appellant prevented Nelia and company from proceeding to their destination. Further, appellant was afforded competent representation by the Public Attorneys' Office during the presentation by the prosecution of the medico-legal officer and during the presentation of his evidence. *People v. Elesterio*[4] enlightens:

"As for the circumstance that the defense counsel turned out later to be a non-lawyer, it is observed that he was chosen by the accused himself and that his representation does not change the fact that Elesterio was undeniably carrying an unlicensed firearm when he was arrested. At any rate, he has since been represented by a member of the Philippine bar, who prepared the petition for *habeas corpus* and the appellant's brief." (Underscoring supplied)

On the third and fourth issues. Article 293 of the Revised Penal Code under which appellant was charged provides:

Art. 293. *Who are guilty of robbery*. — Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything, shall be guilt of robbery. (Italics in the original, underscoring supplied)

Article 294, paragraph 5, under which appellant was penalized provides:

Art. 294. *Robbery with violence against or intimidation of person– Penalties*. — Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

xxx xxx xxx

5. The penalty of *prision correccional* in its maximum period to *prision mayor* in its medium period in other cases. x x x (Citations omitted; italics in the original; underscoring supplied)

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[3] *Rollo*, p. 169.

[4] G.R. No. 63971, May 9, 1989, 173 SCRA 243, 249.

The elements of robbery are thus: 1) there is a taking of personal property; 2) the personal property belongs to another; 3) the taking is with *animus lucrandi*; and 4) the taking is with violence against or intimidation of persons or with force upon things.

Animus lucrandi or intent to gain is an internal act which can be established through the overt acts of the offender. It may be presumed from the furtive taking of useful property pertaining to another, unless special circumstances reveal a different intent on the part of the perpetrator.[5]

The Court finds that under the above-mentioned circumstances surrounding the incidental encounter of the parties, the taking of Nelia's necklace does not indicate presence of intent to gain on appellant's part. That intent to gain on appellant's part is difficult to appreciate gains light given his undenied claim that his relationship with Nelia is rife with ill-feelings, manifested by, among other things, the filing of complaints[6] against him by Nelia and her family which were subsequently dismissed or ended in his acquittal.[7]

Absent intent to gain on the part of appellant, robbery does not lie against him. He is not necessarily scot-free, however.

From the pre-existing sour relations between Nelia and her family on one hand, and appellant and family on the other, and under the circumstances related above attendant to the incidental encounter of the parties, appellant's taking of Nelia's necklace could not have been animated with *animus lucrandi*. Appellant is, however, just the same, criminally liable.

For "[w]hen there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense

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[5] *People v. Reyes*, G.R. 135682, March 26, 2003, 399 SCRA 528.

[6] Exhibit "2" – Information for Maltreatment, Exhibit "4" – Light Threats, Exhibit "5" – Grave Threats.

[7] *Vide* Exhibit "3" – Order granting Supplemental Motion to Quash (Malicious Mischief), folder 1, records, pp. 202-203, Exhibit "4" – Order dismissing the information for Light Threats.

proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved."[8]

SEC. 5. *When an offense includes or is included in another.* — An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.[9] (Italics in the original, underscoring supplied)

Grave coercion, like robbery, has violence for one of its elements. Thus Article 286 of the Revised Penal Code provides:

"Art. 286. *Grave coercions*.— The penalty of *prision correccional* and a fine not exceeding six thousand pesos shall be imposed upon any person who, without authority of law, shall, by means of violence, threats or intimidation, prevent another from doing something not prohibited by law or compel him to do something against his will, whether it be right or wrong.

If the coercion be committed in violation of the exercise of the right of suffrage or for the purpose of compelling another to perform any religious act or to prevent him from exercising such right or from doing such act, the penalty next higher in degree shall be imposed." (Italics in the original; underscoring supplied)

The difference in robbery and grave coercion lies in the *intent* in the commission of the act. The motives of the accused are the prime criterion:

"The distinction between the two lines of decisions, the one holding to robbery and the other to coercion, is deemed to be the intention of the accused. Was the purpose with intent to gain to take the property of another by use of force or intimidation? Then, conviction for robbery. Was the purpose, without authority of law but still believing himself the owner or the creditor, to compel another to do something against his will and to seize property? Then, conviction for coercion under Article 497 of the Penal Code. The motives of the accused

[8] RULES OF COURT, Rule 120, Section 4.

[9] *Id.* at Section 5.

are the prime criterion. And there was no common robber in the present case, but a man who had fought bitterly for title to his ancestral estate, taking the law into his own hands and attempting to collect what he thought was due him. *Animus furandi* was lacking."[10] (Italics in the original; citations omitted; underscoring supplied)

The Court finds that by appellant's employment of threats, intimidation and violence consisting of, *inter alia,* uttering of invectives, driving away of the tricycle driver, and kicking of the tricycle, Nelia was prevented from proceeding to her destination.

Appellant is thus guilty of grave coercion which carries the penalty of *prision correccional* and a fine not exceeding ₱6,000. There being no aggravating or mitigating circumstance, the penalty shall be imposed in its medium term. Applying the Indeterminate Sentence Law, the minimum that may be imposed is anywhere from one (1) month and one (1) day to six (6) months of *arresto mayor,* as minimum, and from two (2) years, four (4) months and one (1) day to four (4) years and two (2) months of *prision correccional,* as maximum.

WHEREFORE, the Court *SETS ASIDE* the challenged Court of Appeals Decision and another is rendered finding appellant, Pedro C. Consulta, *GUILTY* beyond reasonable doubt of Grave Coercion and sentences him to suffer the indeterminate penalty of from six (6) months of *arresto mayor* as minimum, to three (3) years and six (6) months of *prision correccional* medium as maximum.

Appellant is further ordered to return the necklace, failing which he is ordered to pay its value, Three Thousand Five Hundred (₱3,500) Pesos.

Costs *de oficio.*

SO ORDERED.

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

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[10] *United States v. Villa Abrille,* 36 Phil. 807, 809 (1917).

THIRD DIVISION

[G.R. No. 179907. February 12, 2009]

ARLENE N. LAPASARAN, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURTS ARE THE BEST ARBITER OF THE ISSUE OF CREDIBILITY.— Both the trial and appellate courts found the testimonies of the prosecution witnesses credible and convincing. We are, therefore, inclined to respect such finding. The best arbiter of the issue of the credibility of the witnesses and their testimonies is the trial court. When the inquiry is on that issue, appellate courts will not generally disturb the findings of the trial court, considering that the latter was in a better position to decide the question, having heard the witnesses themselves and having observed their deportment and manner of testifying during the trial. Its finding thereon will not be disturbed, unless it plainly overlooked certain facts of substance and value which, if considered, may affect the result of the case. We find no cogent reason to disturb the trial court's conclusion, as affirmed by the CA.

2. CRIMINAL LAW; ILLEGAL RECRUITMENT; PETITIONER'S MISREPRESENTATIONS CONCERNING HER PURPORTED POWER AND AUTHORITY TO RECRUIT FOR OVERSEAS EMPLOYMENT AND THE COLLECTION FROM THE COMPLAINANT OF VARIOUS AMOUNTS CLEARLY INDICATE ACTS CONSTITUTIVE OF ILLEGAL RECRUITMENT.— Petitioner was charged with illegal recruitment, defined and penalized by the Labor Code as amended by Republic Act (R.A.) No. 8042. Illegal recruitment is committed when it is shown that petitioner gave the complainant the distinct impression that she had the power or ability to send the complainant abroad for work, such that the latter was convinced to part with his money in order to be employed. To be engaged in the practice of recruitment and placement, it is plain that there must, at

least, be a promise or an offer of employment from the person posing as a recruiter whether locally or abroad. Petitioner's misrepresentations concerning her purported power and authority to recruit for overseas employment, and the collection from Menardo of various amounts, clearly indicate acts constitutive of illegal recruitment. Petitioner's claim that she did not represent herself as a licensed recruiter, but that she merely tried to help the complainants secure a tourist visa could not make her less guilty of illegal recruitment, it being enough that she gave the impression of having had the authority to recruit workers for deployment abroad.

3. ID.; SWINDLING (ESTAFA); ELEMENTS OF THE CRIME.— Petitioner was charged with violation of Article 315(2)(a) of the Revised Penal Code (RPC) which punishes estafa committed as follows: By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud: (a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits. The elements of the crime are: (a) the accused defrauded another by abuse of confidence or by means of deceit; and (b) damage or prejudice capable of pecuniary estimation is caused to the offended party.

4. ID.; ID.; ACTS OF MISREPRESENTATION AND INDUCEMENT BY PETITIONER ALSO CLEARLY CONSTITUTES ESTAFA; A PERSON MAY BE CONVICTED OF BOTH ILLEGAL RECRUITMENT AND ESTAFA.— It has been sufficiently proven that petitioner represented herself to Menardo as capable of sending him to South Korea for employment, even if she did not have the authority or license for the purpose. Undoubtedly, it was this misrepresentation that induced Menardo to part with his hard-earned money in exchange for what he thought was a promising future abroad. The act of petitioner clearly constitutes estafa under the above-quoted provision. It is well established in jurisprudence that a person may be convicted of both illegal recruitment and estafa. The reason, therefore, is not hard to discern: illegal recruitment is *malum prohibitum*, while estafa is *malum in se*. In the first, the criminal intent of the accused is not necessary for conviction. In the second, such an intent is imperative.

5. ID.; ID.; PROPER IMPOSABLE PENALTY APPLYING THE INDETERMINATE SENTENCE LAW.— As the amount involved is ₱75,000.00 which exceeds ₱22,000.00, the penalty should be imposed in its maximum period which is six (6) years, eight (8) months and twenty-one (21) days to eight (8) years adding one year for every additional ₱10,000.00, provided the total penalty does not exceed 20 years. Hence, since the amount of the fraud exceeds ₱22,000.00 by ₱53,000.00, then a total of five (5) years should be added to the above-stated maximum period. Applying the Indeterminate Sentence Law, the maximum term of the indeterminate penalty shall be that which could be properly imposed under the RPC as discussed above. On the other hand, the minimum term of the indeterminate sentence should be within the range of the penalty next lower in degree than that prescribed by the Code, which is *prision correccional* in its minimum and medium periods ranging from six (6) months and one (1) day to four (4) years and two (2) months. Accordingly, in Criminal Case No. 03-215332, the CA correctly imposed the indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to eleven (11) years, eight (8) months and twenty-one (21) days of *prision mayor*, as maximum.

APPEARANCES OF COUNSEL

Edwin M. Joyas for petitioner.

The Solicitor General 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 Arlene N. Lapasaran, assails the Court of Appeals Decision[1] dated June 28, 2007 and its Resolution[2] dated September 12, 2007, in CA-G.R. CR No. 29898.

[1] Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Hakim S. Abdulwahid and Arturo G. Tayag, concurring; *rollo*, pp. 11-29.

[2] *Rollo*, pp. 8-9.

The facts of the case follow:

In September 2001, private complainant Menardo Villarin (Menardo) and his sister Vilma Villarin (Vilma) met petitioner Arlene N. Lapasaran, who worked at Silver Jet Travel Tours Agency (Silver Jet) at SIMCAS Building, Makati. For a fee of ₱85,000.00, petitioner undertook the processing of the papers necessary for the deployment (under a tourist visa) and employment of Menardo in South Korea. Petitioner informed Menardo that he would be employed as "factory worker," which was, subsequently, changed to "bakery worker."[3] Thereafter, Menardo paid the said fee in installments, the first in September 2001 in the amount of ₱10,000.00, which was received by a certain Pastor Paulino Cajucom;[4] the second installment was ₱35,000.00; while the third and last payment was ₱40,000.00; the last two installments were delivered to the petitioner.[5]

After two postponements in his flight schedule, Menardo finally left for South Korea on November 25, 2001. Unfortunately, he was incarcerated by South Korean immigration authorities and was immediately deported to the Philippines because the travel documents issued to him by the petitioner were fake.[6] He immediately contacted petitioner and informed her of what happened. Thereupon, petitioner promised to send him back to South Korea, but the promise was never fulfilled. Consequently, Menardo and his sister Vilma demanded the return of the money they paid, but petitioner refused and even said, "*Magkorte na lang tayo*."[7] It was later found out that petitioner was no longer connected with Silver Jet.

Hence, the separate charges for illegal recruitment and estafa against petitioner before the Regional Trial Court (RTC) of Manila. Raffled to Branch 34, the cases were docketed as Criminal Case No. 03-215331 for Illegal Recruitment and Criminal

[3] *Id.* at 14.

[4] *Id.* at 28.

[5] *Id.* at 14.

[6] *Id.* at 15.

[7] *Id.*

Case No. 03-215332 for Estafa.[8] When arraigned, she pleaded not guilty to both charges.

In her defense, petitioner testified that she owned a travel agency named A&B Travel and Tours General Services, engaged in the business of visa assistance and ticketing. She averred that it was Vilma who solicited her assistance to secure a tourist visa for Menardo. She admitted transacting with the Villarins, but committed only to securing a tourist visa and a two-way airplane ticket for Menardo, for which she received ₱70,000.00 as payment. She denied having recruited Menardo Villarin; she likewise denied having promised him employment in South Korea.[9]

On February 15, 2005, the RTC rendered a Decision finding petitioner guilty beyond reasonable doubt of illegal recruitment and estafa.[10]

On appeal, the Court of Appeals (CA) affirmed the RTC Decision with a modification in the penalty imposed in Criminal Case No. 03-215332 for estafa.[11]

Petitioner now comes before this Court on the sole issue of:

WHETHER OR NOT THE LAWS ON ILLEGAL RECRUITMENT AND ESTAFA ARE APPLICABLE IN THESE CASES.[12]

We deny the petition.

Both the trial and appellate courts found the testimonies of the prosecution witnesses credible and convincing. We are, therefore, inclined to respect such finding. The best arbiter of the issue of the credibility of the witnesses and their testimonies is the trial court. When the inquiry is on that issue, appellate courts will not generally disturb the findings of the trial court, considering that the latter was in a better position to decide the

[8] *Id.* at 11-12.

[9] *Id.* at 15-16.

[10] *Id.* at 13-14.

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

[12] *Id.* at 39.

question, having heard the witnesses themselves and having observed their deportment and manner of testifying during the trial. Its finding thereon will not be disturbed, unless it plainly overlooked certain facts of substance and value which, if considered, may affect the result of the case. We find no cogent reason to disturb the trial court's conclusion, as affirmed by the CA.[13]

In the first case, petitioner was charged with illegal recruitment, defined and penalized by the Labor Code as amended by Republic Act (R.A.) No. 8042.[14] Illegal recruitment is committed when it is shown that petitioner gave the complainant the distinct impression that she had the power or ability to send the complainant abroad for work, such that the latter was convinced to part with his money in order to be employed.[15] To be engaged in the practice of recruitment and placement, it is plain that there must, at least, be a promise or an offer of employment from the person posing as a recruiter whether locally or abroad.[16] Petitioner's misrepresentations concerning her purported power and authority to recruit for overseas employment, and the collection from Menardo of various amounts, clearly indicate acts constitutive of illegal recruitment.

Petitioner's claim that she did not represent herself as a licensed recruiter, but that she merely tried to help the complainants secure a tourist visa could not make her less guilty of illegal recruitment, it being enough that she gave the impression of having had the authority to recruit workers for deployment abroad.[17]

As provided in Section 7(a)[18] of R.A. No. 8042, the CA correctly affirmed the imposition of the indeterminate penalty

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[13] *People v. Alvarez*, 436 Phil. 255, 271 (2002).

[14] Otherwise known as the "Migrant Workers Act of 1995."

[15] *People v. Gasacao*, G.R. No. 168445, November 11, 2005, 474 SCRA 812, 822.

[16] *People v. Gallardo*, 436 Phil. 698, 711 (2002).

[17] *People v. Ordoño*, 390 Phil. 649, 666 (2000).

[18] Sec. 7. *Penalties.*

of six (6) years and one (1) day to eight (8) years, and the payment of a fine of ₱200,000.00, in Criminal Case No. 03-215331.

In the second case, petitioner was charged with violation of Article 315(2)(a) of the Revised Penal Code (RPC) which punishes estafa committed as follows:

> By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:
>
> (a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

The elements of the crime are: (a) the accused defrauded another by abuse of confidence or by means of deceit; and (b) damage or prejudice capable of pecuniary estimation is caused to the offended party.[19]

Here, it has been sufficiently proven that petitioner represented herself to Menardo as capable of sending him to South Korea for employment, even if she did not have the authority or license for the purpose. Undoubtedly, it was this misrepresentation that induced Menardo to part with his hard-earned money in exchange for what he thought was a promising future abroad. The act of petitioner clearly constitutes estafa under the above-quoted provision.[20]

It is well established in jurisprudence that a person may be convicted of both illegal recruitment and estafa. The reason, therefore, is not hard to discern: illegal recruitment is *malum prohibitum*, while estafa is *malum in se*. In the first, the criminal

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(a) Any person found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine of not less than Two hundred thousand pesos (₱200,000.00) nor more than Five hundred thousand pesos (₱500,000.00).

[19] *People v. Ordoño*, *supra* note 17, at 669.

[20] *People v. Comila*, G.R. No. 171448, February 28, 2007, 517 SCRA 153, 167-168; *People v. Ballesteros*, 435 Phil. 205, 228 (2002).

intent of the accused is not necessary for conviction. In the second, such an intent is imperative.[21]

Lastly, the CA correctly modified the penalty imposed by the RTC for the crime of estafa in Criminal Case No. 03-215332.

Article 315 of the RPC fixes the penalty for Estafa, *viz.:*

> *1st*. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos; and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

As the amount involved is ₱75,000.00 which exceeds ₱22,000.00, the penalty should be imposed in its maximum period which is six (6) years, eight (8) months and twenty-one (21) days to eight (8) years adding one year for every additional ₱10,000.00, provided the total penalty does not exceed 20 years. Hence, since the amount of the fraud exceeds ₱22,000.00 by ₱53,000.00, then a total of five (5) years should be added to the above-stated maximum period.

Applying the Indeterminate Sentence Law, the maximum term of the indeterminate penalty shall be that which could be properly imposed under the RPC as discussed above. On the other hand, the minimum term of the indeterminate sentence should be within the range of the penalty next lower in degree than that prescribed by the Code, which is *prision correccional* in its minimum and medium periods ranging from six (6) months and one (1) day to four (4) years and two (2) months.

Accordingly, in Criminal Case No. 03-215332, the CA correctly imposed the indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to eleven

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[21] *People v. Comila*, *supra* note 20, at 167.

(11) years, eight (8) months and twenty-one (21) days of *prision mayor*, as maximum.

WHEREFORE, premises considered, the petition is *DENIED* for lack of merit. The Decision of the Court of Appeals dated June 28, 2007 and its Resolution dated September 12, 2007, in CA-G.R. CR No. 29898, are *AFFIRMED*.

SO ORDERED.

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

EN BANC

[A.M. No. CA-09-47-J. February 13, 2009]
(Formerly A.M. OCA IPI No. 08-121-CA-J)

GENARO SANTIAGO III, *complainant, vs.* **JUSTICE JUAN Q. ENRIQUEZ, JR. of the Thirteenth [13th] Division, Court of Appeals,** *respondent*.

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; ADMINISTRATIVE COMPLAINT; ERROR IN THE APPRECIATION OF EVIDENCE AND FACTS AND THE CITATION OF CASES IN SUPPORT OF THE DECISION DOES NOT WARRANT THE FILING OF AN ADMINISTRATIVE COMPLAINT, UNLESS TAINTED WITH FRAUD, MALICE OR DISHONESTY OR WITH DELIBERATE INTENT TO CAUSE INJUSTICE.— That cases cited to support a Decision are not applicable, and the appreciation of evidence and facts is erroneous, do not necessarily warrant the filing of an administrative complaint against a judge, unless the Decision

is tainted with fraud, malice or dishonesty or with deliberate intent to cause injustice. The remedy of the aggrieved party is not to file an administrative complaint against the judge, but to elevate the assailed decision or order to the higher court for review and correction. An administrative complaint is not an appropriate remedy where judicial recourse is still available, such as a motion for reconsideration, an appeal, or a petition for *certiorari*, unless the assailed order or decision is tainted with fraud, malice, or dishonesty… The Court has to be shown acts or conduct of the judge clearly indicative of the arbitrariness or prejudice before the latter can be branded the stigma of being biased and partial. Thus, unless he is shown to have acted in bad faith or with deliberate intent to do an injustice, not every error or mistake that a judge commits in the performance of his duties renders him liable…The failure to interpret the law or to properly appreciate the evidence presented does not necessarily render a judge administratively liable. Assuming *arguendo* that respondent's citation of cases in support of the Decision and his appreciation of the facts and evidence were erroneous, since there is no showing that the Decision, reconsideration of which was still pending at the time the present complaint was filed, is tainted with fraud, malice or dishonesty or was rendered with deliberate intent to cause injustice, the complaint must be dismissed.

2. ID.; ID.; JUDICIAL IMMUNITY; PRINCIPLE.— The principle of **"judicial immunity"** insulates judges, and even Justices of superior courts, from being held to account criminally, civilly or administratively for an erroneous decision rendered in good faith. To hold otherwise would render judicial office untenable. No one called upon to try the facts or interpret the law in the process of administering justice could be infallible in his judgment. . . . A judicial officer cannot be called to account in a civil action for acts done by him in the exercise of his judicial function, however erroneous. In the words of *Alzua and Arnalot v. Johnson*, " … it is a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself." This concept of **judicial immunity** rests upon consideration of public policy, its purpose being **to preserve the integrity**

and independence of the judiciary. This principle is of universal application and applies to all grades of judicial officers from the highest judge of the nation and to the lowest officer who sits as a court.

3. ID.; ID.; ID.; FILING OF CHARGES AGAINST A SINGLE MEMBER OF A DIVISION OF THE APPELLATE COURT IS INAPPROPRIATE.— It bears particular stress in the present case that the filing of charges against a single member of a division of the appellate court is inappropriate. The Decision was not rendered by respondent in his individual capacity. It was a product of the consultations and deliberations by the *Special* Division of five. Consider the following pronouncement in *Bautista v. Abdulwahid*: "It is also imperative to state that the Resolution dated May 31, 2004 was not rendered by Justice Abdulwahid alone, in his individual capacity. The Court of Appeals is a collegiate court whose members reach their conclusions in consultation and accordingly render their collective judgment after due deliberation. Thus, we have held that a charge of violation of the Anti-Graft and Corrupt Practices Act on the ground that a collective decision is "unjust" cannot prosper. Consequently, the filing of charges against a single member of a division of the appellate court is inappropriate."

4. ID.; ID.; ID.; THE SUPREME COURT WILL NOT HESITATE TO SHIELD THE MEMBERS OF THE BENCH AGAINST UNMERITORIOUS CHARGES.— In fine, while this Court will not shirk from its responsibility to discipline members of the bench if they err, it too will not hesitate to shield them if they are charged with unmeritorious charges that only serve to disrupt, rather than promote, the orderly administration of justice.

D E C I S I O N

CARPIO MORALES, *J.*:

By I[st] Indorsement[1] dated January 3, 2008, the Court Administrator referred to this Court's Clerk of Court for appropriate action the verified Complaint dated December 27,

[1] *Rollo*, p. 1.

2007,[2] with enclosures, of Genaro Santiago III (complainant) against Court of Appeals Justice Juan Q. Enriquez, Jr. (respondent), for gross ignorance of the law and jurisprudence and gross incompetence in connection with his rendering of alleged unjust judgment in CA-GR CV No. 84167, "*Genaro C. Santiago III versus Republic of the Philippines*," which was promulgated on December 3, 2007.[3]

The antecedent facts of the case follow:

Complainant filed before the Regional Trial Court (RTC) in Quezon City a Petition for Reconstitution of Lost/Destroyed Original Certificate of Title No. 56, registered in the name of Pantaleona Santiago and Blas Fajardo.

By Decision of September 2, 2004, Branch 220 of the Quezon City RTC granted the petition.[4] The Republic of the Philippines through the Office of the Solicitor General appealed the decision to the Court of Appeals where it was docketed as CA-GR CV No. 84167.

The case was raffled to Justice Marlene Gonzales-Sison (Justice Gonzales-Sison) of the appellate court's *Thirteenth* Division of which respondent was Chairperson. Completing the composition of the Division (of three) was Justice Vicente S.E. Veloso (Justice Veloso).

On July 11, 2007, Justice Gonzales-Sison submitted her Report,[5] which was used as basis for the Division's consultation and deliberation.[6] By letter of July 18, 2007 addressed to Justices Gonzales-Sison and Veloso, respondent expressed his dissent

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[2] *Id.* at 2-9.

[3] *Id.* at 10-20. Penned by Justice Juan Q. Enriquez, Jr. with the concurrence of Justices Edgardo P. Cruz and Vicente S.E. Veloso. Justices Lucas P. Bersamin and Marlene Gonzales-Sison dissented, with the latter writing a dissenting opinion.

[4] Decision, *rollo*, pp. 46-55.

[5] *Id.* at 58-74.

[6] *Id.* at 56.

from the Report.[7] Justice Veloso, who originally concurred in the Report, requested Justice Gonzales-Sison, by letter of July 19, 2007, to take a second look at respondent's Dissenting Opinion,[8] as "the reasons [Justice Enriquez] gave are strong enough to be ignored by plain technicality."[9]

In view of his dissent, respondent requested on August 23, 2007 the Raffle Committee of the Court of Appeals to designate two associate justices to complete the composition of a *Special* Division of five.[10] The Raffle Committee, by Special Order dated August 24, 2007, designated Justices Edgardo P. Cruz (Justice Cruz) and Lucas P. Bersamin (Justice Bersamin) as additional members of the *Special* Division.[11]

Justice Veloso soon expressed his concurrence with respondent's Dissenting Opinion.[12] Justice Bersamin expressed his concurrence with the Report of Justice Gonzales–Sison,[13] while Justice Cruz expressed his concurrence with respondent's Dissenting Opinion.[14]

Respondent's Dissenting Opinion thus became the majority opinion of the *Special* Division and the Report-opinion of Justice Gonzales-Sison with which Justice Bersamin concurred became the Dissenting Opinion.

The Decision of the *Special* Division reversed and set aside the September 2, 2004 Decision of the Quezon City RTC. Complainant filed a Motion for Reconsideration which was received by the appellate court on December 20, 2007.[15] On December 27, 2008, complainant filed the present complaint.

[7] *Id.* at 92-93.

[8] *Id.* at 97-102.

[9] *Id.* at 94.

[10] *Id.* at 95.

[11] *Id.* at 96.

[12] *Id.* at 103.

[13] *Id.* at 104.

[14] *Id.* at 107-110.

[15] *Id.* at 123-135.

On January 9, 2008, complainant filed a *Motion for Disqualification and/or Inhibition [of respondent] pursuant to Paragraph 2, Section 1, Rule 137*[16] on the ground that he (complainant) had filed this administrative complaint against respondent. The appellate court denied the motion by Resolution of April 20, 2008.[17]

In the present Complaint, complainant alleges, *inter alia*, that:

xxx xxx xxx

. . . despite the overwhelming evidence of complainant, all corroborated by several government agencies like the original duplicate certificate of OCT No. 56, certified copy of Decree No. 1275, PC Crime Laboratory report, Bureau of Lands record, tracing cloth of survey plan, blue print plan, certified technical description – all approved by the Bureau of Lands, among others and adduced and offered in evidence during trial, Associate Justice Enriquez deliberately twisted the law and existing jurisprudence to grant the appeal, to the extreme prejudice of complainant. For this reason, this administrative charge of GROSS IGNORANCE OF LAW/GROSS INCOMPETENCE is now being filed against respondent Associate Justice Juan Q. Enriquez, Jr. ***No one is above the law.***[18] (Emphasis and italics in the original; underscoring supplied)

In compliance with this Court's Resolution of January 22, 2008,[19] respondent filed his Comment,[20] branding the complaint as "a mere nuisance," a "dirty tactic" in order to harass him for the purpose of making him inhibit from handling the case the decision on which was pending consideration. He denies any irregularities attendant to his arrival at the Decision which, he maintains, has factual and legal basis and is not contrary to law and jurisprudence.

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[16] *Id.* at 136-141.

[17] *Id.* at 142-144. Penned by Justice Juan Q. Enriquez, Jr. with the concurrence of Justices Edgardo P. Cruz, Lucas P. Bersamin, Vicente S.E. Veloso and Marlene Gonzales-Sison.

[18] *Id.* at 8.

[19] *Id.* at 23.

[20] *Id.* at 36-45.

At any rate, respondent contends that the administrative complaint was filed prematurely considering that complainant's motion for reconsideration of the Decision was pending, and that assuming that the Decision was indeed unjust and contrary to law, then Justices Cruz and Veloso, who concurred in his *ponencia*, should also be charged.

Finally, and at all events, respondent contends that the administrative complaint is not the proper forum for the determination of whether the Decision is erroneous or contrary to law and jurisprudence.

In compliance with the directive of the Court,[21] complainant filed a Reply dated 20, 2008 to respondent's Comment[22] in which he contends that the cases cited by respondent to support the Decision are not applicable.

The complaint is bereft of merit.

That cases cited to support a Decision are not applicable, and the appreciation of evidence and facts is erroneous, do not necessarily warrant the filing of an administrative complaint against a judge, unless the Decision is tainted with fraud, malice or dishonesty or with deliberate intent to cause injustice.[23]

> The remedy of the aggrieved party is not to file an administrative complaint against the judge, but to elevate the assailed decision or order to the higher court for review and correction. An administrative complaint is not an appropriate remedy where judicial recourse is still available, such as a motion for reconsideration, an appeal, or a petition for *certiorari*, unless the assailed order or decision is tainted with fraud, malice, or dishonesty…
>
> The Court has to be shown acts or conduct of the judge clearly indicative of the arbitrariness or prejudice before the latter can be branded the stigma of being biased and partial. Thus, unless he is shown to have acted in bad faith or with deliberate intent to do an injustice, not every error or mistake that a judge commits in the performance of his duties renders him liable…The failure to interpret

[21] *Id.* at 145.

[22] *Id.* at 152-155.

[23] *Cortes v. Sandiganbayan*, 467 Phil. 155 (2004).

the law or to properly appreciate the evidence presented does not necessarily render a judge administratively liable.[24] (Italics in the original; underscoring supplied)

Assuming *arguendo* that respondent's citation of cases in support of the Decision and his appreciation of the facts and evidence were erroneous, since there is no showing that the Decision, reconsideration of which was still pending at the time the present complaint was filed, is tainted with fraud, malice or dishonesty or was rendered with deliberate intent to cause injustice, the complaint must be dismissed.

The principle of **"judicial immunity"** insulates judges, and even Justices of superior courts, from being held to account criminally, civilly or administratively for an erroneous decision rendered in good faith.[25] To hold otherwise would render judicial office untenable. No one called upon to try the facts or interpret the law in the process of administering justice could be infallible in his judgment.[26]

> . . . A judicial officer cannot be called to account in a civil action for acts done by him in the exercise of his judicial function, however erroneous. In the words of *Alzua and Arnalot v. Johnson,* " … it is a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself." This concept of **judicial immunity** rests upon consideration of public policy, its purpose being **to preserve the integrity and independence of the judiciary**. This principle is of universal application and applies to all grades of judicial officers from the highest judge of the nation and to the lowest officer who sits as a court.[27] (Italics in the original; emphasis and underscoring supplied)

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[24] *Id.* at 162-163 (2004).

[25] *Tan Tiac Chiong v. Hon. Cosico*, 434 Phil. 753, 762 (2002).

[26] *Fernandez v. Verzola*, A.M. No. CA-04-40, August 13, 2004, 436 SCRA 369, 373.

[27] *Pabalan v. Guevarra*, A.M. No. 333-CJ, November 24, 1976, 74 SCRA 53, 58.

It bears particular stress in the present case that the filing of charges against a single member of a division of the appellate court is inappropriate. The Decision was not rendered by respondent in his individual capacity. It was a product of the consultations and deliberations by the *Special* Division of five. Consider the following pronouncement in *Bautista v. Abdulwahid*:[28]

> It is also imperative to state that the Resolution dated May 31, 2004 was not rendered by Justice Abdulwahid alone, in his individual capacity. The Court of Appeals is a collegiate court whose members reach their conclusions in consultation and accordingly render their collective judgment after due deliberation. Thus, we have held that a charge of violation of the Anti-Graft and Corrupt Practices Act on the ground that a collective decision is "unjust" cannot prosper. Consequently, the filing of charges against a single member of a division of the appellate court is inappropriate.[29] (Underscoring supplied)

In fine, while this Court will not shirk from its responsibility to discipline members of the bench if they err, it too will not hesitate to shield them if they are charged with unmeritorious charges that only serve to disrupt, rather than promote, the orderly administration of justice.

WHEREFORE, the complaint is *DISMISSED*.

SO ORDERED.

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

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[28] A.M. OCA IPI No. 06-97-CA-J, May 2, 2006, 488 SCRA 428.

[29] *Id.* at 435-436. *Vide Rondina v. Bello, Jr.*, A.M. No. CA-05-43, July 8, 2005, 463 SCRA 1, 12; *Cortes v. Sandiganbayan*, 467 Phil. 155, 162.

THIRD DIVISION

[A.M. No. P-08-2521. February 13, 2009]
(Formerly OCA I.P.I. No. 05-2329-P)

CHRISTOPHER D. MANAOG, *complainant, vs.* **ARNEL JOSE A. RUBIO and EDGAR C. SURTIDA II, both Sheriff IV, Regional Trial Court, Naga City,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; REQUIRED TO ADHERE TO THE EXACTING STANDARDS OF MORALITY AND DECENCY IN ORDER TO PRESERVE THE JUDICIARY'S GOOD NAME AND STANDING AS A TRUE TEMPLE OF JUSTICE.—** Time and again, the Court has emphasized the heavy burden of responsibility which court officials and employees are mandated to perform. They are constantly reminded that any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided. This is so because the image of the court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work there. Thus, court employees have been requested to adhere to the exacting standards of morality and decency in order to preserve the judiciary's good name and standing as a true temple of justice.

2. **ID.; ID.; ID.; ID.; ANY CONDUCT THAT WOULD BE A BANE TO THE PUBLIC TRUST AND CONFIDENCE REPOSED IN THE JUDICIARY CANNOT BE COUNTENANCED.—** This Court, speaking in *Pizarro v. Villegas,* held that: We stress that the conduct of even minor employees mirrors the image of the courts they serve; thus, they are required to preserve the judiciary's good name and standing as a true temple of justice x x x. Respondents Rubio and Surtida failed to meet these exacting standards. They have shown lack of decorum, propriety, and respect in their dealing with other people. Their actuations also debased the public's regard for the very institution they represent, thereby warranting administrative sanction. Any conduct

that would be a bane to the public trust and confidence reposed in the Judiciary cannot be countenanced.

3. ID.; ID.; ID.; CHARGE OF CONDUCT UNBECOMING COURT EMPLOYEES; RESPONDENTS FOUND LIABLE THEREFOR; IMPATIENCE AND RUDENESS HAVE NO PLACE IN GOVERNMENT SERVICE IN WHICH PERSONNEL ARE ENJOINED TO ACT WITH SELF-RESTRAINT AND CIVILITY AT ALL TIMES.— The Investigating Judge correctly observed that the respondents failed to exercise the necessary prudence in dealing with the complainant. A court employee, even in the face of boorish behavior from those he deals with, ought to conduct himself in a manner befitting a gentleman and an officer of the court. Suffice it to say, respondents did not accord the complainant the respect due him. Respondents Rubio and Surtida could have easily avoided the heated discussion with the complainant had they simply referred him to the OCC. Respondents Rubio and Surtida should be held liable for conduct unbecoming court employees. Their acts of provoking the complainant constitute behavior wholly unexpected from those in the judicial service. They should be reminded that government service is people-oriented. Patience is an essential part of dispensing justice, civility is never a sign of weakness, and courtesy is a mark of culture and good breeding. Impatience and rudeness have no place in government service in which personnel are enjoined to act with self-restraint and civility at all times.

R E S O L U T I O N

NACHURA, *J.*:

The instant controversy arose from a Complaint dated November 14, 2005 and docketed as OCA I.P.I No. 05-2329-P for misconduct, unethical behavior, verbal abuse, manhandling, grave threat, grave/serious oral defamation, harassment, abuse and usurpation of judicial power by Christopher D. Manaog against Arnel Jose A. Rubio and Edgar C. Surtida, Sheriff IV, Regional Trial Court (RTC)-Naga City.

In a Resolution[1] dated February 27, 2008, the Third Division of the Court referred the complaint to the Executive Judge of the RTC at Naga City[2] for investigation, report and recommendation. Thereafter, the case was referred to the Office of the Court Administrator (OCA), also for evaluation, report and recommendation.[3]

As summarized by the Investigating Judge, the facts are as follows:

The complainant, on October 21, 2005, went to the Office of the Clerk of Court (OCC), RTC, Naga City to secure information on ownership of certain parcels of land, which had been transferred to others allegedly through fraud. He was inquiring at the information counter in the lobby of the Hall of Justice, when respondent Rubio approached him and said, "*Digdi*" (It's here) after the former saw the documents he had brought with him. The complainant claims the respondent told him that the person whose signature appeared on the said documents was already dead, and whatever records the complainant was looking for were already gone. A discussion followed, culminating in a verbal tussle between them.

The complainant avers that the respondent summoned the guard-on-duty at the Hall of Justice and instructed the latter: "*Guard, pahaleon mo ang hayop na taong ini"* (Guard, send away this beast!). The respondent proceeded to hurl invectives at the complainant, statements like "*Dae ka tatao makipag-olay, hayup ka*" (You do not know how to ask for a favor, you beast!). Respondent Surtida, who was unknown to the complainant at the time, also joined the fray, telling the complainant, "*Magdigdi ka ta titirahon ta kang di, puta kang hayop ka*" (Come here and I will hit you, you vile beast!).

The complainant avers that on October 26, 2005, together with his brother, he returned to the Hall of Justice to verify the

[1] *Rollo,* p. 33.

[2] Judge Jaime E. Contreras, Executive Judge, Regional Trial Court, Naga City.

[3] Resolution dated August 13, 2008, *rollo,* p. 123.

identity of the other employee (respondent Surtida) who had joined respondent Rubio in verbally abusing him. While on their way to the office of RTC Branch 25, respondent Rubio shouted at him and said, "*Hoy, hoy, ano nakua mo na ang daga mo*" (Hey, hey, have you found your land?)? The complainant avers that he merely ignored the taunts from respondent Rubio. The latter, however, refused to keep silent and, in the presence of the court employees, told the complainant, "*Maski ka pa mo, raot garo an payo mo*" (Whatever, you appear to be a nutcase). The complainant's brother responded, "*UP graduate man lang kami*" (We are just UP graduates), which statement apparently drew the ire of respondent Rubio, making him retort with the following remark: "*Ano man daa yang UP? Siguro raot an payo kan mga nagkaklase dyan. Maski pa kamo magsurog na duwa, papatulan ko kamo*" (What is that UP? I think the students there are also nutcases. Even if both of you would help each other, I will fight you).

In his June 30, 2008 Report, Executive Judge Jaime E. Contreras, RTC, Naga City, found respondents Sheriffs Jose Arnel Rubio and Edgar C. Surtida II liable for conduct prejudicial to the best interest of the service. Judge Contreras recommended the penalty of suspension for one (1) month for Sheriff Rubio and reprimand for Sheriff Surtida, a recommendation joined by the OCA.

The Court agrees with the report of the Executive Judge and OCA.

Time and again, the Court has emphasized the heavy burden of responsibility which court officials and employees are mandated to perform. They are constantly reminded that any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided. This is so because the image of the court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work there. Thus, court employees have been requested to adhere to the exacting standards of morality and decency in order to preserve

the judiciary's good name and standing as a true temple of justice.[4]

This Court, speaking in *Pizarro v. Villegas*,[5] held that:

> We stress that the conduct of even minor employees mirrors the image of the courts they serve; thus, they are required to preserve the judiciary's good name and standing as a true temple of justice x x x.

Respondents Rubio and Surtida failed to meet these exacting standards. They have shown lack of decorum, propriety, and respect in their dealing with other people. Their actuations also debased the public's regard for the very institution they represent, thereby warranting administrative sanction. Any conduct that would be a bane to the public trust and confidence reposed in the Judiciary cannot be countenanced.[6]

The Investigating Judge correctly observed that the respondents failed to exercise the necessary prudence in dealing with the complainant. A court employee, even in the face of boorish behavior from those he deals with, ought to conduct himself in a manner befitting a gentleman and an officer of the court. Suffice it to say, respondents did not accord the complainant the respect due him. Respondents Rubio and Surtida could have easily avoided the heated discussion with the complainant had they simply referred him to the OCC.

Respondents Rubio and Surtida should be held liable for conduct unbecoming court employees. Their acts of provoking the complainant constitute behavior wholly unexpected from those in the judicial service. They should be reminded that government service is people-oriented. Patience is an essential part of dispensing justice, civility is never a sign of weakness, and courtesy is a mark of culture and good breeding. Impatience and rudeness

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[4] *Reyes v. Vidor*, A.M. No. P-02-1552, December 3, 2002, 393 SCRA 257, 260.

[5] A.M. No. P-97-1243, November 20, 2000, 345 SCRA 42.

[6] *In Re: Complaint for Failure to Pay Just Debts against Esther T. Andres*, A.M. No. 4004-40-SC, March 1, 2005, 452 SCRA 654, 664.

have no place in government service in which personnel are enjoined to act with self-restraint and civility at all times.[7]

WHEREFORE, the Court finds Sheriff Jose Arnel Rubio *GUILTY* of simple misconduct for which he is *SUSPENDED* from the service for one (1) month and one (1) day without pay with a *STERN WARNING* that a repetition of the same or similar offense in the future shall be dealt with more severely. The Court also finds Sheriff Edgar C. Surtida II *GUILTY* of conduct unbecoming a court employee for which he is *REPRIMANDED* with the *STERN WARNING* that a repetition of the same or similar offense in the future shall be dealt with more severely.

SO ORDERED.

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

THIRD DIVISION

[A.M. No. RTJ-07-2093. February 13, 2009]
(Formerly OCA IPI No. 05-2312-RTJ)

SYLVIA SANTOS, *complainant, vs.* **JUDGE EVELYN S. ARCAYA-CHUA, Regional Trial Court, Branch 144, Makati City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; QUANTUM OF PROOF REQUIRED TO ESTABLISH MALFEASANCE IS SUBSTANTIAL

[7] *Jacinto v. Vallarta,* A.M. No. MTJ-04-1541, March 10, 2005, 453 SCRA 83, 94.

EVIDENCE.— It is settled that in administrative proceedings, the quantum of proof required to establish malfeasance is not proof beyond reasonable doubt, but substantial evidence, *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. In this case, Justice Salvador found that substantial evidence existed to support the allegations against respondent.

2. ID.; ID.; ID.; FINDINGS OF INVESTIGATING MAGISTRATES ON THE CREDIBILITY OF WITNESSES ARE GIVEN GREAT WEIGHT.— The findings of investigating magistrates on the credibility of witnesses are generally given by this Court great weight by reason of their unmatched opportunity to see the deportment of the witnesses as they testified. As Justice Salvador's observations and findings are well supported by the records, the Court finds no reason to depart from such rule.

3. ID.; ID.; ID.; WITHDRAWAL OF A COMPLAINT OR DESISTANCE FROM A COMPLAINT WILL NOT DEPRIVE THE SUPREME COURT OF ITS POWER TO FERRET OUT THE TRUTH AND DISCIPLINE ITS MEMBERS ACCORDINGLY.— As a final word, let it be stressed once again that the office of a judge is sacred and imbued with public interest. The need to maintain the public's confidence in the judiciary cannot be made to depend solely on the whims and caprices of complainants who are, in a real sense, only witnesses therein. Thus, withdrawal of a complaint or desistance from a complaint will not deprive this Court of its power under the Constitution to ferret out the truth and discipline its members accordingly.

4. JUDICIAL ETHICS; JUDGES; GROSS MISCONDUCT, DEFINED; RESPONDENT JUDGE FOUND GUILTY OF GROSS MISCONDUCT; IMPOSABLE PENALTY.— As defined, misconduct is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior; while "gross," has been defined as "out of all measure; beyond allowance; flagrant; shameful; such conduct as is not to be excused. Under Sections 8 and 11 of Rule 140, a judge found guilty of gross misconduct may be punished with any of the following sanctions: (1) dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or

appointment to any public office, including government-owned or controlled corporations, provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; (2) suspension from office without salary and other benefits for more than three but not exceeding six months; or (3) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00. This is respondent's first administrative offense. In view of such circumstance and the sanctions provided under Rule 140, the Court finds suspension from office without salary and other benefits for six months to be proper in this case.

APPEARANCES OF COUNSEL

Perfecto A.S. Laguio, Jr. for complainant.

R E S O L U T I O N

AUSTRIA-MARTINEZ, *J.*:

Before the Court is the Complaint of Sylvia Santos (complainant) dated July 14, 2005, against Judge Evelyn S. Arcaya-Chua (respondent), of the Regional Trial Court (RTC) Branch 144, Makati City for serious misconduct and dishonesty.[1]

Complainant, an aunt of respondent's husband, alleges: In the first week of September 2002, she asked respondent's help, who was then the Presiding Judge of the Metropolitan Trial Court (MeTC), Branch 63 of Makati City, regarding the cases[2] of complainant's friend, Emerita Muñoz, pending before the Supreme Court. Respondent, a former employee of the Court, said that she could help as she had connections with some Justices of the Court; she just needed ₱100,000.00 which she would give to an employee of the Court for the speedy resolution of said cases. In the first week of October 2002, complainant gave respondent ₱100,000.00 in the privacy of the latter's chamber. When complainant followed up the cases in February

[1] *Rollo*, pp. 1-4.

[2] G.R. No. 142676 entitled "*Emerita Muñoz v. Atty. Victoriano R. Yabut, Jr. et al.*" and G.R. No. 146718 entitled "*Emerita Muñoz v. Sps. Samuel and Aida Go Chan and Bank of the Philippine Islands.*"

2003, respondent told her that there was a problem, as the other party was offering ₱10 million to the Justices. Complainant asked respondent to return the ₱100,000.00; however respondent could no longer be contacted.[3]

In her Comment dated August 19, 2005, respondent denies the charges against her and avers: In the months adverted to by complainant, she (respondent) was facing protests, damaging newspaper reports and administrative cases which caused her hypertension; thus, she could not have agreed to the supposed transaction of complainant. When she became a judge, complainant asked a lot of favors from her, and knowing that she worked as a Court Attorney of the Supreme Court, complainant asked her to talk to a certain Mario Tolosa of the Third Division, to whom complainant gave ₱50,000.00 for a favorable resolution of Muñoz's cases. Respondent declined; thereafter complainant started spreading malicious imputations against her. On April 23, 2005, complainant begged respondent to talk to anyone in the Third Division to recover the money she gave Tolosa. Respondent again refused; complainant then repeatedly tried to talk to her until April 25, 2005 when complainant threatened to file a case against respondent with the Supreme Court. Complainant sent two demand letters addressed to respondent's court asking for the return of the ₱100,000.00 complainant allegedly gave her, which letters were read by respondent's Clerk of Court. Complainant also told respondent's husband, outside respondent's house, that she (respondent) was corrupt, as she asked for money in order to settle cases in court. Respondent filed cases of Grave Oral Defamation, Intriguing Against Honor and Unjust Vexation against complainant, while complainant filed an estafa case against her.[4]

Complainant and respondent filed several pleadings reiterating their respective claims.[5]

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

[4] *Id.* at 6-15. The estafa case filed by complainant against respondent was dismissed by the City Prosecution Office and the petition for review thereon denied by the Department of Justice, *id.* at 123-125, 169-177, 226-227.

[5] *Rollo*, pp. 61-62, 68-70, 75-79, 91-92, 107-109.

The Court in its Resolution dated July 4, 2007, referred the instant case to Associate Justice Marina L. Buzon of the CA for investigation, report and recommendation.[6]

A preliminary conference was set for September 4, 2007.[7] On said date, complainant manifested her desire to move for the dismissal of her complaint against respondent.[8] In a Verified Manifestation dated September 6, 2007, complainant stated that in the latter part of August 2007, she and respondent had a long and serious discussion about the dispute and bad feelings between them; that after a sincere exchange of views, it dawned on complainant that her accusation against respondent was brought about by misunderstanding, confusion and misapprehension of facts concerning the incident subject of the present administrative case; that for the sake of unity and harmonious relations in their family, the complainant and respondent had reconciled and restored friendly relations with each other; and that in view of the foregoing, complainant was no longer interested in pursuing her administrative case against respondent.[9]

In her Report dated October 5, 2007, Justice Buzon recommended the dismissal of the administrative case in view of paucity of evidence upon which a conclusion could be drawn, brought about by the withdrawal by Santos of her complaint and her failure and refusal to prove the allegations in her complaint.[10]

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[6] *Id.* at 240-241, 255-256. See also *id.* at 228. Prior to this Resolution, the Office of the Court Administrator recommended that the instant case be dismissed for being premature, without prejudice to its being refiled after the criminal complaint shall have been resolved (*id.* at 160). The Court in a Resolution on July 5, 2006, resolved to hold in abeyance the proceedings of the instant case pending the outcome of the estafa case against respondent (*id.* at 161-162). Complainant filed a Motion for Reconsideration and prayed that the case be referred to a Justice of the CA for investigation, report and recommendation (*id.* at 165-167).

[7] *Id.* at 265.

[8] *Id.* at 268.

[9] *Id.* at 270-271.

[10] *Id.* at 303-304.

The Court, adopting the recommendation of Justice Buzon, issued its Resolution dated December 5, 2007 dismissing the complaint against respondent for lack of evidence. The Court in the same Resolution also ordered complainant to show cause why she should not be held in contempt of court for filing an unfounded verified complaint dated July 14, 2005 against respondent.[11]

Complainant submitted her Compliance dated January 6, 2008 stating that:

xxx xxx xxx

2. Contrary to the impression of the Honorable Court, her administrative complaint against Judge Evelyn Argaya [sic] Chua is not unfounded;

3. All the allegations therein are true and based on respondent's personal knowledge;

4. The main reason why respondent did not anymore pursue her complaint was because of the pressure of her family to forgive Judge Chua, for the sake of unity and harmony in the family, given the fact that Judge Chua's husband is her nephew;

5. On several occasions in August 2007, Judge Chua, her husband and their children came to respondent's house and pleaded for forgiveness. Later, respondent's sister, husband and children, as well as her close friends persuaded her to forgive Judge Chua and let bygones be bygones, for the sake of peace and unity in the family;

6. It is solely due to the foregoing events as well as for humane reasons that respondent gave up her complaint against Judge Chua.[12] (Emphasis supplied)

In its Resolution dated March 3, 2008, the Court found that complainant's compliance was not satisfactory, and that she was trifling with court processes. The Court then resolved to: reprimand complainant with a stern warning that a more severe

[11] *Rollo*, p. 292.

[12] *Id.* at 305.

penalty would be imposed on her in the event of a repetition of the same offense; recall the Resolution of the Court dated December 5, 2007; reopen the administrative case against respondent; direct Justice Rebecca D. Salvador[13] to conduct an investigation and submit her report and recommendation; and directed complainant to attend all hearings scheduled by Justice Salvador under pain of contempt of court.[14]

Justice Salvador issued an order setting the preliminary conference on April 9 and 10, 2008, and respondent filed a motion to defer the proceedings pending her motion for reconsideration of the Court's March 3, 2008 Resolution.[15] In a Resolution dated April 10, 2008, Justice Salvador denied the motion to defer proceedings.[16] A preliminary conference was conducted on September 3, 2008 where both parties presented their respective exhibits; and a clarificatory hearing on September 17, 2008 attended by complainant, her counsel and respondent.[17]

In her Report dated September 23, 2008, Investigating Justice Salvador found sufficient grounds to hold respondent liable for the offenses charged and recommended that "respondent be administratively penalized for the grave misconduct and dishonesty charged by complainant."[18]

Justice Salvador found that: complainant was able to present substantial evidence in support of her complaint against respondent; while respondent denied that she asked for and received from complainant ₱100,000.00 for the facilitation of a favorable decision on Muñoz's cases, respondent, however, admitted meeting complainant in her office in September 2002, claiming only a different reason for such meeting; that is, complainant was there to console her for the protests against

[13] In lieu of Justice Buzon, who was to retire on March 18, 2008.

[14] *Rollo*, p. 308.

[15] *Id.* at 310-314.

[16] *Id.* at 339-342.

[17] Report dated September 23, 2008, pp. 11-12.

[18] *Id.* at 2, 31.

respondent at the time; respondent claims to have incurred complainant's ire for declining complainant's request for favors in June 2004; however, it was respondent who asserted that the complainant asked her to talk to Mario Tolosa of the Supreme Court; complainant asserted that she had not heard of Tolosa before; however it was respondent's comment[19] and her husband's affidavit[20] which stated that complainant informed them on April 23, 2005 that Tolosa had gone on absence without leave; it was respondent, as a former employee of the Supreme Court who stood to know who Tolosa was; there was also a strong reason to believe that respondent knew and associated with Muñoz prior to the parties' falling out, since the affidavit of Robert Chua (Robert), respondent's husband, stated that Muñoz was introduced to them by complainant in September 2003, and that they went to Tagaytay with her in 2004; Robert claimed, however, that the topic of case-fixing never cropped up; although respondent filed a complaint for grave oral defamation, intriguing against honor and unjust vexation on June 20, 2005 before complainant filed the instant administrative complaint, it cannot be denied, however, that respondent at the time had already been served complainant's demand letters dated April 28, 2005 and May 27, 2005; respondent's failure, both as a judge and as a lawyer, to reply to complainant's first demand letter, was unusual; considering complainant's advanced age and illnesses, respondent's claim — that complainant's motive for filing the administrative case was respondent's refusal to give in to complainant's request to intercede in the cases of the latter's friend — was too paltry an explanation for complainant's willingness to expend the time, money, effort and aggravation entailed by the administrative case as well as the criminal case filed by and against her; complainant's compliance with the Court's Resolution, which directed her to show cause why she should not be held in contempt for filing an unfounded complaint against respondent, stated that the allegations in her complaint were true and based on personal knowledge, and it was only because of respondent and their family's pleas, as well as for

[19] Dated August 19, 2005.

[20] Dated August 10, 2005.

humane reasons, that she gave up her complaint against respondent.

Justice Salvador particularly observed the demeanor of complainant at the September 3, 2008 hearing. According to her, complainant, while weary of the demands entailed by the administrative case, staunchly stood pat over the veracity of her complaint and the reasons why she decided to withdraw the same; respondent also had no reason to ask forgiveness from complainant, if indeed complainant falsely instituted the administrative case against her.[21]

Justice Salvador also gave weight to complainant's testimony that the return of the money by respondent, in addition to familial interests, induced her to withdraw the complaint.[22]

Respondent filed a Motion dated October 10, 2008 claiming that there were significant omissions of testimonies in the Transcript of Stenographic Notes (TSNs) particularly on the statement *"Ibinalik naman ho nila ang pera";* such question was also beyond the scope of clarificatory questions that may be propounded, as nowhere in the previous testimonies of complainant, either in the direct or the cross-examination, did she mention the return of the money, and it was only during the clarificatory hearing that it surfaced; thus, she (respondent) was deprived of her right to cross-examine complainant. Respondent prayed that corrections on the TSN be made, or that the testimonies of complainant — that "the money was returned to me" and "*ibinalik naman ho nila ang pera*" — be stricken off; and in case the correction of the TSN was no longer proper, her manifestation that the said testimony of complainant was given only during the clarificatory hearing and, in effect, without an opportunity for her to cross-examine the complainant.

In the Court's Resolution dated November 26, 2008, the Court denied respondent's prayer that the proposed corrections on the TSN be made, and that the subject testimonies of

[21] Report, pp. 12-27.

[22] Report, p. 28; TSN September 17, 2008, p. 53.

complainant be stricken off. The Court, however, granted her prayer and noted her manifestation that the subject testimony was given only during the clarificatory hearing and in effect without granting her an opportunity to cross-examine complainant about the same.

The Court agrees with the findings and recommendation of Justice Salvador.

It is settled that in administrative proceedings, the quantum of proof required to establish malfeasance is not proof beyond reasonable doubt, but substantial evidence, *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion.[23]

In this case, Justice Salvador found that substantial evidence existed to support the allegations against respondent.

Try as she might to show the implausibility of complainant's claims, respondent could not deny that she and complainant met at her office sometime in September 2002; that she and her husband knew Muñoz and associated with her on several occasions, and that it was she (respondent), being a former employee of the Supreme Court, who stood to know who Tolosa was.

But most telling of all the circumstances pointing to respondent's guilt is the unwavering stance of complainant that respondent did solicit and receive ₱100,000.00 from her in order to facilitate a favorable ruling in Muñoz's cases.

As aptly observed by Justice Salvador, complainant, when repeatedly asked during the hearing, was consistent in her testimony:

J. DE GUIA-SALVADOR:

> x x x At the start of this afternoon's proceedings, you affirmed the truth of the matters stated in your verified complaint?

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[23] *Vidallon-Magtolis v. Salud*, A.M. No. CA-05-20-P, September 9, 2005, 469 SCRA 439, 458.

MS. SANTOS:

Opo.

J. DE GUIA-SALVADOR:

And according to you they are based on your personal knowledge?

MS. SANTOS:

My complaint is true. That is all true.[24]

xxx xxx xxx

J. DE GUIA-SALVADOR:

Ano ang totoo?

MS. SANTOS:

Ang sabi ko sa kanya, "Evelyn, tulungan mo lang si Emerita kasi napakatagal na ng kaso niya. Hindi niya malaman kung siya ay nanalo o hindi." Ang sabi niya, "Sige Tita, tutulungan ko."

Evelyn, *sasabihin ko ang totoo ha. Huwag kang magagalit sa akin.*

J. DE GUIA-SALVADOR:

Just tell us what happened.

MS. SANTOS:

Sabi niya, Tita, sige, bigyan mo ako ng ₱100,000.00 at tutulungan ko. Pagka sa loob ng tatlong buwan walang nangyari ibabalik ko sa iyo ang ₱50,000.00." Which is true ha. Sinabi ko doon sa humihingi ng pabor sa akin. Okay siya. Dumating ang panahon. It took already years walang nangyari. Siyempre ako ngayon ang ginigipit nung tao. Ngayon, kinausap ko siya. Sabi ko, "Evelyn, kahit konti magbigay ka sa akin para maibigay ko kay Emerita." Unang-una iyang Emerita may utang sa akin ng ₱20,000.00 sa alahas dahil ako, Justice, nagtitinda ng alahas. Bumili sya.

[24] TSN, September 3, 2008, pp. 53-54.

JUDGE ARCAYA-CHUA:

> Your honor, at this point, may I request that the complainant be told not to continue with her testimony because she is already through with her direct examination.

J. DE GUIA-SALVADOR:

> Noted. But allow her testimony to remain in the record.[25]

Complainant's testimony during the clarificatory hearing also revealed her true reasons for withdrawing her complaint. As borne out by the records and correctly pointed out by Justice Salvador in her Report:

J. DE GUIA-SALVADOR:

> I have another question regarding the verified manifestation counsel.
>
> Alright, we go to the verified manifestation which you filed on September 7, 2007, and which had been marked as Exhibits "1", "1-A", "1-B" and submarkings for respondent. You stated in the verified complaint that the accusation against respondent was brought about due to misunderstanding, misapprehension of facts and confusion. Please clarify what do you mean by "the accusation against respondent was brought about due to misunderstanding, misapprehension of facts and confusion"?

MS. SANTOS:

> *Para matapos na po ang problemang iyan kaya nagka-intindihan na kami't nagkabatian. Sa totoo lang po Justice, matagal kaming hindi nagkibuan. Ngayon, dahil nakiusap nga po sila sa akin, kaya ako naman ho, sige, pinatawad ko na sila dahil pamilya ko ho sila, ang asawa niya. Kung hindi lang ho anak ng kapatid ko yan, baka, ewan ko, baka hindi ko tuluyan iyan.*

J. DE GUIA-SALVADOR:

> So it is not true that there were facts regarding the incident which you misunderstood or misapprehended?

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[25] TSN, September 3, 2008, pp. 75-77.

MS. SANTOS:

> *Naintindihan ko po iyan, Justice. Kaya nga ho, iyun na nga ho, sa pakiusap po nila na magkasundo na po kami,* ***ibinalik naman ho nila ang pera****, kaya ang sabi ko ho, tama na. Iyan po ang buong katotohanan, Justice.*[26] (Emphasis supplied)

The findings of investigating magistrates on the credibility of witnesses are generally given by this Court great weight by reason of their unmatched opportunity to see the deportment of the witnesses as they testified.[27] As Justice Salvador's observations and findings are well supported by the records, the Court finds no reason to depart from such rule.

Indeed, complainant's claim that respondent returned the money to her was given during a clarificatory hearing. And respondent's belated objections to said testimony, through a motion submitted to the Court a month later, were accordingly noted. But respondent could not deny that she was present during the clarificatory hearing and could have very well objected to and refuted complainant's declaration on the matter. Respondent, however, did not make any objection at the time, which failure is truly damaging.

As well explained by Justice Salvador:

> Unrefuted by respondent, it would appear from the foregoing declarations that the return of the money complainant claims to have given the former was, in addition to the familial interests cited therefor, part of the reason the latter withdrew her complaint and acceded to the amicable settlement of the case. If it is true that she received no money in consideration of the favorable and expeditious resolution of G.R. Nos. 142676 and 146718, it necessarily and logically follows that respondent would not have returned – as in fact she would not have anything to return – said money to complainant. More so, when it is borne in mind that, as per respondent's September 20, 2005 manifestation, the aforesaid cases had reportedly been decided in favor of Emerita Muñoz. Finding no refutation of

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[26] TSN, September 17, 2008, pp. 51-53.

[27] *Vidallon-Magtolis v. Salud, supra* note 23.

the assertion regarding respondent's return of the money and no reason to doubt the veracity thereof and/or the credibility of complainant insofar as said material fact is concerned, the undersigned is constrained to affirm the existence of a reasonable ground to believe that the former is responsible for the conduct complained of. If a criminal conviction for which the quantum of proof is guilt beyond reasonable doubt, may be made to rest on the testimony of a single credible witness, it stands to reason that an administrative complaint, for which only substantial evidence is required can be sustained on the strength thereof.[28]

Clearly, substantial evidence exists in this case to hold respondent liable for gross misconduct.

As defined, misconduct is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior; while "gross," has been defined as "out of all measure; beyond allowance; flagrant; shameful; such conduct as is not to be excused.[29]

Under Sections 8 and 11 of Rule 140,[30] a judge found guilty of gross misconduct may be punished with any of the following sanctions: (1) dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations, provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; (2) suspension from office without salary and other benefits for more than three but not exceeding six months; or (3) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

This is respondent's first administrative offense.[31] In view of such circumstance and the sanctions provided under Rule 140,

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[28] Report, pp. 28-29.

[29] *Vidallon-Magtolis v. Salud*, *supra* note 23, at 469.

[30] As amended by A.M. No. 01-8-10-SC.

[31] Per OCA Docket Legal Office.

the Court finds suspension from office without salary and other benefits for six months to be proper in this case.[32]

As a final word, let it be stressed once again that the office of a judge is sacred and imbued with public interest. The need to maintain the public's confidence in the judiciary cannot be made to depend solely on the whims and caprices of complainants who are, in a real sense, only witnesses therein.[33] Thus, withdrawal of a complaint or desistance from a complaint will not deprive this Court of its power under the Constitution to ferret out the truth and discipline its members accordingly.[34]

WHEREFORE, Judge Evelyn S. Arcaya-Chua of the Regional Trial Court, Branch 144, Makati City is found *GUILTY* of gross misconduct and is hereby *SUSPENDED* from office for six (6) months without salary and other benefits. She is *WARNED* that the commission of the same or a similar act in the future shall merit a more severe penalty.

SO ORDERED.

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

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[32] See *Dulay v. Lelina*, A.M. No. RTJ-99-1516, July 14, 2005, 463 SCRA 269, 276.

[33] *Carman v. Zerrudo*, 466 Phil. 569, 580 (2004).

[34] *Id*.

FIRST DIVISION

[G.R. Nos. 119660-61. February 13, 2009]

PAT. EDGARDO HERRERA *y* BALTORIBIO and PAT. REDENTOR MARIANO *y* ANTONIO, *petitioners, vs.* **HONORABLE SANDIGANBAYAN and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; DOUBLE JEOPARDY; REQUISITES TO PROSPER.— The rule on double jeopardy does not apply. Public respondent Sandiganbayan ordered the amendment of the Informations and made it of record that the evidence adduced during the pre-trial of the case and the hearing on the petition for bail shall be deemed automatically reproduced as evidence during the trial of the case on the merits. Double jeopardy did not attach by virtue of petitioner's plea of not guilty under the amended information. For a claim of double jeopardy to prosper, the following requisites must concur: (1) there is a complaint or information or other formal charge sufficient in form and substance to sustain a conviction; (2) the same is filed before a court of competent jurisdiction; (3) there is a valid arraignment or plea to the charges; and (4) the accused is convicted or acquitted or the case is otherwise dismissed or terminated without his express consent.

2. ID.; ID.; ID.; ID.; NOT PRESENT IN CASE AT BAR.— In the present case, petitioners and the two accused pleaded not guilty to the two original Informations for the crimes of murder. Thereafter, in their Joint Petition for Bail, petitioners raised the issue of lack of jurisdiction on the ground that the prosecution failed to allege in the informations that the crimes were committed "in relation to their office." On the same day, public respondent ordered the amendment of the Informations accordingly. Thus, the first requirement for double jeopardy to attach, *i.e.*, that the Informations against the petitioners were valid, has not been complied with. Likewise, the fourth element was lacking. Petitioners cannot be validly convicted on the basis of the original Informations as the prosecution failed to

allege in the Informations that the crimes were committed "in relation to their office." Thus, petitioners were not placed in danger of being convicted when they entered their pleas of not guilty to the two original Informations which were insufficient in form and substance to sustain their conviction. There was also no dismissal or termination of the cases.

3. ID.; ID.; INFORMATION; AMENDMENT THEREOF, WHEN ALLOWED.— Furthermore, it was well-within the power of public respondent Sandiganbayan to order the amendment of the two original Informations. Section 4, Rule 117 of the Rules on Criminal Procedure states that if the motion to quash is based on an alleged defect of the complaint or Information which can be cured by amendment, the court shall order that an amendment be made. If it is based on the ground that the facts charged do not constitute an offense, the prosecution shall be given by the court an opportunity to correct the defect by amendment. The motion shall be granted if the prosecution fails to make the amendment, or the complaint or Information still suffers from the same defect despite the amendment.

4. ID.; ID.; RIGHT OF THE ACCUSED; RIGHT TO CONFRONT AND CROSS EXAMINE THE WITNESSES; NO VIOLATION THEREOF WHERE THE PARTIES' COUNSEL CONDUCTED AN EXTENSIVE EXAMINATION OF THE WITNESSES.— Section 6, Rule 132, of the Revised Rules on Evidence provides that upon the termination of the direct examination, the witness may be cross-examined by the adverse party as to any matter stated in the direct examination, or connected therewith, with sufficient fullness and freedom to test his accuracy and truthfulness and freedom from interest or bias or the reverse, and to elicit all important facts bearing upon the issue. The cross-examination of a witness is a right of a party against whom he is called. Section 14(2), Article III of the Constitution states that the accused shall have the right to meet the witnesses face to face. Section 1(f), Rule 115 of the Revised Rules of Criminal Procedure also states that in all criminal prosecutions, the accused shall have the right to confront and cross-examine the witnesses against him. In the present case, petitioners' counsel has conducted an extensive cross-examination of prosecution witness Winterhalter on the scheduled dates of hearing. Petitioners, therefore, cannot belatedly claim that they were deprived of the said opportunity

and, thus, anchor their theory on the procedural infirmities in the proceedings.

5. ID.; EVIDENCE; WEIGHT AND SUFFICIENCY; POWER TO STOP INTRODUCTION OF FURTHER TESTIMONY, WHEN MAY BE EXERCISED BY THE COURT.— Moreover, the trial court has the power to direct the course of the trial either to shorten or to extend the direct or cross-examination of a counsel. Under Section 6, Rule 133 of the Revised Rules on Evidence, the court may stop the introduction of further testimony upon any particular point when the evidence upon it is already so full that more witnesses to the same point cannot be reasonably expected to be additionally persuasive. But this power should be exercised with caution. Thus, it is within the prerogative of public respondent Sandiganbayan to determine when to terminate the presentation of the evidence of the prosecution or the defense.

6. ID.; ID.; CREDIBILITY OF WITNESSES; FINDINGS OF FACT OF THE TRIAL COURT WITH RESPECT THERETO ACCORDED THE HIGHEST RESPECT.— Petitioners' attempt to destroy the credibility of prosecution witness Winterhalter fails. Public respondent Sandiganbayan had the opportunity to observe first-hand the demeanor and deportment of the witnesses and, therefore, its findings that the witnesses for the prosecution are to be believed over those of the defense are entitled to great weight. Winterhalter recognized the petitioners as the ones who cooperated with Pat. Barrera in killing the victims. She saw the events unfolding with the use of her binoculars 80 to 90 meters away. She established the identity of the petitioners as the companions of Pat. Barrera when they killed the victims. It has been ruled that findings of fact of the trial court on credibility of witnesses should be accorded the highest respect. The Court has refrained from interfering with the judgment of the trial court in passing on the credibility of witnesses unless there appears on record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misapprehended or misinterpreted. None exists in this case.

7. ID.; ID.; ID.; WHERE THERE IS NOTHING TO INDICATE THAT A WITNESS WAS MOVED BY IMPROPER MOTIVES, THE POSITIVE AND CATEGORICAL DECLARATIONS THEREOF ON THE WITNESS STAND

SHOULD BE GIVEN FULL FAITH AND CREDENCE.— After the incident, Winterhalter and her neighbor, also a foreigner, had been receiving death threats, but she voluntarily testified in order to shed light on the commission of the crime. In fact, she did not even know the two victims. Indeed, where there is nothing to indicate that a witness was moved by improper motives, the positive and categorical declarations on the witness stand, made under solemn oath, should be given full faith and credence. It has not been shown that Winterhalter had any reason to falsely implicate the petitioners.

8. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ESSENTIAL ELEMENTS TO PROSPER.— The accused who invokes self-defense thereby admits having killed the victim, and the burden of evidence is shifted on him to prove, with clear and convincing evidence, the confluence of the following essential elements: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.

9. ID.; ID.; ID.; ID.; UNLAWFUL AGGRESSION; THREAT TO ACCUSEDS' LIVES NOT SUFFICIENTLY SERIOUS TO JUSTIFY SHOOTING THE VICTIMS WHO WERE BOTH HANDCUFFED AND UNARMED.— To proceed with the argument that there was unlawful aggression on the part of the two victims as they were trying to get the pistol tucked in the waist of one of the police officers, petitioners should prove that they used reasonable means in repelling the supposed aggression. Considering that both victims were handcuffed and unarmed and, therefore, had restricted movements, it could only mean that the perceived threats to petitioners' lives were not sufficiently serious, in which case they were not justified in shooting the hapless victims who were unarmed. Petitioners could have simply subdued the two victims in a manner as to engage them in a fight without necessarily killing them.

10. ID.; ID.; ID.; THE NUMBER OF WOUNDS INFLICTED ON THE VICTIMS ARE IMPORTANT INDICIA WHICH DISPROVE A PLEA OF SELF-DEFENSE OR DEFENSE OF STRANGER.— Moreover, the nature and number of wounds inflicted by the accused are constantly and unremittingly considered as important *indicia* which disprove a plea of self-

defense or defense of stranger because they demonstrate a determined effort to kill the victim and not just defend oneself. The victims were repeatedly shot at close range and on vital parts of their bodies. The autopsy report showed the extent of the wounds sustained by the victims and, therefore, proved the fact that the two were intended to be killed.

11. ID.; CONSPIRACY; WHEN TWO OR MORE PERSONS AGREE TO COMMIT A CRIME, EACH IS RESPONSIBLE, WHEN THE CONSPIRACY IS PROVEN, FOR ALL THE ACTS OF THE OTHERS, DONE IN FURTHERANCE OF THE CONSPIRACY; CASE AT BAR.— Conspiracy can be inferred from the acts of the accused which clearly manifest a concurrence of wills, a common intent or design to commit a crime. The familiar rule in conspiracy is that when two or more persons agree or conspire to commit a crime, each is responsible, when the conspiracy is proven, for all the acts of the others, done in furtherance of the conspiracy. In this case, petitioner Mariano drove the vehicle to Timothy Street which was a place less conspicuous to passersby. There, Pat. Alcalde, Pat. Barrera, and petitioner Herrera brought out the two victims from the back portion of the van in order to perpetuate the killing. Petitioner Herrera alighted from the front passenger side of the van and, together with Pat. Alcalde and Pat. Barrera, began shooting the victims. According to Winterhalter, petitioner Mariano even appeared to be writing something on a sheet of paper immediately before the shooting, although it cannot be determined with certainty as to whether he was making an inquiry or merely noting the names of the victims. Petitioner Mariano also fired at the two victims. The evidence showed a common design on the part of the petitioners and the two accused to effect the killings. After the killing, petitioners even helped carry the two victims into the van. Thus, conspiracy in the commission of the crime of murder can be inferred from the surrounding circumstances.

12. ID.; JUSTIFYING CIRCUMSTANCES; FULFILLMENT OF A DUTY; REQUISITES TO PROSPER.— Intertwined with their argument that they were acting in self-defense, petitioners want this Court to appreciate the presumption of regularity in the performance of their official acts. This contention has no merit. In order to consider the defense of fulfillment of a duty, it must be shown that: (1) the accused acted in the

performance of a duty or in the lawful exercise of a right or office; and (2) the injury caused or the offense committed is the necessary consequence of the due performance of duty or the lawful exercise of a right or office. Petitioners need not resort to inflicting injuries and even to the extent of killing the victims as there was no resistance at all from them when they were apprehended. The two victims were handcuffed and unarmed while the petitioners and the other police officers were armed with pistols and a rifle. Aida Viloria Magsipoc, NBI Supervising Forensic Chemist, per Chemistry Report No. C-89-1606, conducted the paraffin test on George Go and Shi Shu Yang which yielded negative results, and, thus, pointed to the fact that the victims never fired a gun and were totally defenseless in the face of the fully armed police officers. Clearly, the presumption of regularity in the performance of official duties on the part of the petitioners does not apply.

13. ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; ESSENCE.— Petitioners maintain that the prosecution failed to establish their guilt beyond reasonable doubt. On the contrary, the crime of murder was sufficiently established as the killing of the two victims was attended by the qualifying circumstance of treachery. The essence of treachery is a deliberate and sudden attack, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape. Frontal attack can be treacherous when it is sudden and unexpected and the victim is unarmed. What is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate.

14. ID.; MURDER; ELEMENTS; PRESENT IN CASE AT BAR.— Petitioner Mariano parked the patrol van along Timothy Street which was a practically deserted area, isolated from traffic and pedestrians. Pat. Alcalde, Pat. Barrera, and petitioner Herrera brought out the two handcuffed victims from the back portion of the patrol van in order to eventually salvage them. Petitioner Mariano appeared to be faking an alleged interrogation and was trying to get the name of Shi Shu Yang, whose identity was then not yet immediately known. Later, petitioner Mariano also participated in shooting at the unarmed victims. Hence, the elements of murder have been proven: (1) that the two victims were killed; (2) that petitioners and the two other accused killed the victims; (3) that the killing was attended by the qualifying circumstance of treachery

committed by the petitioners and the two other accused who conspired together in killing the victims; and (4) that the killing was not parricide or infanticide.

15. ID.; ID.; CIVIL LIABILITIES OF ACCUSED-PETITIONERS.— Public respondent Sandiganbayan did not grant the proper award of damages in favor of the heirs of Shi Shu Yang and George Go *y* Tan. Even if the heirs of the deceased failed to seek the affirmative relief of damages on appeal, the Court can, nonetheless, grant the award of damages as the fact of death of the two victims had been established. When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages. Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime. Under prevailing jurisprudence, the award of ₱50,000 to the heirs of the victims as civil indemnity is in order. In cases of murder and homicide, moral damages may be awarded without need of allegation and proof of the emotional suffering of the heirs, other than the death of the victim, since the emotional wounds from the vicious killing of the victims cannot be denied. Thus, the award of ₱50,000 is proper. As to the award of actual damages, Edna Go testified that she incurred funeral expenses of ₱11,500. She also testified that at the time of his death, George Go, then 38 years old, was earning an annual income of ₱102,387, less 10% withholding tax. The computation of loss of earnings in the amount of ₱1,433,418 is as follows: Life expectancy: = 2/3 x (80-38 [age of the victim George Go at the time of his death]) = 2/3 x 42 = 28 life expectancy. In the absence of proof of his living expenses, his net income is deemed to be 50% of his gross income. Net earning capacity: = Life expectancy x (₱102,387 - ₱51,193.50) = 28 x ₱51,193.50 = ₱1,433,418 loss of earnings. Moreover, the award of exemplary damages of ₱25,000 is proper since the qualifying circumstance of treachery attended the killing of the victims. Article 2230 of the Civil Code allows the award of exemplary damages as part of the civil liability when the crime was committed with one or more aggravating circumstances. The term aggravating circumstance as used therein should be construed in its generic sense since it did not specify otherwise.

APPEARANCES OF COUNSEL

Clarence D. Guerrero and *Servillano E. Abad* for petitioners.
GMG Law Firm for R.Mariano.
Rene V. Sarmiento & Associates for private respondents.

D E C I S I O N

AZCUNA, *J.*:

Petitioners Pat. Edgardo Herrera *y* Baltoribio and Pat. Redentor Mariano *y* Antonio, together with the other accused, Pat. Roberto Barrera and Pat. Rodolfo Alcalde, all members of the Parañaque Police Station, were charged with two (2) counts of murder, for their killing of Shi Shu Yang and George Go *y* Tan, before public respondent Sandiganbayan in Criminal Case Nos. 16674 and 16675.

The original informations, both dated December 4, 1990, against the petitioners and two other accused alleged:

In Criminal Case No. 16674:

That on or about the 28th day of December, 1989 in the Municipality of [Parañaque], Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused who were then public officers, being then members of the Parañaque Police Force, and armed with guns, and conspiring and confederating and mutually helping and aiding one another, with intent to kill and with treachery and by taking advantage of their public positions as members of the Parañaque Police Force, then and there willfully, unlawfully and feloniously shoot one SHI SHU YANG on the different parts of his body, thereby inflicting serious and mortal wounds upon said victim, which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of said victim, in such amount as may be awarded to them under the provision of the Civil Code of the Philippines.

CONTRARY TO LAW.[1]

[1] Records, Vol. II, p. 6.

In Criminal Case No. 16675:

That on or about the 28th day of December, 1989 in the Municipality of Parañaque, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused who were then public officers, being then members of the Parañaque Police Force, [and] armed with guns, conspiring and confederating and mutually helping and aiding one another, with intent to kill and with treachery and by taking advantage of their public positions as members of the Parañaque Police Force, did then and there willfully, unlawfully and feloniously shoot one GEORGE GO *Y* TAN on the different parts of his body, thereby inflicting serious and mortal wounds upon said victim, which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of said victim, in such amount as may be awarded to them under the provision of the Civil Code of the Philippines.

CONTRARY TO LAW.[2]

During the arraignment on March 18, 1992, petitioners and the other accused pleaded not guilty. Petitioners then filed a Joint Petition for Bail and raised the issue of lack of jurisdiction of failure of the prosecution to allege in the Informations that they committed the crimes "in relation to their office," citing the case of *Bartolome v. People*.[3] On the same day, March 18,

[2] *Id. at* 8.

[3] G.R. No. 64548, July 7, 1986, 142 SCRA 459. In this case, therein accused, Rolando Bartolome *y* Perez, Senior Labor Regulation Officer and Chief of the Labor Regulations Section, and Elino Coronel *y* Santos, Labor Regulation Officer, both of the Ministry of Labor (now Department of Labor and Employment [DOLE]), were charged with the crime of falsification of official document penalized under Article 171, paragraph 4 of the Revised Penal Code (*i.e.*, Bartolome made untruthful statements in his Personal Data Sheet [Civil Service Form No. 212] by making it appear that he was a 4th Year AB student at the Far Eastern University (FEU) and that he had taken and passed the "Career Service (Professional) Qualifying Examination" on May 2, 1976 in Manila even if his rating was 73.35%). The Court declared the proceedings in the Sandiganbayan to be null and void *ab initio* on the ground that said court had no jurisdiction over the case. It explained that there was no showing that the alleged falsification was committed by therein accused, if at all, as a consequence of, and while they were discharging, official functions. The Information set forth therein did not allege that there was an intimate connection between the discharge of official duties and the

1992, public respondent Sandiganbayan ordered the amendment of the informations and stated that the evidence adduced during the pre-trial of the case and the hearing on the petition for bail shall be deemed automatically reproduced as evidence during the trial of the case on the merits.

The amended Informations, both dated July 15, 1992, against the petitioners and the two accused alleged:

In Criminal Case No. 16674:

That on or about the 28th day of December, 1989 in the Municipality of Parañaque, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above named accused who were then public officers, being then members of the Parañaque Police Force, and armed with guns, and conspiring and confederating and mutually helping and aiding one another, committing the offense in relation to their public position or office, with intent to kill and with treachery and by taking advantage of their public positions as members of the Parañaque Police Force, then and there willfully, unlawfully and feloniously shoot one SHI SHU YANG on the different parts of his body, thereby inflicting serious and mortal wounds upon said victim, which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of said victim, in such amount as may be awarded to them under the provision of the Civil Code of the Philippines.

CONTRARY TO LAW.[4]

In Criminal Case No. 16675:

That on or about the 28th day of December, 1989 in the Municipality of Parañaque, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above named accused who were then public officers, being then members of the Parañaque Police Force, and armed with guns, and conspiring and confederating and mutually helping and aiding one another, committing the offense in relation to their public position or office, with intent to kill and with treachery and by taking advantage of their public positions as members of the Parañaque Police Force, then and there willfully, unlawfully and

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commission of the offense. Therefore, since the alleged falsification was not an offense committed in relation to the office of the accused, it did not come under the jurisdiction of the Sandiganbayan.

[4] Records, Vol. II, p. 1.

feloniously shoot one GEORGE GO *Y* TAN on the different parts of his body, thereby inflicting serious and mortal wounds upon said victim, which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of said victim, in such amount as may be awarded to them under the provision of the Civil Code of the Philippines.

CONTRARY TO LAW.[5]

Arraigned anew on September 18, 1992, petitioners Herrera and Mariano entered their pleas of not guilty[6] and withdrew their prior objections to the issue of lack of jurisdiction of public respondent Sandiganbayan over the case and moved that the proceedings and evidence presented during their Joint Petition for Bail be adopted *in toto*. Pat Barrera[7] was later convicted

[5] *Id.* at 4.

[6] Records, Vol. I, pp. 105-106.

[7] Pat. Roberto Barrera was later apprehended and trial of the case against him proceeded. In a Decision dated January 15, 2004, per Justice Diosdado M. Peralta (now a Member of this Court) and concurred in by Justice Teresita J. Leonardo-De Castro (Chairperson and now a Member of this Court) and Justice Gregory S. Ong, the Sandiganbayan convicted him of two counts of murder and sentenced him to suffer the penalty of *reclusion perpetua* and to pay civil indemnity and damages. The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered in the following:

(1) In Crim. Case No. 16674, the Court finds the accused Pat. Roberto Barrera guilty beyond reasonable doubt of the crime of murder defined in and penalized by Article 248 of the Revised Penal Code, as amended, and hereby sentences him to suffer the penalty of *reclusion perpetua* with the accessory penalties of civil interdiction during the time of his sentence and perpetual absolute disqualification for public office.

(2) In Crim. Case No. 16675, the Court finds the accused Pat. Roberto Barrera guilty beyond reasonable doubt of the crime of murder defined in and penalized by Article 248 of the Revised Penal Code, as amended, and hereby sentences him to suffer the penalty of *reclusion perpetua* with the accessory penalties of civil interdiction during the time of his sentence and perpetual absolute disqualification for public office.

Accused Barrera is further ordered to pay the legal heirs of George Go and Shi Shu Yang the amount of fifty thousand pesos (₱50,000.00) each for moral damages and fifty thousand pesos (₱50,000.00) each as indemnity for death; and, to pay eleven thousand five hundred pesos (₱11,500.00) as actual

for two (2) counts of murder. After filing a notice of appeal, Pat. Barrera did not file any further pleading.

During the pre-trial on March 30, 1993, the parties stipulated that petitioners were public officers at the time of the commission of the crimes. Whereupon, the cases were consolidated and a joint trial on the merits ensued.

The prosecution's evidence consisted of the following:

Reynaldo Ong *y* Tan was the manager of Chow Chow Restaurant which was owned by Spouses George Go, one of the victims, and Edna Ong Go, his elder sister. The restaurant was located at 5 Country Homes Commercial Center, Dr. A. Santos Avenue, Parañaque, Metro Manila. At about 4:00 am of December 28, 1989, Ong heard two explosions. He proceeded to the third floor of the restaurant to check on what had happened and as he looked down, he saw Pat. Roberto Barrera and his friend lighting firecrackers at the back of the restaurant. Ong descended the stairs toward the ground floor of the restaurant where he saw the victims, the George Go and Shi Shu Yang. George Go asked for some firecrackers and proceeded to the kitchen to light the firecrackers. From a distance outside the restaurant, Pat. Barrera shouted, "*Pare, meron pa ba?*" (asking if there are firecrackers) to which George Go responded, "*Marami pa.*" ("There are still plenty.") After George Go responded in the affirmative, Pat. Barrera went to the restaurant armed with a .38 caliber pistol tucked in his waist. George Go then went upstairs, took his .45 caliber pistol from an attaché case, tucked it in his waist, and went back to the kitchen. Moments later, Pat. Barrera approached George Go, introduced himself as a Parañaque policeman, and disarmed him (George Go) of his licensed .45 caliber pistol. Pat. Barrera then shouted at his

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damages and one million four hundred thirty three thousand four hundred eighteen pesos (₱1,433,418.00) for loss of earnings to the heirs of George Go. The period within which the accused Roberto Barrera was the period within which the accused Roberto Barrera was detained at the City Jail shall be credited to him in full as long as he agrees in writing to abide by and follow strictly the rules and regulations of the said institution.

Costs against the accused.

SO ORDERED. (*Rollo*, pp. 273-274).

(Barrera's) companion, a policeman, who was upstairs, "*Pare ilabas mo iyong mahaba,*" (ordering the companion to bring out the long firearm) while commanding George Go to come out as he had hid himself the parking lot. Ong pleaded with Pat. Barrera and told him that George Go would surface only if he would not be shot. As soon as George Go emerged from the parking lot. Pat. Barrera said, "*Tarantado kang Chekwa ka, ako yung nagbigay sayo 'nong sobre*" (uttering invective upon the victim with the use of the pejorative term for Chinese as he referred to his Christmas solicitation from the victim who gave him twenty pesos ₱20 and two t-shirts). George Go did not retaliate nor respond. Ong admitted that he was the one who received the envelope from Pat. Barrera two days before the incident, and he placed ₱20 inside the envelope and handed it to Pat. Barrera along with the two t-shirts. Pat Barrera also demanded that George Go present the license of his firearm which the latter readily showed. Pat. Barrera then told George Go that he would bring the firearm to the police station for verification. He then called the police station informing them that he had just disarmed George Go. Ong felt tension and told Pat. Barrera to cool down. About 20 minutes later, two parañaque policemen, Pfc. Gerry Biong and Col. Pureza, arrived. Pat. Barrera ordered George Go and his Taiwanese friend, Shi Shu Yang, to board the owner-type jeepney.[8]

Edna Ong Go corroborated the testimony of Ong and declared that at about 6:00 a.m. of that same day, George Go and Shi Shu Yang were brought to the Parañaque Police Station. Ong proceeded, but went back to the house to inform her to go to the police station. When she arrived at the police station, she saw Shi Shu Yang and her husband, George Go, making a telephone call. She heard Pat. Barrera demanding George Go to produce his license to carry a firearm. Pat. Barrera also told George Go to undergo medical examination, but the latter refused. Thus, Pat. Barrera, together with the petitioners and Pat. Alcalde, shoved George Go to the wall and made him and Shi Shu Yang ride a police car waiting nearby. They took the victims to the Parañaque Community Hospital for medical examination.

[8] TSN (Reynaldo Ong), July 14, 1993, pp. 3-16.

Thereafter, the two were brought to Timothy Street, Multinational Village, Parañaque where they were killed.[9]

Edna Go also testified that George Go was an agent of Stanley Work Sales with a monthly income of ₱5,000, exclusive of transportaion and allowances. She declared that she and her husband own Chow Chow Restaurant and that said establishment was registered in the name of her husband with an annual income of ₱102,387, less 10% withholding tax. She said that she had spent for the wake and funeral of her husband and estimated the expenses for the wake to be around ₱10,000 as she was not able to keep the receipts. However, she presented the receipt issued by La Funeraria Paz amounting to ₱11,500 as expenses for the casket and funeral services. She stated that she was in a state of shock and became frightened upon learning of the death of her husband.[10]

Cristina Winterhalter *y* Siscar, a foreigner staying in a house along Saint Anthony Street, witnessed the killing of the two victims with the use of a pair of binoculars lent to her by a neighbor as she viewed it from a distance of about 80 to 90 meters. She testified that at around 11:00 a.m. of December 28, 1989, she was standing by the window of her house, waiting for her daughter and an Italian neighbor to come home, when she noticed a Ford Fiera patrol van, with "Parañaque Police Mobile" appearing on both sides, passed in front of her house and proceeded to Timothy Street which was parallel thereto. From a distance of between 80 to 90 meters, she saw seven persons inside the van, two seated in front while five stayed at the back. When the van was parked, she saw two men alight from the back seat, one was in civilian clothes (referring to Pat. Alcalde) and one in police uniform and carrying a rifle (referring to Pat. Barrera). They took out George Go and Shi Shu Yang who were both handcuffed seated at the back. The one seated at the front passenger side was petitioner Herrera while petitioner Mariano was the one driving the van. Petitioner Mariano went to the front area of the van and wrote something

[9] TSN (Edna Go), June 10, 1992, pp. 4-22.

[10] TSN (Edna Go), March 31, 1993, pp. 4-10.

on a piece of paper. Pat. Barrera hit George Go on the face and, together with petitioner Mariano, they fired about 20 successive shots at the victim. They also kicked Shi Shu Yang and fired about four times. Petitioner Herrera also fired at the victims lying on the pavement. They placed the bodies of the victims inside the van and headed for Fortunate Village. Winterhalter and a neighbor went to the crime scene and found bloodstains on the pavement, a set of dentures, and a pair of eyeglasses. Later, she executed a sworn statement before the National Bureau of Investigation (NBI) to narrate what she witnessed. A diagram (Exhibits "L" and "L-1") was made to give a clear picture of the location of her house and that of the crime scene.[11]

Dr. Roberto V. Garcia, Medico Legal Officer of the NBI, conducted an autopsy on the body of George Go at around 5:30 p.m. of December 28, 1989 at the Rizal Funeral Homes, Pasay City. Autopsy Report No. 89-4195 (Exhibit "A") showed that George Go sustained eight (8) fatal gunshot wounds on his jaw, chest, abdomen, and arms, as follows: gunshot wound no. 1 had entry point (4 by 61/2 centimeters) on the right jaw with exit point (1.8 by 1.5 centimeters) on the left forehead; gunshot wound no. 2 had entry point (0.6 by 1 centimeters) on the upper left chest right with exit point (1.8 by 1.5 centimeter in diameter) on the upper left back; gunshot wound no. 3 had entry point (0.6 by 0.8 centimeters) below the left collar bone with exit point (3.2 by 2.8 centimeters) on the upper right back; gunshot wound no. 4 had entry point (0.5 by 0.7 centimeter) on the upper right chest with exit point (4 by 2.8 centimeters) on upper right back; gunshot wound no. 5 had entry point (0.7 by 1.3 centimeters) on the upper right abdomen with exit point (1.5 by 1.3 centimeters) on the upper right back; gunshot wound no. 6 had entry point (0.5 by 0.8 centimeter) on the abdomen area which was just above the navel with exit point (2.6 by 1.9 centimeters in diameter) on the lower right back; gunshot wound no. 7 had entry point (0.6 by 0.8 centimeter) on the lower left abdomen with exit point on the lower right (2.6 by 1.9 centimeters) on the lower right back; and gunshot wound no. 8 had entry point (0.5 by 0.7 centimeter) on the left arm with exit point

[11] TSN (Cristina Winterhalter), April 3, 1992, pp. 2-36.

(1.8 by 1.6 centimeters) on the left arm. He estimated that the probable distance from the muzzle of the gun to the victim was about an armslength of 24 inches. He prepared a diagram (Exhibit "B") indicating the different gunshot wounds sustained by the victim and issued a Certificate of Post-Mortem Examination (Exhibit "C"). With the trajectory of the bullet, he said that it was possible that after the first shot was fired, the victim assumed a kneeling position or was lying on the pavement as the assailant continued to fire the successive shots. The body of the victim was later identified by Edna Go, wife of George Go.[12]

At around 7:00 p.m., Dr. Garcia also conducted an autopsy on the body of Shi Shu Yang in the said funeral parlor. Autopsy Report No. 89-4196 (Exhibit "D") indicated that Shi Shu Yang sustained three gunshot wounds. He made a diagram (Exhibit "E") identifying the locations of the gunshot wounds and, likewise, issued a Certificate of Post-Mortem Examination (Exhibit "F"). Illustrating a distance of about 24 inches, the entry point of gunshot wound no. 1 was at the back of the head of the victim with no exit point as the deformed bullet was lodged therein. The entry point of gunshot wound no. 2 was on the left side of the neck of the victim (0.6 by 0.8 centimeter) and exit point on the right side of the neck (1.2 by 1 centimeters in cross diameter). He concluded that the assailant must have been at the left of the victim when the shot was fired. As for gunshot wound no. 3, the distance between the muzzle of the gun and the right arm could have been more than 24 inches and that the assailant was at the oblique front right of the victim.[13]

Edwin Purificando, Senior Forensic Chemist of the NBI, examined the blood type of the victims, as follows, blood type "B" for George Go per Biology Report No. B-89-2490 (Exhibit "M-2") and blood type "A" for Shi Shu Yang per Biology Report No. B-89-2491 (Exhibit "M-1"). He also analyzed the specimen of the blood obtained by the NBI Duty Chemists, Aida Pascual and Bella Arriola, from the pavement located along Timothy Street, called "blood scraping," as shown in Biology Examination

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[12] TSN (Dr. Roberto V. Garcia), March 25, 1992, pp. 3-16.

[13] *Id.* at 16-24.

Report No. B-89-2498 (Exhibit "M"), and found that it only yielded blood type "B" which matched with the blood type of George Go. He repeated the "blood scraping" procedure and no evidence of blood type "A" was found in Biology Examination Report No. B-90-15 (Exhibits "N" and "N-1").[14]

Aida Veloria *y* Magsipoc, Supervising Forensic Chemist of the NBI, testified that on December 28, 1989, acting upon the requests for paraffin test (Exhibits "I" and "I-1") by SPO4 Glem Tiongson and SPO4 Jose Suarez, respectively, she conducted the diphenylamine-paraffin tests on the dorsal of the left and right hands of the victims and per Chemistry Report No. C-89-1605 for George Go (Exhibit "H") and Chemistry Report No. C-89-1606 for Shi Shu Yang (Exhibit "H-1"), they were found negative of nitrates which proved that the victims never fired a gun.[15]

Teodoro Ubia *y* Janeo, a Medical Technologist of the NBI, testified that he took pictures of the cadaver of George Go (Exhibits "K" to "K-4") and an unidentified person, later known to be Shi Shu Yang (Exhibits "J" to "J-2"), to show the different locations where the victims were shot.[16]

The prosecution presented its rebuttal witness, Atty. Leon Comea Evangelista, an agent of the NBI, who testified that on December 28, 1989, upon the request of Edna Go, he and the other NBI agents went to Timothy Street to conduct an investigation on the killing incident. He conducted an ocular inspection at the scene of the crime and made sketches (Exhibits "U" and "U-1") depicting the incident.[17]

On the other hand, the evidence for the defense, are as follows:

Rodolfo Ver *y* Foronda, Fingerprint Examiner II of the NBI, testified that in compliance with the *subpoena duces tecum* issued by public respondent Sandiganbayan, he confirmed that the NBI has in its custody the following documents relative to the shooting

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[14] TSN (Edwin Purificando), April 3, 1992, pp. 37-46.

[15] TSN (Aida M. Viloria), April 1, 1992, pp. 4-18.

[16] TSN (Teodoro J. Ubia), April 1, 1992, pp. 18-25.

[17] TSN (Leon C. Evangelista), June 14, 1994.

incident that resulted in the death of the two victims, to wit; Progress Report dated December 28, 1989 (Exhibits "1" and "1-a"); Initial Investigation Report dated December 28, 1989 signed by Col. Rogelio Pureza (Exhibit "2"); Request for Paraffin Test dated December 28, 1989 prepared by SPO4 Glenn F. Ticson, Officer-on-Case which was addressed to the Commanding Officer of the Philippine Constabulary (Exhibit "3"); Sworn Statements of Pat. Barrera, petitioner Mariano, Pat. Alcalde, and petitioner Herrera (Exhibits "4", "4-a", "5", "5-a", "6", "6-a", "7", and "7-a"); photocopies of the 8 pictures of Parañaque Police van No. 102 (Exhibits "8", "8-a" to "8-g"); and a photograph of the blood stains found on the pavement of Timonthy Street (Exhibit "9").[18]

Col. Rogelio Pureza *y* Abutan, PNP District Director of the Northern Police District, CAMANABA, testified that he approved the Progress Report dated December 28, 1989 (Exhibits "1" and "1-a") of Rodolfo Ver as he was the Station Commander of the Parañaque Police Station and in such capacity, he ordered the investigation of the case. The said report addressed to the Regional Commander (Exhibit "11") was based on the investigation conducted on petitioners Herrera and Mariano, Pat. Alcalde, Pat. Barrera, and one Edwin Maquinay, also a police officer, and the report of the investigator, SPO4 Ticson, on the case. He narrated that at about noontime of December 28, 1989, Edna Go came to his office requesting him for assistance with regard to her husband's case, but he told her to await the outcome of the investigation as the cases for "Illegal Possession of Firearms and Resisting Arrest" were already filed with the Prosecutor's Office and it would be inappropriate for him to intercede in the case. While he was talking with Go, SPO4 Ticson called to inform him about a shooting incident involving the husband of Go. Since he was not sure if George Go was already dead when the call came in, he did not relay the information to Go. Thereafter, he came to know that George Go and Shi Shu Yang were brought to the Parañaque Community Hospital by petitioners, Pat. Barrera and Pat. Alcalde. As a result of the investigation conducted, he and the other police officers filed a case for homicide against

[18] TSN (Rodolfo F. Ver), September 29, 1993, pp. 4-12.

two of their policemen based on the evaluation report of their investigator. He turned over the petitioners and the accused to the NBI for investigation. The two (2) reports stated that one of the victims (referring to George Go) was carrying a caliber .45 firearm which was forwarded to the Philippine Constabulary Crime Laboratory (now Philippine National Police [PNP] Crime Laboratory) for verification and also for the purpose of determining if it was previously involved in a crime and to the Firearms and Explosive Unit for the issuance of a certification as to the veracity of its license.[19]

SPO4 Glenn Ticson *y* Fuentes testified that on December 28, 1989, he was assigned as Duty Investigator at the Complaints and Investigation Division, Parañaque Police Station and was tasked to investigate the criminal cases referred to him by their Desk Officer or immediate supervisor. On December 28, 1989, Cpl. Antonio Batola, Duty Officer, reported to him about a shooting incident whereby the victims were brought to the Parañaque Community Hospital. He and Pat. Oscar dela Cruz immediately proceeded to the said hospital and, upon arrival, the hospital personnel informed them that the victims were pronounced dead on arrival. The victims were identified through their identification cards as Shi Shu Yang and George Go. The bodies of the victims sustained multiple gunshot wounds and were bathed in blood. When he was informed that the victims were brought by four policemen, he interviewed two of them (Pat. Barrera and Pat. Alcalde) and they admitted having shot the victims but claimed self-defense. He called up their Station Commander to inform the latter about the shooting incident involving the Parañaque policemen. He retrieved the service firearms belonging to the two and proceeded to the scene of the crime at about noontime. The people within the vicinity told him that while they did not see the actual shooting incident, they heard successive gunshots. The patrol van used by the petitioners and the other two was parked at the hospital and, later, brought to the police station. Ticson declared further that after the incident, he instructed his co-investigator on the case to get the statement of Edna Go, wife of the victim, George

[19] TSN (Rogelio A. Pureza), September 29, 1993, pp. 14-18.

Go, at the Chow Chow Restaurant. Prior to the shooting incident, he was informed that George Go was previously arrested by Pat. Barrera in connection with a case for "Illegal Possession of Firearm." On the same day of the shooting incident, he requested the NBI to conduct an autopsy on the cadavers. Thereafter, he prepared two (2) reports which he submitted to Col. Pureza at about 9:00 pm. of December 28, 1989. The pictures of the police van used in transporting the victims to the hospital were taken at about 3:00 p.m. at the police station but he was not the one who took the shots. He said that Col. Pureza assigned Pat. De la Cruz and Pat. Octavio to assist him in the investigation of the case. As Head Investigator, his duties included responding requests for autopsy and paraffin tests, but he did not recommend that paraffin test be conducted on the two victims. Before the turnover of this case to the NBI, he did not subject the firearms involved in this case for ballistic examination. The caliber. 45 firearm recovered from George Go was in the custody of Col. Pureza which was turned over by Pfc. Biong but he did not know if Col. Pureza signed any receipt for said firearm. He saw the tampered serial number of said firearm at the office of Col. Pureza in the afternoon of December 28, 1989.[20]

SPO3 Gil Labay *y* Cantor testified that on January 8, 1990, he was assigned at the Physical Identification Division of the PNP Crime Laboratory at Camp Crame, Quezon City and one of his duties was to perform macro-etching on firearms and motor vehicles. On January 8, 1990, he examined one (1) caliber .45 firearm bearing Serial No. 198842 which was subpoenaed by public respondent Sandigabayan. Per Physical Identification Report No. PIR-037-90 (Exhibit "16"), his findings showed that there were signs of filing and grinding on the metal surface where the serial number was located. His examination was based upon the letter-request of the Station Commander of the Parañaque Police Station (Exhibit "17"). He did not know if said firearm was submitted to the PNP Crime Laboratory and received by one Pat. Bustillo (Exhibit "18-a"). He said that the serial number of the firearm was tampered and he did not

[20] TSN (Glenn F. Ticson), September 30, 1993, pp. 4-19.

see the original serial number of the said firearm. In the course of his examination, he could not also determine the approximate period of time when the alleged tampering of the firearm was made because of the superimposition of the number. He did not verify from the Firearms and Explosive Unit whether the firearm was licensed or not.[21]

Testifying in his defense, petitioner Redentor Mariano *y* Antonio declared that on December 28, 1989, he was assigned to the Mobile Patrol Division of the Parañaque Police Station and his duty was from 6:00 p.m. to 6:00 a.m. At about 5:30 a.m. of December 28, 1989, he received a radio message instructing him to proceed to the police headquarters to assist Pat. Barrera in bringing some persons for medical examination. Upon arrival at the police headquarters, Pat. Alcalde and Pat. Barrera alighted from the mobile patrol van while he stayed behind. At about 10:30 a.m. of the same day, he, together with Pat. Alcalde, Pat. Barrera, and petitioner Herrera, brought the victims, George Go and Shi Shu Yang, to the Parañaque Community Hospital, passing by Fortunate Village and Multinational Village. On their way back to the Parañaque Police Station at about 11:00 a.m., he heard Pat. Alcalde saying "*George, ano ka ba, bitiwan mo ang baril mo." (*"George, put the gun away."*)* and not long after, he heard successive shots. When he looked back, he saw George Go grappling for the possession of a firearm with Pat. Alcalde. He stopped the van and alighted in order to pacify the trouble inside the van but he again heard successive shots and, thereafter, saw the two Chinese nationals bloodied. He told his companions to bring the victims to the hospital and informed their Chief of Police about the incident. Upon arrival at the hospital, he told his companions to request the hospital personnel to get the two dead persons inside the van. After the incident, he was investigated and was asked to execute a sworn statement.[22]

On cross-examination, he declared that the reason why the two Chinese nationals were brought to the hospital in the morning of December 28, 1989 for medical examination was because he

[21] TSN (Gil C. Labay), October 27, 1993, pp. 4- 11.

[22] TSN (Redentor A. Mariano), January 12, 1994, pp. 3-10.

learned that there was a case filed against George Go. He said that on their way to the hospital, he was seated in front of the van beside the driver, while Pat. Alcalde, Pat. Barrera, George Go and the latter's companion (referring to Shi Shu Yang) were seated at the back. He and the driver were both armed with caliber .38 while Pat. Alcalde was armed with an M-16 armalite rifle and Pat. Barrera was armed with a caliber .38. While inside the van, George Go was handcuffed while his companion was not. Pat. Alcalde and Pat. Barrera were seated facing the two Chinese nationals. The distance from where Pat. Alcalde and Pat. Barrera were seated to the two victims was about two feet. From the time he heard the first shot up to the time the police van stopped, they had traveled for about 5 to 10 meters. He was shocked when he heard the first shot and when he looked back, he saw George Go trying to grab the armalite of Pat. Alcalde. He did not see Pat. Alcalde pull the trigger of the latter's armalite after he heard the series of shots. While at the police headquarters, he asked Pat. Alcalde and Pat. Barrera about what had happened, and they told him that George Go tried to grab the firearm of Pat. Alcalde but he was not able to ask them who shot George Go. In the morning of December 21, 1989, they were required to undergo paraffin tests at the PNP Crime Laboratory. He said that as to him, the result was negative but he did not know what was the result of the findings on Pat. Barrera and Pat. Alcalde. They left the hospital before 1:00 p.m. and arrived at Multinational Village. He also said that in the night of March 3, 1990, Edna Go came to see him at Camp Bicutan and asked him why the other policemen did not meet with her as agreed upon by them so that the case would be settled before the National Police Commission.[23]

Dr. Frederick Singson *y* Soliven, Resident Physician of the Parañaque Community Hospital, testified that on December 28, 1989, he examined George Go and found out that the latter was positive for alcohol but he had no signs of physical injuries. He said that at about 11:45 a.m. of the same day, George Go, who sustained six gunshot wounds, was brought back to the hospital and was declared dead on arrival (Exhibit "11-a"). He

[23] *Id*. at 11-36.

treated petitioner Herrera on the same day and found that said patient was negative of alcohol and had a linear abrasion of 1 cm. (Exhibit "20-a"). He was not the one who prepared the entries in Exhibit "11-a" and there was no initial of the person who made the handwritten notations therein. He stated that George Go was brought to the hospital by the policemen and one of them was petitioner Herrera, but he did not ask the policemen the purpose why George Go had to be examined. He did not take the blood chemistry of George Go to determine whether alcohol existed in his blood. He admitted that he was not the one who wrote the notations of the dorsal portion of Exhibit "20". The first part of the medical report on George Go was written by Dr. Bautista and while the lower portion was written by him (Exhibits "X" and "Y"). He also said that the abrasion on the neck of petitioner Herrera was due to scuffle with somebody, but there was also a possibility that said injury could also be self-inflicted.[24]

SPO2 Armand Octavio *y* Halili, a member of the Parañaque Police Station, testified that on December 28, 1989, he was instructed to take the statement of Pat. Barrera (Exhibit "21", "21-a" and "21-b"). He also received an Investigation Report from the office of the Ciminal Investigation Division duly signed by SPO4 Ticson and Col. Pureza. Aside from these reports, he was also furnished with copies of the Certification from the Firearms and Explosive Unit and an Investigation Report regarding the charge for "Illegal Possession of Firearms" against George Go.[25]

Testifying in his defense, petitioner Edgardo Herrera declared that he was a member of the Parañaque Police Station. On December 28, 1989, he reported for work at the police headquarters and his duty was from 6:00 p.m. to 6:00 a.m. together with petitioner Mariano and Pat. Alcalde. At about 6:00 a.m. of December 28, 1989, they received a radio message from their headquarters which directed them to report to the Chief of Police. Upon arrival at the police headquarters, their

[24] TSN (Frederic S. Singson), April 15, 1994, pp. 3-14.

[25] TSN (Armando H. Octavio), April 15, 1994, pp. 15-21.

Desk Officer ordered them to bring a certain George Go to the Parañaque Community Hospital for medical examination. Petitioner Herrera stated that while being brought to the hospital, George Go was very unruly and refused to be brought to the hospital. On their way to the hospital, they took the Sucat Road route and negotiated along Fortunate Village and Multinational Village to avoid the traffic. After the examination of George Go, they brought him back to the police headquarters but upon reaching Timothy Street in Multinational Village, a shooting incident happened. He was seated in front when he heard Pat. Alcalde saying "*George, bitiwan mo ang baril ko*" ("George, put my gun down"), and later heard a gunshot. He looked back and saw that the muzzle of an armalite was poked at his back, so he parried it but it resulted in successive shots being fired. He immediately jumped out of the vehicle and as he pulled out his firearm, he saw the two bloodied Chinese nationals already lying on the pavement. He immediately drove the police van and brought the victims back to the Parañaque Community Hospital. After the incident, he was investigated and executed a sworn statement (Exhibits "7" and "7-a"). He was also subjected to paraffin test which yielded negative results.[26]

On cross-examination, he declared that he did not see who placed the handcuffs on George Go. He said that when he saw George Go seated at the back of the police van, he was not handcuffed. Before they brought George Go to the hospital, he saw Go's wife who was insisting to go with them but George Go did not allow her and, instead, took along his Taiwanese friend, Shi Shu Yang. Apart from George Go and Shi Shu Yang, there were four of them who boarded the police van and alighted at the hospital. All of them, except Maquinay, were armed. Having driven the police van for almost a year, he was familiar with the different roads coming from the police station to the Parañaque Community Hospital. He said that there were two routes in traversing to the said hospital, one was from Dr. Santos Avenue up to Sucat Road and other was through Fortunate Village and then to Multinational Village. There were houses and business establishments along Dr. Santos Avenue while

[26] TSN (Edgardo Herrera *y* Penturibio), April 15, 1994, pp. 22-30.

there were a few houses and unfinished structures along Timothy Street in Multinational Village. He was the one who decided to take Multinational Village in going back to the police headquarters to avoid traffic. He claimed that George Go and Shi Shu Yang were not forced to alight from the police van by Pat. Barrera and Pat. Alcalde when they passed by Timothy Street. After hearing the gunshots, they went back to the scene of the crime and saw blood stains on the sidewalk.[27]

On December 13, 1994, public respondent Sandiganbayan[28] convicted the petitioners each for two (2) counts of murder. The dispositive portion of its Decision reads as follows:

WHEREFORE, after joint trial on the merits in the above-numbered cases, judgment is hereby rendered as follows:

I. In Crim. Case No. 16674 [*should be No. 16675]* — accused Edgardo Herrera *y* [B]altoribio and Redentor Mariano *y* Antonio are hereby found guilty beyond reasonable doubt as co-principals in the offense of Murder, as defined and penalized by Article 248 of the Revised Penal Code, qualified by treachery and with the generic aggravating circumstance of taking advantage of their public positions, abuse of superior strength, in band and use of a motor vehicle, without any mitigating circumstance in offset, and each of the accused is hereby sentenced to suffer the penalty of *reclusion perpetua* in said case, with the accessory penalties of imposed by law; to indemnify, jointly and severally, the heirs of the late George Go in the amounts of ₱11,500.00 as actual damages, plus ₱500,000.00 in the form of unrealized earnings and income.

II. In Crim. Case No. 16675 [*should be 16674*] — accused Edgardo Herrera *y* [B]altoribio and Redentor Mariano *y* Antonio are herby (sic) found GUILTY beyond reasonable doubt as co-principals in the offense of Murder, defined and penalized by Article 248 of the Revised Penal Code, qualified by treachery and with the generic aggravating circumstance of taking advantage of their public positions, abuse of superior strength, in band and use of a motor vehicle, without any mitigating circumstance in offset, and each of the accused is

[27] *Id*. at 30-47.

[28] Per Justice Romeo M. Escareal (Chairman, Second Division) and concurred in by Justice Augusto M. Amores and Justice Minita Chico-Nazario (now an Associate Justice of this Court.).

hereby sentenced to suffer the penalty of *reclusion perpetua* in said case, with the accessory penalties of [i]mposed by law; to indemnify, jointly and severally, the heirs of the late Shi Shu Yang in the amounts of ₱50,000.00;

III. Both accused to pay their proportionate share of the costs of these actions.[29]

On March 28, 1995, public respondent Sandiganbayan denied petitioners' Joint Motion for Reconsideration. On April 3, 1995, petitioner Herrera filed a notice of appeal. Thereafter, on May 30, 1995, he and petitioner Mariano filed a petition for review on *certiorari* with this Court alleging the following grounds:

1. PUBLIC RESPONDENT SANDIGANBAYAN ERRED IN CONVICTING THE PETITIONERS FOR MURDER UNDER THE AMENDED INFORMATIONS;
2. PUBLIC RESPONDENT SANDIGANBAYAN ERRED IN REFUSING TO ALLOW THE PETITIONERS TO CONDUCT FURTHER CROSS EXAMINATION ON PROSECUTION WITNESS WINTERHALTER;
3. PUBLIC RESPONDENT SANDIGANBAYAN ERRED IN NOT FINDING AND CONCLUDING THAT THE TESTIMONY OF ALLEGED EYEWITNESS WINTERHALTER WAS WANTING IN CREDIBILITY;
4. PUBLIC RESPONDENT SANDIGANBAYAN ERRED IN NOT FINDING AND CONCLUDING THAT PROSECUTION WITNESS NBI MEDICO-LEGAL OFFICER AND HIS REAL EVIDENCE SUPPORT THE THEORY OF THE DEFENSE;
5. PUBLIC RESPONDENT SANDIGANBAYAN ERRED IN NOT FINDING AND CONCLUDING THAT THERE WAS TOTAL ABSENCE OF EVIDENCE TO SUPPORT CONSPIRACY;
6. PUBLIC RESPONDENT SANDIGANBAYAN ERRED IN NOT FINDING AND CONCLUDING THAT THE PETITIONERS ARE ENTITLED TO THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL ACTS; AND

[29] *Rollo*, pp. 92-93.

7. PUBLIC RESPONDENT SANDIGANBAYAN ERRED IN NOT FINDING AND CONCLUDING THAT THE EVIDENCE OF THE PROSECUTION FAILED TO ESTABLISH THE GUILT OF THE PETITIONERS BEYOND REASONABLE DOUBT.

Petitioners raise the procedural infirmities that attended the proceedings of the case and seek their acquittal. Public respondents Sandiganbayan and People of the Philippines, through the Office of the Solicitor General, maintain that the convictions of the petitioners for two (2) counts of the crime of murder under the amended Informations by public respondent Sandiganbayan were in order as the prosecution has sufficiently established their guilt beyond reasonable doubt.

The Court affirms the convictions.

First. Petitioners insist that public respondent Sandiganbayan erred in convicting them for the crime of murder under the amended Informations as they had earlier been arraigned under the original Informations for murder and their rearraignment under the amended Informations placed them in double jeopardy.

The rule on double jeopardy does not apply. Public respondent Sandiganbayan ordered the amendment of the Informations and made it of record that the evidence adduced during the pre-trial of the case and the hearing on the petition for bail shall be deemed automatically reproduced as evidence during the trial of the case on the merits. Double jeopardy did not attach by virtue of petitioner's plea of not guilty under the amended information. For a claim of double jeopardy to prosper, the following requisites must concur: (1) there is a complaint or information or other formal charge sufficient in form and substance to sustain a conviction; (2) the same is filed before a court of competent jurisdiction; (3) there is a valid arraignment or plea to the charges; and (4) the accused is convicted or acquitted or the case is otherwise dismissed or terminated without his express consent.[30]

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[30] *Amadore v. Romulo*, G.R. No. 161608, August 9, 2005, 466 SCRA 397; *Lasoy v. Zenarosa*, G.R. No. 129472, April 12, 2005, 455 SCRA 360.

In the present case, petitioners and the two accused accused pleaded not guilty to the two original Informations for the crimes of murder. Thereafter, in their Joint Petition for Bail, petitioners raised the issue of lack of jurisdiction on the ground that the prosecution failed to allege in the informations that the crimes were committed "in relation to their office." On the same day, public respondent ordered the amendment of the Informations accordingly. Thus, the first requirement for double jeopardy to attach, *i.e.*, that the Informations against the petitioners were valid, has not been complied with.

Likewise, the fourth element was lacking. Petitioners cannot be validly convicted on the basis of the original Information as the prosecution failed to allege in the Informations that the crimes were committed "in relation to their office." Thus, petitioners were not placed in danger of being convicted when they entered their pleas of not guilty to the two original Informations which were insufficient in form and substance to sustain their conviction. There was also no dismissal or termination of the cases.

Furthermore, it was well-within the power of public respondent Sandiganbayan to order the amendment of the two original Informations. Section 4, Rule 117 of the Rules on Criminal Procedure states that if the motion to quash is based on an alleged defect of the complaint or Information which can be cured by amendment, the court shall order that an amendment be made. If it is based on the ground that the facts charged do not constitute an offense, the prosecution shall be given by the court an opportunity to correct the defect by amendment. The motion shall be granted if the prosecution fails to make the amendment, or the complaint or Information still suffers from the same defect despite the amendment.

Second. Petitioners make much of the fact that public respondent Sandiganbayan should have allowed their counsel to conduct further cross-examination on prosecution witness Winterhalter.

Section 6, Rule 132 of the Revised Rules on Evidence provides that upon the termination of the direct examination, the witness may be cross-examined by the adverse party as to any matter

stated in the direct examination, or connected therewith, with sufficient fullness and freedom to test his accuracy and truthfulness and freedom from interest or bias or the reverse, and to elicit all important facts bearing upon the issue. The cross-examination of a witness is a right of a party against whom he is called. Section 14(2), Article III of the Constitution states that the accused shall have the right to meet the witnesses face to face. Section 1(f), Rule 115 of the Revised Rules of Criminal Procedure also states that in all criminal prosecutions, the accused shall have the right to confront and cross-examine the witnesses against him. In the present case, petitioners' counsel has conducted an extensive cross-examination of prosecution witness Winterhalter on the scheduled dates of hearing. Petitioners, therefore, cannot belatedly claim that they were deprived of the said opportunity and, thus, anchor their theory on the procedural infirmities in the proceedings.

Moreover, the trial court has the power to direct the course of the trial either to shorten or to extend the direct or cross/ examination of a counsel. Under Section 6, Rule 133 of the Revised Rules on Evidence, the court may stop the introduction of further testimony upon any particular point when the evidence upon it is already so full that more witnesses to the same point cannot be reasonably expected to be additionally persuasive. But this power should be exercised with caution. Thus, it is within the prerogative of pubic respondent Sandiganbayan to determine when to terminate the presentation of the evidence of the prosecution or the defense.

Third. Petitioners' attempt to destroy the credibility of prosecution witness Winterhalter fails. Public respondent Sandiganbayan had the opportunity to observe first-hand the demeanor and deportment of the witnesses and, therefore, its findings that the witnesses for the prosecution are to be believed over those of the defense are entitled to great weight. Winterhalter recognized the petitioners as the ones who cooperated with Pat. Barrera in killing the victims. She saw the events unfolding with the use of her binoculars 80 to 90 meters away. She established the identity of the petitioners as the companions of Pat. Barrera when they killed the victims. It has been ruled

that findings of fact of the trial court on credibility of witnesses should be accorded the highest respect. The Court has refrained from interfering with the judgment of the trial court in passing on the credibility of witnesses unless there appears on record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misapprehended or misinterpreted.[31] None exists in this case.

After the incident, Winterhalter' and her neighbor, also a foreigner, had been receiving death threats, but she voluntarily testified in order to shed light on the commission of the crime. In fact, she did not even know the two victims. Indeed, where there is nothing to indicate that a witness was moved by improper motives, the positive and categorical declarations on the witness stand, made under solemn oath, should be given full faith and credence.[32] It has not been shown that Winterhalter had any reason to falsely implicate the petitioners.

Winterhalter narrated that Pat. Barrera and Pat. Alcalde, together with the petitioners, were the ones responsible for the death of the victims. This fact dovetailed with the post mortem report prepared by Dr. Roberto Garcia, NBI Medico Legal Officer, showing the gunshot wounds on the different parts of the victims' bodies.

Fourth. Petitioners persuade the Court that the testimony of prosecution witness Dr. Roberto Garcia, NBI Medico Legal Officer, supports the theory of the defense that they acted in self-defense.

This argument cannot stand. The accused who invokes self-defense thereby admits having killed the victim, and the burden of evidence is shifted on him to prove, with clear and convincing evidence, the confluence of the following essential elements: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.[33]

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[31] *People v. Felipe*, G.R. No. 142505, December 11, 2003, 418 SCRA 146.

[32] *People v. Sara*, G.R. No. 140618, December 10, 2003, 417 SCRA 431.

[33] *People v. De los Reyes*, G.R. No. 140680, May 28, 2004, 430 SCRA 166.

To proceed with the argument that there was unlawful aggression on the part of the two victims as they were trying to get the pistol tucked in the waist of one of the police officers, petitioners should prove that they used reasonable means in repelling the supposed aggression. Considering that both victims were handcuffed and unarmed and, therefore, had restricted movements, it could only mean that the perceived threats to petitioners' lives were not sufficiently serious, in which case they were not justified in shooting the hapless victims who were unarmed. Petitioners could have simply subdued the two victims in a manner as to engage them in a fight without necessarily killing them.

Moreover, the nature and number of wounds inflicted by the accused are constantly and unremittingly considered as important *indicia* which disprove a plea of self-defense or defense of stranger because they demostrate a determined effort to kill the victim and not just defend oneself.[34] The victims were repeatedly shot at close range and on vital parts of their bodies. The autopsy report showed the extent of the wounds sustained by the victims and, therefore, proved the fact that the two were intended to be killed.

Fifth. Petitioners assert that there was total absence of evidence to prove that conspiracy attended the commission of the crime.

Conspiracy can be inferred from the acts of the accused which clearly manifest a concurrence of wills, a common intent or design to commit a crime. The familiar rule in conspiracy is that when two or more persons agree or conspire to commit a crime, each is responsible, when the conspiracy is proven, for all the acts of the others, done in furtherance of the conspiracy.[35] In this case, petitioner Mariano drove the vehicle to Timothy Street which was a place less conspicuous to passersby. There, Pat. Alcalde, Pat. Barrera, and petitioner Herrera brought out

[34] *Cabanlig v. Sandiganbayan*, G.R. No. 148431, July 28, 2005, 464 SCRA 324.

[35] *People v. Masagnay*, G.R. No. 137364, June 10, 2004, 431 SCRA 572.

the two victims from the back portion of the van in order to perpetuate the killing. Petitioner Herrera alighted from the front passenger side of the van and, together with Pat. Alcalde and Pat. Barrera, began shooting the victims. According to Winterhalter, petitioner Mariano even appeared to be writing something on a sheet of paper immediately before the shooting, although it cannot be determined with certainty as to whether he was making an inquiry or merely noting the names of the victims. Petitioner Mariano also fired at the two victims. The evidence showed a common design on the part of the petitioners and the two accused to effect the killings. After the killing, petitioners even helped carry the two victims into the van. Thus, conspiracy in the commission of the crime of murder can be inferred from the surrounding circumstances.

Sixth. Intertwined with their argument that they were acting in self-defense, petitioners want this Court to appreciate the presumption of regularity in the performance of their official acts.

This contention has no merit. In order to consider the defense of fulfillment of a duty, it must be shown that: (1) the accused acted in the performance of a duty or in the lawful exercise of a right or office; and (2) the injury caused or the offense committed is the necessary consequence of the due performance of duty or the lawful exercise of a right or office.[36] Petitioners need not resort to inflicting injuries and even to the extent of killing the victims as there was no resistance at all from them when they were apprehended. The two victims were handcuffed and unarmed while the petitioners and the other police officers were armed with pistols and a rifle. Aida Viloria Magsipoc, NBI Supervising Forensic Chemist, per Chemistry Report No. C-89-1606, conducted the paraffin tests on George Go and Shi Shu Yang which yielded negative results, and, thus, pointed to the fact that the victims never fired a gun and were totally defenseless in the face of the fully armed police officers. Clearly, the presumption of regularity in the performance of official duties on the part of the petitioners does not apply.

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[36] *Angcaco v. People*, G.R. No. 146664, February 28, 2002, 378 SCRA 297.

Seventh. Petitioners maintain that the prosecution failed to establish their guilt beyond reasonable doubt.

On the contrary, the crime of murder was sufficiently established as the killing of the two victims was attended by the qualifying circumstance of treachery. The essence of treachery is a deliberate and sudden attack, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape. Frontal attack can be treacherous when it is sudden and unexpected and the victim is unarmed. What is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate.[37]

Petitioner Mariano parked the patrol van along Timothy Street which was a practically deserted area, isolated from traffic and pedestrians. Pat. Alcalde, Pat. Barrera, and petitioner Herrera brought out the two handcuffed victims from the back portion of the patrol van in order to eventually salvage them. Petitioner Mariano appeared to be faking an alleged interrogation and was trying to get the name of Shi Shu Yang, whose identity was then not yet immediately known. Later, petitioner Mariano also participated in shooting at the unarmed victims.

Hence, the elements of murder have been proven: 1) that the two victims were killed; 2) that petitioners and the two other accused killed the victims; 3) that the killing was attended by the qualifying circumstance of treachery committed by the petitioners and the two other accused who conspired together in killing the victims; and 4) that the killing was not parricide or infanticide.

Eighth. Public respondent Sandiganbayan did not grant the proper award of damages in favor of the heirs of Shi Shu Yang and George Go *y* Tan.

Even if the heirs of the deceased failed to seek the affirmative relief of damages on appeal, the Court can, nonetheless, grant the award of damages as the fact of death of the two victims had been established. When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto*

[37] *People v. Tolentino*, G.R.No. 176385, February 26, 2008, 546 SCRA 671.

for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.[38]

Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime. Under prevailing jurisprudence, the award of ₱50,000 to the heirs of the victims as civil indemnity is in order.[39] In cases of murder and homicide, moral damages may be awarded without need of allegation and proof of the emotional suffering of the heirs, other than the death of the victim, since the emotional wounds from the vicious killing of the victims cannot be denied. Thus, the award of ₱50,000 is proper.[40]

As to the award of actual damages, Edna Go testified that she incurred funeral expenses of ₱11,500.[41] She also testified that at the time of his death, George Go, then 38 years old, was earning an annual income of ₱102,387, less 10% withholding tax.[42] The computation of loss of earnings in the amount of ₱1,433,418 is as follows:

Life expectancy:

= 2/3 x (80-38 [age of the victim George Go at the time of his death])

= 2/3 x 42

= 28 life expectancy

In the absence of proof of his living expenses, his net income is deemed to be 50% of his gross income.[43]

Net earning capacity:

= Life expectancy x (₱102,387 - ₱51,193.50)

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[38] *People v. Beltran, Jr.*, G.R. No. 168051, September 27, 2006, 503 SCRA 715.

[39] *People v. Dumadag*, G.R. No. 147196, June 4, 2004, 431 SCRA 65.

[40] *People v. Villa*, G.R. No. 179278, March 28, 2008, 550 SCRA 480.

[41] TSN (Edna Go), March 31, 1993, *supra* at 8.

[42] *Id.* at 6-7.

[43] *People v. Aspiras*, G.R. No. 121203, April 12, 2000, 330 SCRA 479.

= 28 x ₱51,193.50

= ₱1,433,418 loss of earnings

Moreover, the award of exemplary damages of ₱25,000 is proper since the qualifying circumstance of treachery attended the killing of the victims. Article 2230 of the Civil Code allows the award of exemplary damages as part of the civil liability when the crime was committed with one or more aggravating circumstances. The term aggravating circumstance as used therein should be construed in its generic sense since it did not specify otherwise.[44]

WHEREFORE, the petition is *DENIED* and the Decision dated December 13, 1994, of public respondent Sandiganbayan in Criminal Case Nos. 16674 and 16675 finding petitioners Pat. Edgardo Herrera *y* Baltoribio and Pat. Redentor Mariano *y* Antonio guilty beyond reasonable doubt as co-principals for two (2) counts of murder, for the killing of Shi Shu Yang and George Go *y* Tan, and sentencing each of them to suffer the penalty of *reclusion perpetua* with the accessory penalties of civil interdiction during the time of their sentence and perpetual absolute disqualification for public office is *AFFIRMED WITH MODIFICATION* in that petitioners are *ORDERED* to pay the heirs of Shi Shu Yang and George Go *y* Tan each in the amount of ₱50,000 as civil indemnity, ₱50,000 as moral damages, and ₱25,000 as exemplary damages. Petitioners are further *ORDERED* to pay the heirs of George Go *y* Tan the amount of ₱11,500 for actual damages and ₱1,433,418 in the form of unrealized earnings and income.

SO ORDERED.

Costs against the pertitioners.

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

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[44] *People v. Eling*, G.R. No. 178546, April 30, 2008.

FIRST DIVISION

[G.R. No. 127327. February 13, 2009]

LIBERATA AMBITO, BASILIO AMBITO, and CRISANTO AMBITO, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES and COURT OF APPEALS,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; B.P. BLG. 22, OTHERWISE KNOWN AS "THE BOUNCING CHECKS LAW"; ELEMENTS.— The elements of violation of B.P. Blg. 22 are: (1) making, drawing, and issuance of any check to apply on account or for value; (2) knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of the check in full upon its presentment; and (3) subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit, or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.

2. ID.; ID.; MERE ACT OF ISSUING A WORTHLESS CHECK, WHETHER AS A DEPOSIT, AS A GUARANTEE OR AS EVIDENCE OF PRE-EXISTING DEBT, IS *MALUM PROHIBITUM*.— The gravamen of the offense punished by B.P. Blg. 22 is the act of making or issuing a worthless check or a check that is dishonored upon its presentation for payment. It is not the nonpayment of an obligation which the law punishes. The law is not intended or designed to coerce a debtor to pay his debt. The thrust of the law is to prohibit, under pain of penal sanctions, the making of worthless checks and putting them in circulation. Because of its deleterious effects on the public interest, the practice is proscribed by the law. The law punishes the act not as an offense against property, but an offense against public order. Thus, the mere act of issuing a worthless check – whether as a deposit, as a guarantee or even as evidence of pre-existing debt – is *malum prohibitum*. In light of the foregoing, petitioners' contention in the lower court that the subject checks were only issued as mere guarantee and were not intended for deposit as per agreement with PSI is not tenable. Co-petitioner Basilio Ambito would be liable under B.P. Blg. 22 by the mere fact

that he issued the subject checks, provided that the other elements of the crime are properly proved.

3. ID.; ID.; ABSENT PROOF THAT THE ACCUSED RECEIVED A NOTICE OF DISHONOR, A PROSECUTION FOR VIOLATION THEREOF CANNOT PROSPER.— With regard to the second element, we note that the law provides for a *prima facie* rule of evidence. A disputable presumption of knowledge of insufficiency of funds in or credit with the bank is assumed from the act of making, drawing, and issuing a check, payment of which is refused by the drawee bank for insufficiency of funds when presented within 90 days from the date of issue. However, such presumption does not arise when the maker or drawer pays or makes arrangements for the payment of the check *within five banking days after receiving notice* that such check had been dishonored. In order for the maker or drawer to pay the value thereof or make arrangements for its payment within the period prescribed by law, it is therefore necessary and indispensable for the maker or drawer to be notified of the dishonor of the check. Under B.P. Blg. 22, the prosecution must prove not only that the accused issued a check that was subsequently dishonored. It must also establish that the accused was actually notified that the check was dishonored, and that he or she failed, within five (5) banking days from receipt of the notice, to pay the holder of the check the amount due thereon or to make arrangement for its payment. Absent proof that the accused received such notice, a prosecution for violation of the Bouncing Checks Law cannot prosper.

4. ID.; ID.; ID.; THE NOTICE OF DISHONOR MUST BE ACTUALLY SENT TO AND RECEIVED BY THE ACCUSED; CASE AT BAR.— The absence of a notice of dishonor necessarily deprives an accused an opportunity to preclude a criminal prosecution. Accordingly, procedural due process clearly enjoins that a notice of dishonor be actually sent to and received by the accused. The accused has a right to demand – and the basic postulates of fairness require – that the notice of dishonor be actually sent to and received by the same to afford him/her the opportunity to avert prosecution under B.P. Blg. 22. In the case at bar, there is nothing in the records that would indicate that co-petitioner Basilio Ambito was given any notice of dishonor by PSI or by Manila Bank, the drawee bank, when the subject checks were dishonored

for insufficiency of funds upon presentment for payment. In fact, all that the OSG can aver regarding this matter is that co-petitioner Basilio Ambito had been notified of the fact of dishonor since PSI filed a collection case against petitioners more than three (3) years before the same filed the criminal cases before this Court. Likewise, respondent CA merely cited, in its assailed Decision, co-petitioner Basilio Ambito's July 17, 1989 trial court testimony as basis for concluding that he was properly informed of the dishonor of the subject checks, xxx. Verily, the aforementioned circumstances are not in accord with the manner or form by which a notice of dishonor should be made under the law and existing jurisprudence.

5. ID.; ID.; ID.; ID.; THE NOTICE OF DISHONOR MUST BE IN WRITING; A MERE ORAL NOTICE OR DEMAND TO PAY IS INSUFFICIENT FOR CONVICTION.— The notice of dishonor of a check may be sent to the drawer or maker by the drawee bank, the holder of the check, or the offended party either by personal delivery or by registered mail. The notice of dishonor to the maker of a check must be in writing. While, indeed, Section 2 of B.P. Blg. 22 does not state that the notice of dishonor be in writing, taken in conjunction, however with Section 3 of the law, *i.e.*, "that where there are no sufficient funds in or credit with such drawee bank, such fact shall always be explicitly stated in the notice of dishonor or refusal," a mere oral notice or demand to pay would appear to be insufficient for conviction under the law. The Court has previously held that both the spirit and letter of the Bouncing Checks Law would require for the act to be punished thereunder not only that the accused issued a check that is dishonored, but that likewise the accused has actually been notified in writing of the fact of dishonor. The consistent rule is that penal statutes have to be construed strictly against the State and liberally in favor of the accused. There being no proof that co-petitioner Basilio Ambito was given any written notice either by PSI or by Manila Bank informing him of the fact that his checks were dishonored and giving him five (5) banking days within which to make arrangements for payment of the said checks, the rebuttable presumption that he had knowledge of the insufficiency of his funds has no application in the present case.

6. ID.; ID.; ABSENT THE PREREQUISITE NOTICE OF DISHONOR, THE ACCUSED CANNOT BE CONVICTED

FOR VIOLATION THEREOF; ACQUITTAL OF THE ACCUSED BASED ON REASONABLE DOUBT DOES NOT PRECLUDE THE AWARD OF CIVIL DAMAGES.— Due to the failure of prosecution in this case to prove that co-petitioner Basilio Ambito was given the requisite notice of dishonor and the opportunity to make arrangements for payment as provided for under the law, We cannot with moral certainty convict him of violation of B.P. Blg. 22. However, Basilio Ambito's acquittal for his violations of B.P. Blg. 22 for failure of the prosecution to prove all elements of the offense beyond reasonable doubt did not entail the extinguishment of his civil liability for the dishonored checks. In a number of similar cases, we have held that an acquittal based on reasonable doubt does not preclude the award of civil damages. The judgment of acquittal extinguishes the liability of the accused for damages only when it includes a declaration that the facts from which the civil liability might arise did not exist. Thus, in the case at bar, the trial court's directive for Basilio Ambito to indemnify PSI the total sum of ₱173,480.55, with interest thereon at the legal rate of 12% per annum from the date of filing of the Informations on May 10, 1982, until paid, and to pay the costs is affirmed.

7. REMEDIAL LAW; EVIDENCE; IT IS NOT THE FUNCTION OF THE SUPREME COURT TO ANALYZE OR WEIGH EVIDENCE ALL OVER AGAIN; EXCEPTIONS.— We find no reason to disturb the identical findings of the CA and the RTC regarding the particular circumstances surrounding the petitioners' conviction of Estafa through Falsification of Commercial Documents because the same are adequately supported by the evidence on record. It is not the function of this Court to analyze or weigh evidence all over again, unless there is a showing that the findings of the lower court are totally devoid of support or are glaringly erroneous as to constitute palpable error or grave abuse of discretion.

8. CRIMINAL LAW; ESTAFA BY MEANS OF DECEIT; ELEMENTS.— The elements of Estafa by means of deceit, whether committed by false pretenses or concealment, are the following – (a) that there must be a false pretense, fraudulent act or fraudulent means. (b) That such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneous with the commission of the fraud. (c) That the offended party must have relied on the false pretense, fraudulent

act or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act or fraudulent means. (d) That as a result thereof, the offended party suffered damage.

9. ID.; ID.; ID.; IN THE ABSENCE THEREOF, ANY SUBSEQUENT ACT OF THE ACCUSED, HOWEVER FRAUDULENT AND SUSPICIOUS IT MIGHT APPEAR, CANNOT SERVE AS BASIS FOR PROSECUTION THEREFOR.— In the prosecution for Estafa under Article 315, paragraph 2(a) of the RPC, it is indispensable that the element of deceit, consisting in the false statement or fraudulent representation of the accused, be made prior to, or at least simultaneously with, the delivery of the thing by the complainant. The false pretense or fraudulent act must be committed prior to or simultaneously with the commission of the fraud, it being essential that such false statement or representation constitutes the very cause or the only motive which induces the offended party to part with his money. In the absence of such requisite, any subsequent act of the accused, however fraudulent and suspicious it might appear, cannot serve as basis for prosecution for estafa under the said provision.

10. ID.; COMPLEX CRIME OF ESTAFA THROUGH FALSIFICATION OF COMMERCIAL DOCUMENTS; COMMITTED WHENEVER A PERSON CARRIES OUT ON A PUBLIC, OFFICIAL OR COMMERCIAL DOCUMENT ANY OF THE ACTS OF FALSIFICATION AS A NECESSARY MEANS TO PERPETRATE ESTAFA.— The pronouncement by the appeals court that a complex crime had been committed by petitioners is proper because, whenever a person carries out on a public, official or commercial document any of the acts of falsification enumerated in Article 171 of the RPC as a necessary means to perpetrate another crime, like Estafa, Theft, or Malversation, a complex crime is formed by the two crimes. Under Article 48 of the RPC, a complex crime refers to (1) the commission of at least two grave or less grave felonies that must both (or all) be the result of a single act, or (2) one offense must be a necessary means for committing the other (or others). Negatively put, there is no complex crime when (1) two or more crimes are committed, but not by a single act; or (2) committing one crime is not a necessary means for committing the other (or others).

11. ID.; ID.; ID.; DAMAGE OR INTENT TO CAUSE DAMAGE NOT AN ELEMENT OF THE CRIME OF FALSIFICATION; DAMAGE IS CAUSED BY THE COMMISSION OF ESTAFA CASE AT BAR.— The falsification of a public, official, or commercial document may be a means of committing Estafa, because before the falsified document is actually utilized to defraud another, the crime of Falsification has already been consummated, damage or intent to cause damage not being an element of the crime of falsification of public, official or commercial document. In other words, the crime of falsification has already existed. Actually utilizing that falsified public, official or commercial document to defraud another is estafa. But the damage is caused by the commission of Estafa, not by the falsification of the document. Therefore, the falsification of the public, official or commercial document is only a necessary means to commit the estafa. In the case before us, the issuance by petitioners of CCTDs which reflected amounts that were never deposited as such in either RBBI or RBLI is Falsification under Articles 171 and 172 of the RPC. The particular criminal undertaking consisted of petitioners, taking advantage of their position as owners of RBBI and RBLI, making untruthful statements/representations with regard to the existence of time deposits in favor of PSI by issuing the subject CCTDs without putting up the corresponding deposits in said banks.

12. ID.; FALSIFICATION OF PUBLIC DOCUMENTS THROUGH AN UNTRUTHFUL NARRATION OF FACTS; ELEMENTS.— Under Article 171, paragraph 4 of the RPC, the elements of falsification of public documents through an untruthful narration of facts are: (1) the offender makes in a document untruthful statements in a narration of facts; (2) the offender has a legal obligation to disclose the truth of the facts narrated; (3) the facts narrated by the offender are absolutely false; and (4) the perversion of truth in the narration of facts was made with the wrongful intent to injure a third person.

APPEARANCES OF COUNSEL

S.B. Britanico Lisaca and Associates Law Office for petitioners.

The Solicitor General for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Civil Procedure of the Decision[1] of respondent Court of Appeals (CA), dated March 29, 1996, in *CA-G.R. CR No. 12727*, entitled *People of the Philippines v. Liberata Ambito, et al.*, filed by petitioners Liberata Ambito, Basilio Ambito and Crisanto Ambito. The assailed CA decision affirmed the judgment of conviction of multiple charges of violation of Batas Pambansa Blg. 22 (B.P. Blg. 22) meted upon co-petitioner Basilio Ambito; multiple charges of the complex offense of Estafa through Falsification of Commercial Documents, defined and penalized in Articles 48, 171, 172 and 315 of the Revised Penal Code (RPC), meted upon co-petitioners Liberata and Basilio Ambito; and two charges of Falsification of Commercial Document, as defined and penalized under Articles 171 and 172 of the RPC, meted upon co-petitioner Crisanto Ambito in the Decision[2] rendered by the Regional Trial Court (RTC) of Iloilo City, Branch 26, dated November 29, 1990, in the consolidated Criminal Case Nos. 14556 to 14587.

The facts of this case, as summarized in the assailed CA decision, are as follows:

> Basilio Ambito and Liberata Ambito were the principal owners of two rural banks in the province of Iloilo namely, the Community Rural Bank of Leon, Inc., in the municipality of Leon, and the Rural Bank of Banate, Inc. in the municipality of Banate. In addition, the spouses Ambito were the owners of Casette [Kajzette] Enterprises, a commercial establishment in Jaro, Iloilo City engaged in procuring farm implements intended for the use of the agricultural loan borrowers of the said banks. The spouses Ambito obtained their supply of farm implements and spare parts from the Iloilo City branch of

[1] Penned by then Court of Appeals (CA) and later Supreme Court (SC) Associate Justice Romeo J. Callejo, Sr. (ret.), with then CA and later SC Associate Justice Antonio M. Martinez (ret.) and CA Associate Justice Delilah Vidallon-Magtolis (ret.), concurring; *rollo*, pp. 162-188.

[2] *Id.*, at pp. 145-161.

Pacific Star, Inc. which was then engaged in selling 'Yanmar' machineries and spare parts.

On several occasions in 1979, the spouses Basilio Ambito and Liberata Ambito transacted business with Pacific Star, Inc. whereby they purchased Yanmar machineries and spare parts from the said company allegedly for the use of the loan borrowers of their banks. In these transactions, the spouses Ambito made down payments in their purchases either in case, in checks or in certificates of time deposit issued by the Rural Bank of Banate, Inc. and the Community Rural Bank of Leon, Inc.

However, when the Manila Banking Corporation (Manila Bank) checks issued by Basilio Ambito as down payment of their purchases were presented for payment by the drawee bank, the same were dishonored for insufficiency of funds. These are Check No. 79173946 dated June 20, 1979 in the amount of ₱39,168.75 (Exh. 'A', CC No. 14556); Check No. 79173948 dated June 15, 1979 in the amount of ₱75,595.00 (Exh. 'A', CC 14557); Check No. 79173947 dated June 30, 1979 in the amount of ₱45,957.00 (Exh. 'A', CC No. 14558); Check No. 79182639 dated October 18, 1979 in the amount of ₱4,501.36 (Exh. 'A', CC No. 14559); Check No. 79182638 dated September 27, 1979 in the amount of ₱1,957.60 (Exh. 'A', CC No. 14560); Check No. 79182637 dated September 18, 1979 in the amount of ₱ 2,425.50 (Exh. 'A', CC No. 14561) and Check No. 79175930 dated August 9, 1979 in the amount of ₱2,875.25 (Exh. 'A', CC No. 14562).

At the time the spouses Basilio Ambito and Liberata Ambito made purchases of farm implements from the Pacific Star, Inc. in 1979, the general manager of the Rural Bank of Banate, Inc. was Liberata Ambito herself and the cashier, Marilyn Traje, while the general manager of the Community Rural Bank of Leon, Inc. was Crisanto Ambito, brother of Basilio Ambito, and the cashier, Reynaldo Baron.

On three separate occasions, Liberata Ambito forced the cashier of the Rural Bank of Banate, Marilyn Traje, to sign several blank certificates of time deposit and to give the same to her alleging that she needed the said certificates in connection with some transactions involving the bank. Marilyn Traje at first refused to give Liberata Ambito the said certificates but the latter scolded her, at the same time assuring her that she would be responsible to anybody for the issuance of said certificates including personnel and investigators of the Central Bank tasked with the examination of the accounts of

the bank. Afraid that she would lose her job if she would not follow Liberata Ambito. Marilyn Traje signed and gave the blank certificates of time deposit to her without receiving any consideration therefore.

The same thing happened to Reynaldo Baron, the cashier of the Community Rural Bank of Leon, Inc. who was asked by the spouses Ambito as well as the manager of the bank, Crisanto Ambito, to sign and give blank certificates of time deposit to them. Reynaldo Baron was at first hesitant to accommodate the request of the Ambitos but due to their persistence and considering that they were his superiors and owners of the bank, Baron signed the certificates of time deposit in blank and gave the same to the Ambitos. When Baron asked for the duplicate copies of the certificates, he was told that they were still negotiating with Pacific Star, Inc. Later, the Ambitos told Baron that the transaction was cancelled and that he should just cause the printing of similar blank certificates by the Apostol Printing Press in Iloilo City. Baron got scared and objected to the idea vouched to him by the Ambitos until finally he resigned from his job because he could no longer withstand the pressure exerted on him involving transactions he believed were anomalous. Baron worked as cashier of the Community Rural Bank of Leon, Inc. from August to December 1979. When the Central Bank investigators came and conducted examination of the records and transactions of the bank, Baron reported the anomalies to them.

The blank certificates of time deposit of the Rural Bank of Banate, Inc. obtained by the spouses Basilio and Liberata Ambito from Marilyn Traje were filled up with the amounts of deposit and the name of the Pacific Star, Inc. as depositor and used by the spouses as down payments of the purchase price of the machineries and spare parts purchased from the Pacific Star, Inc. These certificates of time deposit are as follows:

1. Certificate of Time Deposit No. 079, due date May 7, 1979, in the amount of ₱7,276.50 (Exh. 'A', Crim. Case No. 14563) as down payment of the articles covered by Sales Invoice No. 3002 dated November 9, 1978 of Pacific Star, Inc. (Exh. 'A-1', Crim. Case No. 14563);

2. Certificate of Time Deposit Nos. 083 and 085 both with due date May 14, 1979 in the amounts of ₱17,283.00 and ₱3,132.00, respectively (Exhs. 'A' and 'A-1', Crim. Case No. 14564) as down payment. Sales Invoice Nos. 3003,

3004 and 3005 (Exhs. 'A-1', 'A-2' and 'A-3', Crim. Case No. 14564);

3. Certificate of Time Deposit No. 086, due date May 21, 1979, in the amount of ₱11,896.50 (Exh. 'A', Crim. Case No. 14565) as down payment, Sales Invoice No. 3006 (Exh. 'A-1', Crim. Case No. 14565);

4. Certificate of Time Deposit No. 087, due date May 27, 1979 (Exh. 'A', Crim. Case No. 14566) in the amount of ₱7,945.00 as down payment, Sales Invoice No. 3007 dated November 27, 1978 and Sales Invoice No. 3008 dated November 28, 1978 in the total amount of ₱7,945.00 (Exhs. 'A-1' and 'A-2', Crim. Case No. 14566);

5. Certificate of Time Deposit No. 089, due date May 29, 1979, in the amount of ₱17,090.50 (Exh. 'A', Crim. Case No. 14567) as down payment, Sales Invoices Nos. 3009 and 3010 both date December 1, 1978 (Exhs. 'A-1' and 'A-2', Crim. Case No. 14567);

6. Certificate of Time Deposit No. 095, due date June 20, 1979 in the amount of ₱24,062.50 (Exh. 'A', Crim. Case No. 14568) as down payment in Sales Invoice Nos. 3031 dated December 11, 1978 (Exh. 'A-1', Crim. Case No. 14568);

7. Certificate of Time Deposit No. 089, due date May 29, 1979, in the amount of ₱17,090.50 (Exh. 'A', Crim. Case No. 14567) as down payment in Sales Invoice No. 3035 (Exh. 'A-1', Crim. Case No. 14567);

8. Certificate of Time Deposit No. 097, due date June 13, 1979, in the amount of ₱5,827.50 (Exh. 'A', Crim. Case No. 14570) as down payment in Sales Invoice Nos. 3066 and 3067 both dated January 3, 1979 (Exhs. 'A-1' and 'A-2', Crim. Case No. 14570);

9. Certificate of Time Deposit No. 098, due date June 16, 1979, in the amount of ₱8,365.00 (Exh. 'A', Crim. Case No. 14571) as down payment in Sales Invoice Nos. 3081 dated January 10, 1979 and Sales Invoice No. 3091 dated January 16, 1979 (Exhs. 'A-1' and 'A-2', Crim. Case No. 14571);

10. Certificate of Time Deposit No. 099, due date July 22, 1979, in the amount of ₱27,226.50 (Exh. 'A', Crim. Case No. 14572 as down payment in Sales Invoice No. 3097 dated January 23, 1979 (Exh. 'A-1', Crim. Case No. 14572);

11. Certificate of Time Deposit No. 100, due date July 25, 1979, in the amount of ₱9,380.00 (Exh. 'A', Crim. Case No. 14573) as down payment in Sales Invoice No. 3099 dated January 25, 1979 (Exh. 'A-1', Crim. Case No. 14573);

12. Certificate of Time Deposit No. 101, due date July 28, 1979 in the amount of ₱3,132.50 (Exh. 'A'; Crim. Case No. 14574) as down payment in Sales Invoice No. 3106 (Exh. 'A-1', Crim. Case No. 14574);

13. Certificate of Time Deposit No. 102, due date August 15, 1979 in the amount of ₱21,420.00 (Exh. 'A', Crim. Case No. 14575) in payment of Sales Invoice No. 3120 dated February 8, 1979, Sales Invoice No. 3121 dated February 8, 1979 and Sales Invoice No. 3126 dated February 12, 1979, (Exhs. 'A-1', 'A-2' and 'A-3', Crim Case No. 14575);

14. Certificate of Time Deposit No. 105, due date August 14, 1979, in the amount of ₱25,375.00 (Exh. 'A', Crim. Case No. 14576) as down payment of Sales Invoice No. 3129 dated February 15, 1979 (Exh. 'A-1', Crim. Case No. 14576);

15. Certificate of Time Deposit No. 106, due date August 16, 1979, in the amount of ₱58,712.50 (Exh. 'A', Crim. Case No. 14577) as down payment of Sales Invoice No. 3134 dated February 17, 1977 (Exh. 'A-1', Crim. Case No. 14577);

16. Certificate of Time Deposit No. 107, due date August 21, 1979, in the amount of ₱16,205.00 (Exh. 'A', Crim. Case No. 14578) and Certificate of Time Deposit No. 104, due date September 18, 1979, in the amount of ₱2,730.00 (Exh. 'A-1', Crim. Case No. 14578) as down payment in Sales Invoice No. 3137 dated February 22, 1979 and Sales Invoice No. 3178 dated March 22, 1979;

17. Certificate of Time Deposit No. 108, due date October 15, 1979, in the amount of ₱78,277.50 (Exh. 'A', Crim.

Case No. 14579) as down payment in Sales Invoice Nos. 3215, 3216 and 3217 all dated April 18, 1979, (Exhs. 'A-1', 'A-2' and 'A-3', Crim. Case No. 14579);

18. Certificate of Time Deposit No. 109, due date October 16, 1979, in the amount of ₱8,557.50 (Exh. 'A', Crim. Case No. 14580) as down payment in Sales Invoice No. 3221 dated April 19, 1979 (Exh. 'A-1', Crim. Case No. 14580);

19. Certificate of Time Deposit No. 110, due date October 22, 1979, in the amount of ₱38,529.75 (Exh. 'A', Crim. Case No. 14581) as down payment in Sales Invoice No. 3240 and 3241 both dated April 25, 1979 (Exhs. 'A-1' and 'A-2', Crim. Case No. 145810);

20. Certificate of Time Deposit No. 111, due date October 29, 1979, in the amount of ₱7,218.75 (Exh. 'A', Crim. Case No. 14582) as down payment in Sales Invoice No. 3409 dated May 2, 1979 (Exh. 'A-1', Crim. Case No. 14582);

21. Certificates of Time Deposit Nos. 112, 113, 114, 115, 116, 117 and 118 all dated November 1, 1979 in the amounts of ₱57,750.00, ₱93,933.00, ₱21,393.75, ₱12,285.00, ₱13,860.00, ₱20,002.50 and ₱156,555.00 respectively (Exhs. 'A', 'A-1', 'A-2', 'A-3', 'A-4', 'A-5', 'A-6', Crim. Case No. 14583) as down payment in Sales Invoice Nos. 3423 to 3429, inclusive (Exhs. 'A-7' to 'A-13', inclusive, Crim. Case No. 14583);

22. Certificate of Time Deposit No. 119, due date December 18, 1979, in the amount of ₱5,892.25 (Exh. 'A', Crim. Case No. 14584) as down payment in Sales Invoice No. 3505 dated June 21, 1979 (Exh. 'A-1', Crim. Case No. 14584);

23. Certificate of Time Deposit No. 134, due date January 23, 1980, in the amount of ₱3,984.00 (Exh. 'A', Crim. Case No. 14585) as down payment in Sales Invoice No. 3272 dated July 27, 1979 (Exh. 'A-1', Crim. Case No. 14585);

The certificates of time deposit of the Community Rural Bank of Leon found to have been falsified are (1) Certificate of Time

Deposit No. 039 , due date February 4, 1980 in the amount of ₱32,555.25 (Exh. 'A', Crim. Case No. 14586) and (2) Certificate of Time Deposit No. 040, due date February 14, 1980 in the amount of ₱9,103.19 (Exh. 'A', Crim. Case No. 14587).

The said certificates of time deposit supposedly issued by the Rural Bank of the Banate, Inc. and the Community Rural Bank of Leon, Inc. were unfunded and not covered by any deposit so that when presented for redemption by the (sic) Pacific Star, Inc., the same were not honored. As a consequence, Pacific Star, Inc. suffered actual damages in the amounts representing the total value of the machineries and spare parts sold and delivered by the complainant to the Ambitos and the latter failed and refused to pay the same despite demands on them.

In view of the anomalous transactions entered into by the Ambitos, both the Rural Bank of Banate, Inc. and the Community Rural Bank of Leon, Inc. became insolvent and so sometime in May 7, 1980, the Central Bank of the Philippines placed both banks under receivership and liquidation. Maria Luz Preires, bank examiner of the Central Bank, was appointed deputy receiver and later deputy liquidator of the Community Rural Bank of Leon. The Central Bank took over the affairs and records of the banks including their deposits, assets and liabilities. Records showed no certificate of time deposit in the name of Pacific Star, Inc. properly funded and covered by any deposit. Anomalous issuances of certificates of time deposit were uncovered as, for instance, Community Rural Bank of Leon, Inc. Certificates of Time Deposit Nos. 039 (Exh. 'A', Crim. Case No. 14586 and 040 (Exh. 'A', Crim. Case No. 14587) which were supposed to be in the name of Pacific Star, Inc. were actually issued in the name of Paciencia Cantara on October 17, 1979 and Francisco Alinsao on November 19, 1979 and only in the amounts of ₱1,000.00 and ₱3,000.00, respectively (Exh. 'B', Crim. Cases Nos. 14586 and 14587).

Subsequently, on complaint of Pacific Star, Inc., the Ambitos were charged of violations of B.P. Blg. 22, Falsification and Estafa through Falsification of Commercial Document under the Informations filed in the aforecited cases.

After due proceedings, the Court *a quo*, promulgated a Decision, dated November 29, 1990, the decretal portion of which reads as follows:

WHEREFORE, in Criminal Cases Nos. 14556, 14557, 14558, 14559, 14560, 14561 and 14562, the Court hereby finds the accused, Basilio Ambito, guilty beyond reasonable doubt of the offense of violation of the provisions of Section 1 of Batas Pambansa Blg. 22 and hereby sentences the said accused to suffer in each of the seven cases, the penalty of imprisonment of SIX (6) MONTHS and ONE (1) DAY and to indemnify the offended party, Pacific Star, Inc. the total sum of ₱173,480.55, with interest thereon at the legal rate of 12% per annum from the date of filing of the Informations on May 10, 1982, until paid, without subsidiary imprisonment in case of insolvency, and to pay the costs.

In Criminal Cases Nos. 14574 and 14585, the Court hereby finds the accused, Basilio Ambito and Liberata Ambito, guilty beyond reasonable doubt of the complex offense of Estafa thru Falsification of Commercial Document, defined and penalized in Articles 48, 171, 172 and 315 of the Revised Penal Code and hereby sentences the said accused to suffer in each case, an indeterminate sentence ranging from TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of *prision correccional* as minimum to FOUR (4) YEARS, NINE (9) MONTHS and ELEVEN (11) DAYS of *prision correccional* as maximum, and pay a fine of ₱3,000.00 and to indemnify the offended party, Pacific Star, Inc. the total sum of ₱18,287.00 with interests thereon at the legal rate of 12% per annum from the date of the filing of the Informations on May 10, 1982 until paid, without subsidiary imprisonment in case of insolvency, together with the accessory penalties provided for by law, and to pay the costs.

In Criminal Cases Nos. 14563, 14570, 14580, 14582 and 14584, the Court hereby finds the accused, Basilio Ambito and Liberata Ambito, guilty beyond reasonable doubt of the complex crime of Estafa thru Falsification of Commercial Document, defined and penalized in Articles 48, 171, 172 and 315 of the Revised Penal Code and hereby sentences the said accused to suffer, in each of these cases, an indeterminate prison sentence ranging from TWO (2) YEARS, ELEVEN (11) MONTHS and ELEVEN (11) DAYS of *prision correccional* as minimum, to SIX (6) YEARS, EIGHT (8) MONTHS and TWENTY ONE (21) DAYS of *prision mayor* as maximum, and to indemnify the offended party, Pacific Star, Inc., the total

sum of ₱83,095.00, with interests thereon at the legal rate of 12% per annum from the date of the filing of the Informations on May 10, 1982 until paid, without subsidiary imprisonment in case of insolvency, together with the accessory penalties provided for by law, and to pay the costs.

In Criminal Cases Nos. 14566, 14569, 14571 and 14573, the Court hereby finds the accused, Basilio Ambito and Liberata Ambito, guilty beyond reasonable doubt of the complex offense of Estafa thru Falsification of Commercial Document, defined and penalized in Articles 48, 171, 172 and 315 of the Revised Penal Code and hereby sentences the said accused to suffer, in each of these cases, an indeterminate prison sentence ranging from FOUR (4) YEARS, TWO (2) MONTHS of *prision correccional* as minimum, to EIGHT (8) YEARS of *prision mayor* as maximum, and to indemnify the offended party, Pacific Star, Inc., the total sum of ₱103,900.00 with interests thereon at the legal rate of 12% per annum from the date of the filing of the Informations on May 10, 1982 until paid, without subsidiary imprisonment in case of insolvency, together with the accessory penalties provided for by law and to pay costs.

In Criminal Cases Nos. 14564 and 14578, the Court hereby finds the accused, Basilio Ambito and Liberata Ambito, guilty beyond reasonable doubt of the complex offense of Estafa thru Falsification of Commercial Document, defined and penalized in Articles 48, 171, 172 and 315 of the Revised Penal Code and hereby sentences the said accused to suffer, in each of these cases, an indeterminate prison sentence ranging from FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of *prision correccional* as minimum, to ELEVEN (11) YEARS of *prision mayor* as maximum, and to indemnify the offended party, Pacific Star, Inc., the total sum of ₱116,530.00 with interests thereon at the legal rate of 12% per annum from the date of the filing of the Informations on May 10, 1982 until paid, without subsidiary imprisonment in case of insolvency, together with the accessory penalties provided for by law and to pay costs.

In Criminal Cases Nos. 14565, the Court hereby finds the accused, Basilio Ambito and Liberata Ambito, guilty beyond reasonable doubt of the complex offense of Estafa thru Falsification of Commercial Document, defined and penalized in Articles 48, 171, 172 and 315 of the Revised Penal Code

and hereby sentences the said accused to suffer, in each of these cases, an indeterminate prison sentence ranging from FOUR (4) YEARS and TWO (2) MONTHS of *prision correccional* as minimum, to NINE (9) YEARS of *prision mayor* as maximum, and to indemnify the offended party, Pacific Star, Inc., the sum of ₱35,190.00 with interests thereon at the legal rate of 12% per annum from the date of the filing of the Informations on May 10, 1982 until paid, without subsidiary imprisonment in case of insolvency, together with the accessory penalties provided for by law and to pay costs.

In Criminal Cases Nos. 14567, the Court hereby finds the accused, Basilio Ambito and Liberata Ambito, guilty beyond reasonable doubt of the offense of Estafa thru Falsification of Commercial Document, defined and penalized in Articles 48, 171, 172 and 315 of the Revised Penal Code and hereby sentences the said accused each, to suffer an indeterminate prison sentence ranging from FOUR (4) YEARS and TWO (2) MONTHS of *prision correccional* as minimum, to TEN (10) YEARS of *prision mayor* as maximum, and to indemnify the offended party, Pacific Star, Inc., the sum of ₱50,555.00 with interests thereon at the legal rate of 12% per annum from the date of the filing of the Informations on May 10, 1982 until paid, without subsidiary imprisonment in case of insolvency, together with the accessory penalties provided for by law and to pay costs.

In Criminal Cases Nos. 14568 and 14575, the Court hereby finds the accused, Basilio Ambito and Liberata Ambito, guilty beyond reasonable doubt of the offense of Estafa thru Falsification of Commercial Document, defined and penalized in Articles 48, 171, 172 and 315 of the Revised Penal Code and hereby sentences the said accused to suffer, in each of these cases, an indeterminate prison sentence ranging from FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of *prision correccional* as minimum, to TWELVE (12) YEARS of *prision mayor* as maximum, and to indemnify the offended party, Pacific Star, Inc., the sum of ₱134,375.00 with interests thereon at the legal rate of 12% per annum from the date of the filing of the Informations on May 10, 1982 until paid, without subsidiary imprisonment in case of insolvency, together with the accessory penalties provided for by law and to pay costs.

In Criminal Cases Nos. 14572, 14576 and 14581, the Court hereby finds the accused, Basilio Ambito and Liberata Ambito, guilty beyond reasonable doubt of the offense of Estafa thru Falsification of Commercial Document, defined and penalized in Articles 48, 171, 172 and 315 of the Revised Penal Code and hereby sentences the said accused to suffer, in each of these cases, an indeterminate prison sentence ranging from SIX (6) YEARS and ONE (1) DAY of *prision mayor* as minimum, to THIRTEEN (13) YEARS of *reclusion temporal* as maximum, and to indemnify the offended party, Pacific Star, Inc., the total sum of ₱235,170.00 with interests thereon at the legal rate of 12% per annum from the date of the filing of the Informations on May 10, 1982 until paid, without subsidiary imprisonment in case of insolvency, together with the accessory penalties provided for by law and to pay costs.

In Criminal Cases Nos. 14577, 14579 and 14583, the Court hereby finds the accused, Basilio Ambito and Liberata Ambito, guilty beyond reasonable doubt of the complex offense of Estafa thru Falsification of Commercial Document, defined and penalized in Articles 48, 171, 172 and 315 of the Revised Penal Code and hereby sentences the said accused to suffer, in each of these cases, an indeterminate prison sentence ranging from TEN (10) YEARS and ONE (1) DAY of *prision mayor* as minimum, to TWENTY (20) YEARS of *reclusion temporal* as maximum, and to indemnify the offended party, Pacific Star, Inc., the total sum of ₱1,110,500.00 with interests thereon at the legal rate of 12% per annum from the date of the filing of the Informations on May 10, 1982 until paid, without subsidiary imprisonment in case of insolvency, together with the accessory penalties provided for by law and to pay costs.

The foregoing penalties imposed upon the accused are, however, subject to the threefold rule as provided for in Article 70 of the Revised Penal Code so that the maximum duration of the accused' imprisonment shall not be more than three times the most severe of the penalties the total period of which not to exceed Forty (40) years.

In Criminal Cases Nos. 14586 and 14587, the Court hereby finds the accused, Crisanto Ambito, guilty beyond reasonable doubt of the offense of Falsification of Commercial Document, defined and penalized under Articles 171 and 172 of the Revised Penal Code and hereby sentences the said accused to suffer,

in each of these two cases, an indeterminate prison sentence ranging from ONE (1) YEAR and ONE (1) DAY of *prision correccional* as minimum, to FOUR (4) YEARS, TWO (2) MONTHS of *prision correccional* as maximum, and pay a fine of ₱2,000.00, together with the accessory penalties provided for by law, and to pay the costs. For insufficiency of evidence, Basilio Ambito and Liberata Ambito are hereby ACQUITTED of the offenses charged in these Criminal Cases Nos. 14586 and 14587.

On reasonable doubt, the accused Marilyn Traje and Reynaldo Baron, are hereby ACQUITTED of the offense charged in all the criminal cases against them and the bail bonds posted for their provisional liberty are hereby ordered cancelled.[3]

After they were convicted by the RTC, petitioners appealed their case to respondent CA which, in turn, denied their appeal via the assailed CA Decision, the dispositive portion of which reads as follows:

IN THE LIGHT OF ALL THE FOREGOING, the assailed Decision is hereby AFFIRMED *in toto*. With costs against the Appellants.

SO ORDERED.[4]

Petitioners promptly interposed a Motion for Reconsideration of the adverse CA Decision but this was succinctly rejected by the CA in its Resolution[5] dated November 8, 1996, hence, petitioners' recourse to this Court for review on *certiorari*.

This Court initially denied said Petition for Review on *Certiorari*[6] through a Resolution[7] dated January 29, 1997 on the ground that the said petition raised factual issues. Undaunted, petitioners filed a Motion for Reconsideration[8] dated February

[3] *Id.*, at pp. 162-176.

[4] *Id.*, at pp. 187-188.

[5] *Id.*, at p. 189.

[6] *Id.*, at pp. 14-189.

[7] *Id.*, at p. 190.

[8] *Id.*, at pp. 191-250.

25, 1997 seeking to persuade this Court to give due course to their petition which this Court granted in a Resolution[9] dated April 28, 1997, thereby reinstating the petition. Respondents were required to file comment on the petition as ordered in the same Resolution. Respondents filed their Comment[10] on September 9, 1997, while petitioners filed a delayed Reply[11] on September 4, 1998. In turn, respondents filed a Rejoinder[12] on January 18, 1999.

On January 17, 2005, this Court issued a Resolution[13] directing both parties to submit their respective memoranda within thirty (30) days from notice. Respondents submitted their Memorandum[14] on March 18, 2005 but petitioners failed to submit theirs despite the fact that this Court had already granted numerous extensions of time to file as requested by petitioners' counsel. This Court even resorted to imposing a fine on petitioners' counsel for his repeated non-compliance as stated by our Resolution[15] dated March 8, 2006 but to no avail. Thus, in a Resolution[16] dated June 20, 2007, this Court resolved to dispense with the filing of petitioners' memorandum.

In their Petition,[17] petitioners raised the following grounds:

A. THE RESPONDENT COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN FINDING THE PETITIONERS GUILTY OF THE OFFENSES IMPUTED TO THEM, THERE BEING UNCONTROVERTED EVIDENCE SHOWING THAT FROM THE NATURE OF THE TRANSACTIONS AND DEALINGS BETWEEN THE PETITIONERS AND PSI FOR A

[9] *Id.*, at p. 252.

[10] *Id.*, at pp. 280-317.

[11] *Id.*, at pp. 409-466.

[12] *Id.*, at pp. 477-491.

[13] *Id.*, at pp. 497-498.

[14] *Id.*, at pp. 499-547.

[15] *Id.*, at p. 601.

[16] *Id.*, at p. 652.

[17] *Supra* note 6.

LONG PERIOD OF 14 YEARS, THE LIABILITY OF THE PETITIONERS, IF ANY, IS ONLY CIVIL IN NATURE, AND NO CRIMINAL LIABILITY ATTACHES TO THEM.

B. THE RESPONDENT COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN FINDING THE PETITIONERS GUILTY BEYOND REASONABLE DOUBT OF ALL THE OFFENSES IMPUTED TO THEM, THE FACTS OF THE CASE SHOWING THAT THE VALUE OF THE SUBJECT CHECKS AND CCTDS [CREDIT CERTIFICATES OF TIME DEPOSIT] HAVE ALREADY BEEN FULLY PAID PRIOR TO THE INSTITUTION OF THE CRIMINAL CASES BELOW.

C. ANENT CRIMINAL CASE NOS. 14556 TO 14562, THE RESPONDENT COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN FINDING THE PETITIONER BASILIO AMBITO GUILTY BEYOND REASONABLE DOUBT OF THE OFFENSE OF VIOLATION OF BP22 DESPITE THE LACK OF ESSENTIAL ELEMENTS OF PRIOR NOTICE OF DISHONOR AND DEMAND FOR PAYMENT OF THE ALLEGED DISHONORED CHECKS GIVEN BY PSI TO PETITIONERS.

D. ANENT CRIMINAL CASE NOS. 14556, 14557 AND 14558, THE RESPONDENT COURT COMMITTED A REVERSIBLE ERROR IN FINDING PETITIONER BASILIO AMBITO GUILTY OF VIOLATION OF BP22 DESPITE THAT THE SUBJECT CHECKS WERE NOT PRESENTED FOR PAYMENT WITHIN 90 DAYS FROM DATE OF CHECK.

E. ANENT CRIMINAL CASE NOS. 14556 AND 14557, THE RESPONDENT COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN FINDING PETITIONER BASILIO AMBITO GUILTY OF THE OFFENSE OF VIOLATION OF BP22 DESPITE THAT THERE WAS IN EACH CASE NO PROPER EVIDENCE OFFERED TO PROVE THE CRIME CHARGED.

F. ANENT CRIMINAL CASE NOS. 14563 TO 14585, THE RESPONDENT COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN FINDING THE PETITIONERS GUILTY BEYOND REASONABLE DOUBT OF THE OFFENSE OF ESTAFA BY FALSE PRETENSES COMPLEXED WITH FALSIFICATION OF A COMMERCIAL DOCUMENT, THERE

BEING PROSECUTION EVIDENCE TENDING TO SHOW THE LACK OF THE ELEMENT OF DECEIT.

G. ANENT CRIMINAL CASE NOS. 14563 TO 14585, THE RESPONDENT COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN FINDING THE PETITIONERS GUILTY BEYOND REASONABLE DOUBT OF ESTAFA BY FALSE PRETENSES COMPLEXED WITH FALSIFICATION OF A COMMERCIAL DOCUMENT, IT BEING CLEAR FROM THE FACE OF THE SUBJECT CCTDS THEMSELVES THAT THERE THEREIN EXISTS NO FALSE NARRATION OF FACTS.

H. THE RESPONDENT COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN REFUSING TO RESOLVE THE ASSIGNED ERROR OF DOUBLE PAYMENT OF IMDEMNITY (SIC) OR CIVIL LIABILITY ON THE MERITS THEREOF, IT BEING IN A POSITION TO DO SO, AND DESPITE TIMELY NOTICE OF THE PRIOR INSTITUTION OF THE CIVIL CASE INVOLVING THE SAME TRANSACTIONS AS IN THE CASES AT BAR.[18]

In essence, petitioners' recourse to this Court is hinged on their belief that their conviction in the lower court was not based on proof beyond reasonable doubt and that the respondent CA failed to perform its duty to fully ascertain whether the prosecution's evidence was sufficient enough to warrant a finding that would support their conviction for violation of B.P. Blg. 22 and for Estafa through Falsification of Commercial Documents.

We hold the petition to be meritorious in part.

Anent the issue of whether or not co-petitioner Basilio Ambito's conviction in Criminal Case Nos. 14556 to 14562 for the seven (7) counts of violation of B.P. Blg. 22 was in accordance with law, petitioners argue that he cannot be convicted of the same since the prosecution allegedly failed to prove the dispensable elements of prior notice of dishonor and demand for payment of the checks at issue.[19] Furthermore, they insist that there is

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[18] *Id.*, at pp. 37-38.

[19] *Id.*, at pp. 56-61.

no violation of B.P. Blg. 22, particularly in Criminal Case Nos. 14556, 14557 and 14558 as the subject checks therein were presented for payment more than ninety (90) days from date.[20]

In response, the Office of the Solicitor General (OSG) asserts that petitioners' claim of necessary and indispensable elements of notice of dishonor and demand to pay cannot be found in the statute defining the essential elements of violation of B.P. Blg. 22. The OSG further insists that, from among the said essential elements, there is no particular manner prescribed in which the person who made and issued the dishonored checks should be notified of the fact of dishonor.

Be that as it may, the OSG avers that as far as the checks subject of the charges of violation of B.P. Blg. 22 in these criminal cases are concerned, co-petitioner Basilio Ambito had been more than sufficiently notified of the fact of dishonor because on December 28, 1979, Pacific Star, Inc. (PSI) filed with Branch 2 of the RTC of Manila a civil complaint for collection against petitioners, or more than three (3) years before the thirty-two (32) Informations for violations of B.P. Blg. 22 and for Estafa through Falsification of Commercial Documents were filed against petitioners on May 10, 1982. Within that three-year span of time, the OSG points out, co-petitioner Basilio Ambito failed to pay the value of the checks despite having been notified of their dishonor. [21]

As to petitioners' contention that the prosecution was not able to prove the indispensable element that the drawer had knowledge that the checks were not backed up by sufficient funds since the checks subject of Criminal Case Nos. 14556, 14557 and 14558 were presented for payment more than ninety (90) days from date, the OSG claims that the said element had been clearly established by the petitioners' testimony in the lower court where petitioners contend that the subject checks

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[20] *Id.*, at pp. 61-63.

[21] *Id.*, at p. 529.

were issued only as mere guarantee and, as such, were not supposed to be deposited as previously agreed by PSI and petitioners.[22] In any case, the OSG argues that under Section 2 of B.P. Blg. 22, the maker's knowledge of the insufficiency of funds is legally presumed from the dishonor of the check for insufficiency of funds.[23]

After carefully reviewing the records and the submissions of the parties, we find that the prosecution's evidence was inadequate to prove co-petitioner Basilio Ambito's guilt beyond reasonable doubt for seven (7) counts of violation of B.P. Blg. 22.

The elements of violation of B.P. Blg. 22 are: (1) making, drawing, and issuance of any check to apply on account or for value; (2) knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of the check in full upon its presentment; and (3) subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit, or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.[24]

The gravamen of the offense punished by B.P. Blg. 22 is the act of making or issuing a worthless check or a check that is dishonored upon its presentation for payment. It is not the nonpayment of an obligation which the law punishes. The law is not intended or designed to coerce a debtor to pay his debt. The thrust of the law is to prohibit, under pain of penal sanctions, the making of worthless checks and putting them in circulation. Because of its deleterious effects on the public interest, the practice is proscribed by the law. The law punishes the act not as an offense against property, but an offense against public order.[25] Thus, the mere act of issuing a worthless check – whether

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[22] *Id.*, at p. 528. (citing TSN, July 17, 1989, pp.35-36)

[23] *Id.*, at pp. 530-531.

[24] *Tan v. People*, G.R. No. 145006, August 30, 2006, 500 SCRA 172, 182.

[25] *Lozano v.* Martinez, No. 63419, December 18, 1986, 146 SCRA 323, 338.

as a deposit, as a guarantee or even as evidence of pre-existing debt – is *malum prohibitum*.[26]

In light of the foregoing, petitioners' contention in the lower court that the subject checks were only issued as mere guarantee and were not intended for deposit as per agreement with PSI is not tenable. Co-petitioner Basilio Ambito would be liable under B.P. Blg. 22 by the mere fact that he issued the subject checks, provided that the other elements of the crime are properly proved.

With regard to the second element, we note that the law provides for a *prima facie* rule of evidence. A disputable presumption of knowledge of insufficiency of funds in or credit with the bank is assumed from the act of making, drawing, and issuing a check, payment of which is refused by the drawee bank for insufficiency of funds when presented within 90 days from the date of issue. However, such presumption does not arise when the maker or drawer pays or makes arrangements for the payment of the check *within five banking days after receiving notice* that such check had been dishonored. In order for the maker or drawer to pay the value thereof or make arrangements for its payment within the period prescribed by law, it is therefore necessary and indispensable for the maker or drawer to be notified of the dishonor of the check.

Under B.P. Blg. 22, the prosecution must prove not only that the accused issued a check that was subsequently dishonored. It must also establish that the accused was actually notified that the check was dishonored, and that he or she failed, within five (5) banking days from receipt of the notice, to pay the holder of the check the amount due thereon or to make arrangement for its payment. Absent proof that the accused received such notice, a prosecution for violation of the Bouncing Checks Law cannot prosper.[27]

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[26] *Ricaforte v. Jurado*, G.R. No. 154438, September 5, 2007, 532 SCRA 317, 330.

[27] *Bax v. People*, G.R. No. 149858, September 5, 2007, 532 SCRA 284, 291, citing *King v. People*, G.R. No. 131540, December 2, 1999, 319 SCRA 654.

The absence of a notice of dishonor necessarily deprives an accused an opportunity to preclude a criminal prosecution. Accordingly, procedural due process clearly enjoins that a notice of dishonor be actually sent to and received by the accused. The accused has a right to demand – and the basic postulates of fairness require – that the notice of dishonor be actually sent to and received by the same to afford him/her the opportunity to avert prosecution under B.P. Blg. 22.[28]

In the case at bar, there is nothing in the records that would indicate that co-petitioner Basilio Ambito was given any notice of dishonor by PSI or by Manila Bank, the drawee bank, when the subject checks were dishonored for insufficiency of funds upon presentment for payment. In fact, all that the OSG can aver regarding this matter is that co-petitioner Basilio Ambito had been notified of the fact of dishonor since PSI filed a collection case against petitioners more than three (3) years before the same filed the criminal cases before this Court.[29]

Likewise, respondent CA merely cited, in its assailed Decision, co-petitioner Basilio Ambito's July 17, 1989 trial court testimony as basis for concluding that he was properly informed of the dishonor of the subject checks, viz:

> Appellant Basilio's claim that he was never notified of the dishonor of the checks he issued in partial payments of the purchases Kazette Enterprises made from PSI is belied by his own admission made when he testified in the Court *a quo* thus:
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> xxx xxx xxx
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> Q Inspite of you agreement they deposited and when presented they bounce?
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> A That was in the receipts.
>
> Q So you admit you have presented these checks already marked as Exhibit 'A' for the prosecution for criminal cases Nos. 14556 to 14562, inclusive, were all returned for insufficiency of funds by the depository bank?

[28] *Lao v. Court of Appeals*, G.R. No. 119178, June 20, 1997, 274 SCRA 572, 594.

[29] *Rollo*, p. 529.

A Yes, sir. (t.s.n., Ambito, page 35, July 17, 1989)

Nothwithstanding his notice of the dishonor of the checks, Appellant failed to replace the same with cash or make arrangements with PSI, for the payments of the amounts of the checks.[30]

Verily, the aforementioned circumstances are not in accord with the manner or form by which a notice of dishonor should be made under the law and existing jurisprudence.

The notice of dishonor of a check may be sent to the drawer or maker by the drawee bank, the holder of the check, or the offended party either by personal delivery or by registered mail. The notice of dishonor to the maker of a check must be in writing.[31]

While, indeed, Section 2 of B.P. Blg. 22 does not state that the notice of dishonor be in writing, taken in conjunction, however with Section 3 of the law, *i.e.*, "that where there are no sufficient funds in or credit with such drawee bank, such fact shall always be explicitly stated in the notice of dishonor or refusal," a mere oral notice or demand to pay would appear to be insufficient for conviction under the law. The Court has previously held that both the spirit and letter of the Bouncing Checks Law would require for the act to be punished thereunder not only that the accused issued a check that is dishonored, but that likewise the accused has actually been notified in writing of the fact of dishonor. The consistent rule is that penal statutes have to be construed strictly against the State and liberally in favor of the accused.[32]

There being no proof that co-petitioner Basilio Ambito was given any written notice either by PSI or by Manila Bank informing him of the fact that his checks were dishonored and giving him five (5) banking days within which to make arrangements for payment of the said checks, the rebuttable presumption that he

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[30] *Id.*, at p. 179.

[31] *Rigor v. People*, G.R. No. 144887, November 17, 2004, 442 SCRA 450, 462.

[32] *Domangsang v. Court of Appeals*, G.R. No. 139292, December 5, 2000, 347 SCRA 75, 83.

had knowledge of the insufficiency of his funds has no application in the present case.

Due to the failure of prosecution in this case to prove that co-petitioner Basilio Ambito was given the requisite notice of dishonor and the opportunity to make arrangements for payment as provided for under the law, We cannot with moral certainty convict him of violation of B.P. Blg. 22.

However, Basilio Ambito's acquittal for his violations of B.P. Blg. 22 for failure of the prosecution to prove all elements of the offense beyond reasonable doubt did not entail the extinguishment of his civil liability for the dishonored checks. In a number of similar cases,[33] we have held that an acquittal based on reasonable doubt does not preclude the award of civil damages. The judgment of acquittal extinguishes the liability of the accused for damages only when it includes a declaration that the facts from which the civil liability might arise did not exist. Thus, in the case at bar, the trial court's directive for Basilio Ambito to indemnify PSI the total sum of ₱173,480.55, with interest thereon at the legal rate of 12% per annum from the date of filing of the Informations on May 10, 1982, until paid, and to pay the costs is affirmed.

Anent the question of whether or not petitioner spouses Liberata and Basilio Ambito's conviction for the offense of Estafa through Falsification of Commercial Document was proven beyond reasonable doubt, the petitioners interposed the defense that they cannot be properly convicted of the same as there was no finding of false narration of facts and of deceit.

Petitioners assert that PSI was not deceived by the issuance of the subject credit certificates of time deposit (CCTDs), which did not contain a false narration of facts, for the reasons that: (i) said CCTDs, which were undated as to their respective dates of issuance, did not state that funds had already been deposited by PSI; (ii) during the course of their alleged fourteen-year

[33] *Domangsang v. Court of Appeals, Id.* at 84-85, *Rico v. People*, G. R. No. 137191, November 18, 2002, 392 SCRA 61, 74; *Bax v. People*, G.R. No. 149858, September 5, 2007, 532 SCRA 284, 292-293.

long business relationship, PSI, which had been accepting said CCTDs, knew that they were unfunded as said certificates of time deposit were issued to serve as "promissory notes" to guarantee payment for the balance of the invoice price of the machineries;[34] (iii) petitioners did not represent to PSI that "the money was already deposited" because the subject CCTDs were "even postdated";[35] (iv) the amounts stated in the CCTDs were not "downpayments" but "CREDIT extended to petitioner Basilio Ambito payable six months after the sales/purchases were made;[36] (v) petitioners' obligation is civil in nature because current and savings deposits constitute loans to a bank and, thus, a CCTD is an evidence of a simple loan;[37] (vi) the essential element of fraud was absent because PSI knew that the CCTDs issued to it by petitioners were not covered by funds because it knew that the deposits were yet to be made when the farmers, to whom Basilio Ambito resold on credit the machineries, shall have deposited in the rural banks their payments for those machineries;[38] (vii) the subject certificates of time deposit issued to PSI were not ordinary certificates of time deposit but "CREDIT certificates of Time Deposit" because the term "credit" indicates a "deferred or delayed nature of the payment," thus, signifying a promise to pay at a future date;[39] (viii) PSI was not defrauded as it gave discounts in its sales invoices if petitioners paid in full the value of the certificates "on or before 180 days" from delivery. By giving discounts for early payment, it was thus aware of the possibility that said certificates might not be funded when they fell due;[40] (ix) the sales invoices issued by PSI gave it the right to institute civil actions only and not criminal actions;[41]

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[34] *Rollo*, pp. 64-72.

[35] *Id.*, at pp. 434-435.

[36] *Id.*, at pp. 435-436.

[37] *Id.*, at p. 437.

[38] *Id.*, at p. 438.

[39] *Id.*, at p. 439.

[40] *Id.*, at pp. 439-440.

[41] *Id.*, at p. 441.

and (x) petitioners had already performed their obligations to PSI by way of the payment of the amount of ₱300,000.00 and the return of one unit Kubota machinery valued at ₱ 28,000.00.[42]

We are not persuaded. We find no reason to disturb the identical findings of the CA and the RTC regarding the particular circumstances surrounding the petitioners' conviction of Estafa through Falsification of Commercial Documents because the same are adequately supported by the evidence on record.

It is not the function of this Court to analyze or weigh evidence all over again, unless there is a showing that the findings of the lower court are totally devoid of support or are glaringly erroneous as to constitute palpable error or grave abuse of discretion.[43]

The elements of Estafa by means of deceit, whether committed by false pretenses or concealment, are the following – (a) that there must be a false pretense, fraudulent act or fraudulent means. (b) That such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneous with the commission of the fraud. (c) That the offended party must have relied on the false pretense, fraudulent act or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act or fraudulent means. (d) That as a result thereof, the offended party suffered damage.[44]

In the prosecution for Estafa under Article 315, paragraph 2(a) of the RPC,[45] it is indispensable that the element of deceit, consisting in the false statement or fraudulent representation of the accused, be made prior to, or at least simultaneously with, the delivery of the thing by the complainant.

The false pretense or fraudulent act must be committed prior to or simultaneously with the commission of the fraud, it being

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[42] *Id.*, at pp. 441-442.

[43] *De Jesus v. Court of Appeals*, G.R. No. 127857, June 20, 2006, 491 SCRA 325, 333.

[44] *R.R. Paredes v. Calilung*, G.R. No. 156055, March 5, 2007, 517 SCRA 369, 393.

[45] Art. 315. *Swindling (estafa).*— Any person who shall defraud another by any of the means mentioned herein below . . .

essential that such false statement or representation constitutes the very cause or the only motive which induces the offended party to part with his money. In the absence of such requisite, any subsequent act of the accused, however fraudulent and suspicious it might appear, cannot serve as basis for prosecution for estafa under the said provision.[46]

In the case at bar, the records would show that PSI was given assurance by petitioners that they will pay the unpaid balance of their purchases from PSI when the CCTDs with petitioners' banks, the Rural Bank of Banate, Inc. (RBBI) and/or the Rural Bank of Leon, Inc. (RBLI), and issued under the name of PSI, would be presented for payment to RBBI and RBLI which, in turn, will pay the amount of deposit stated thereon. The amounts stated in the CCTDs correspond to the purchase cost of the machineries and equipment that co-petitioner Basilio Ambito bought from PSI as evidenced by the Sales Invoices presented during the trial. It is uncontroverted that PSI did not apply for and secure loans from RBBI and RBLI. In fine, PSI and co-petitioner Basilio Ambito were engaged in a vendor-purchaser business relationship while PSI and RBBI/RBLI were connected as depositor-depository. It is likewise established that petitioners employed deceit when they were able to persuade PSI to allow them to pay the aforementioned machineries and equipment through down payments paid either in cash or in the form of checks or through the CCTDs with RBBI and RBLI issued in PSI's name with interest thereon. It was later found out that petitioners never made any deposits in the said Banks under the name of PSI. In fact, the issuance of CCTDs to PSI was not recorded in the books of RBBI and RBLI and the Deputy Liquidator appointed by the Central Bank of the

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2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

[46] *Aricheta v. People*, G.R. No. 172500, September 21, 2007, 533 SCRA 695, 704.

Philippines even corroborated this finding of anomalous bank transactions in her testimony during the trial. [47]

As borne by the records and the pleadings, it is indubitable that petitioners' representations were outright distortions of the truth perpetrated by them for the sole purpose of inducing PSI to sell and deliver to co-petitioner Basilio Ambito machineries and equipments. Petitioners knew that no deposits were ever made with RBBI and RBLI under the name of PSI, as represented by the subject CCTDs, since they did not intend to deposit any amount to pay for the machineries. PSI was an innocent victim of deceit, machinations and chicanery committed by petitioners which resulted in its pecuniary damage and, thus, confirming the lower courts' finding that petitioners are guilty of the complex crime of Estafa through Falsification of Commercial Documents.

The pronouncement by the appeals court that a complex crime had been committed by petitioners is proper because, whenever a person carries out on a public, official or commercial document any of the acts of falsification enumerated in Article 171 of the RPC[48] as a necessary means to perpetrate another crime, like

[47] *Rollo*, pp. 184-187.

[48] 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:

1. Counterfeiting or imitating any handwriting, signature, or rubric;
2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;
3. Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;
4. Making untruthful statements in a narration of facts;
5. Altering true dates;
6. Making any alteration or intercalation in a genuine document which changes its meaning;
7. Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such copy a statement contrary to, or different from, that of the genuine original; or
8. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.

Estafa, Theft, or Malversation, a complex crime is formed by the two crimes.

Under Article 48 of the RPC,[49] a complex crime refers to (1) the commission of at least two grave or less grave felonies that must both (or all) be the result of a single act, or (2) one offense must be a necessary means for committing the other (or others). Negatively put, there is no complex crime when (1) two or more crimes are committed, but not by a single act; or (2) committing one crime is not a necessary means for committing the other (or others).[50]

The falsification of a public, official, or commercial document may be a means of committing Estafa, because before the falsified document is actually utilized to defraud another, the crime of Falsification has already been consummated, damage or intent to cause damage not being an element of the crime of falsification of public, official or commercial document. In other words, the crime of falsification has already existed. Actually utilizing that falsified public, official or commercial document to defraud another is estafa. But the damage is caused by the commission of Estafa, not by the falsification of the document. Therefore, the falsification of the public, official or commercial document is only a necessary means to commit the estafa.[51]

In the case before us, the issuance by petitioners of CCTDs which reflected amounts that were never deposited as such in either RBBI or RBLI is Falsification under Articles 171[52] and

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The same penalty shall be imposed upon any ecclesiastical minister who shall commit any of the offenses enumerated in the preceding paragraphs of this article, with respect to any record or document of such character that its falsification may affect the civil status of persons.

[49] Art. 48. *Penalty for complex crimes*.— When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

[50] *Monteverde v. People*, G.R. No. 139610, August 12, 2002, 387 SCRA 196, 208.

[51] *Cf.* Reyes, *The Revised Penal Code*, Book II, 2001 ed., p. 226.

[52] *Supra* note 47.

172[53] of the RPC. The particular criminal undertaking consisted of petitioners, taking advantage of their position as owners of RBBI and RBLI, making untruthful statements/representations with regard to the existence of time deposits in favor of PSI by issuing the subject CCTDs without putting up the corresponding deposits in said banks.

Under Article 171, paragraph 4 of the RPC,[54] the elements of falsification of public documents through an untruthful narration of facts are: (1) the offender makes in a document untruthful statements in a narration of facts; (2) the offender has a legal obligation to disclose the truth of the facts narrated; (3) the facts narrated by the offender are absolutely false; and (4) the perversion of truth in the narration of facts was made with the wrongful intent to injure a third person.[55]

As earlier discussed, the issuance of the falsified CCTDs for the sole purpose of obtaining or purchasing various machinery

[53] Art. 172. *Falsification by private individuals and use of falsified documents*.— The penalty of *prision correccional* in its medium and maximum periods and a fine of not more than 5,000 pesos shall be imposed upon:

1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document; and
2. Any person who, to the damage of a third party, or with the intent to cause such damage, shall in any private document commit any of the acts of falsification enumerated in the next preceding article.

Any person who shall knowingly introduce in evidence in any judicial proceeding or to the damage of another or who, with the intent to cause such damage, shall use any of the false documents embraced in the next preceding article or in any of the foregoing subdivisions of this article, shall be punished by the penalty next lower in degree.

[54] 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:

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(4) Making untruthful statements in a narration of facts;

[55] *Enemecio v. Office of the Ombudsman (Visayas)*, G.R. No. 146731, January 13, 2004, 419 SCRA 82, 91.

and equipment from PSI amounts to the criminal offense of Estafa under Article 315 (2) (a) of the RPC.[56] The petitioners falsified the subject CCTDs, which are commercial documents, to defraud PSI. Since the falsification of the CCTDs was the necessary means for the commission of Estafa, the assailed judgment of the appeals court convicting petitioners of the complex crime of Estafa through Falsification of Commercial Documents is correct.

Quite apart from the prosecution's successful discharge of its burden of proof, we find that the accused failed to discharge their burden to prove their defense. To begin with, there appears to be no proof on record of the alleged 14-year financial arrangement between accused and PSI or the purported "consignment only" agreement between them other than the uncorroborated and self-serving testimony of the accused. Moreover, we uphold the findings of the CA and the court *a quo* as to the proper characterization of the CCTDs and the lack of credible, independent evidence of the alleged payment of the accused's obligations to PSI.

Finally, with respect to co-petitioner Crisanto Ambito, we find no reason to disturb the trial court's ruling that he is liable for only the crime of Falsification of Commercial Documents in connection with CCTD Nos. 039 and 040 of RBLI, there being no showing that the said CCTDs were used to purchase farm implements from PSI.[57]

WHEREFORE, the Petition is *PARTLY GRANTED*. The assailed Decision dated March 29, 1996 of the Court of Appeals affirming that of the Regional Trial Court is *AFFIRMED* with respect to petitioner spouses Basilio and Liberata Ambito's conviction for Estafa through Falsification of Commercial Documents (in Criminal Case Nos. 14563 to 14585) and with respect to co-petitioner Crisanto Ambito's conviction for Falsification of Commercial Documents (in Criminal Case Nos. 14586 and 14587). However, the aforesaid Decision is *REVERSED* with respect to co-petitioner Basilio Ambito's conviction for

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[56] *Supra* note 44.

[57] *Rollo* at 156.

violation of B.P. Blg. 22 (in Criminal Case Nos. 14556 to 14562), who is hereby *ACQUITTED* on the ground that his guilt has not been established beyond reasonable doubt. However, the portion of the said Decision insofar as it directs Basilio Ambito to indemnify Pacific Star, Inc. the total sum of ₱173,480.55, with interest thereon at the legal rate of 12% per annum from the date of filing of the Informations on May 10, 1982, until paid, and to pay the costs (also in Criminal Case Nos. 14556 to 14562) is *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 142525. February 13, 2009]

FEDERAL BUILDERS, INC., *petitioner, vs.* **DAIICHI PROPERTIES AND DEVELOPMENT, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW; PROPER REMEDY OF A PARTY AGGRIEVED BY A DECISION OF THE COURT OF APPEALS; PETITION FOR REVIEW DISTINGUISHED FROM PETITION FOR *CERTIORARI*.— It bears stressing that this case must be dismissed outright since Federal chose the wrong remedy in bringing this case before this Court. Petitioner should have filed a petition for review under Rule 45 of the 1997 Rules of Civil Procedure instead of a Special Civil Action for *Certiorari* under Rule 65. The proper remedy of a party aggrieved by a decision of the Court of Appeals is a petition for review under Rule 45, which is not identical to a Petition for *Certiorari*

under Rule 65. Under Rule 45, decisions, final orders or resolutions of the Court of Appeals in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to this Court by filing a petition for review, which would be but a continuation of the appellate process over the original case. On the other hand, a special civil action under Rule 65 is an independent action based on the specific grounds therein provided and, as a general rule, cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that to be taken under Rule 45. Accordingly, when a party adopts an improper remedy, as in this case, such petition may be dismissed outright.

2. ID.; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; INQUIRY IS LIMITED ESSENTIALLY TO WHETHER OR NOT THE PUBLIC RESPONDENT ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION.— At any rate, even if we were to ignore the procedural defects, the instant petition must still be dismissed as the Court of Appeals did not commit any grave abuse of discretion amounting to want or excess of jurisdiction in reversing the orders of the Arbitral Tribunal. In *certiorari* proceedings under Rule 65 of the Rules of Court, the inquiry is limited essentially to whether or not the public respondent acted without or in excess of its jurisdiction or with grave abuse of discretion. A court, tribunal, board or officer acts without jurisdiction if it/he does not have the legal power to determine the case. There is excess of jurisdiction where, being clothed with the power to determine the case, the tribunal, board or officer oversteps its/his authority as determined by law. And there is grave abuse of discretion where the court, tribunal, board or officer acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of its/his judgment as to be said to be equivalent to lack of jurisdiction. The Court of Appeals is far from being abusive in rendering its questioned decision.

3. REMEDIAL LAW; ARBITRATION; CONSTRUCTION ARBITRATION; THE ARBITRAL TRIBUNAL CANNOT ENGAGE IN AND RELY ON SPECULATION, CONJECTURE AND GUESSWORK.— Obviously Daiichi and Federal disagree on one item in the formula. Daiichi insists that the old quantity must be factored in, while Federal contends

that in place of the old quantity, the quantity required under the construction agreement should instead be brought in. Although in Federal's formula, the quantity required under the construction agreement is already established, as evidenced by the construction agreement contract, what remains unknown, however, are the items in Daiichi's formula which are the quantities under the revised plan and the old plan. By not allowing Daiichi to commission an independent survey on these unknown items, the tribunal effectively prevents respondent from presenting evidence for its cause. Furthermore, this case undeniably involves highly technical matters within the special training and expertise of those engaged in the construction industry. Persons specialized in this field, and are fair-minded, are invaluable sources of needed information that can shed light on the confusing and contradicting claims asserted by the parties. The Court cites with approval the disquisition of the Court of Appeals in this regard: A determination of the quantities of materials required to complete the project under the original bid plans and the revised plans is doubtless necessary for the judicious resolution of the underlying dispute between the parties. Given the tedious and technical process involved in this undertaking, the participation of an impartial third person who will provide the Arbitral Tribunal with the necessary detailed information is, contrary to what the assailed orders imply, virtually a must. Thus, its refusal to consider what [Daiichi] aptly describes as "vital" and "unimpeachable" piece of information constitutes an utter disregard of the spirit, if not the letter, of the Rules of Procedure Governing Construction Arbitration, Article 1, Section 3 of which exhorts arbitrators to "use every and all reasonable means to ascertain facts in each case speedily and objectively and without regard to technicalities of law or procedure." Just like any dispenser of justice, the [Arbitral Tribunal] is bound to seek the truth or what approximates it. It cannot engage in and rely on speculation, conjecture and guesswork, which, needless to state, cannot be an acceptable norm for an intelligent judgment. [Daiichi's] motion to commission an independent quantity surveyor was an earnest attempt to provide the [Arbitral Tribunal] with a credible tool to get at the truth, to afford it with a rational basis to fairly settle clashing interests. x x x.

4. ID.; ID.; ID.; REFUSAL OF THE ARBITRAL TRIBUNAL TO COMMISSION AN INDEPENDENT QUANTITY

SURVEYOR DESPITE THE CLEAR RIGHT OF THE PARTY TO THE SAME CONSTITUTES GRAVE ABUSE OF DISCRETION.— The Court is in a quandary why the Arbitral Tribunal refused to grant the motion of Daiichi. The tribunal ignored the effort of a party whose only desire was to elucidate and give details of the pertinent information, not necessarily favorable to the latter, particularly those which can be provided by an independent quantity surveyor. By doing so, the tribunal was being unmindful of Article 1, Section 3 of the Rules of Procedure Governing Construction Arbitration, which exhorts the arbitrators to "*use every and all reasonable means to ascertain facts in each case speedily and objectively and without regard to technicalities of law or procedure.*" The information that the independent surveyor can provide is not at all inconsequential, for it redounds to the very thesis of Daiichi, *i.e.*, that the deductive cost is arrived at by determining the quantities of materials required to complete the project under the old plan or original bid and the revised plan. The stubborn refusal of the Arbitral Tribunal to commission an independent quantity surveyor despite the clear right of Daiichi to the same was characterized by capriciousness and arbitrariness amounting to grave abuse of discretion.

5. REMEDIAL LAW; JUDGMENT; DISPOSITIVE PART; SETTLES AND DECLARES THE RIGHTS AND OBLIGATIONS OF THE PARTIES, FINALLY, DEFINITIVELY, AUTHORITATIVELY, NOWITHSTANDING THE EXISTENCE OF INCONSISTENT STATEMENTS IN THE BODY THAT MAY TEND TO CONFUSE.— Moreover, the tenor of the dispositive portion of the Court of Appeals' Decision does not order the Arbitral Tribunal to adopt the formula of Daiichi in resolving the focal issue of the case. The appellate court simply directed the tribunal to commission an independent surveyor. Indeed, it is the dispositive part of the judgment that actually settles and declares the rights and obligations of the parties, finally, definitively, authoritatively, notwithstanding the existence of inconsistent statements in the body that may tend to confuse. It is the dispositive part that controls, for purposes of execution. Hence, there is no doubt that the Court of Appeals decided the case within the ambit of its authority.

APPEARANCES OF COUNSEL

Aguirre Abaño Pamfilo Paras Pineda & Agustin Law Office for petitioner.

Abello Concepcion Regala & Cruz Law Offices for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This Petition for Review on *Certiorari* under Rule 65 of the Rules of Court assails the Decision[1] of the Court of Appeals dated 9 November 1999 in CA-G.R. SP No. 54122 which set aside the Orders of the Arbitral Tribunal of the Construction Industry Arbitration Commission denying the Motion to Commission an Independent Quantity Surveyor of Daiichi Properties and Development, Inc. (Daiichi), and the Court of Appeals' Resolution[2] dated 23 February 2000 denying the motion for reconsideration of the said decision.

Daiichi invited bidders for the general construction of its high-rise building project named Orient Plaza. One of those who submitted its proposal was Federal Builders, Inc. (Federal). Federal emerged as the winning bidder for the construction project.

On 29 December 1995, Daiichi and Federal executed a Construction Agreement which, among other things, stipulated that the cement and steel bars to be used in the construction of Orient Plaza would be provided by Daiichi while the labor and other materials would be supplied by Federal, *viz*:

1. 834,273 bags of cement, as the guaranteed maximum quantity of cement to be supplied by Daiichi;

2. 9,262,334.45 kilograms of steel bars, as the guaranteed maximum quantity of steel bars, also to be supplied by Daiichi; and

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[1] Penned by Associate Justices Cancio C. Garcia with Bernardo Ll. Salas and Candido V. Rivera, concurring; *rollo,* pp. 36-47.

[2] *Rollo,* p. 49.

3. ₱212,000,000.00 as the fixed price of [Federal's] labor and other materials.[3]

The Construction Agreement likewise granted Daiichi the right to revise the construction plans for the project, thus:

2.10 All variations or departures from the bid plans, this Contract Agreement and other related contract and bid documents to the issued construction plans and other future revisions shall be considered as change order.

xxx xxx xxx

8.01. The CONTRACTOR is obliged to undertake any additional work or extra work or omission or reduction of work which the OWNER may require.

xxx xxx xxx

8.04. The OWNER may … at any time during the progress of the work by written instructions, cause alterations in the original plans and specifications to be made by way of addition, deletion, or otherwise deviating therefrom; and said work shall be executed by the CONTRACTOR under the direction of the Construction Manager in the same manner as if the same had been part of the original plans and specifications.[4]

In the course of the construction, Daiichi made some changes by reducing the concrete strength from 8,000 to 6,000 pounds per square inch, which reduction resulted in a decrease in the required quantities of cement, steel bars, other materials and a diminution of the labor costs. Pursuant to this, Daiichi issued revised construction plans. Daiichi and Federal also agreed to reduce the contract price of the project and to submit a separate evaluation of the deductive costs arising from the revisions of the construction plans. While the parties agreed that due to the reduction in the concrete strength, a corresponding decrease in the required quantities of cement, steel bars, other materials and labor must follow, they cannot agree on the method in arriving at the deductive cost. Daiichi presented its own estimate of the deductive cost *by getting the difference between the*

[3] *Id.* at 37.

[4] *Id.* at 38.

quantities/peso value of steel bars, cement, labor and materials required under the original plan with the quantities/peso value of the same items required under the revised plan; thus:

Change in Quantity =	Quantity of Materials required Under Revised Plan.	–	Quantity of Materials Required Under Original Plan

Using the foregoing methodology, Daiichi computed the deductive cost at ₱64,602,110.59.

For its part, Federal insisted on a different formula to obtain the deductive cost *by comparing the quantities/peso value of steel bars, cement, labor and materials required under the construction agreement (or guaranteed maximum) with the quantity of materials required under the revised plan*, to wit:

Change in Quantity =	Guaranteed Maximum Or Fixed Quantity of Materials under the Construction Agreement.	–	Quantity of Materials required under Revised Plan.

By employing the foregoing formula, Federal reached the amount of ₱31,326,810.15 as the deductive costs.

On account of this differing computations in determining the deductive costs, Daiichi engaged the services of an independent quantity surveyor, Davis Langdo and Seah Philippines, Inc. (DLS), to conduct a survey of the deductive costs. DLS came out with its own estimate of the deductive cost in the amount of ₱68,441,415.58, which is closer to that submitted by Daiichi.

Daiichi also made some deductions from the amount it paid to Federal using the former's manner of computation.

Feeling aggrieved, Federal filed a petition for arbitration with the Construction Industry Arbitration Commission (CIAC) on 9 November 1998. The parties agreed that their dispute be settled by the Arbitral Tribunal.

The basic issue submitted to the Arbitral Tribunal appears to be the determination of the correct approach in order to obtain the deductive costs brought about by the revisions in the project.

In the course of the hearing, Daiichi filed on 2 June 1999 a Motion to Commission an Independent Quantity Surveyor in order to determine the actual quantities of materials required to complete the project under the original or old plan and the revised plan.[5] Daiichi was of the opinion that the only way to ascertain the deductive costs was to compare the materials required under the old and the new plans. Federal opposed the said motion on the grounds that Daiichi already submitted estimates from an independent quantity surveyor, and that there was no need to make an estimate of the old plans since the same were never implemented. Federal insisted that the estimate of the old plan was irrelevant since the quantity of materials required for the project was reflected in the construction agreement.

On 29 June 1999, the Arbitral Tribunal issued an Order denying Daiichi's Motion to Commission an Independent Quantity Surveyor, reasoning that *the commissioning of an independent surveyor was not absolutely necessary*, and that *the engagement of such surveyor would only be useful if both parties agreed on such engagement*.

Daiichi filed a motion for reconsideration, which was also denied by the Arbitral Tribunal in an Order dated 13 July 1999.

Unfazed, Daiichi questioned the orders of the Arbitral Tribunal before the Court of Appeals.

In a Decision dated 9 November 1999, the Court of Appeals set aside the orders of the Arbitral Tribunal and ordered the latter to commission an independent quantity surveyor to determine the actual quantities of materials required under the original plan and the revised plans therefor as requested by Daiichi. The decretal portion of the Decision reads:

> WHEREFORE, the instant petition is hereby GRANTED and the assailed orders dated June 29, 1999 and July 13, 1999 of the respondent Arbitral Tribunal are hereby NULLIFIED and SET ASIDE. Accordingly, the respondent Arbitral Tribunal is hereby ordered, subject to the prescription of Section 5, Chapter XV of the Rules of Procedure Governing Construction Arbitration, to commission

[5] *Id.* at 168.

an independent quantity surveyor to determine the actual quantities of materials required to complete the "Orient Square" project under the original/bid plan and the revised plans therefor.[6]

Federal filed a motion for reconsideration which was denied by the Court of Appeals in a Resolution dated 23 February 2000.

Hence, this petition.

It bears stressing that this case must be dismissed outright since Federal chose the wrong remedy in bringing this case before this Court. Petitioner should have filed a petition for review under Rule 45 of the 1997 Rules of Civil Procedure instead of a Special Civil Action for *Certiorari* under Rule 65. The proper remedy of a party aggrieved by a decision of the Court of Appeals is a petition for review under Rule 45, which is not identical to a Petition for *Certiorari* under Rule 65. Under Rule 45, decisions, final orders or resolutions of the Court of Appeals in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to this Court by filing a petition for review, which would be but a continuation of the appellate process over the original case. On the other hand, a special civil action under Rule 65 is an independent action based on the specific grounds therein provided and, as a general rule, cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that to be taken under Rule 45. Accordingly, when a party adopts an improper remedy, as in this case, such petition may be dismissed outright.

At any rate, even if we were to ignore the procedural defects, the instant petition must still be dismissed as the Court of Appeals did not commit any grave abuse of discretion amounting to want or excess of jurisdiction in reversing the orders of the Arbitral Tribunal.

In *certiorari* proceedings under Rule 65 of the Rules of Court, the inquiry is limited essentially to whether or not the public

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

respondent acted without or in excess of its jurisdiction or with grave abuse of discretion.[7]

A court, tribunal, board or officer acts without jurisdiction if it/he does not have the legal power to determine the case.[8] There is excess of jurisdiction where, being clothed with the power to determine the case, the tribunal, board or officer oversteps its/his authority as determined by law. And there is grave abuse of discretion where the court, tribunal, board or officer acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of its/his judgment as to be said to be equivalent to lack of jurisdiction.[9]

The Court of Appeals is far from being abusive in rendering its questioned decision.

The Court of Appeals annulled and set aside the Arbitral Tribunal's orders on the ground that said orders completely failed to give Daiichi the vital piece of information necessary for the judicious resolution of the case thereby ignoring the letter, spirit, policy and objective of the Rules of Procedure Governing Construction Arbitration which require, among other things, that arbitrators must employ all reasonable means to ascertain facts in each case. To the mind of the Court of Appeals, the Arbitral Tribunal must exert all its best efforts to thresh out the matters relevant to the case and to apprise itself of the evidence that contending parties may present to support their respective theories. According to the appellate court, since it is Daiichi's claim that the deductive cost can only be established by finding out the quantities of materials required to complete the project under the original plan and the revised plan, the Arbitral Tribunal should have allowed the commissioning of an independent expert who would give an objective information for the tribunal to reach a sensible, if not well-informed, resolution of the controversy.

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[7] *People v. Court of Appeals*, G.R. No. 144332, 10 June 2004, 431 SCRA 610, 617.

[8] *Litton Mills, Inc. v. Galleon Trader, Inc.*, G.R. No. L-40867, 26 July 1988, 163 SCRA 489, 494.

[9] *Id.*

We agree with the Court of Appeals.

As mentioned earlier, the crux of the controversy lies in the formula to arrive at the deductive cost. Daiichi postulates that the deductive cost is ascertained by getting the difference between the quantities/peso value of steel bars, cement, labor and materials required under the original plan with the quantities/peso value of the same items required under the revised plan. Two reference points must be determined first, *i.e.*, the old quantity and the new quantity which are to be matched. To determine the old quantity (*quantity of materials required under the old plan*) and the new quantity (*quantity of materials required under the revised plan*), it is necessary that a quantitative survey must first be conducted on these two items. Without such survey, Daiichi asserts, the deductive cost can never be determined.

Federal, for its part, has a different formula to obtain the deductive cost by comparing the quantities required under the construction agreement and those required under the revised plan.

Obviously Daiichi and Federal disagree on one item in the formula. Daiichi insists that the old quantity must be factored in, while Federal contends that in place of the old quantity, the quantity required under the construction agreement should instead be brought in. Although in Federal's formula, the quantity required under the construction agreement is already established, as evidenced by the construction agreement contract, what remains unknown, however, are the items in Daiichi's formula which are the quantities under the revised plan and the old plan. By not allowing Daiichi to commission an independent survey on these unknown items, the tribunal effectively prevents respondent from presenting evidence for its cause. Furthermore, this case undeniably involves highly technical matters within the special training and expertise of those engaged in the construction industry. Persons specialized in this field, and are fair-minded, are invaluable sources of needed information that can shed light on the confusing and contradicting claims asserted by the parties. The Court cites with approval the disquisition of the Court of Appeals in this regard:

A determination of the quantities of materials required to complete the project under the original bid plans and the revised plans is doubtless necessary for the judicious resolution of the underlying dispute between the parties. Given the tedious and technical process involved in this undertaking, the participation of an impartial third person who will provide the Arbitral Tribunal with the necessary detailed information is, contrary to what the assailed orders imply, virtually a must. Thus, its refusal to consider what [Daiichi] aptly describes as "vital" and "unimpeachable" piece of information constitutes an utter disregard of the spirit, if not the letter, of the Rules of Procedure Governing Construction Arbitration, Article 1, Section 3 of which exhorts arbitrators to "use every and all reasonable means to ascertain facts in each case speedily and objectively and without regard to technicalities of law or procedure."

Just like any dispenser of justice, the [Arbitral Tribunal] is bound to seek the truth or what approximates it. It cannot engage in and rely on speculation, conjecture and guesswork, which, needless to state, cannot be an acceptable norm for an intelligent judgment. [Daiichi's] motion to commission an independent quantity surveyor was an earnest attempt to provide the [Arbitral Tribunal] with a credible tool to get at the truth, to afford it with a rational basis to fairly settle clashing interests. x x x.[10]

As to the Arbitral Tribunal's ratiocination that the hiring of an independent quantity surveyor can be useful only if both parties agree to such engagement, the Court of Appeals rightly impugned said excuse as frail and baseless, *viz*:

This justification is specious inasmuch as the designation of an independent quantity surveyor may be made on the basis alone of the motion of one party. Section 5, Chapter XV of the Rules of Procedure Governing Construction Arbitration says so:

> "Section 5. Appointment of Experts.— The service of technical or legal experts may be utilized in the settlement of disputes if requested by one of the parties x x x."[11]

The Court is in a quandary why the Arbitral Tribunal refused to grant the motion of Daiichi. The tribunal ignored the effort

[10] *Rollo*, pp. 45-46.

[11] *Id.* at 46.

of a party whose only desire was to elucidate and give details of the pertinent information, not necessarily favorable to the latter, particularly those which can be provided by an independent quantity surveyor. By doing so, the tribunal was being unmindful of Article 1, Section 3 of the Rules of Procedure Governing Construction Arbitration, which exhorts the arbitrators to "*use every and all reasonable means to ascertain facts in each case speedily and objectively and without regard to technicalities of law or procedure*." The information that the independent surveyor can provide is not at all inconsequential, for it redounds to the very thesis of Daiichi, *i.e.*, that the deductive cost is arrived at by determining the quantities of materials required to complete the project under the old plan or original bid and the revised plan. The stubborn refusal of the Arbitral Tribunal to commission an independent quantity surveyor despite the clear right of Daiichi to the same was characterized by capriciousness and arbitrariness amounting to grave abuse of discretion. In the language of the appellate court:

> The error is so egregious as to justify a charge of grave abuse of discretion. As it were, the Court is at a loss to understand why a simple motion, containing a reasonable plea not necessarily favorable to [Daiichi], but envisaged to assist in the judicious resolution of the basic dispute between the parties, would elicit an unrealistic response from the [Arbitral Tribunal].[12]

As to Federal's claim that there is no necessity to conduct a survey, since Daiichi has already submitted estimates from an independent quantity surveyor, we find said argument tenuous. The survey initiated by Daiichi cannot be said to be independent, because it was done through its behest. An independent survey sanctioned by the Arbitral Tribunal, and not at the prodding of any contending party, is suitable in this kind of controversy.

Federal contends that the Court of Appeals encroached on the Arbitral Tribunal's jurisdiction in finding Daiichi's formula more acceptable, thereby pre-empting any decision which the Tribunal had yet to make.

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[12] *Id.*

This is inaccurate. The Court of Appeals resolved primarily the issue of the grave abuse of discretion committed by the Arbitral Tribunal in refusing to commission an independent survey of the original plan and the revised plan. While the said court may have intimated that the formula of Daiichi was desirable, the former did so to lay emphasis on its position that the Arbitral Tribunal could not, without abusing its discretion, blindly preclude Daiichi from presenting evidence or information to substantiate its theory. This information, to the Court of Appeals' mind, can only be elicited from the commissioning of an independent quantity surveyor. A solid testimony attesting to the fact that the Court of Appeals did not attempt to pre-empt the Arbitral Tribunal's disposition of the main case is evidenced by the declaration of the same court, to wit:

> Much has been made by [Federal] of what it views as the insignificant evidentiary value of a second survey report. **In this regard, suffice it to state that the worth of such document, be it accepted as evidence, or, to borrow from the Arbitral Tribunal, as procedural device, is for the Tribunal to decide at the first instance.**[13] (Emphasis supplied.)

Moreover, the tenor of the dispositive portion of the Court of Appeals' Decision does not order the Arbitral Tribunal to adopt the formula of Daiichi in resolving the focal issue of the case. The appellate court simply directed the tribunal to commission an independent surveyor. Indeed, it is the dispositive part of the judgment that actually settles and declares the rights and obligations of the parties, finally, definitively, authoritatively, notwithstanding the existence of inconsistent statements in the body that may tend to confuse.[14] It is the dispositive part that controls, for purposes of execution.[15] Hence, there is no doubt that the Court of Appeals decided the case within the ambit of its authority.

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[13] *Id.*

[14] *Espiritu v. Court of First Instance of Cavite*, G.R. No. L-44696, 18 October 1988, 166 SCRA 394, 399.

[15] *Id.*

In fine, this Court defers to the findings of the Court of Appeals, there being no cogent reason to veer away from such.

WHEREFORE, the Decision of the Court of Appeals dated 9 November 1999 nullifying the Arbitral Tribunal's Orders dated 29 June 1999 and 13 July 1999, and ordering the said tribunal to commission an independent quantity surveyor, is hereby *AFFIRMED*. Upon finality of this Decision, the Arbitral Tribunal is hereby directed to issue, with all deliberate dispatch, an Order commissioning an independent surveyor to determine the actual quantities of materials required to complete the "Orient Plaza" project under the original plan and the revised plan, and to resolve the main case.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Velasco, Jr.,[*] and *Peralta, JJ.,* concur.

THIRD DIVISION

[G.R. No. 143538. February 13, 2009]

VICENTE A. MIEL, *petitioner, vs.* **JESUS A. MALINDOG,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; APPEAL FROM THE JUDGMENTS OF THE CIVIL SERVICE COMMISSION; PERIOD OF APPEAL; 15-DAY PERIOD TO APPEAL COMMENCED TO RUN FROM RECEIPT OF THE

[*] Associate Justice Presbitero J. Velasco, Jr. was designated to sit as additional member replacing Associate Justice Antonio Eduardo B. Nachura per Raffle dated 11 February 2009.

JUDGMENT BY THE PARTY'S COUNSEL OF RECORD, IF THE PARTY IS REPRESENTED BY A COUNSEL; CASE AT BAR.— Under the provisions of Rule 43 of the Rules of Court, the appeal from the judgments, final orders or resolutions of the CSC shall be taken by filing a verified petition for review to the Court of Appeals within fifteen (15) days from notice of the judgment, final order or resolution. Jurisprudence instructs that when a party is represented by counsel, notice of the judgment, final order or resolution should be made upon the counsel of record. Thus, the fifteen-day period to appeal under Rule 43 of the Rules of Court commenced to run from receipt of the judgment, final order or resolution by the party's counsel on record. Records show that in the filing of respondent's Motion for Reconsideration of CSC-HO Resolution No. 973301, respondent was represented by Atty. Alexander L. Bulauitan. The CSC-HO issued Resolution No. 980648 denying respondent's Motion for Reconsideration on 25 March 1998. Atty. Bulauitan received a copy of CSC-HO Resolution No. 980648 on **29 April 1998**. Respondent then had fifteen (15) days from such date of receipt, or until **14 May 1998**, to appeal to the Court of Appeals under Rule 43 of the Rules of the Court. Respondent, however, filed his appeal of CSC-HO Resolutions No. 973301 and No. 980648 with the Court of Appeals only on **19 June 1998**, which was obviously beyond the 15-day reglementary period for doing so.

2. ID.; ID.; PERFECTION OF AN APPEAL; FAILURE TO PERFECT AN APPEAL WITHIN THE REGLEMENTARY PERIOD RENDERS THE QUESTIONED DECISION FINAL AND EXECUTORY, AND DEPRIVES THE APPELLATE COURT OF JURISDICTION TO ALTER THE DECISION MUCH LESS TO ENTERTAIN THE APPEAL; EXCEPTIONS.— The rule is that failure to file or perfect an appeal within the reglementary period will make the judgment final and executory by operation of law. Perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional; failure to do so renders the questioned decision/resolution final and executory, and deprives the appellate court of jurisdiction to alter the decision/resolution, much less to entertain the appeal. Nonetheless, we have held that a delay in the filing of an appeal under exceptional circumstances may be excused on grounds of substantial justice and equity. Filing of an appeal beyond the reglementary period

may, under meritorious cases, be excused if the barring of the appeal would be inequitable and unjust in light of certain circumstances therein. Courts may suspend its own rules, or except a particular case from its operations, whenever the purposes of justice require it. In *Baylon v. Fact-Finding Intelligence Bureau*, we laid down the range of reasons which may provide justification for a court to resist strict adherence to procedure, to wit: (1) matters of life, liberty, honor and property; (2) counsel's negligence without the participatory negligence on the part of the client; (3) the existence of special or compelling circumstances; (4) the merits of the case; (5) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (6) a lack of any showing that the review sought is merely frivolous and dilatory; and (7) the other party will not be unjustly prejudiced thereby.

3. ID.; ID.; ID.; ID.; ID.; PRESENT IN CASE AT BAR.— In the case at bar, the CSC-HO found respondent guilty of dishonesty and imposed upon him the penalty of dismissal from the service. The penalty of dismissal is a severe punishment because it blemishes a person's record in government service. It is an injury to one's reputation and honor which produces irreversible effects on one's career and private life. Worse, it implies loss of livelihood to the employee and his family. Respondent would certainly suffer grave injustice if the penalty of dismissal imposed on him turned out to be erroneous or disproportionate and such was not duly rectified because of mere technicality. Further, it appears that respondent was not able to file his appeal on time because Atty. Bulauitan failed to immediately inform respondent of the notice of CSC-HO Resolution No. 980648. Atty. Bulauitan was so busy then as campaign manager of a senatorial aspirant that he forgot to notify respondent of the notice of said resolution. Generally, respondent is bound by the negligence of Atty. Bulauitan. However, since respondent had nothing to do with the negligence of Atty. Bulauitan, respondent's case should be an exception to the rule on the effects of the counsel's negligence, as the application of such rule would result in serious injustice to respondent. Hence, it is in the greater interest of justice that the penalty of dismissal meted out to respondent be meticulously reviewed by the Court of Appeals despite procedural lapses in respondent's appeal. The Court of Appeals, therefore, did not err in giving due course to respondent's appeal.

4. POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE; A PUBLIC SERVANT MUST EXHIBIT AT ALL TIMES THE HIGHEST SENSE OF HONESTY AND INTEGRITY.— Public service requires the utmost integrity and strictest discipline. Thus, a public servant must exhibit at all times the highest sense of honesty and integrity. No less than the Constitution sanctifies the principle that a public office is a public trust, and enjoins all public officers and employees to serve with the highest degree of responsibility, integrity, loyalty and efficiency. The Code of Conduct and Ethical Standards for Public Officials and Employees additionally provides that every public servant shall at all times uphold public interest over his or her personal interest.

5. ID.; ID.; ID.; THE ACT OF MAKING UNTRUTHFUL STATEMENTS OR CONCEALMENT OF ANY INFORMATION IN THE PERSONAL DATA SHEET CONSTITUTES DISHONESTY.— A PDS is an official document required of a government employee and official by the Civil Service Commission. It is the repository of all information about any government employee or official regarding his personal background, qualification, and eligibility. Government employees are tasked under the Civil Service rules to properly and completely accomplish their PDS. The act of making untruthful statements, or concealment of any information in the PDS, constitutes dishonesty and is punishable under the Civil Service rules. Dishonesty is a "disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness." Dishonesty inevitably reflects on the discipline and morale of the service.

6. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF ADMINISTRATIVE AGENCIES AND QUASI-JUDICIAL BODIES ARE GENERALLY ACCORDED NOT ONLY GREAT RESPECT BUT EVEN FINALITY, ESPECIALLY WHEN THE COURT OF APPEALS AFFIRMS SAID FINDINGS.— There is no reason for us to disturb the consistent finding of CSC-RO No. 8, CSC-HO, and the Court of Appeals that respondent made untruthful statements when he stated in his second PDS that he worked at the PHJLD of DPWH Region 8 from **1 May 1984 until 9 October 1986**; and when he indicated in his third PDS that he was "on leave" from his

job as civil engineer at DPWH Region 8 from **1 January 1984 up to 9 October 1986**, when, in fact, he was working at PHILPOS BAGACAY MINES during the same period according to his first PDS. Findings of fact of administrative agencies and quasi-judicial bodies, such as the CSC, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only great respect but even finality. This is particularly true where the Court of Appeals affirms such findings of fact.

7. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CHARGES; DISHONESTY; CLASSIFIED AS A GRAVE OFFENSE; IMPOSABLE PENALTY.— Section 52, A(1), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service (Civil Service Rules), classifies dishonesty as a grave offense with a corresponding penalty of dismissal even if committed for the first time. Be that as it may, we observed that respondent had been in the government service for more or less 20 years, during which he made a steady ascent from a lowly laborer at the National Irrigation Administration, Catbalogan, Samar, to a Civil Engineer II at the SED-DPWH. Respondent also had no previous derogatory record as a government employee. Moreover, he returned the loyalty cash award of ₱1,500.00. We can consider the foregoing as mitigating circumstances to lower the penalty imposable on respondent pursuant to Section 53 of the Civil Service Rules, xxx.

8. ID.; ID.; ID.; MITIGATING CIRCUMSTANCES; MAY BE CONSIDERED IN THE IMPOSITION OF PROPER PENALTY TO THE EMPLOYEE CHARGED.— In *Apuyan, Jr. v. Sta. Isabel*, a government employee was charged with and found guilty of dishonesty. Nonetheless, instead of dismissing respondent, we imposed the penalty of one-year suspension without pay considering that his dishonesty was his first offense. In *Civil Service Commission v. Belagan*, a government employee was found guilty of grave misconduct, the penalty for which was dismissal from the service. However, we did not impose the penalty of dismissal upon respondent, considering the presence of the following mitigating circumstances: (1) his long years of service in the government; and (2) his unblemished record in the past. We likewise ruled therein that the appropriate penalty for respondent was one-

year suspension from service without pay. Pursuant to the aforementioned jurisprudence, we hold that instead of imposing the penalty of dismissal upon respondent in the instant case, we are penalizing him for his dishonesty with one-year suspension from service without pay and with a stern warning that a repetition of the same or similar acts in the future will be dealt with more severely.

APPEARANCES OF COUNSEL

Ernesto P. Miel for petitioner.
Wilfedo M. Bolito for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before Us is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking the reversal of the Decision[2] dated 29 July 1999 and Resolution[3] dated 26 May 2000 of the Court of Appeals in CA-G.R. SP No. 48045.

The facts gathered from the records are as follows:

On 19 July 1994, petitioner Vicente A. Miel, then employed as Engineer II of the Samar Engineering District, Department of Public Works and Highways, Catbalogan, Samar (SED-DPWH), filed with the Civil Service Commission, Region Office No. 8, Tacloban City (CSC-RO No. 8), a Complaint for falsification of official documents, dishonesty, conduct prejudicial to the best interest of the service and grave misconduct, against respondent Jesus A. Malindog, then employed also as Engineer II of SED-DPWH, Samar.

Petitioner alleged in his Complaint that respondent submitted three separate Personal Data Sheets (PDS), or Civil

[1] *Rollo*, pp. 3-22.

[2] Penned by Associate Justice Artemon D. Luna with Associate Justices Conchita Carpio Morales (now a member of this Court) and Bernardo P. Abesamis, concurring; *rollo*, pp. 23-29.

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

Service Form No. 212, pertinent portions of which are reproduced below:

According to the **first PDS**[4]:

PERSONAL DATA SHEET
(20 DECEMBER 1988)

xxx xxx xxx

SERVICE RECORD (Include experience outside government service)

INCLUSIVE DATES		POSITION	DEPARTMENT/ AGENCY
From	To		
xxx		xxx	xxx
July 1, 1984 - October 9, 1986		C.E. Supervisor	PHILPOS BAGACAY MINES

The **second PDS**[5] stated:

PERSONAL DATA SHEET
(2 MARCH 1992)

xxx xxx xxx

SERVICE RECORD (Include experience outside government service)

INCLUSIVE DATES		POSITION	DEPARTMENT/ AGENCY
From	To		
xxx		xxx	xxx
June 1, 1984 – Dec. 31, 1986		Civil Engineer	PJHL, DPWH
Jan.1, 1984 – June 30, 1986		Civil Engineer	-do-
July 1, 1986 - Oct. 9, 1986		Civil Engineer	-do-

And the **third PDS**[6] declared:

[4] Records, p. 137.

[5] *Id.* at 138.

[6] *Id.* at 139.

PERSONAL DATA SHEET
(Year 1994)

xxx xxx xxx

SERVICE RECORD (Include experience outside government service)

INCLUSIVE DATES From	To	POSITION	DEPARTMENT/ AGENCY
xxx		xxx	xxx
Jan. 1, 1984 - October 9, 1986		on leave	

Petitioner compared respondent's three PDSs and pointed out the following contradictory and apparently deceitful information therein: respondent stated under the service record section of his first PDS that he worked for PHILPOS BAGACAY MINES, a private company in Hinabangan, Samar, as C.E. Supervisor from **1 July 1984 up to 9 October 1986**; then respondent indicated under the service record section of his second PDS that he worked at the Philippine-Japan Highway Loan Division (PJHLD) of the DPWH Region 8 from **1 May 1984 until 9 October 1986**; and, finally, respondent wrote under the service record section of his third PDS that he was "on leave" from his job as civil engineer in DPWH Region 8 from **1 January 1984 up to 9 October 1986**. By reason of these false statements made by respondent in his PDS, he was granted an amount of ₱1,500.00 as loyalty cash award by SED-DPWH. Respondent was also recommended for promotion to the vacant position of Engineer III in SED-DPWH, but petitioner contended that respondent should be disqualified from the said promotion by reason of the falsification he made on his three PDSs. Petitioner, thus, prayed in his Complaint[7] that appropriate sanctions be imposed on respondent based on the foregoing allegations.

On 5 September 1994, respondent filed before CSC-RO No. 8 an Answer[8] to petitioner's Complaint. In his Answer, respondent denied the charges against him and averred that they were

[7] *Id.* at 133-136.

[8] *Id.* at 67-71.

malicious and pure harassment. Respondent claimed that petitioner held a grudge against respondent because they were in "bitter contest" for the vacant position of Engineer III in SED-DPWH. Petitioner scanned respondent's personal records just to make a case against him. Respondent explained that he indeed worked for PHILPOS BAGACAY MINES and at the PJHLD of DPWH Region 8, but he could no longer recall the exact dates of said employments, considering the length of time that had lapsed since then. Also due to the frailty of human memory, respondent could not exactly remember his whereabouts during the period he was supposedly on leave from his job as civil engineer in DPWH Region 8 for the period of 1 January 1984 to 9 October 1986. Respondent asserted that he did not commit any wrong when he accepted the loyalty cash award. He did not bribe or use unlawful schemes in order to be recommended for the vacant Engineer III position. Respondent pleaded that petitioner's Complaint be dismissed for lack of merit.

After conducting a preliminary investigation of petitioner's Complaint, Lorenzo S. Danipog (Danipog), Director III of CSC-RO No. 8, issued a Resolution[9] formally charging respondent with dishonesty. Director Danipog found that respondent had willfully and maliciously written false information on his three PDSs. He opined that respondent purposely fabricated his second and third PDSs so he could be entitled to the loyalty cash award of ₱1,500.00. Director Danipog did not give much credence to respondent's defense of "frailty of memory," because respondent's false statements on his PDSs were carefully written and complete as to days, months and years, which could only be done by a conscious mind. The falsification of statements in the PDS constituted dishonesty, and Danipog concluded that there was *prima facie* case to charge respondent with the same.

On 7 July 1997, the Civil Service Commission Head Office (CSC-HO) issued Resolution No. 973301[10] finding respondent guilty of dishonesty and imposing upon him the penalty of dismissal from the service. The CSC-HO believed that respondent

[9] *Id.* at 128-130.

[10] *Rollo*, pp. 36-40.

falsified his second and third PDSs so he could be entitled to the loyalty cash award of ₱1,500.00 from SED-DPWH; under Section 7(e), Rule X of the Omnibus Rules Implementing Book V of the 1987 Administrative Code of the Philippines and CSC Memorandum Circular No. 42 dated 15 October 1992, the loyalty award shall be given only to a government employee who has completed at least ten (10) years of continuous and satisfactory service to the particular office granting the award. The CSC-HO held that respondent's actuation constituted dishonesty under the Civil Service Rules. The dispositive portion of the CSC-HO Resolution reads:

> WHEREFORE, Jesus A. Malindog is hereby found guilty of Dishonesty. Accordingly, he is meted the penalty of dismissal from the service with all the accessory penalties including perpetual disqualification from holding public office and from taking future government examinations.[11]

Respondent filed a Motion for Reconsideration of CSC-HO Resolution No. 973301 dated 7 July 1997, but it was denied by the CSC-HO in its Resolution No. 980648[12] dated 25 March 1998. Thus, respondent appealed to the Court of Appeals *via* Rule 43 of the Rules of Court. Respondent's appeal was docketed as CA-G.R. SP No. 48045.

The Court of Appeals promulgated on 29 July 1999 its Decision in CA-G.R. SP No. 48045, affirming with modification CSC-HO Resolution No. 973301 dated 7 July 1997. The appellate court sustained the finding of the CSC-HO that respondent was guilty of dishonesty for making false statements in his second and third PDSs. Nevertheless, it held that the penalty of dismissal imposed on respondent should be reduced to one-year suspension from work without pay considering that: (1) respondent had been in the government service for almost 20 years; (2) this was his first offense; (3) he rose from the ranks as a mere laborer until he was promoted to Engineer II at the SED-DPWH;

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[11] *Id.* at 40.

[12] Records, pp. 32-34.

and (3) he returned the loyalty cash award of ₱1,500.00. Hence, the Court of Appeals decreed:

> WHEREFORE, the Resolutions of the Civil Service Commission are hereby AFFIRMED, with the MODIFICATION that petitioner is penalized to suffer one year suspension without pay, with the warning that a repetition of the same or similar act will be dealt with more severely.[13]

In its Resolution dated 26 May 2000, the Court of Appeals denied petitioner's Motion for Reconsideration of the aforementioned Decision.

Consequently, petitioner lodged the instant Petition before us assigning the following errors:

I.

THE COURT OF APPEALS ERRED IN FAILING TO APPLY SECTION 4, RULE 43 OF THE RULES OF PROCEDURE THAT THE APPEAL OF RESPONDENT WAS FILED OUT OF TIME BY IGNORING OUR DOCUMENTARY EVIDENCE ISSUED BY THE CIVIL SERVICE COMMISSION THAT RESPONDENT'S FORMER COUNSEL OR THROUGH RESPONSIBLE PERSON IN HIS OFFICE ADDRESS RECEIVED CSC RESOLUTION DENYING HIS MOTION FOR RECONSIDERATION FIFTY ONE (51) DAYS BEFORE FILING HIS PETITION FOR REVIEW WITH THE COURT OF APPEALS. THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO EXCESS OF JURISDICTION;

II.

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION BY IMPOSING THE PENALTY OF ONE YEAR SUSPENSION INSTEAD OF AFFIRMING THE CIVIL SERVICE COMMISSION'S PENALTY OF DISMISSAL AGAINST THE LAW AND APPLICABLE DECISIONS OF THE SUPREME COURT, SINCE IT COULD NOT FAULT THE CIVIL SERVICE COMMISSION FOR HAVING COMMITTED ANY GRAVE ABUSE OF DISCRETION.

Apropos the first issue, petitioner asserts that respondent's appeal of CSC-HO Resolution No. 980648 before the Court of

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[13] *Rollo,* p. 28.

Appeals was filed beyond the period allowed for appeal and should have been therefore dismissed.[14]

Under the provisions of Rule 43 of the Rules of Court, the appeal from the judgments, final orders or resolutions of the CSC shall be taken by filing a verified petition for review to the Court of Appeals within fifteen (15) days from notice of the judgment, final order or resolution. Jurisprudence instructs that when a party is represented by counsel, notice of the judgment, final order or resolution should be made upon the counsel of record.[15] Thus, the fifteen-day period to appeal under Rule 43 of the Rules of Court commenced to run from receipt of the judgment, final order or resolution by the party's counsel on record.[16]

Records show that in the filing of respondent's Motion for Reconsideration of CSC-HO Resolution No. 973301, respondent was represented by Atty. Alexander L. Bulauitan.[17] The CSC-HO issued Resolution No. 980648 denying respondent's Motion for Reconsideration on 25 March 1998. Atty. Bulauitan received a copy of CSC-HO Resolution No. 980648 on **29 April 1998**.[18] Respondent then had fifteen (15) days from such date of receipt, or until **14 May 1998**, to appeal to the Court of Appeals under Rule 43 of the Rules of the Court. Respondent, however, filed his appeal of CSC-HO Resolutions No. 973301 and No. 980648 with the Court of Appeals only on **19 June 1998,** which was obviously beyond the 15-day reglementary period for doing so.[19]

The rule is that failure to file or perfect an appeal within the reglementary period will make the judgment final and executory

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[14] *Id.* at 13-17.

[15] *Philemploy Services and Resources, Inc. v. Rodriguez*, G.R. No. 152616, 31 March 2006, 486 SCRA 302, 325 citing *Spouses Aguilar v. Court of Appeals*, 369 Phil. 655, 664 (1999); *Magno v. Court of Appeals*, G.R. No. 58781, 31 July 1987, 152 SCRA 555, 558; *Cubar v. Mendoza*, G.R. No. 55035, 23 February 1983, 120 SCRA 768, 772.

[16] RULES OF COURT, Rule 13, Section 2.

[17] Records, p. 38.

[18] *Rollo*, p. 75.

[19] CA *rollo*, pp. 2-9.

by operation of law.[20] Perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional; failure to do so renders the questioned decision/resolution final and executory, and deprives the appellate court of jurisdiction to alter the decision/resolution, much less to entertain the appeal.[21]

Nonetheless, we have held that a delay in the filing of an appeal under exceptional circumstances may be excused on grounds of substantial justice and equity.[22] Filing of an appeal beyond the reglementary period may, under meritorious cases, be excused if the barring of the appeal would be inequitable and unjust in light of certain circumstances therein.[23] Courts may suspend its own rules, or except a particular case from its operations, whenever the purposes of justice require it.[24] In *Baylon v. Fact-Finding Intelligence Bureau*,[25] we laid down the range of reasons which may provide justification for a court to resist strict adherence to procedure, to wit: (1) matters of life, liberty, honor and property; (2) counsel's negligence without the participatory negligence on the part of the client; (3) the existence of special or compelling circumstances; (4) the merits of the case; (5) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (6) a lack of any showing that the review sought is merely frivolous and dilatory; and (7) the other party will not be unjustly prejudiced thereby.

In the case at bar, the CSC-HO found respondent guilty of dishonesty and imposed upon him the penalty of dismissal from

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[20] *Sapitan v. JB Line Bicol Express, Inc.*, G.R. No. 163775, 19 October 2007, 537 SCRA 230, 242-243.

[21] *Sehwani Incorporated v. In-N-Out Burger, Inc.*, G.R. No. 171053, 15 October 2007, 536 SCRA 225, 233.

[22] *Legasto v. Court of Appeals*, G.R. Nos. 76854-60, 25 April 1989, 172 SCRA 722, 727.

[23] *Philippine National Bank v. Court of Appeals*, 316 Phil. 371, 384 (1995).

[24] *C. Viuda de Ordoveza v. Raymundo*, 63 Phil. 275, 278 (1936).

[25] 442 Phil. 217, 231 (2002).

the service. The penalty of dismissal is a severe punishment because it blemishes a person's record in government service. It is an injury to one's reputation and honor which produces irreversible effects on one's career and private life. Worse, it implies loss of livelihood to the employee and his family. Respondent would certainly suffer grave injustice if the penalty of dismissal imposed on him turned out to be erroneous or disproportionate and such was not duly rectified because of mere technicality. Further, it appears that respondent was not able to file his appeal on time because Atty. Bulauitan failed to immediately inform respondent of the notice of CSC-HO Resolution No. 980648. Atty. Bulauitan was so busy then as campaign manager of a senatorial aspirant that he forgot to notify respondent of the notice of said resolution. Generally, respondent is bound by the negligence of Atty. Bulauitan. However, since respondent had nothing to do with the negligence of Atty. Bulauitan, respondent's case should be an exception to the rule on the effects of the counsel's negligence, as the application of such rule would result in serious injustice to respondent.[26]

Hence, it is in the greater interest of justice that the penalty of dismissal meted out to respondent be meticulously reviewed by the Court of Appeals despite procedural lapses in respondent's appeal. The Court of Appeals, therefore, did not err in giving due course to respondent's appeal.

With regard to his second assigned error, petitioner argues that respondent was guilty of dishonesty in making false statements in his PDS and, thus, respondent should be dismissed from the service.[27]

Public service requires the utmost integrity and strictest discipline. Thus, a public servant must exhibit at all times the highest sense of honesty and integrity. No less than the Constitution sanctifies the principle that a public office is a public trust, and enjoins all public officers and employees to serve with the highest degree of responsibility, integrity, loyalty

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[26] *Id.*

[27] *Rollo*, pp. 17-18.

and efficiency.[28] The Code of Conduct and Ethical Standards for Public Officials and Employees additionally provides that every public servant shall at all times uphold public interest over his or her personal interest.[29]

A PDS is an official document required of a government employee and official by the Civil Service Commission. It is the repository of all information about any government employee or official regarding his personal background, qualification, and eligibility. Government employees are tasked under the Civil Service rules to properly and completely accomplish their PDS.[30] The act of making untruthful statements, or concealment of any information in the PDS, constitutes dishonesty and is punishable under the Civil Service rules.[31] Dishonesty is a "disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness."[32] Dishonesty inevitably reflects on the discipline and morale of the service.[33]

It appears that respondent prepared and submitted three PDSs dated 20 December 1988 (first), 2 March 1992 (second) and 1994 (third).[34] Respondent filed these PDSs on three separate

[28] 1987 CONSTITUTION, Article XI, Section 1.

[29] Republic Act No. 6713, Section 2.

[30] *Advincula v. Dicen*, G.R. No. 162403, 16 May 2005, 458 SCRA 696, 708; *Bautista v. Navarro*, 200 Phil. 278, 283 (1982); *Inting v. Tanodbayan*, 186 Phil. 343, 348 (1980).

[31] *Ratti v. Mendoza-De Castro*, A.M. No. P-04-1844, 23 July 2004, 435 SCRA 11, 20-21; *Civil Service Commission v. Sta. Ana*, 435 Phil. 1, 11 (2002); *Biteng v. Department of Interior and Local Government (Cordillera Administrative Region)*, G.R. No. 153894, 16 February 2005, 451 SCRA 520, 528; *De Guzman v. De los Santos*, 442 Phil. 428, 436 (2002).

[32] *Gillamac-Ortiz v. Almeida, Jr.*, A.M. No. P-07-2401, 28 November 2007, 539 SCRA 20, 25; *Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Sec. I and Angelita Esmerio, Clerk III, Office of the Clerk of Court*, A.M No. 2001-7-SC & No. 2001-8-SC, 22 July 2005, 464 SCRA 1, 15.

[33] *Alabastro v. Moncada, Sr.*, A.M. No. P-04-1887, 16 December 2004, 447 SCRA 42, 59.

[34] Records, pp. 137-139.

occasions, and these were verified by the records officer of the SED-DPWH.[35] It is already incontrovertible that respondent's three PDSs contained different and conflicting pieces of information as to his employment for the period 1984-1986.

There is no reason for us to disturb the consistent finding of CSC-RO No. 8, CSC-HO, and the Court of Appeals that respondent made untruthful statements when he stated in his second PDS that he worked at the PHJLD of DPWH Region 8 from **1 May 1984 until 9 October 1986**; and when he indicated in his third PDS that he was "on leave" from his job as civil engineer at DPWH Region 8 from **1 January 1984 up to 9 October 1986**, when, in fact, he was working at PHILPOS BAGACAY MINES during the same period according to his first PDS. Findings of fact of administrative agencies and quasi-judicial bodies, such as the CSC, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only great respect but even finality. This is particularly true where the Court of Appeals affirms such findings of fact.[36]

Respondent's act of making false statements in his second and third PDSs clearly displayed dishonesty on his part. Respondent's dishonesty became more apparent when he received the unwarranted loyalty cash award of ₱1,500.00[37] for supposedly rendering 10 years of unbroken service. Evidently, the erroneous computation of respondent's years of service was caused by his varying and irreconcilable statements in his three PDSs.

Respondent's contention that the false statements in his second and third PDSs were caused by his frail memory deserves scant consideration. It should be noted that the gaps among the dates he accomplished his three PDSs, *i.e.*, 20 December 1988, 2 March 1992 and 1994, were not that long as to make him forget the vital information stated in each of them. And respondent accomplished all three PDSs within a decade from the time of

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[35] *Id.* at 41 & 48.

[36] *Pabu-aya v. Court of Appeals*, 408 Phil. 782, 788 (2001).

[37] Records, p. 145.

his employment in 1984 to 1986, making it unlikely for him not to remember clearly the details thereof. Also, respondent was not that old or sickly, being only 38 and 40 years old at the time he signed his second and third PDSs, respectively, for him to have such poor memory.[38] Finally, respondent is a civil engineer and government employee. As such, he is expected to be knowledgeable of and responsible for documents pertaining to his employment.

Section 52, A(1), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service (Civil Service Rules), classifies dishonesty as a grave offense with a corresponding penalty of dismissal even if committed for the first time.

Be that as it may, we observed that respondent had been in the government service for more or less 20 years, during which he made a steady ascent from a lowly laborer at the National Irrigation Administration, Catbalogan, Samar, to a Civil Engineer II at the SED-DPWH.[39] Respondent also had no previous derogatory record as a government employee. Moreover, he returned the loyalty cash award of ₱1,500.00.[40] We can consider the foregoing as mitigating circumstances[41] to lower the penalty imposable on respondent pursuant to Section 53 of the Civil Service Rules, *viz*:

Section 53. ***Extenuating, Mitigating, Aggravating, or Alternative Circumstances.***— In the determination of the penalties to be imposed, *mitigating, aggravating and alternative circumstances* attendant to the commission of the offense shall be considered.

The following circumstances shall be appreciated:

xxx xxx xxx

g. habituality

xxx xxx xxx

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[38] Respondent was 38 years old in March 1992 and 40 years old in 1994.

[39] Records, pp. 41 and 48.

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

[41] *Civil Service Commission v. Manzano*, G.R. No. 160195, 30 October 2006, 506 SCRA 113, 132; *Civil Service Commission v. Belagan*, G.R. No. 132164, 19 October 2004, 440 SCRA 578, 601.

j. length of service in the government

xxx xxx xxx

l. other analogous circumstances.

In *Apuyan, Jr. v. Sta. Isabel*,[42] a government employee was charged with and found guilty of dishonesty. Nonetheless, instead of dismissing respondent, we imposed the penalty of one-year suspension without pay considering that his dishonesty was his first offense. In *Civil Service Commission v. Belagan*,[43] a government employee was found guilty of grave misconduct, the penalty for which was dismissal from the service. However, we did not impose the penalty of dismissal upon respondent, considering the presence of the following mitigating circumstances: (1) his long years of service in the government; and (2) his unblemished record in the past. We likewise ruled therein that the appropriate penalty for respondent was one-year suspension from service without pay.

Pursuant to the aforementioned jurisprudence, we hold that instead of imposing the penalty of dismissal upon respondent in the instant case, we are penalizing him for his dishonesty with one-year suspension from service without pay and with a stern warning that a repetition of the same or similar acts in the future will be dealt with more severely.

WHEREFORE, the Decision dated 29 July 1999 and Resolution dated 26 May 2000 of the Court of Appeals in CA-G.R. SP No. 48045 are hereby *AFFIRMED in toto*. Respondent is hereby *WARNED* that a repetition of the same or similar acts in the future will be dealt with more severely.

SO ORDERED.

Ynares-Santiago (Chairperson), Carpio,[*] *Austria-Martinez,* and *Peralta, JJ.,* concur.

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[42] Adm. Matter No. P-01-1497, 28 May 2004, 430 SCRA 1.

[43] *Supra* note 41.

[*] Associate Justice Antonio T. Carpio was designated to sit as additional member replacing Associate Justice Antonio Eduardo B. Nachura per Raffle dated 11 February 2009.

THIRD DIVISION

[G.R. No. 146157. February 13, 2009]

LA CAMPANA DEVELOPMENT CORPORATION (FORMERLY LA CAMPANA FOOD PRODUCTS INC.), *petitioner, vs.* **DEVELOPMENT BANK OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PERFECTION OF AN APPEAL IN THE MANNER AND WITHIN THE PERIOD PRESCRIBED BY LAW IS NOT ONLY MANDATORY BUT JURISDICTIONAL AS WELL.— At the outset, the procedural infirmity of the present petition calls for the denial of the same. A perusal of the statement of material dates herein indicates that petitioner La Campana received a copy of the *21 November 2000 Resolution* of the Court of Appeals denying its motion for reconsideration on 4 December 2000; thus, it had until 19 December 2000 within which to appeal by *certiorari* the assailed decision and resolution or to move for extension of time to file the said appeal. Petitioner La Campana filed its motion for extension on 18 December 2000, praying for 30 days' extension from 19 December 2000 or until 18 January 2001 to file its petition for *certiorari*, which this Court granted. However, petitioner La Campana was only able to file its Petition on 19 January 2001, or one (1) day beyond the extended period. Having been filed late, the present petition should be denied. The perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional as well, and failure to perfect an appeal has the effect of rendering the judgment or resolution final and executory. After all, 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.

2. ID.; RULES OF PROCEDURE; THE SUPREME COURT MAY, IN THE INTEREST OF ITS EQUITY JURISDICTION, DISREGARD PROCEDURAL LAPSES SO THAT A CASE MAY BE RESOLVED ON ITS MERITS.— Be that as it may,

this Court is of the view that the procedural *faux pas* of petitioner La Campana should not take precedence over the final resolution of the present controversy that has long plagued the parties herein. The denial of the present Petition will have put the instant case to rest, but this court has time and again ruled that litigants should have the amplest opportunity for a proper and just disposition of their cause – free, as much as possible, from the constraints of procedural technicalities. In the interest of our equity jurisdiction, this court may disregard procedural lapses so that a case may be resolved on its merits.

3. ID.; JUDGMENTS; A DECISION SHOULD BE TAKEN AS A WHOLE AND CONSIDERED IN ITS ENTIRETY TO GET THE TRUE MEANING AND INTENT OF ANY PARTICULAR PORTION THEREOF.— The controversy between the parties herein has been dragging for close to four decades already, and this is the third time this case has reached us. What should have been a simple implementation of the 3 November 1994 Decision of the Court of Appeals in CA-G.R. CV No. 34856 in 1997 was delayed by the filing of a motion for reconsideration raising the issue of ambiguity of the *fallo* of said decision, when a simple reading of the body thereof could have easily exposed the motion for what it really was – nothing more than a dilatory move. Having read the entirety of the subject decision abovementioned, we find neither insufficiency nor ambiguity in its *fallo* so as to justify the issuance of the 13 June 1997 and 12 August 1997 Orders of the RTC. A careful examination of the Orders would straightaway reveal the superfluity of the need for clarification from the Court of Appeals. The reading by the RTC of the *fallo* of the 3 November 1994 Decision of the Court of Appeals in CA-G.R. CV No. 34856 should have included the statements of the body thereof. This is sanctioned by the aphorism that a final and executory judgment may nonetheless be "clarified" by reference to other portions of the decision of which it forms a part; that a judgment must not be read separately but in connection with the other portions of the decision of which it forms a part. Otherwise stated, a decision should be taken as a whole and considered in its entirety to get the true meaning and intent of any particular portion thereof. Indeed, as early as in *Policarpio v. Philippine Veterans Board*, we have already settled the rule that in order to get to the true intent and meaning

of a decision, no specific portion thereof should be resorted to, but the same must be considered in its entirety.

4. ID.; SPECIAL CIVIL ACTIONS; FORECLOSURE OF REAL ESTATE MORTGAGE; THE BUYER BECOMES THE ABSOLUTE OWNER OF THE PROPERTY PURCHASED IF IT IS NOT REDEEMED ONE YEAR FROM DATE OF REGISTRATION OF THE SALE.— In foreclosure proceedings, the buyer becomes the absolute owner of the property purchased if it is not redeemed during the prescribed period of redemption, which is one year from the date of registration of the sale. In the case at bar, the 3 November 1994 Decision of the Court of Appeals in CA-G.R. CV No. 34856 not only determined and declared that the foreclosure sale of the subject properties occurred on 25 March 1976; it also acknowledged that there existed in the record a *Certificate of Sale* dated 31 March 1976 issued by the Sheriff of Quezon City and subsequently annotated on the titles of the subject properties. Hence, although the said decision did not categorically state the date of the registration of sale, which was 30 April 1976, and while the inclusion of this piece of information in the decision would have been ideal, such precision is not absolutely necessary nor the lack thereof fatal to the certainty of the judgment. Besides, fixing the date at one year from said registration, or on 1 May 1977, is easily discernible as the logical consequence of the meaning of the period stated.

5. ID.; JUDGMENTS; DOCTRINE OF *RES JUDICATA*; FOUNDED ON PUBLIC POLICY AND NECESSITY.— It must be remembered that it is to the interest of the public that there should be an end to litigation by the parties over a subject fully and fairly adjudicated. The doctrine of *res judicata* is a rule that pervades every well-regulated system of jurisprudence and is founded upon two grounds embodied in various maxims of the common law, namely: (1) public policy and necessity, which dictates that it would be in the interest of the State that there should be an end to litigation – *republicae ut sit litium*; and (2) the hardship on the individual that he should be vexed twice for the same cause – *nemo debet bis vexari pro una et eadem causa*. A contrary doctrine would subject 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 public tranquillity and happiness.

6. ID.; ID.; A JUDGMENT, IF LEFT UNEXECUTED, WOULD BE NOTHING BUT AN EMPTY VICTORY FOR THE PREVAILING PARTY; CASE AT BAR.— It is almost trite to say that execution is the fruit and end of the suit and is the life of the law. A judgment, if left unexecuted, would be nothing but an empty victory for the prevailing party. Litigation must end sometime and somewhere. An effective and efficient administration of justice requires that once a judgment has become final, the winning party be not deprived of the fruits of the verdict. Courts must, therefore, guard against any scheme calculated to bring about that result. Constituted as they are to put an end to controversies, courts should frown upon any attempt to prolong them. Instead of allowing itself to be used by petitioner La Campana in its schemes to evade execution of the judgment against it, the RTC should exert the utmost effort, permitted by law, equity, and reason, to see to it that respondent DBP shall enjoy the fruits of the final and executory decision in its favor.

APPEARANCES OF COUNSEL

Augustus Caesar C. Aspiras for petitioner.
Office of the Legal Counsel (DBP) for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court filed by La Campana Development Corporation (petitioner La Campana) assailing the *Decision*[1] and *Resolution*,[2] promulgated on 31 August 2000 and 21 November 2000, respectively, by the Court of Appeals in CA-G.R. SP No. 48773, entitled, "*Development Bank of the Philippines vs. The Regional Trial Court, Branch No. 76, Quezon City, Presided by the Hon. Monina A. Zeñarosa, La Campana Food Products Inc. (now known as La Campana Development*

[1] Penned by Associate Justice Romeo J. Callejo, Sr. with Associate Justices Salome A. Montoya and Martin S. Villarama, Jr., concurring; *rollo*, pp. 28-49.

[2] *Rollo*, p. 51.

Corporation), and The Register of Deeds of Quezon City."

The present Petition stemmed from a *Motion for the Issuance of a Writ of Execution*[3] filed by Development Bank of the Philippines (respondent DBP) on 7 January 1997, which prayed for the implementation of the *3 November 1994 Decision*[4] of the Court of Appeals in CA-G.R. CV No. 34856, entitled, "*La Campana Food Products, Inc. v. Development Bank of the Philippines, et al*."

The antecedents of the aforementioned *Motion* are as follows:

Sometime in 1968, petitioner La Campana obtained a foreign currency loan that was guaranteed by respondent DBP. To protect the latter, petitioner La Campana executed a real estate mortgage over its properties. Petitioner La Campana, however, failed to pay the interest due on said loan; thus, all the promissory notes became due and respondent DBP, in compliance with the contract of guaranty abovementioned, had to remit payment to petitioner La Campana's creditor. When respondent DBP demanded reimbursement from petitioner La Campana to no avail, the former instituted extrajudicial foreclosure proceedings for the mortgaged properties of the latter.

In order to stay the foreclosure of its mortgaged properties, petitioner La Campana filed a complaint with the Court of First Instance (CFI) of Rizal, Branch IX, for payment of the (1) retained portion of the dollar loan; (2) damages for unearned and expected profits for the failure of respondent DBP to release the proceeds of the dollar loan in its entirety; (3) exemplary damages; and (4) attorney's fees. The sale at public auction of the mortgaged properties eventually pushed through, with respondent DBP being the highest bidder. Accordingly, the complaint of petitioner La Campana was amended to include the nullification of the foreclosure sale. On 3 December 1985,[5]

[3] Records, pp. 1103-1110.

[4] Penned by Associate Justice Hector L. Hofileña with Associate Justices Gloria C. Paras and Salome A. Montoya, concurring; *rollo*, pp. 57-75.

[5] *Development Bank of the Philippines v. Intermediate Appellate Court*, G.R. No. 65338, 3 December 1985, 140 SCRA 338, 345.

the abovementioned complaint eventually reached this Court and therein we ruled in favor of respondent DBP. We held that the latter did not act capriciously and whimsically in allocating to the numerous creditors of petitioner La Campana the proceeds of the dollar loan, considering that such act was sanctioned by the Discretionary Clause found in the Mortgage Agreement executed by the parties.

On 27 May 1986, petitioner La Campana instituted another complaint against respondent DBP, and impleaded the Register of Deeds of Quezon City, for the cancellation of real estate mortgage and release of titles of the mortgaged properties on the ground that respondent DBP had already lost whatever right it had to the foreclosed properties which it acquired at public auction sometime in 1972 or more than ten (10) years ago, because it failed to register the Certificates of Sale covering the same.[6] The same was filed with the Regional Trial Court (RTC) of Quezon City, Branch 76, docketed as Civil Case No. Q-47948.

On 5 October 1990, the RTC rendered judgment[7] in favor of respondent DBP. Petitioner La Campana was ordered, *inter alia*, to (1) deliver possession of the subject properties to respondent DBP; and (2) pay such sums of money unlawfully collected or received by way of rentals and/or fruits from the subject properties to respondent DBP until such time that possession thereof had been restored to the latter.

Upon motion of petitioner La Campana, however, in an *Order*[8] dated 22 March 1991, the RTC reversed its earlier ruling.

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[6] Petitioner La Campana contended that the complaint was predicated on Arts. 1142 and 1144 of the New Civil Code, which provides that a mortgage action prescribes within ten (10) years. Specifically, it alleged: "In as much as the registration of the Certificate of Sale is an indispensable requirement required by law for the validity of any extra-judicial foreclosure proceeding and in order to perfect whatever rights the defendant Development Bank (DBP) may have had by virtue of the auction sale held on June 20, 1975, its failure to effect the registration of the certificate of sale within the period of ten (10) years inevitably resulted in the extinguishment of its right over the mortgaged properties of the plaintiff."

[7] Records, pp. 1111-1116.

[8] *Id.* at 1136-1140.

Respondent DBP appealed the aforementioned to the Court of Appeals.

On 3 November 1994, the appellate court decided[9] the appeal, docketed as CA-G.R. CV No. 34856, in favor of the bank and declared that "while non-registration of the certificates of title under the name of DBP may not be binding on innocent third parties, La Campana – which has lost its rights of ownership for its failure to redeem – cannot invoke such non-registration as against DBP. After all, registration under the Torrens System is not a mode of acquiring ownership."[10] The dispositive portion reads:

> 1. ORDERING La Campana Food Products, Inc. to surrender to the Development Bank of the Philippines the possession of the properties covered by the Transfer Certificate (sic) of Title Nos. 33035, 33036, 45869, 45870, 45871, 42868 and 23617;
>
> 2. ORDERING La Campana Food Products, Inc. to pay the Development Bank of the Philippines such sums of money unlawfully collected and/or received by way of rentals from the properties covered by the aforementioned TCT's;[11]

Undaunted, petitioner La Campana came to this Court and filed two (2) petitions – a petition for review on *certiorari*, docketed as G.R. No. 120257 and a petition for *certiorari*, docketed as G.R. No. 124107.

On 7 August 1995, we resolved[12] to deny the appeal by *certiorari* in view of the non-compliance with the requirement that a verified statement of the date of filing of its motion for reconsideration before the Court of Appeals must be submitted with the petition. Similarly, the special civil action for *certiorari* was dismissed in a *Resolution*[13] dated 20 May 1996 for failure of petitioner La Campana to show that grave abuse of discretion

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[9] *Id.* at 1117-1135.

[10] *Id.* at 1132.

[11] *Id.* at 1134.

[12] *Id.* at 1141-1142.

[13] *Id.* at 1237-c.

had been committed by the appellate court. The foregoing resolutions became final and executory and were entered in the Book of Entries of Judgments on 18 March 1996[14] and 2 September 1996,[15] respectively.

In view of the foregoing, on 9 January 1997, respondent DBP filed with the RTC of Quezon City, Branch 76, a *Motion for Issuance of Writ of Execution*[16] for the implementation of the *3 November 1994 Decision* of the Court of Appeals in CA-G.R. CV No. 34856, *i.e.*, for petitioner La Campana to 1) surrender to respondent DBP the possession of the subject properties; and 2) render an accounting of all the sums of money "unlawfully collected and/or received by way of rentals from the properties" covering the period from 1 May 1976 until the possession thereof had been completely surrendered to it.

On 12 February 1997, respondent DBP filed a supplement[17] to the aforesaid motion in order to make of record that La Campana Food Products, Inc. had changed its name to La Campana Development Corporation; and that Transfer Certificates of Title Nos. 33035, 33036, 45869, 45870, 45871, 42868 and 23617 had been reconstituted as Transfer Certificates of Title Nos. RT-10014 (33035), RT 10013 (33036), RT-10011 (45869), RT-1009 (45870), RT-10010 (45871), RT-10012 (42868) and RT-10015 (23617).

Petitioner La Campana opposed[18] the supplemental motion on the ground that the "decision (sought to be implemented) is incomplete"[19] as it is "totally silent as to what amount was unlawfully collected and from what period up to what period is covered by the said decision x x x."[20] Further, it was of the

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[14] *Id.* at 1143.

[15] *Id.* at 1237-b.

[16] *Id.* at 1103-1110.

[17] *Id.* at 1146-1150.

[18] *Id.* at 1180-1184.

[19] *Id*.

[20] *Id*.

view that since TCT Nos. 33035, 33036, 45069 (sic), 45870, 45871, 42868 and 23617 had all been cancelled by the Register of Deeds of Quezon City and new ones issued in the new name of petitioner La Campana, *i.e.*, La Campana Development Corporation, the portion of the decision involving said titles cannot now be executed.

In reply[21] to the opposition, respondent DBP maintained that (1) reconstitution of the titles would not render impossible a compliance with the decision, because what was to be surrendered by petitioner La Campana was the possession of the properties; and (2) the change of name of petitioner La Campana had no effect on the execution of the decision. Respondent then manifested that on 17 February 1997, the titles to the subject properties had already been consolidated in its name, as follows:

Former Title Nos.	Reconstituted (La Campana) Title Nos.	Present (DBP) TitleNos.
1.TCT No. 33035	TCT No. RT- 10014 (33035)	TCT No. N-171476
2.TCT No. 33036	TCT No. RT- 10013 (33036)	TCT No. N-171475
3.TCT No. 45869	TCT No. RT- 10011 (45869)	TCT No. N-171473
4.TCT No. 45870	TCT No. RT- 1009 (45870)	TCT No. N-171471
5.TCT No. 45871	TCT No. RT- 10010 (45871)	TCT No. N-171472
6.TCT No. 42868	TCT No. RT- 10012 (42868)	TCT No. N-171474
7.TCT No. 23617	TCT No. RT- 10015 (23617)	TCT No. N-171477

On 31 March 1997, the RTC[22] issued an *Order*[23] granting respondent DBP's motion for issuance of a writ of execution stating that:

The Decision is clear and unequivocal. The Court of Appeals orders La Campana to surrender the possession of the properties to DBP and not the possession of the certificate of titles (sic) covering

[21] *Id.* at 1185-1192.

[22] RTC, Branch 76, Quezon City, presided by Hon. Monina A. Zeñarosa is now an Associate Justice of the Court of Appeals.

[23] Records, pp. 1220-1223.

said properties. Hence, the cancellation of the titles by virtue of a reconstitution will not render it impossible for La Campana to comply with the foregoing order, x x x. The properties mentioned in the decision refer to no other than those which are the subject of this instant case x x x.

While it is true that the decision is silent as to the amount of money to be turned over to DBP, the right of the latter (to) said sum is underscored when the Court of Appeals declared that the buyer at the foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of the sale. Thus, being the absolute owner of the subject realties, the DBP is entitled to receive the fruits thereof, which in this case, are the rentals paid by the tenants for the use of the properties.

La Campana insisted that the decision failed to state the period to be covered by the unlawful collection of rentals. This contention is untenable. The Decision clearly points out that La Campana lost its right of ownership when it failed to redeem the properties within one year from the registration of the sale. Considering that the Sheriff's certificate of sale was annotated in the certificate of titles on April 30, 1976 as PE-9167/T-23617, the DBP became the absolute owner of the properties on May 1, 1977. Thus, the period to be considered in determining the amount of collection should start from May 1, 1977 up to the time when the possession of the properties are actually and completely surrendered to DBP.

The dispositive portion of the same reads:

WHEREFORE, let a writ of execution be issued in favour of defendant Development Bank of the Philippines, and have the same secured by the Branch Deputy Sheriff of this Court. Further, Mr. Ricardo S. Tantongco, in his capacity as the incumbent President of La Campana Development Corporation (new corporate name) is hereby ordered to immediately render an accounting stating therein the names of the tenants occupying the properties and their respective monthly/yearly rental payments from May 1, 1977 until the date of complete surrender of the properties to DBP. The Court would like to stress that a change in the corporate name does not create a new corporation and it continues to be responsible under its new name for all the liabilities it had previously incurred.

In a scantily argued *Motion for Reconsideration*,[24] petitioner La Campana prayed for the reversal of the aforequoted *Order* of the RTC.

In resolving petitioner La Campana's motion, on 13 June 1997, the RTC modified[25] its earlier order. It retained the first part respecting the order directing petitioner La Campana to surrender possession of the subject properties, but it suspended that part ordering the execution of the second paragraph[26] of the *3 November 1994 Decision* of the Court of Appeals, "pending [the] filing of a necessary pleading by defendant (DBP) before the appellate court to clarify the exact amount due to Development Bank of the Philippines and receipt of a resolution thereon from said Court."[27] It ratiocinated that:

> Nowhere in the dispositive portion nor in the body of the decision can be found any reference to or that which indicates the amount of collections to be turned over by La Campana to Development Bank of the Philippines. The Decision is silent on this score.
>
> Settled is the rule that when the judgment of a superior court is remanded to the trial court for execution, the function of the trial court is ministerial only; x x x. Any pronouncement of this Court with respect to the period of computation and the total amount of collections to be paid to Development Bank of the Philippines would be tantamount to modifying or varying the tenor of the decision sought to be executed. A clarification of the judgment on this matter is thereby necessary.[28]

Thus, on 19 June 1997, a writ of execution was issued to implement the first paragraph[29] of the *3 November 1994 Decision*

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[24] *Id.* at 1224-1227.

[25] *Id.* at 1277-1280.

[26] 2. ORDERING La Campana Food Products, Inc. to pay the Development Bank of the Philippines such sums of money unlawfully collected and/or received by way of rentals from the properties covered by the aforementioned TCT's.

[27] Records, p. 1280.

[28] *Id.* at 1279.

[29] 1. ORDERING La Campana Food Products, Inc. to surrender to the Development Bank of the Philippines the possession of the properties covered

of the Court of Appeals in CA-G.R. CV No. 34856, commanding the Sheriff to ensure that petitioner La Campana surrender to respondent DBP possession of the properties formerly covered by TCTs No. 33035, No. 33036, No. 45869, No. 45870, No. 45871, No. 42868 and No. 23617.

On 12 August 1997, the subsequent motion of respondent DBP seeking reconsideration of the *13 June 1997 Order* was denied[30] by the RTC.

Respondent DBP then went to Court of Appeals to assail the *13 June 1997* and *12 August 1997 Orders* of the RTC by way of a petition for *certiorari*. The petition was docketed as CA-G.R. SP No. 45749. The same, however, was subsequently dismissed "without prejudice," because the *Verification* and *Certification Against Forum Shopping* attached thereto were merely signed by respondent DBP's counsel.[31]

On 31 July 1998, respondent DBP re-filed its Petition for *Certiorari* with the Court of Appeals. It was docketed as CA-G.R. SP No. 48773.

On 31 August 2000, the Court of Appeals promulgated a decision,[32] the *fallo* of which states:

IN THE LIGHT OF ALL THE FOREGOING, the Petition is given due course and is hereby **GRANTED**. The Orders of the Public Respondent, **Annexes "A" and "B" of the Petition**, are hereby set aside and nullified. Judgment is rendered as follows:

1. The Public Respondent is hereby ordered to set and conduct a hearing for the reception of the evidence of the parties to ascertain the amounts of rentals/income collected/received by the Private Respondent from the properties now titled under the name of the

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by the Transfer Certificate (sic) of Title Nos. 33035, 33036, 45869, 45870, 45871, 42868 and 23617.

[30] *Rollo*, pp. 55-56.

[31] *Id.* at 39.

[32] Penned by Court of Appeals Associate Justice Romeo J. Callejo with Associate Justices Salome A. Montoya and Martin S. Villarama, Jr. concurring; *rollo*, pp. 28-49.

Petitioner during the period from May 1, 1976 up to the time that the possession of the properties is turned over to the Petitioner;

2. Once the total amount of said rentals/income/fruits is ascertained by the Public Respondent, after said hearing, the Public Respondent is hereby ordered to resolve the "**Motion for a Writ of Execution**" and "**Supplemental Motion for a Writ of Execution**" filed by the Petitioner.

In granting the petition, the appellate court dealt with the issues raised *seriatim*: First. As to the issue of the supposed defective Verification and Certification against Forum Shopping of the Petition filed by respondent DBP in CA-G.R. SP No. 48773, the Court of Appeals, after scrutinizing the assailed certifications, held that:

It is as clear as broad daylight that the affiants categorically and unequivocally declared in said "Verification/Certification" that they (Vice-President/Head of Special Accounts Management of DBP and a Senior Assistant Vice-President/in-house counsel of DBP) were authorized to execute the same for and in behalf of the Petitioner (DBP).[33]

Second. With respect to the allegation that the petition was filed out of time or beyond the 60-day period within which to file a petition for *certiorari* under Rule 65 of the Revised Rules of Court, the appellate court made the following pronouncements:

While it may be true that the Petitioner (DBP) received on September 18, 1997 the Order of the Public Respondent, x x x, however, it filed its first "Petition for *Certiorari*" with this Court, docketed as CA-G.R. No. 45749, on October 27, 1997, or thirty-nine (39) days from notice of the Order, x x x, well within the sixty (60) day period provided for in Section 4, Rule 65 of the Rules of Civil Procedure. The Petitioner (DBP) received on August 11, 1998 the Resolution of this Court in CA-G.R. No. 45749 denying its "Motion for Reconsideration" declaring that the dismissal of the Petition was "without prejudice" and, on August 27, 1998, or barely sixteen (16) days from notice of said Resolution, the Petitioner filed its "Petition for *Certiorari*" in the present recourse. Patently, then, the Petition was filed well within the period therefore. Incidentally, the Resolution

[33] *Rollo,* p. 40.

of the Supreme Court in Bar Matter 803 was effective only on September 1, 1998.[34]

And, third. Anent the related issues of whether the second paragraph of the decretal portion of the *3 November 1994 Decision* of the Court of Appeals in CA-G.R. CV No. 34856 was incomplete, as it failed to fix the amount of rentals due from petitioner La Campana; and whether the trial court, in resolving the motion for issuance of a writ of execution, was empowered to hold hearings and receive evidence to ascertain the exact amount to be remitted to respondent DBP, the appellate court discoursed:

> [T]here is no need for a "clarification" by this Court, in CA-G.R. No. 34856 (CV). Contrary to the perception of the Public Respondent, its Decision, x x x, is efficacious. The deficiency perceived by the Public Respondent does not involve a clerical error in the Decision of this Court in said case or a correction or amendment thereof. What is involved is x x x, described as a "logical follow through of something set forth in the body" of the Decision of this Court and in the dispositive portion thereof; "the inevitable follow through or translation into, operational or behavioural terms, of the finding and declaration," by this Court in said case of the Petitioner (DBP) having become the absolute owner of the property as of May 1, 1976, one (1) year after the registration of the "Certificate of Sale," executed by the Sheriff x x x after the Private Respondent (La Campana) failed to redeem the property within one (1) year thereafter, and the entitlement of the Petitioner to rentals collected and/or received by the Private Respondent (La Campana), during the period from May 1, 1976 up to the time the possession of said properties is turned over to the Petitioner (DBP) x x x.
>
> xxx xxx xxx
>
> It cannot be said that simply because this Court x x x did not specifically order the Public Respondent to receive said evidence of the parties after the records were remanded by this Court to the Public Respondent, the Public Respondent is bereft of residual if not inherent authority to receive the evidence of the parties to ascertain the precise amount due to the Petitioner (DBP) x x x.
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> xxx xxx xxx.

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[34] *Id.* at 42.

Neither is the Public Respondent proscribed from setting a hearing for the purpose of receiving evidence on the amounts collected or received by the Private Respondent (La Campana) from May 1, 1976 up to the time the possession of the properties is turned over to the Petitioner (DBP) x x x.[35]

The *Motion for Reconsideration*[36] of petitioner La Campana was denied by the Court of Appeals in a *Resolution* dated 21 November 2000.

Hence, this petition.

The aforementioned *31 August 2000 Decision* and *21 November 2000 Resolution* of the Court of Appeals in CA-G.R. SP No. 48773 are now the subjects of the Petition for Review on *Certiorari*[37] before this Court, where petitioner La Campana assigns the following errors[38]:

I.

THE HONORABLE COURT OF APPEALS ERRED IN FINDING THAT THE REGIONAL TRIAL COURT OF QUEZON CITY, BRANCH 76 (SIC) ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION WHEN IT ISSUED ITS ASSAILED ORDERS DATED 13 JUNE 1997 AND 12 AUGUST 1997;

II.

THE HONORABLE COURT OF APPEALS ERRED IN RESOLVING THAT ITS EARLIER DECISION DATED 03 NOVEMBER 1994 IS COMPLETE AND CAN BE SUBJECT OF EXECUTION WITHOUT THE TRIAL COURT BEING CLARIFIED OF HAVING TO DETERMINE THE EXACT AMOUNT DUE TO RESPONDENT DEVELOPMENT BANK OF THE PHILIPPINES;

III.

THE HONORABLE COURT OF APPEALS IN RESOLVING THE PETITION FILED BY THE RESPONDENT ERRED IN GOING

[35] *Id.* at 44-46.

[36] CA *rollo*, pp. 287-297.

[37] *Rollo*, pp. 10-26.

[38] *Id.* at 13-14.

BEYOND THE PRAYER OF THE RESPONDENT'S PETITION BY CONSIDERING THE PERIOD OF MAY 1, 1976 INSTEAD OF MAY 1, 1977; AND

IV.

THE HONORABLE COURT OF APPEALS ERRED IN EVEN CONSIDERING THE PETITION FOR *CERTIORARI* OF THE RESPONDENT DEVELOPMENT BANK OF THE PHILIPPINES, THE SAME HAVING BEEN FILED OUT OF TIME, OR MORE THAN SIXTY (60) DAYS HAVE LAPSED SINCE THE FILING OF THE RESPONDENT'S PETITION.

At the outset, the procedural infirmity of the present petition calls for the denial of the same. A perusal of the statement of material dates herein indicates that petitioner La Campana received a copy of the *21 November 2000 Resolution* of the Court of Appeals denying its motion for reconsideration on 4 December 2000; thus, it had until 19 December 2000 within which to appeal by *certiorari* the assailed decision and resolution or to move for extension of time to file the said appeal. Petitioner La Campana filed its motion for extension on 18 December 2000, praying for 30 days' extension from 19 December 2000 or until 18 January 2001 to file its petition for *certiorari*, which this Court granted. However, petitioner La Campana was only able to file its Petition on 19 January 2001,[39] or one (1) day beyond the extended period.

Having been filed late, the present petition should be denied. The perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional as well, and failure to perfect an appeal has the effect of rendering the judgment or resolution final and executory.[40] After all, 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.[41]

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[39] *Id*. at 10.

[40] *Manipor v. Sps. Ricafort,* 454 Phil. 825, 832 (2003).

[41] *Republic v. Court of Appeals,* 379 Phil. 92, 100-101 (2000).

Be that as it may, this Court is of the view that the procedural *faux pas* of petitioner La Campana should not take precedence over the final resolution of the present controversy that has long plagued the parties herein. The denial of the present Petition will have put the instant case to rest, but this court has time and again ruled that litigants should have the amplest opportunity for a proper and just disposition of their cause – free, as much as possible, from the constraints of procedural technicalities.[42] In the interest of our equity jurisdiction, this court may disregard procedural lapses so that a case may be resolved on its merits.[43]

Essentially two issues confront this Court, *viz*: (a) whether the Court of Appeals, in CA-G.R. SP No. 48773, erred in giving due course to the Petition for *Certiorari* of respondent DBP; and (b) whether the Court of Appeals erred in setting aside and nullifying the *13 June 1997* and *12 August 1997 Orders* of the RTC and ordering the conduct of hearings for the reception of evidence to determine the amount of rentals/fruits collected/ received by petitioner La Campana from the subject properties.

Petitioner La Campana urges this Court to set aside the *31 August 2000 Decision* and *21 November 2000 Resolution* of the Court of Appeals in CA-G.R. CV No. 48773, as the latter erred in holding that the *3 November 1994 Decision* of the Court of Appeals in CA-G.R. SP No. 34856 clearly defined how the amount of rentals/fruits collected/received from the subject properties could be computed, considering that the dispositive part of said decision was silent on this matter. It justified the issuance by the RTC of the *13 June 1997* and *12 August 1997 Orders* by contending that said court is not in a position to hear evidence on the supposed ambiguity and/or deficiency of the *3 November 1994 Decision* of the Court of Appeals in CA-G.R. CV No. 34856, as it would be "contrary to the well-settled rule that clarification of judgment is not the duty of the trial court to make."[44] It further argued that if the

[42] *Cando v. Olazo,* G.R. No. 160741, 22 March 2007, 518 SCRA 741, 748-749.

[43] *Id*.

[44] *Rollo,* p. 18.

RTC proceeds with the hearing, the latter may unwittingly change, amplify, enlarge, alter or modify the decision sought to be executed.

For petitioner La Campana, the issue of the amount to be collected "is not merely simple mathematical computation, but determination of the existence of the rentals and the period of time";[45] and the "portion of the period when collection was deemed unlawful is still to be determined."[46]

On the other hand, respondent DBP counters that the *3 November 1994 Decision* of the Court of Appeals in CA-G.R. CV No. 34856 was complete in itself and enforceable by execution. It reasons that the subject decision stated clearly why petitioner La Campana lost its right of ownership over the properties, and at what point in time it occurred. Moreover, it maintains that the fact that the subject decision has long attained finality is more than enough reason to compel the RTC to order petitioner La Campana to render an accounting of the collected and/or received rentals and/or fruits received from the subject properties.

Given the foregoing discourse, the threshold issue then that must be resolved is whether the *3 November 1994 Decision* of the Court of Appeals in CA-G.R. CV No. 34856 was complete and capable of execution even if the dispositive part of the same, which reads:

> 1. ORDERING La Campana Food Products, Inc. to surrender to the Development Bank of the Philippines the possession of the properties covered by the Transfer Certificate (sic) of Title Nos. 33035, 33036, 45869, 45870, 45871, 42868 and 23617;
>
> 2. **ORDERING La Campana Food Products, Inc. to pay the Development Bank of the Philippines such sums of money unlawfully collected and/or received by way of rentals from the properties covered by the aforementioned TCT's**; x x x.[47] (Emphasis supplied.)

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[45] *Id.*

[46] *Id.*

[47] *Id.* at 74.

does not state the precise amount to be paid by petitioner La Campana and the particular date from whence to begin computing such amount.

In refusing to issue a writ of execution against petitioner La Campana for the remittance of collected/received rentals/fruits from the subject properties, the RTC in its *12 August 1997 Order* reasoned that:

> It is a settled general principle that the execution of judgment must conform to that which is ordained and decreed in the dispositive portion of the decision (citation omitted). In the present case, nowhere in the dispositive portion of the decision dated November 3, 1994 can (it) be deduced the period of computation and the exact amount due to defendant Development Bank of the Philippines. These omissions should be properly addressed to the Court of Appeals which rendered said decision which incidentally modified the Order of the Court dated March 22, 1991.[48]

We disagree.

The controversy between the parties herein has been dragging for close to four decades already, and this is the third time this case has reached us. What should have been a simple implementation of the *3 November 1994 Decision* of the Court of Appeals in CA-G.R. CV No. 34856 in 1997 was delayed by the filing of a motion for reconsideration raising the issue of ambiguity of the *fallo* of said decision, when a simple reading of the body thereof could have easily exposed the motion for what it really was – nothing more than a dilatory move.

Having read the entirety of the subject decision abovementioned, we find neither insufficiency nor ambiguity in its *fallo* so as to justify the issuance of the *13 June 1997* and *12 August 1997 Orders* of the RTC. A careful examination of the Orders would straightaway reveal the superfluity of the need for clarification from the Court of Appeals. The reading by the RTC of the *fallo* of the *3 November 1994 Decision* of the Court of Appeals in CA-G.R. CV No. 34856 should have included the statements of the body thereof. This is sanctioned by the aphorism that a final and executory judgment may nonetheless be "clarified"

[48] Records, p. 1352.

by reference to other portions of the decision of which it forms a part[49]; that a judgment must not be read separately but in connection with the other portions of the decision of which it forms a part.[50] Otherwise stated, a decision should be taken as a whole and considered in its entirety to get the true meaning and intent of any particular portion thereof.[51] Indeed, as early as in *Policarpio v. Philippine Veterans Board*,[52] we have already settled the rule that in order to get to the true intent and meaning of a decision, no specific portion thereof should be resorted to, but the same must be considered in its entirety.

In foreclosure proceedings, the buyer becomes the absolute owner of the property purchased if it is not redeemed during the prescribed period of redemption,[53] which is one year from the date of registration of the sale.[54] In the case at bar, the *3 November 1994 Decision* of the Court of Appeals in CA-G.R. CV No. 34856 not only determined and declared that the foreclosure sale of the subject properties occurred on 25 March 1976; it also acknowledged that there existed in the record a *Certificate of Sale* dated 31 March 1976 issued by the Sheriff of Quezon City and subsequently annotated on the titles of the subject properties. Hence, although the said decision did not categorically state the date of the registration of sale, which was 30 April 1976, and while the inclusion of this piece of information in the decision would have been ideal, such precision is not absolutely necessary nor the lack thereof fatal to the certainty of the judgment. Besides, fixing the date at one year from said registration, or on 1 May 1977, is easily discernible as the logical consequence of the meaning of the period stated.

That there was need for an accounting of the monies representing rentals/fruits collected/received from the subject

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[49] *Heirs of Moreno v. Mactan-Cebu Int'l. Airport Authority*, 459 Phil. 948, 964 (2003).

[50] *Republic v. De los Angeles*, 148-B Phil. 902, 922-923 (1971).

[51] *Id.* at 926-927.

[52] *De Ralla v. Director of Lands*, 83 Phil. 491 (1941).

[53] *Samson v. Rivera*, G.R. No. 154355, 20 May 2004, 428 SCRA 759, 767-768.

[54] *Id.*

properties should have alerted the trial court of the need to look into the record of the case, specifically the body of the decision being executed, from which it would have learned the parameters in calculating the amount to be satisfied, as well as the fact that the amount to be satisfied could only be determined after due accounting that petitioner La Campana was yet to make. Just because the means for determining the exact amount payable by petitioner La Campana to respondent DBP was not definitively stated in the judgment does not make the same ambiguous, hence, unenforceable. The accounting of the books and records of petitioner La Campana during the time frame material to the issue is a practical and expedient means of determining with specificity the amount to be paid by it to respondent DBP. For the RTC to require such accounting and submission of the results thereof would only give effect to the *31 August 1997 Decision* of the Court of Appeals in CA-G.R. SP No. 48773, and there is no apparent and immediate danger of the RTC modifying said judgment.

The insistence of the RTC on a literal reading of the dispositive portion of the subject decision shows a lack of familiarity with the congruent interplay of the provisions of procedural law. The *31 August 1997 Decision* of the Court of Appeals in CA-G.R. SP No. 48773, through then Court of Appeals Associate Justice Callejo,[55] hit it squarely on the head when it held that:

> It cannot be said that simply because this Court, in CA-G.R. No. 34856 (CV) did not specifically order the Public Respondent (trial court) to receive said evidence of the parties after the records were remanded by this Court to Public Respondent, the Public Respondent is bereft of residual if not inherent authority to receive the evidence of the parties to ascertain the precise amount due to the Petitioner (DBP), under the second paragraph of the Decision of this Court in CA-G.R. No. 34856 (CV) x x x [r]esort must be made to the true intent and meaning of the Decision of the Court.[56]

Notably, the *31 March 1997 Order* of the RTC correctly acknowledged that:

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[55] Now a retired Supreme Court Associate Justice.

[56] *Rollo*, pp. 45-46.

La Campana insisted that the decision failed to state the period to be covered by the unlawful collection of rentals. This contention is untenable. The Decision clearly points out that La Campana lost its right of ownership when it failed to redeem the properties within one year from the registration of the sale. Considering that the Sheriff's certificate of sale was annotated in the certificate of titles (sic) on April 30, 1976 as PE-9167/T-23617, the DBP became the absolute owner of the properties on May 1, 1977. Thus, the period to be considered in determining the amount of collection should start from May 1, 1997 up to the time when the possession of the properties are actually and completely surrendered to DBP.

but for some reason or another, it "chose" to err on the side of caution; hence, its *13 June 1997* and *12 August 1997 Orders*.

It must be remembered that it is to the interest of the public that there should be an end to litigation by the parties over a subject fully and fairly adjudicated. The doctrine of *res judicata* is a rule that pervades every well-regulated system of jurisprudence and is founded upon two grounds embodied in various maxims of the common law, namely: (1) public policy and necessity, which dictates that it would be in the interest of the State that there should be an end to litigation – *republicae ut sit litium*; and (2) the hardship on the individual that he should be vexed twice for the same cause – *nemo debet bis vexari pro una et eadem causa*. A contrary doctrine would subject 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 public tranquillity and happiness.[57]

It is almost trite to say that execution is the fruit and end of the suit and is the life of the law.[58] A judgment, if left unexecuted, would be nothing but an empty victory for the prevailing party.[59] Litigation must end sometime and somewhere. An effective and efficient administration of justice requires that once a judgment

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[57] *Cruz v. Court of Appeals*, G.R. No. 164797, 13 February 2006, 482 SCRA 379, 395.

[58] *Florentino v. Rivera*, G.R. No. 167968, 23 January 2006, 479 SCRA 522, 532; *Garcia v. Yared*, 447 Phil. 444, 453 (2003).

[59] *Garcia v. Yared, id.*

has become final, the winning party be not deprived of the fruits of the verdict. Courts must, therefore, guard against any scheme calculated to bring about that result. Constituted as they are to put an end to controversies, courts should frown upon any attempt to prolong them.[60]

Instead of allowing itself to be used by petitioner La Campana in its schemes to evade execution of the judgment against it, the RTC should exert the utmost effort, permitted by law, equity, and reason, to see to it that respondent DBP shall enjoy the fruits of the final and executory decision in its favor.

With respect to the issue of whether or not the Court of Appeals erred in giving due course to the petition filed before it, considering the allegations, issues and arguments adduced and our disquisition thereof, suffice it to state that to reverse the assailed decision and resolution of the Court of Appeals is to disregard the error of the RTC. In so doing, great injustice and undue prejudice would be caused respondent DBP who has long awaited the fruit of the verdict in its favor; a verdict that has long attained finality.

WHEREFORE, premises considered, the instant Petition for Review on *Certiorari* is *DENIED* for lack of merit. The case at bar is remanded to the court *a quo* for further proceedings in consonance with our discussion as abovestated. With costs against petitioner La Campana Development Corporation.

SO ORDERED.

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

[60] *Ho v. Lacsa*, G.R. No. 142664, 5 October 2005, 472 SCRA 92, 100.

FIRST DIVISION

[G.R. No. 146949. February 13, 2009]

NARCISO C. LOGUINSA, JR., *petitioner, vs.* **SANDIGANBAYAN (5th DIVISION),** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE SANDIGANBAYAN ARE BINDING UPON THE SUPREME COURT; EXCEPTIONS; NOT PRESENT IN CASE AT BAR.— In appeals to this Court from the Sandiganbayan, only questions of law may be raised, not issues of fact. The factual findings of the Sandiganbayan are binding upon this Court. Admittedly, this general rule is subject to some exceptions, among them are: (1) when the conclusion is a finding grounded entirely on speculation, surmise or conjecture; (2) the inference made is manifestly mistaken; (3) there is a grave abuse of discretion on the part of the lower court or agency; (4) the judgment is based on a misapprehension of facts; (5) said findings of facts are conclusions without citation of specific evidence on which they are based; and (6) the findings of fact by the Sandiganbayan are premised on the absence of evidence on record. In the case at bar, we do not find any of the above exceptions to be present as to compel us to veer away from the facts established by the trial court and affirmed by respondent Sandiganbayan.

2. ID.; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; THE EVIDENCE TO BE PRESENTED BY THE PROSECUTION DURING THE TRIAL DEPENDS SOLELY UPON THE DISCRETION OF THE PROSECUTOR.— As correctly stated in the assailed Sandiganbayan Decision, the failure of the prosecution to present and have the Cashbooks of General Fund marked in evidence does not necessarily exonerate petitioner. The conviction of the petitioner was based on the testimonies of witnesses and other documentary exhibits of the prosecution. It is the prerogative of each party to determine which evidence to submit therefore herein petitioner cannot dictate or impose on the prosecution during the lower court trial as to who or what

documentary evidence it should present. Section 5, Rule 110 of the Revised Rules on Criminal Procedure expressly provides that all criminal actions shall be prosecuted under the direction and control of the fiscal and what prosecution evidence should be presented during the trial depends solely upon the discretion of the prosecutor.

3. ID.; EVIDENCE; EXCEPTIONS TO THE HEARSAY RULE; ENTRIES IN OFFICIAL RECORDS; ENTRIES MADE IN THE PERFORMANCE OF OFFICIAL FUNCTIONS ARE SUFFICIENT BY ITSELF TO ESTABLISH *PRIMA FACIE* THE TRUTH OF THE FACTS STATED THEREIN WITHOUT NEED OF PRESENTING OTHER EVIDENCE.— Moreover, as aptly pointed out in the assailed Sandiganbayan Decision, the cash examination report contains entries made in the performance of official functions and is, thus, sufficient by itself to establish *prima facie* the truth of the facts stated therein without the need of presenting other evidence following the rule laid down by Section 44, Rule 130 of the Revised Rules of Evidence. Indeed, if the Cashbooks of General Fund contained information that would exonerate petitioner, petitioner himself, after the prosecution had presented its evidence, should have presented the said cashbook in evidence before the trial court. He could have availed of any number of court processes to compel the auditors to produce the Cashbooks but strangely enough, he did not.

4. CRIMINAL LAW; MALVERSATION OF PUBLIC FUNDS; PRONOUNCEMENT IN TINGA CASE (NO. 57650. APRIL 15, 1988) INAPPLICABLE TO CASE AT BAR.— Similarly, we do not agree with petitioner's assertion that mere reliance on the fact that he signed the assailed General Form No. 74(A) is not enough to establish his admission of the alleged shortage in his accounts in light of our pronouncement in the case of *Tinga v. People* where this Court held that "it is incorrect to state that petitioner-accused had admitted his shortage when he signed the audit report prepared by the audit team." We find that the facts in that case to be in variance with those found in the case at bar.

5. POLITICAL LAW; DUE PROCESS; ESSENCE.— Petitioner puts forward as his second assignment of error the assertion that his constitutional right to due process was denied when his pleas for a re-audit and review of his case and account had

been denied outright by respondent court. We hold the same to be untenable since such a request by petitioner is not sanctioned by the Rules of Court as the case is already on appeal. He should have prayed for such a re-audit before the trial court and not for the first time on appeal before the respondent Sandiganbayan. The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. In the case at bar, a perusal of the records would indicate that petitioner was not denied any of the above due process guarantees that would warrant the respondent court to review the factual findings of the court *a quo* and to order a re-audit of the process that uncovered the shortage in petitioner's accounts.

6. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT CARRY GREAT WEIGHT AND WILL NOT BE DISTURBED ON APPEAL; EXCEPTIONS; NOT PRESENT IN CASE AT BAR.— The findings of fact of the trial court, its calibration of the testimonies of witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded by the appellate court high respect if not conclusive effect. Well-settled is the rule that unless the trial court overlooked, misunderstood, or misapplied some facts of substance and value which, if considered, might affect the outcome of the case, its findings carry great weight and will not be disturbed on appeal. In line with our earlier conclusion that the first and second audits at issue were in proper order, we find that the respondent Sandiganbayan did not err in denying petitioner's request for a re-audit.

7. CRIMINAL LAW; MALVERSATION OF PUBLIC FUNDS; ELEMENTS; PROVEN IN CASE AT BAR.— Likewise, we also do not lend credence to petitioner's contention in his third assignment of error that both the trial court and respondent Sandiganbayan erred in ruling that the guilt of petitioner has been proven beyond reasonable doubt. The elements of the offense of malversation of public funds are as follows: (1) the offender is a public officer; (2) he has the custody or control of the funds or property by reason of the duties of his office; (3) the funds or property involved are public funds or property for which he is accountable; and (4) he has appropriated, taken or misappropriated, or has consented to, or through abandonment

or negligence, permitted the taking by another person of such funds or property. The facts of this case clearly show that foregoing elements have been satisfactorily proven, thus, we find no reason to rule otherwise.

APPEARANCES OF COUNSEL

Roger C. Berbano for petitioner.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Civil Procedure which seeks to reverse and set aside the following: (a) the Decision[1] promulgated on March 8, 2000 affirming the ruling of the Regional Trial Court, Mati, Davao Oriental, Branch 5 that petitioner is guilty beyond reasonable doubt of the crime of Malversation of Public Funds; (b) the Resolution[2] promulgated on September 13, 2000 denying petitioner's Motion for Reconsideration; and (c) the Resolution[3] promulgated on October 13, 2000 denying petitioner's Motion to Suspend Proceedings, which Decision and Resolutions were all issued by the respondent court, Sandiganbayan, Fifth Division in A/R Case No. 031 entitled *"People of the Philippines v. Narciso C. Loguinsa, Jr."*

The facts of this case, as gathered from the assailed Sandiganbayan Decision, are as follows:

On March 23, 1993, Enrique B. Lapore, Provincial Auditor of Mati, Davao Oriental, issued PSS Office No. 93-301 creating Special Audit Teams to conduct Financial and Compliance Audit on the Municipalities of Banaybanay, Manay, San Isidro and Boston, and

[1] Penned by then Sandiganbayan Associate Justice and later Supreme Court (SC) Associate Justice Minita V. Chico-Nazario, with Sandiganbayan Associate Justice Anacleto D. Badoy, Jr. (ret.) and Sandiganbayan Associate Justice Ma. Cristina Cortez-Estrada concurring; *rollo*, pp. 73-84.

[2] Sandiganbayan Records, A/R Case No. 031, vol. 2, p.158.

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

Cash Examination of their respective Municipal Treasurers. On March 29, 1993, in compliance with said Order, a team composed of State Auditor II Robert J. Lumpay, as team leader, State Auditor I Luzmille O. Pilar and State Auditing Examiner II Herminda Chongco, as members, proceeded to the Municipality of Banaybanay, Mati, Davao Oriental, and conducted a Cash Examination of the Cash and Accounts of accused-appellant Narciso C. Loguinsa, Jr. [Loguinsa], Municipal Treasurer of the Municipality of Banaybanay, Davao Oriental.

The auditing team demanded from appellant to present all his cash accounts inside the safe vault. Appellant opened his safe vault in the presence of Assistant Municipal Treasurer Melinde Conson, Budget Officer Mario Gentiles and Lumpay. Found inside the vault were the cashbooks for the General Fund, INFRA, SEF, NALGU and Trust Fund. Using a coupon bond with a notation DON'T BREAK THE SEAL UNDER PENALTY OF LAW and which was signed by Conson and Gentiles, the safe vault was sealed. Thereafter, Lumpay examined the journals and ledgers in the accounting section in order to reconcile the cash book balances posted for the period June 17, 1992 to March 29, 1993 and those entered in the ledgers. He found no difference in the INFRA, SEF, NALGU and Trust Fund, but as to the General Fund Cashbook, which cashbook was personally prepared by the appellant, there appeared a shortage in the amount of ₱1,728,145.35. Lumpay also found that the balances in the cashbook agreed with the balances in the general ledgers. It was State Auditor Pilar who prepared the back reconciliation statements, while it was State Auditing Examiner Chongco who prepared the inventory of all accountable forms, and who conducted the cash count of the collections liquidated by the collectors and turned over to Conson. The total amount remitted to Conson was ₱64,674.87.

The conduct of the cash examination lasted for three weeks. Lumpay prepared the Report of Cash Examination using General Form 74(A). Lumpay gave the accused a copy of the report. Upon seeing the report, accused affixed his signature thereto.

In view of the findings of the audit team, Lumpay in a letter dated May 12, 1993 demanded from the appellant to produce immediately the missing funds amounting to ₱1,728,145.35, and to submit within seventy-two (72) hours a written explanation on how this shortage occurred.

On May 20, 1993 Lumpay received a letter from Loguinsa dated May 19, 1993 requesting that he be furnished with a copy of the

complete details of the audit examination, together with its attachments. In response to this request, Lumpay, on May 21, 1993, furnished appellant a copy of the cash examination report. As there was no answer from the appellant, Lumpay, through a letter dated May 26, 1993, reiterated his demand for appellant to immediately produce the missing funds, together with a written explanation, within seventy-two (72) hours on why the shortage was incurred.

In a letter dated May 26, 1993, Lumpay informed Banaybanay Municipal Mayor Pedro T. Mejos on the shortage contracted by the accused. He likewise informed the Mayor of the demand made on the appellant to restitute the amount of ₱1,728,145.35 and recommended the immediate relief of the accused as Municipal Treasurer.

On August 12, 1993 Lumpay submitted a Memorandum to Provincial Auditor Lapore regarding the findings of the audit team and the corresponding demand made on the appellant. The Provincial Auditor furnished the Department of Finance (DOF) a copy of the Memorandum.

On December 6, 1993 Provincial Treasurer Antonio P. Quilala issued Office Order No. 33-93 directing Maximo D. Tanzo, Lupon Municipal Treasurer, and Anecita A. Plaza, Administrative Officer II of the Office of the Provincial Treasurer, to conduct an investigation on the cash shortage of appellant.

At around the middle of February 1994, in the Office of the Municipal Treasurer of Banaybanay, Tanzo and Plaza started their investigation. Prior to conducting the investigation, they borrowed the five cashbooks stored in the office of the Provincial Auditor and brought it to Banaybanay. The period covered by the investigation was from June 7, 1992 to March 29, 1993. They requested from Melinde G. Conson, who at that time was the acting Municipal Treasurer of Banaybanay, all the documents relating to the transactions entered in the cashbooks.

On February 21, 1994, Mrs. Plaza handed to appellant a letter of Tanzo inviting him to appear before them on March 1, 1994 at the Office of the Municipal Treasurer to apprise him of their findings regarding his account.

On March 1, 1994, appellant came to the meeting held at the Office of the Municipal Treasurer but refused to sign any document and to answer questions propounded to him regarding the results of the cash verification. After the meeting, they prepared a statement

of the accountability of the appellant. On June 27, 1994, they submitted their findings to Quilala, which confirmed the shortage run up by appellant amounting to ₱1,728,145.35.

On April 4, 1995, the Regional Director of the Bureau of Local Government Finance (BLGF), Region XI, formally charged accused with Dishonesty thru Malversation of Public Funds.

After the investigation conducted by the BLGF, the hearing officer recommended the dismissal of the case. However, on review by the BLGF Central Office, appellant was found guilty of Dishonesty thru Malversation of Public Funds and accordingly meted the penalty of dismissal from the government service with all the accessory penalties attached thereto.

On December 27, 1994, accused-appellant was charged with Malversation before this Court in an Information, the accusatory portion of which reads:

> That on or about March 29, 1993, or sometime prior or subsequent thereto in Banaybanay, Davao Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer being then the Municipal Treasurer of the same municipality, and as such is an accountable officer, entrusted with and responsible for public funds collected and received by him, by reason of his position while in the performance of his official functions, taking advantage of his position, did then and there willfully, unlawfully and feloniously misappropriate, embezzle, take away and convert for his personal benefit the amount of ONE MILLION SEVEN HUNDRED TWENTY EIGHT THOUSAND ONE HUNDRED FOURTY (sic) FIVE AND THIRTY FIVE CENTAVOS (₱1,728,145.35) PESOS, Philippine Currency, from such funds, thereby causing damage and prejudice to the government in the aforementioned amount.
>
> CONTRARY TO LAW.

On January 4, 1995, this Court issued an order for the arrest of accused-appellant. A Hold Departure Order was issued on January 5, 1995.

On January 17, 1995, bondsmen Leopoldo Y. Lopez IV and Ma. Elena Lopez Adaza posted a property bond for the provisional liberty of accused-appellant.

With the passage of Republic Act No. 7975, which took effect on May 6, 1995, the instant case, by resolution of this Court dated July 4, 1995, was remanded to the Executive Judge of the Regional Trial Court of Mati, Davao Oriental, The case was raffled to Branch 5 of the same Court.

On December 21, 1995, accused, assisted by counsel, pleaded "not guilty" to the crime charged.

After trial, the lower court rendered a guilty verdict.[4]

The dispositive portion of the trial court's Decision[5] dated February 16, 1999 reads as follows:

WHEREFORE, the Court finds the accused Narciso C. Loguinsa, Jr., guilty beyond reasonable doubt as principal of the crime of Malversation of Public Funds defined in Article 217, par. 4, Revised Penal Code, and there being no modifying circumstances, imposes upon him the indeterminate penalty ranging from TWELVE (12) YEARS and ONE (1) DAY of *reclusion temporal*, as minimum to EIGHTEEN (18) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of *reclusion temporal*, as maximum; to suffer perpetual special disqualification; to pay a fine of ₱1,728,145.35; to indemnify the Municipal Government of Banaybanay, Davao Oriental, the aforesaid amount of ₱1,728,145.35, and to pay the costs of the proceedings.[6]

The above Decision was appealed before the respondent Sandiganbayan which, in turn, affirmed *in toto* the same in its March 8, 2000 Decision.[7]

Petitioner thereafter filed a Motion for Reconsideration and a Supplemental Motion for Reconsideration, which motions were opposed by the prosecution. Pending resolution of these motions, petitioner filed before the respondent court a motion requesting that the proceedings before it be suspended "pending the outcome and termination of his request for a re-audit and review of his Cash and Accounts." The prosecution opposed this motion.

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[4] *Id.*, at pp. 73-77.

[5] *Id.*, at pp. 42-56.

[6] *Id.*, at p. 56.

[7] *Supra* note 1.

In its September 13, 2000 Resolution,[8] the respondent court denied petitioner's Motion for Reconsideration and Supplemental Motion for Reconsideration.

Petitioner again filed before the respondent court a Motion for Reconsideration. Considering that petitioner's Motion for Reconsideration was already a second motion for reconsideration, the prosecution moved on October 13, 2000, during the hearing set for the said motion, that the same be denied by the respondent court. The respondent court ruled in favor of the prosecution.

In a Resolution[9] promulgated on October 13, 2000, the respondent court likewise denied petitioner's Motion to Suspend Proceedings.

Feeling aggrieved with the findings of the respondent court, petitioner filed the instant petition before this Court. Initially, the petition was dismissed for various procedural defects but upon motion of petitioner Loguinsa, this Court reconsidered the dismissal in a Resolution dated June 20, 2001.

In his Petition and Memorandum, Loguinsa essentially raises the following issues:

1. Whether or not respondent Court gravely erred in not declaring that the examination and audit report prepared by the Audit Team is contrary to law.

2. Whether or not petitioner's constitutional right to due process was denied when the pleas of petitioner for a re-audit and review of his case and account had been denied outright by respondent Court.

3. Whether or not the trial Court and respondent Court also erred in ruling that the guilt of petitioner has been proven beyond reasonable doubt.[10]

After a thorough consideration of the issues raised and the evidence on record, we hold that the instant petition to be unmeritorious.

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[8] *Supra* note 2.

[9] *Supra* note 3.

[10] *Id.*, at p. 229.

Anent the first issue, petitioner maintains that his conviction on the basis of General Form No. 74(A) entitled "REPORT OF CASH EXAMINATION," which bore his signature, instead of the Cashbooks of General Fund, records of collection and disbursements, is contrary to law. The auditors and prosecutors failed to pinpoint the actual collections made but not deposited in the depositary banks and the actual withdrawals made to complete the alleged shortage of ₱1,728,145.35 which allegedly made the audit of petitioner's accounts not thorough, objective or complete. Furthermore, petitioner insists that the fact that he signed the cash examination report should not have been understood that he admitted his shortage, it only meant that an acknowledgment or a demand on him to produce his shortage had been made. In fact, petitioner asserts that he never admitted his shortage.[11]

We find the above claims to be untenable. The records will bear out that the judgment of conviction on petitioner that was handed down by the trial court did not merely rely on General Form No. 74(A) or the cash examination report alone. The prosecution presented several pieces of documentary evidence in order to establish its case. It also introduced the testimonies of witnesses Commission on Audit (COA) State Auditor II Robert Lumpay and Lupon Municipal Treasurer Maximo Tanzo who were involved in the first and second government audits respectively that led to the discovery and later confirmation of the shortage in petitioner's accounts. It also introduced the testimony of witness Banaybanay Assistant and later Acting Municipal Treasurer Melinde G. Conson.[12]

In appeals to this Court from the Sandiganbayan, only questions of law may be raised, not issues of fact. The factual findings of the Sandiganbayan are binding upon this Court. Admittedly, this general rule is subject to some exceptions, among them are: (1) when the conclusion is a finding grounded entirely on speculation, surmise or conjecture; (2) the inference made is manifestly mistaken; (3) there is a grave abuse of discretion on

[11] *Id.*, at pp. 230-231.

[12] *Id.*, at pp. 43-45.

the part of the lower court or agency; (4) the judgment is based on a misapprehension of facts; (5) said findings of facts are conclusions without citation of specific evidence on which they are based; and (6) the findings of fact by the Sandiganbayan are premised on the absence of evidence on record.[13]

In the case at bar, we do not find any of the above exceptions to be present as to compel us to veer away from the facts established by the trial court and affirmed by respondent Sandiganbayan.

As correctly stated in the assailed Sandiganbayan Decision, the failure of the prosecution to present and have the Cashbooks of General Fund marked in evidence does not necessarily exonerate petitioner. The conviction of the petitioner was based on the testimonies of witnesses and other documentary exhibits of the prosecution. It is the prerogative of each party to determine which evidence to submit therefore herein petitioner cannot dictate or impose on the prosecution during the lower court trial as to who or what documentary evidence it should present.[14] Section 5, Rule 110 of the Revised Rules on Criminal Procedure expressly provides that all criminal actions shall be prosecuted under the direction and control of the fiscal and what prosecution evidence should be presented during the trial depends solely upon the discretion of the prosecutor.[15]

Moreover, as aptly pointed out in the assailed Sandiganbayan Decision, the cash examination report contains entries made in the performance of official functions and is, thus, sufficient by itself to establish *prima facie* the truth of the facts stated therein without the need of presenting other evidence following the rule laid down by Section 44, Rule 130 of the Revised Rules of Evidence.[16]

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[13] *Baldebrin v. Sandiganbayan*, G.R. Nos. 144950-71, March 22, 2007, 518 SCRA 627, 638.

[14] *Rollo*, p. 82.

[15] *People v. De Los Reyes*, G.R. No. 106874, January 21, 1994, 229 SCRA 439, 445.

[16] Section 44, Rule 130 of the Revised Rules of Evidence. *Entries in official records.* — Entries in official records made in the performance of

Indeed, if the Cashbooks of General Fund contained information that would exonerate petitioner, petitioner himself, after the prosecution had presented its evidence, should have presented the said cashbook in evidence before the trial court. He could have availed of any number of court processes to compel the auditors to produce the Cashbooks but strangely enough, he did not.

As regards to petitioner's claim that his signature on the cash examination report does not in any way equate to an admission of the shortage reflected therein, we find the same to be incredulous given that the natural presumption is that a person does not sign an official document, such as General Form No. 74(A) or cash examination report in this case, in blank (as petitioner claims) or without first informing himself of its contents. Petitioner, who was a ranking government treasurer thus conceivably a person of stature and intelligence, is presumed, by common logic, to know better than sign any document which he knows would render him responsible, administratively or even criminally. In signing the assailed document, petitioner acknowledged and certified that the amount therein stated is his accountability. Only substantial evidence showing the contrary can possibly counteract such a documentary acknowledgment. As borne out by the records of the instant case, petitioner was unable to present such proof.

Similarly, we do not agree with petitioner's assertion that mere reliance on the fact that he signed the assailed General Form No. 74(A) is not enough to establish his admission of the alleged shortage in his accounts in light of our pronouncement in the case of *Tinga v. People*[17] where this Court held that "it is incorrect to state that petitioner-accused had admitted his shortage when he signed the audit report prepared by the audit team."[18] We find that the facts in that case to be in variance with those found in the case at bar.

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his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated.

[17] No. 57650, April 15, 1988, 160 SCRA 483.

[18] *Id.*, at p. 489.

In *Tinga*, there was a dispute as to the amount of shortage because the audit team failed to consider certain records and past transactions of the defendant, which were only brought to light *after* the audit. Thus, this Court declared that there was an incomplete and haphazard compliance with the Manual of Instructions to Treasurers and Auditors and Other Guidelines in the examination made by the audit team.[19] We also ruled in that case that the *prima facie* presumption under Article 217 of the Revised Penal Code arises only if there was no issue as to the accuracy, correctness and regularity of the audit findings and if the fact that the funds are missing is indubitably established.[20] Moreover, in *Tinga,* the Sandiganbayan itself decreed that the audit conducted by the COA audit team was riddled with errors which were borne out by the evidence on record.

In the case at bar, we find the first audit made by the COA personnel led by COA State Auditor II Lumpay and the second audit made by Lupon Municipal Treasurer Tanzo with Office of the Provincial Treasurer Administrative Officer II Plaza to be in proper order. The undisputed facts bear out that the COA audit team from the Provincial Auditor's Office of Davao Oriental led by Lumpay conducted its three-week cash examination in the presence of petitioner. Thereafter, Lumpay prepared the cash examination report using General Form No. 74(A) of which he gave a copy to petitioner, who in turn voluntarily affixed his signature thereto upon seeing the report. The facts clearly showed that not only the journal and ledgers were examined by the team but most importantly the cashbooks from which the shortage of **₱**1,728,145.35 was discovered. If petitioner's assertion before this Court is to be believed that the Lumpay audit examination had no basis because this was not supported by the entries in the cashbooks, then he should not have signed General Form No. 74(A). Moreover, the findings of the Lumpay audit examination were verified by the second, separate and independent audit conducted by Tanzo and Plaza who thereafter prepared a statement of the accountabilities of petitioner which was also

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[19] *Ibid.*

[20] *Id.*, at p. 488.

presented in evidence in the trial court. Thus, the accuracy and correctness of both audits (which unfortunately for petitioner resulted the same finding of shortage on his part) have not been successfully impugned.

Petitioner puts forward as his second assignment of error the assertion that his constitutional right to due process was denied when his pleas for a re-audit and review of his case and account had been denied outright by respondent court.

We hold the same to be untenable since such a request by petitioner is not sanctioned by the Rules of Court as the case is already on appeal. He should have prayed for such a re-audit before the trial court and not for the first time on appeal before the respondent Sandiganbayan.

The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense.[21] In the case at bar, a perusal of the records would indicate that petitioner was not denied any of the above due process guarantees that would warrant the respondent court to review the factual findings of the court *a quo* and to order a re-audit of the process that uncovered the shortage in petitioner's accounts.

The findings of fact of the trial court, its calibration of the testimonies of witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded by the appellate court high respect if not conclusive effect.[22] Well-settled is the rule that unless the trial court overlooked, misunderstood, or misapplied some facts of substance and value which, if considered, might affect the outcome of the case, its findings carry great weight and will not be disturbed on appeal.[23] In line with our earlier conclusion that the first and

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[21] *Tan v. Balon, Jr.*, A.C. No. 6483, August 31, 2007, 531 SCRA 645, 655.

[22] *Nombrefia v. People*, G.R. No. 157919, January 30, 2007, 513 SCRA 369, 376-377.

[23] *People v. Dadulla*, G.R. No. 175946, March 23, 2007, 519 SCRA 48, 56.

second audits at issue were in proper order, we find that the respondent Sandiganbayan did not err in denying petitioner's request for a re-audit.

Likewise, we also do not lend credence to petitioner's contention in his third assignment of error that both the trial court and respondent Sandiganbayan erred in ruling that the guilt of petitioner has been proven beyond reasonable doubt.

The elements of the offense of malversation of public funds are as follows: (1) the offender is a public officer; (2) he has the custody or control of the funds or property by reason of the duties of his office; (3) the funds or property involved are public funds or property for which he is accountable; and (4) he has appropriated, taken or misappropriated, or has consented to, or through abandonment or negligence, permitted the taking by another person of such funds or property.[24] The facts of this case clearly show that foregoing elements have been satisfactorily proven, thus, we find no reason to rule otherwise.

WHEREFORE, the Petition is *DENIED* for lack of merit. The Decision promulgated on March 8, 2000 of the Sandiganbayan in A/R Case No. 031, affirming the decision of the Regional Trial Court, Mati, Davao Oriental, Branch 5 which found petitioner guilty beyond reasonable doubt of the crime of Malversation of Public Funds, defined in Article 217, par. 4, Revised Penal Code, and sentenced him to an indeterminate penalty ranging from twelve (12) years and one (1) day of *reclusion temporal*, as minimum to eighteen (18) years, eight (8) months and one (1) day of *reclusion temporal* as maximum; to suffer special perpetual disqualification from public office; to pay a fine of **₱**1,728,145.35; to indemnify the Municipal Government of Banaybanay, Davao Oriental the aforesaid amount of **₱**1,728,145.35; and to pay the cost of the proceedings, is *AFFIRMED*.

The Sandiganbayan's Resolution promulgated on September 13, 2000, denying petitioner's Motion for Reconsideration; and

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[24] *Duero v. People*, G.R. No. 162212, January 30, 2007, 513 SCRA 389, 401.

the Resolution promulgated on October 13, 2000, denying petitioner's Motion to Suspend Proceedings in A/R Case No. 031, are likewise *AFFIRMED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 152413. February 13, 2009]

BARCELIZA P. CAPISTRANO, *petitioner, vs.* **DARRYL LIMCUANDO and FE S. SUMIRAN,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; VOIDABLE CONTRACTS; THE PERSON WHO EMPLOYED FRAUD CANNOT BASE HIS ACTION FOR THE ANNULMENT OF CONTRACTS UPON SUCH FLAW OF THE CONTRACT; CASE AT BAR.— We simply cannot uphold petitioner's contention that the deed of sale she executed in favor of respondents should be declared null and void on the basis of the previous deed of sale with right of repurchase petitioner executed in favor of the spouses Zuasola and Subida. Ostensibly, when petitioner sold the subject property to herein respondents, she no longer had any right to do so for having previously sold the same property to other vendees. However, it is elementary that he who comes to court must do so with clean hands. Being the vendor in both sales, petitioner knew perfectly well that when she offered the subject property for sale to respondents she had already previously sold it to the spouses Zuasola and Subida. It is undeniable then that petitioner fraudulently obtained the consent of respondents in the execution of the assailed deed of sale. She even admits her

conviction of the crime of *estafa* for the deception she perpetrated on respondents by virtue of the double sale. Certainly, petitioner's action for annulment of the subject deed should be dismissed based on Article 1397 of the Civil Code which provides that the person who employed fraud cannot base his action for the annulment of contracts upon such flaw of the contract xxx. Petitioner is, therefore, precluded from seeking the annulment of the said contract based on the fraud which she herself has caused.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; INSTITUTION OF CIVIL ACTION; THE CIVIL ACTION IMPLIEDLY INSTITUTED ON THE CRIMINAL ACTION IS THE RECOVERY OF CIVIL LIABILITY ARISING FROM THE OFFENSE CHARGED; ACTION TO ANNUL THE DEED OF SALE IS NOT IMPLIEDLY INSTITUTED WITH THE CRIMINAL ACTION BUT SHOULD BE VENTILATED IN A SEPARATE CIVIL ACTION.— The theory of petitioner that the respondents should be deemed to have themselves assailed the validity of the subject deed of sale, since the civil aspect of the criminal case for estafa was impliedly instituted with the filing of said criminal action, is bereft of legal basis. The civil action impliedly instituted in a criminal case pertains only to the recovery of civil liability arising from the offense charged. Such civil action includes recovery of indemnity under the Revised Penal Code, and damages under Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines arising from the same act or omission of the accused. In other words, the civil action which is deemed impliedly instituted with the criminal action is the recovery of indemnity or damages under the Revised Penal Code and specifically enumerated articles of the Civil Code. The action to annul the subject deed of sale is obviously not among the civil actions that are deemed impliedly instituted with the criminal action. Thus, respondents' active participation in the prosecution of petitioner for the crime of *estafa*, as well as their concession that fraud attended the execution of the said deed of sale, would have significance only as to the recovery of civil indemnity arising from the said crime. The trial court did not err when it held that the action to annul the deed of sale should be ventilated in a separate civil action, notwithstanding petitioner's conviction in the criminal action.

3. CIVIL LAW; PUBLIC LAND ACT (C.A. NO. 141); LAND ACQUIRED THROUGH PATENT OR GRANT MAY BE REPURCHASED BY THE PATENTEE, HIS WIDOW, OR LEGAL HEIRS WITHIN FIVE YEARS FROM DATE OF SALE; RATIONALE; EXERCISE OF THE RIGHT TO REPURCHASE MUST BE CONSISTENT WITH THE NOBLE INTENT OF THE LAW.— In light of the peculiar facts of this case, we also find no merit in petitioner's alternative cause of action that she should be allowed to repurchase the subject property from respondents. It is true that Section 118 of the Public Land Act pertains to the prohibition of the sale or encumbrance of a land acquired through free patent and homestead provision **within a period of five years from the date of the issuance of the patent or grant.** On the other hand, Section 119 of the said law subjects said land's alienation, impliedly after the expiration of the prohibitive period, upon a right of repurchase by the homesteader, his widow, or heirs, **within a period of five years from the date of its conveyance.** Indeed, these provisions complement the intent and purpose of the law "to preserve and keep in the family of the homesteader that portion of public land which the State had gratuitously given to him." However, it is important to stress that the ultimate objective of the law is "to promote public policy, that is, to provide home and decent living for destitutes, aimed at providing a class of independent small landholders which is the bulwark of peace and order." Our prevailing jurisprudence requires that the motive of the patentee, his widow, or legal heirs in the exercise of their right to repurchase a land acquired through patent or grant must be consistent with the noble intent of the Public Land Act. We held in a number of cases that the right to repurchase of a patentee should fail if his underlying cause is contrary to everything that the Public Land Act stands for.

4. ID.; ID.; ID.; RIGHT TO REPURCHASE OF A PATENTEE SHALL NOT BE SUSTAINED WHEN THE EXERCISE OF SAID RIGHT IS NOT CONSISTENT WITH THE ULTIMATE OBJECTIVE OF THE PUBLIC LAND ACT.— Analogous to the rationale in the foregoing cited cases, we cannot sustain the right to repurchase of a patentee when such repurchase would reward rather than sanction an act of injustice committed by her in her fraudulent dealings with land that she acquired from the government under the Public Land Act. We uphold the CA's finding that petitioner is guilty of bad faith and that

she only made efforts to repurchase the property from the first buyers after an information for estafa had been filed against her by the second buyers. To be sure, petitioner only made an effort to enforce her right to repurchase from the second buyers (by filing the complaint subject of the present petition) during the pendency of the said criminal action for estafa. Indeed, petitioner's successive conveyances of the disputed land for valuable consideration to different vendees clearly indicate the profit-making motive of petitioner and her lack of intention to preserve the land for herself and her family. This Court cannot countenance such a betrayal of the ultimate objective of the law.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Balagtas P. Ilagan for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a petition for review of the Court of Appeals' (CA) *Decision*[1] dated September 28, 2001 and the *Resolution*[2] dated February 1, 2002 in CA – G.R. CV No. 49028, which affirmed the *Amended Decision*[3] dated January 23, 1995 rendered by the Regional Trial Court (RTC), Branch 32 of San Pablo City, Laguna in Civil Case No. SP 3757. Said civil case was an action for the annulment of a deed of sale or for the repurchase of real property, wherein the RTC held:

WHEREFORE, the Court hereby orders and adjudges:

1. The validity of the Deed of Absolute Sale dated February 1, 1989 executed by plaintiff [petitioner] in favor of defendants [respondents];

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[1] Penned by Associate Justice Eubulo G. Verzola with Associate Justices Marina L. Buzon and Bienvenido L. Reyes concurring; *rollo*, pp. 71-76.

[2] *Id.* at pp. 84-85.

[3] *Id.* at pp. 43-50.

2. That the true and correct consideration of the sale of the undivided one-half of the property now registered under TCT No. T-127771 with an area of 195 square meters in the name of plaintiff [petitioner] and defendants [respondents] is ₱75,000.00 partial payment of ₱10,000.00 having been effected by defendants [respondents] in favor of plaintiff [petitioner];

3. The defendants [respondents] to pay the plaintiff [petitioner] the sum of ₱65,000.00 representing the balance unpaid for the total cost of the disputed property in the sum of ₱75,000.00. The payment of ₱65,000.00 should be effected by defendants [respondents] to plaintiff [petitioner] within thirty (30) days from receipt of this decision without interest;

4. The claims of both parties for damages against each other are denied for insufficiency of evidence.[4]

A summary of the relevant facts culled from the pleadings and the evidence on record follows:

Petitioner owned a parcel of land, with an estimated area of 224 square meters located at Barangay Talaga, Rizal, Laguna, covered by Original Certificate of Title No. P-10302 pursuant to a Free Patent issued on August 23, 1977. She sold this parcel of land with a right of repurchase in favor of spouses Felimon Zuasola and Anita Subida on December 31, 1985.

On February 1, 1989, petitioner sold half of the same parcel of land to respondents for the price of ₱75,000.00 on the understanding that respondents shall pay the amount of ₱10,000.00 as partial payment and the balance to be paid by monthly installments. Petitioner received the partial payment of ₱10,000.00 but signed a deed of absolute sale, denominated as "*Kasulatan ng Bilihang Tuluyan*," disposing half of the property in favor of respondents purportedly in consideration of the amount received. Subsequently, respondents defaulted on their monthly installments. Petitioner repeatedly demanded for the payment of the balance of ₱65,000.00 from respondents but the latter refused to pay and claimed that they had already fully satisfied the consideration for the disputed land according to the terms of the subject deed of sale.

[4] *Id.* at pp. 49-50.

Respondents learned afterwards that the disputed land had been previously sold by the petitioner to the spouses Zuasola and Subida which led respondents to file a criminal complaint for *estafa* against petitioner on April 10, 1991. Petitioner was eventually convicted.

On August 19, 1991, petitioner repurchased the parcel of land from the spouses Zuasola and Subida. She also offered to repurchase from respondents the portion of the disputed land which she sold to them but the latter refused. On September 27, 1991, Transfer Certificate of Title No. 127771 over the disputed land was issued in the names of respondents.

On May 27, 1993, petitioner filed a complaint[5] for the annulment of the subject deed of sale alleging that the sale was a nullity from the beginning and that respondents even assailed its validity in the previously mentioned criminal case for estafa against petitioner. As an alternative cause of action, petitioner sought to repurchase the disputed land from respondents based on Section 119 of Commonwealth Act No. 141 (Public Land Act). She prayed as follows:

> WHEREFORE, it is respectfully prayed that judgment be rendered in favor of plaintiff and against defendants:
>
> 1. To declare the "Kasulatan ng Bilihang Tuluyan" as nullified;
> 2. To order the repurchase of the said one-half (½) portion of the realty by the plaintiff [petitioner];
> 3. That defendants [respondents] be made to pay the costs of this suit.
>
> Plaintiff [Petitioner] likewise prays for any other relief which to this Honorable Court may be just and equitable in the premises.

In their Answer with Counterclaim,[6] respondents admitted the material facts of the case but chiefly contended that they purchased the subject land from petitioner in consideration of the sum of Ten Thousand Pesos (₱10,000.00) only and that

[5] *Id.* at pp. 33-36.

[6] *Ibid.*

they never assailed the validity of the subject deed of sale in the estafa case.

After pre-trial and the marking of the exhibits, the parties manifested to the RTC their intention to submit the case for judgment on the basis of the evidence on record. The RTC directed the parties to file their respective memoranda and, thereafter, rendered its judgment.

In its *Amended Decision*, the RTC sustained the validity of the subject deed of sale and denied the right of the petitioner to repurchase the disputed land from the respondents. In explanation, the trial court ruled:

> When plaintiff [petitioner] sold one-half (½) of the subject property to the defendants [respondents] on February 1, 1989, the five (5) year period from the date of issuance of the patent on August 23, 1977 had absolutely expired. There was no longer [any] barrier for the plaintiff [petitioner] to dispose or alienate the subject property. When the plaintiff [petitioner] executed the *Venta con Pacto de Retro* in favor of spouses Zuasola in 1985, the barrier or prohibition was likewise already inapplicable because the five (5) year period had already expired as almost eight (8) years had elapsed from the date of issuance of the patent in 1977.
>
> The filing of an Information for Estafa against plaintiff [petitioner] is a criminal action which cannot properly be considered as a basis for the annulment of a Deed of Absolute Sale executed by plaintiff [petitioner] in favor of defendants [respondents]. The plaintiff [petitioner] was convicted of Estafa on the basis of criminal evidence that supports a conviction beyond reasonable doubt. The annulment of the Deed of Absolute Sale should be ventilated in a separate civil action that needs preponderance of evidence for the purpose. At this instance it should also be considered seriously that when this action was filed on May 27, 1993, the plaintiff [petitioner] was already aware that Transfer Certificate of Title No. T-127771 on the disputed one-half portion was already issued in the name of defendants [respondents] as of September 27, 1991 and which title originated from OCT P-10302, the Free-Patent awarded to herein plaintiff [petitioner] on August 23, 1977 under Act No. 141. A perusal of the complaint shows that it seeks relief for declaration of nullity of the Deed of Absolute Sale executed by plaintiff [petitioner] in favor of defendants [respondents] on February 1, 1989 but it does not

seek annulment of TCT No. T-127771 or a reconveyance of the same it appearing that said title is registered in the name of the defendants [respondents] insofar as the one-half disputed portion is concerned.

The repurchase made by the plaintiff [petitioner] of the disputed property from the spouses Zuasola is a voluntary act executed by plaintiff [petitioner] which the Court considers not binding and effective for the annulment of the Deed of Sale of February 1, 1989 in favor of defendants [respondents]. If plaintiff [petitioner] opted to repurchase the subject property from the spouses Zuasola it was because plaintiff [petitioner] was under the impression that she was under the protective mantle of the provisions of Sec. 119 of Public [Land] Act 141. This actuation of plaintiff [petitioner] is not looked [upon] with favor by the Court.

The plaintiff [petitioner], however, raised the issue of nonpayment of the full consideration of the sale of the disputed one-half portion to the defendants [respondents] in the total sum of ₱75,000.00. Defendants [Respondents] alleged that the full consideration is ₱10,000.00 as envisioned in the Deed of Absolute Sale and said amount having been fully paid to plaintiff [petitioner], defendants [respondents] are no longer obligated to plaintiff [petitioner]. The Court glaringly noticed that the Deed of Sale with right of repurchase of the subject property in favor of the Zuasolas was for the amount of ₱40,000.00 which shows that even in 1985 the one-half undivided portion which is now the subject of this action could command a consideration of ₱20,000.00 in a transaction of *Venta Con Pacto de Retro*. The subject property abuts a provincial road. The undivided one-half of the whole property of 195 square meters to the mind of the Court could not be fairly sold for a consideration of ₱10,000.00. The Court entertains a laudable and correct impression that the subject property was agreed to be sold for the sum of ₱75,000.00, the amount of ₱10,000.00 having already been paid in advance leaving a balance of ₱65,000.00 which should therefore be paid by the defendants [respondents] to plaintiff [petitioner].[7]

On appeal by both petitioner and respondents, the CA affirmed the judgment of the RTC as follows:

Plaintiff-appellant's [Petitioner's] right to repurchase the one-half (½) portion of the property no longer exists. The prohibition against the alienation of the land acquired by [petitioner] by free

[7] *Id.* at pp. 47-48.

patent ended on August 23, 1983 or five years from its issuance. Thus, when plaintiff-appellant [petitioner] sold the one-half (½) portion of the property to defendant-appellants [respondents] on February 1, 1989, the redemption period contemplated by Section 119 of the Public Land Act, as amended, no longer finds application.

It may be true that the policy behind homestead laws is to distribute disposable agricultural lands of the state to land destitute citizens for their home and cultivation, **but this right may not altogether be true when the person invoking the same is guilty of bad faith**.

In the instant case, plaintiff-appellant [petitioner] was convicted of estafa by reason of the double sale over the same property. She repurchased the property from the first buyer only after an information had already been filed against her. It is inescapable that when she filed the complaint with the court *a quo* she was with unclean hands. **It is an act that negates the gratuitous reward by the State.**

From the foregoing, we deem it fit not to disturb the judgment of the court *a quo*.[8] (Emphasis supplied)

Hence, the instant petition for review.

Petitioner asserts that the subject deed of sale is null and void. The cause of this obligation, as an indispensable element of a contract, is allegedly false because of the fact that, prior to the sale of the disputed land in favor of the respondents in 1989, petitioner had the same land sold with right of repurchase in favor of spouses Zuasola and Subida way back in 1985.[9]

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[8] *Id.* at p. 75.

[9] Citing Article 1318 in relation to Articles 1350 and 1353 of the Civil Code as follows:

Art. 1318. There is no contract unless the following requisites concur:

1) Consent of the contracting parties;

2) Object certain which is the subject matter of the contract;

3) Cause of the obligation which is established.

Art. 1350. In onerous contracts the cause is understood to be, for each contracting party, the prestation or promise of a thing or service by the other;

xxx xxx xxx

Art.1353. The statement of a false cause in contracts shall render them void, if it should not be proved that they were founded upon another cause which is true and lawful.

Petitioner's asserts that her redemption of the disputed land from spouses Zuasola and Subida does not cure a void contract (*i.e.* the deed of sale in favor of respondents). In addition, petitioner argues that, at the time the adverted criminal case was instituted against her, respondents essentially admitted that fraud attended the execution of the subject deed of sale and that, therefore, respondents should be deemed to have assailed the validity of the said contract.

Anent her alternative cause of action, petitioner claims that the RTC ostensibly and irrelevantly applied Section 118 of the Public Land Act. She underscores instead Section 119 of the said law and stresses that her right to repurchase the disputed land prescribes only after five years from the date she conveyed the same to the respondents in 1989. Thus, she claims she timely exercised such right when she instituted the complaint in 1993.

In their *Comment*[10] and *Memorandum*,[11] respondents argue that the provision of the Public Land Act which prohibits the alienation of the disputed land within a period of five years reckoned from the date of the issuance of the patent had lapsed along with the right to repurchase the disputed land under the said law. The respondents further contend that the petitioner conveyed the disputed land in bad faith and should not therefore be allowed to come to court with unclean hands.

After evaluation of the parties' competing arguments, we find the petition devoid of merit.

We simply cannot uphold petitioner's contention that the deed of sale she executed in favor of respondents should be declared null and void on the basis of the previous deed of sale with right of repurchase petitioner executed in favor the spouses Zuasola and Subida. Ostensibly, when petitioner sold the subject property to herein respondents, she no longer had any right to do so for having previously sold the same property to other vendees. However, it is elementary that he who comes to court

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[10] *Rollo*, pp. 90-92.

[11] *Id.* at pp. 118-127.

must do so with clean hands.[12] Being the vendor in both sales, petitioner knew perfectly well that when she offered the subject property for sale to respondents she had already previously sold it to the spouses Zuasola and Subida. It is undeniable then that petitioner fraudulently obtained the consent of respondents in the execution of the assailed deed of sale. She even admits her conviction of the crime of *estafa* for the deception she perpetrated on respondents by virtue of the double sale.

Certainly, petitioner's action for annulment of the subject deed should be dismissed based on Article 1397 of the Civil Code which provides that the person who employed fraud cannot base his action for the annulment of contracts upon such flaw of the contract, thus:

> Art. 1397. The **action for the annulment of contracts** may be instituted by all who are thereby obliged principally or subsidiarily. However, persons who are capable cannot allege the incapacity of those with whom they contracted; **nor can those who** exerted intimidation, violence, or undue influence, or **employed fraud**, or caused mistake **base their action upon these flaws of the contract**.

Petitioner is, therefore, precluded from seeking the annulment of the said contract based on the fraud which she herself has caused.

The theory of petitioner that the respondents should be deemed to have themselves assailed the validity of the subject deed of sale, since the civil aspect of the criminal case for estafa was impliedly instituted with the filing of said criminal action, is bereft of legal basis. The civil action impliedly instituted in a criminal case pertains only to the recovery of civil liability arising from the offense charged.[13] Such civil action includes recovery of indemnity under the Revised Penal Code, and damages under Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines

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[12] *Dequito v. Llamas,* G.R. No. L-28090, September 4, 1975, 66 SCRA 504, 510; *Camporedondo v. National Labor Relations Commission,* G.R. No. 129049, August 6, 1999, 312 SCRA 47, 48.

[13] Rules of Court, Rule 111, Section 1.

arising from the same act or omission of the accused.[14] In other words, the civil action which is deemed impliedly instituted with the criminal action is the recovery of indemnity or damages under the Revised Penal Code and specifically enumerated articles of the Civil Code. The action to annul the subject deed of sale is obviously not among the civil actions that are deemed impliedly instituted with the criminal action. Thus, respondents' active participation in the prosecution of petitioner for the crime of *estafa*, as well as their concession that fraud attended the execution of the said deed of sale, would have significance only as to the recovery of civil indemnity arising from the said crime. The trial court did not err when it held that the action to annul the deed of sale should be ventilated in a separate civil action, notwithstanding petitioner's conviction in the criminal action.

In light of the peculiar facts of this case, we also find no merit in petitioner's alternative cause of action that she should be allowed to repurchase the subject property from respondents.

It is true that Section 118[15] of the Public Land Act pertains to the prohibition of the sale or encumbrance of a land acquired through free patent and homestead provision **within a period of five years from the date of the issuance of the patent or grant**. On the other hand, Section 119[16] of the said law subjects

[14] *Id*.

[15] C.A. No. 141, Sec. 118: Except in favor of the Government or any of its branches, units or institutions, or legally constituted banking corporations, lands acquired under free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent or grant nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period; but the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations, or corporations.

No alienation, transfer, or conveyance of any homestead after five years and before twenty-five years after issuance of title shall be valid without the approval of the Secretary of Agriculture and Natural Resources, which approval shall not be denied except on constitutional and legal grounds.

[16] C.A. No. 141, Sec. 119: Every conveyance of land acquired under the free patent and homestead provisions, when proper, shall be subject to repurchase by the applicant, his widow, or legal heirs, within a period of five years from the date of conveyance.

said land's alienation, impliedly after the expiration of the prohibitive period, upon a right of repurchase by the homesteader, his widow, or heirs, **within a period of five years from the date of its conveyance**. Indeed, these provisions complement the intent and purpose of the law "to preserve and keep in the family of the homesteader that portion of public land which the State had gratuitously given to him."[17]

However, it is important to stress that the ultimate objective of the law is "to promote public policy, that is, to provide home and decent living for destitutes, aimed at providing a class of independent small landholders which is the bulwark of peace and order."[18] Our prevailing jurisprudence requires that the motive of the patentee, his widow, or legal heirs in the exercise of their right to repurchase a land acquired through patent or grant must be consistent with the noble intent of the Public Land Act. We held in a number of cases that the right to repurchase of a patentee should fail if his underlying cause is contrary to everything that the Public Land Act stands for. In *Benzonan v. CA*,[19] we ruled:

> In the light of the records of these cases, we rule that respondent Pe cannot repurchase the disputed property without doing violence to everything that CA No. 141 (as amended) stands for.
>
> We ruled in ***Simeon v. Peña***, 36 SCRA 610, 617 [1970] through Chief Justice Claudio Teehankee, that:
>
> xxx xxx xxx
>
> "These findings of fact of the Court of Appeals that "(E)vidently, the reconveyance sought by the plaintiff (petitioner) is not in accordance with the purpose of the law, that is, 'to preserve and keep in the family of the homesteader that portion of public land which the State has gratuitously given to him'" and expressly found by it to "find justification from the evidence of record . . ."

[17] *Rural Bank of Davao City, Inc. v. Court of Appeals*, G.R. No. 83992, January 27, 1993, 217 SCRA 554, 563-564, citing *Pascua v. Talens*, 80 Phil. 792, 793-794.

[18] *Benzonan v. CA*, G.R. Nos. 97973 and 97998, January 27, 1992, 205 SCRA 515, 524-526.

[19] *Supra*.

"Under the circumstances, the Court is constrained to agree with the Court of Appeals **that petitioners' proposed repurchase of the property [do] not fall within the purpose, spirit and meaning of Section 119 of the Public Land Act, authorizing redemption of the homestead from any vendee thereof**."

We reiterated this ruling in ***Vargas v. Court of Appeals***, 91 SCRA 195, 200, [1979] *viz*:

"As regards the case of *Simeon v. Peña*, petitioners ought to know that petitioner therein was not allowed to repurchase because the lower court found that **his purpose was only speculative and for profit**. In the present case, the Court of Appeals found that herein petitioners' purposes and motives are also speculative and for profit.

"It might be well to note that the underlying principle of Section 119 of Commonwealth Act No. 141 is to give the homesteader or patentee every chance to preserve for himself and his family the land that the State had gratuitously given to him as a reward for his labor in cleaning and cultivating it. (*Simeon v. Peña*, 36 SCRA 617). As found by the Court of Appeals, the motive of the petitioners in repurchasing the lots in question being one for speculation and profit, the same therefore does not fall within the purpose, spirit and meaning of said section."

and in ***Santana, et al. v. Mariñas***, 94 SCRA 853, 861-862 [1979] to wit:

"In *Simeon v. Peña* we analyzed the various cases previously decided, and arrived at the conclusion that the plain intent, the *raison d' etre*, of Section 119, C.A. No. 141 '. . . is to give the homesteader or patentee every chance to preserve for himself and his family the land that the state had gratuitously given to him as a reward for his labor in cleaning and cultivating it.' In the same breath, we agreed with the trial court, in that case, that it is in this sense that the provision of law in question becomes unqualified and unconditional. **And in keeping with such reasons behind the passage of the law, its basic objective is to promote public policy, that is, to provide home and decent living for destitutes, aimed at promoting a class of independent small landholders which is the bulwark of peace and order.**"

> "As it was in *Simeon v. Peña*, respondent Mariñas' intention in exercising the right of repurchase 'is not for the purpose of preserving the same within the family fold,' but 'to dispose of it again for greater profit in violation of the law's policy and spirit.' The foregoing conclusions are supported by the trial court's findings of fact already cited, culled from evidence adduced. Thus respondent Mariñas was 71 years old and a widower at the time of the sale in 1956; that he was 78 when he testified on October 24, 1963 (or over 94 years old today if still alive); that . . . he was not living on the property when he sold the same but was residing in the poblacion attending to a hardware store, and that the property was no longer agricultural at the time of the sale, but was a residential and commercial lot in the midst of many subdivisions. The profit motivation behind the effort to repurchase was conclusively shown when the then plaintiff's counsel, in the case below, Atty. Loreto Castillo, in his presence, suggested to herein petitioners' counsel, Atty. Rafael Dinglasan '. . . to just add to the original price so the case would be settled.' Moreover, Atty. Castillo manifested in court that an amicable settlement was possible, for which reason he asked for time 'within which to settle the terms thereof and that 'the plaintiff . . . Mr. Mariñas, has manifested to the Court that if the defendants would be willing to pay the sum of One Peso and Fifty Centavos (₱1.50) per square meter, he would be willing to accept the offer and dismiss the case."

Our decisions were disregarded by the respondent court which chose to adopt a Court of Appeals ruling in *Lim, et al. v. Cruz, et al.*, CA-G.R. No. 67422, November 25, 1983 that the motives of the homesteader in repurchasing the land are inconsequential" and that it does not matter even "when the obvious purpose is for selfish gain or personal aggrandizement."

In *Heirs of Venancio Bajenting v. Bañez*,[20] we reiterated the doctrine applied in the above-cited cases as follows:

> As elucidated by this Court, the object of the provisions of Act 141, as amended, granting rights and privileges to patentees or homesteaders is to provide a house for each citizen where his family

[20] G.R. No. 166190, September 20, 2006, 502 SCRA 531.

may settle and live beyond the reach of financial misfortune and to inculcate in the individuals the feelings of independence which are essential to the maintenance of free institution. The State is called upon to ensure that the citizen shall not be divested of needs for support, and reclined to pauperism. The Court, likewise, emphasized that the purpose of such law is conservation of a family home in keeping with the policy of the State to foster families as the factors of society, and thus promote public welfare. The sentiment of patriotism and independence, the spirit of citizenship, the feeling of interest in public affairs, are cultivated and fostered more readily when the citizen lives permanently in his own house with a sense of its protection and durability. It is intended to promote the spread of small land ownership and the preservation of public land grants in the names of the underprivileged for whose benefits they are specially intended and whose welfare is a special concern of the State. The law is intended to commence ownership of lands acquired as homestead by the patentee or homesteader or his heirs.

In *Simeon v. Peña*, the Court declared that the law was enacted to give the homesteader or patentee every chance to preserve for himself and his family the land that the State had gratuitously given to him as a reward for his labor in cleaning and cultivating it. In that sense, the law becomes unqualified and unconditional. **Its basic objective, the Court stressed, is to promote public policy, that is, to provide home and decent living for destitutes, aimed at providing a class of independent small landholders which is the bulwark of peace and order.**

To ensure the attainment of said objectives, the law gives the patentee, his widow or his legal heirs the right to repurchase the property within five years from date of the sale. **However, the patentee, his widow or legal heirs should not be allowed to take advantage of the salutary policy of the law to enable them to recover the land only to dispose of it again to amass a hefty profit to themselves. The Court cannot sustain such a transaction which would put a premium on speculation which is contrary to the philosophy behind Section 119 of Act 141, as amended.**

Analogous to the rationale in the foregoing cited cases, we cannot sustain the right to repurchase of a patentee when such repurchase would reward rather than sanction an act of injustice committed by her in her fraudulent dealings with land that she acquired from the government under the Public Land Act. We

uphold the CA's finding that petitioner is guilty of bad faith and that she only made efforts to repurchase the property from the first buyers after an information for estafa had been filed against her by the second buyers. To be sure, petitioner only made an effort to enforce her right to repurchase from the second buyers (by filing the complaint subject of the present petition) during the pendency of the said criminal action for estafa. Indeed, petitioner's successive conveyances of the disputed land for valuable consideration to different vendees clearly indicate the profit-making motive of petitioner and her lack of intention to preserve the land for herself and her family. This Court cannot countenance such a betrayal of the ultimate objective of the law.

In view of the foregoing, the appellate court did not commit any reversible error in its assailed decision and resolution.

WHEREFORE, the petition of Barceliza P. Capistrano is hereby *DENIED* for lack of merit.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 161793. February 13, 2009]

EDWARD KENNETH NGO TE, *petitioner, vs.* **ROWENA ONG GUTIERREZ YU-TE,** *respondent,* **REPUBLIC OF THE PHILIPPINES,** *oppositor.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; ARTICLE 36 THEREOF; PSYCHOLOGICAL INCAPACITY; INFLICTION OF PHYSICAL VIOLENCE, CONSTITUTIONAL INDOLENCE

OR LAZINESS, DRUG DEPENDENCE AND PSYCHOSEXUAL ANOMALY ARE MANIFESTATIONS OF A SOCIOPATHIC PERSONALITY ANOMALY.— In dissolving marital bonds on account of either party's psychological incapacity, the Court is not demolishing the foundation of families, but it is actually protecting the sanctity of marriage, because it refuses to allow a person afflicted with a psychological disorder, who cannot comply with or assume the essential marital obligations, from remaining in that sacred bond. It may be stressed that the infliction of physical violence, constitutional indolence or laziness, drug dependence or addiction, and psychosexual anomaly are manifestations of a sociopathic personality anomaly. Let it be noted that in Article 36, there is no marriage to speak of in the first place, as the same is void from the very beginning. To indulge in imagery, the declaration of nullity under Article 36 will simply provide a decent burial to a stillborn marriage.

2. ID.; ID.; ID.; ID.; EACH CASE MUST BE JUDGED, NOT ON THE BASIS OF *A PRIORI* ASSUMPTIONS, PREDILECTIONS OR GENERALIZATIONS BUT ACCORDING TO ITS OWN FACTS.— Lest it be misunderstood, we are not suggesting the abandonment of *Molina* in this case. We simply declare that, as aptly stated by Justice Dante O. Tinga in *Antonio v. Reyes*, there is need to emphasize other perspectives as well which should govern the disposition of petitions for declaration of nullity under Article 36. At the risk of being redundant, we reiterate once more the principle that each case must be judged, not on the basis of *a priori* assumptions, predilections or generalizations but according to its own facts. And, to repeat for emphasis, courts should interpret the provision on a case-to-case basis; guided by experience, the findings of experts and researchers in psychological disciplines, and by decisions of church tribunals.

3. ID.; ID.; ID.; ID.; THE EVIDENCE MUST SHOW A LINK, MEDICAL OR THE LIKE, BETWEEN THE ACTS THAT MANIFEST PSYCHOLOGICAL INCAPACITY AND THE PSYCHOLOGICAL DISORDER ITSELF.— By the very nature of Article 36, courts, despite having the primary task and burden of decision-making, **must not discount but, instead, must consider as decisive evidence the expert opinion on the psychological and mental temperaments of the parties.**

Hernandez v. Court of Appeals emphasizes the importance of presenting expert testimony to establish the precise cause of party's psychological incapacity, and to show that it existed at the inception of the marriage. And as *Marcos v. Marcos* asserts, there is no requirement that the person to be declared psychologically incapacitated be personally examined by a physician, if the totality of evidence presented is enough to sustain a finding of psychological incapacity. Verily, the evidence must show a link, medical or the like, between the acts that manifest psychological incapacity and the psychological disorder itself. This is not to mention, but we mention nevertheless for emphasis, that the presentation of expert proof presupposes a thorough and in-depth assessment of the parties by the psychologist or expert, for a conclusive diagnosis of a grave, severe and incurable presence of psychological incapacity. Parenthetically, the Court, at this point, finds it fitting to suggest the inclusion in the *Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages*, an option for the trial judge to refer the case to a court-appointed psychologist/expert for an independent assessment and evaluation of the psychological state of the parties. This will assist the courts, who are no experts in the field of psychology, to arrive at an intelligent and judicious determination of the case. The rule, however, does not dispense with the parties' prerogative to present their own expert witnesses.

4. ID.; ID.; ID.; ID.; MARRIAGE SHALL BE DECLARED NULL AND VOID WHERE BOTH PARTIES ARE FOUND AFFLICTED WITH GRAVE, SEVERE AND INCURABLE PSYCHOLOGICAL INCAPACITY; CASE AT BAR.— The seriousness of the diagnosis and the gravity of the disorders considered, the Court, in this case, finds as decisive the psychological evaluation made by the expert witness; and, thus, rules that the marriage of the parties is null and void on ground of both parties' psychological incapacity. We further consider that the trial court, which had a first-hand view of the witnesses' deportment, arrived at the same conclusion. Indeed, petitioner, who is afflicted with dependent personality disorder, cannot assume the essential marital obligations of living together, observing love, respect and fidelity and rendering help and support, for he is unable to make everyday decisions without advice from others, allows others to make most of his important

decisions (such as where to live), tends to agree with people even when he believes they are wrong, has difficulty doing things on his own, volunteers to do things that are demeaning in order to get approval from other people, feels uncomfortable or helpless when alone and is often preoccupied with fears of being abandoned. As clearly shown in this case, petitioner followed everything dictated to him by the persons around him. He is insecure, weak and gullible, has no sense of his identity as a person, has no cohesive self to speak of, and has no goals and clear direction in life. Although on a different plane, the same may also be said of the respondent. Her being afflicted with antisocial personality disorder makes her unable to assume the essential marital obligations. This finding takes into account her disregard for the rights of others, her abuse, mistreatment and control of others without remorse, her tendency to blame others, and her intolerance of the conventional behavioral limitations imposed by society. Moreover, as shown in this case, respondent is impulsive and domineering; she had no qualms in manipulating petitioner with her threats of blackmail and of committing suicide. Both parties being afflicted with grave, severe and incurable psychological incapacity, the precipitous marriage which they contracted on April 23, 1996 is thus, declared null and void.

APPEARANCES OF COUNSEL

Froilan M. Bacungan and Associates for petitioner.
The Solicitor General for oppositor.

D E C I S I O N

NACHURA, *J.*:

Far from novel is the issue involved in this petition. Psychological incapacity, since its incorporation in our laws, has become a clichéd subject of discussion in our jurisprudence. The Court treats this case, however, with much ado, it having realized that current jurisprudential doctrine has unnecessarily imposed a perspective by which psychological incapacity should be viewed, totally inconsistent with the way the concept was formulated—free in form and devoid of any definition.

For the resolution of the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the August 5, 2003 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 71867. The petition further assails the January 19, 2004 Resolution[2] denying the motion for the reconsideration of the challenged decision.

The relevant facts and proceedings follow.

Petitioner Edward Kenneth Ngo Te first got a glimpse of respondent Rowena Ong Gutierrez Yu-Te in a gathering organized by the Filipino-Chinese association in their college. Edward was then initially attracted to Rowena's close friend; but, as the latter already had a boyfriend, the young man decided to court Rowena. That was in January 1996, when petitioner was a sophomore student and respondent, a freshman.[3]

Sharing similar angst towards their families, the two understood one another and developed a certain degree of closeness towards each other. In March 1996, or around three months after their first meeting, Rowena asked Edward that they elope. At first, he refused, bickering that he was young and jobless. Her persistence, however, made him relent. Thus, they left Manila and sailed to Cebu that month; he, providing their travel money and she, purchasing the boat ticket.[4]

However, Edward's ₱80,000.00 lasted for only a month. Their pension house accommodation and daily sustenance fast depleted it. And they could not find a job. In April 1996, they decided to go back to Manila. Rowena proceeded to her uncle's house and Edward to his parents' home. As his family was abroad, and Rowena kept on telephoning him, threatening him

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[1] Penned by Associate Justice Remedios Salazar-Fernando, with Associate Justices Delilah Vidallon-Magtolis and Edgardo F. Sundiam, concurring; *rollo*, pp. 23-36.

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

[3] TSN, September 12, 2000, p. 2.

[4] *Id.*

that she would commit suicide, Edward agreed to stay with Rowena at her uncle's place.[5]

On April 23, 1996, Rowena's uncle brought the two to a court to get married. He was then 25 years old, and she, 20.[6] The two then continued to stay at her uncle's place where Edward was treated like a prisoner—he was not allowed to go out unaccompanied. Her uncle also showed Edward his guns and warned the latter not to leave Rowena.[7] At one point, Edward was able to call home and talk to his brother who suggested that they should stay at their parents' home and live with them. Edward relayed this to Rowena who, however, suggested that he should get his inheritance so that they could live on their own. Edward talked to his father about this, but the patriarch got mad, told Edward that he would be disinherited, and insisted that Edward must go home.[8]

After a month, Edward escaped from the house of Rowena's uncle, and stayed with his parents. His family then hid him from Rowena and her family whenever they telephoned to ask for him.[9]

In June 1996, Edward was able to talk to Rowena. Unmoved by his persistence that they should live with his parents, she said that it was better for them to live separate lives. They then parted ways.[10]

After almost four years, or on January 18, 2000, Edward filed a petition before the Regional Trial Court (RTC) of Quezon City, Branch 106, for the annulment of his marriage to Rowena on the basis of the latter's psychological incapacity. This was docketed as Civil Case No. Q-00-39720.[11]

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[5] *Id.* at 2-3.

[6] Records, p. 8.

[7] TSN, September 12, 2000, pp. 3-4.

[8] *Id.*

[9] *Id.*

[10] *Id.* at 4.

[11] Records, p. 1.

As Rowena did not file an answer, the trial court, on July 11, 2000, ordered the Office of the City Prosecutor (OCP) of Quezon City to investigate whether there was collusion between the parties.[12] In the meantime, on July 27, 2000, the Office of the Solicitor General (OSG) entered its appearance and deputized the OCP to appear on its behalf and assist it in the scheduled hearings.[13]

On August 23, 2000, the OCP submitted an investigation report stating that it could not determine if there was collusion between the parties; thus, it recommended trial on the merits.[14]

The clinical psychologist who examined petitioner found both parties psychologically incapacitated, and made the following findings and conclusions:

BACKGROUND DATA & BRIEF MARITAL HISTORY:

EDWARD KENNETH NGO TE is a [29-year-old] Filipino male adult born and baptized Born Again Christian at Manila. He finished two years in college at AMA Computer College last 1994 and is currently unemployed. He is married to and separated from ROWENA GUTIERREZ YU-TE. He presented himself at my office for a psychological evaluation in relation to his petition for Nullification of Marriage against the latter by the grounds of psychological incapacity. He is now residing at 181 P. Tuazon Street, Quezon City.

Petitioner got himself three siblings who are now in business and one deceased sister. Both his parents are also in the business world by whom he [considers] as generous, hospitable, and patient. This said virtues are said to be handed to each of the family member. He generally considers himself to be quiet and simple. He clearly remembers himself to be afraid of meeting people. After 1994, he tried his luck in being a Sales Executive of Mansfield International Incorporated. And because of job incompetence, as well as being quiet and loner, he did not stay long in the job until 1996. His interest lie[s] on becoming a full servant of God by being a priest or a pastor. He [is] said to isolate himself from his friends even during his childhood days as he only loves to read the Bible and hear its message.

[12] *Id.* at 24.

[13] *Id.* at 36-37.

[14] *Id.* at 39.

Respondent is said to come from a fine family despite having a lazy father and a disobedient wife. She is said to have not finish[ed] her collegiate degree and shared intimate sexual moments with her boyfriend prior to that with petitioner.

In January of 1996, respondent showed her kindness to petitioner and this became the foundation of their intimate relationship. After a month of dating, petitioner mentioned to respondent that he is having problems with his family. Respondent surprisingly retorted that she also hates her family and that she actually wanted to get out of their lives. From that [time on], respondent had insisted to petitioner that they should elope and live together. Petitioner hesitated because he is not prepared as they are both young and inexperienced, but she insisted that they would somehow manage because petitioner is rich. In the last week of March 1996, respondent seriously brought the idea of eloping and she already bought tickets for the boat going to Cebu. Petitioner reluctantly agreed to the idea and so they eloped to Cebu. The parties are supposed to stay at the house of a friend of respondent, but they were not able to locate her, so petitioner was compelled to rent an apartment. The parties tried to look for a job but could not find any so it was suggested by respondent that they should go back and seek help from petitioner's parents. When the parties arrived at the house of petitioner, all of his whole family was all out of the country so respondent decided to go back to her home for the meantime while petitioner stayed behind at their home. After a few days of separation, respondent called petitioner by phone and said she wanted to talk to him. Petitioner responded immediately and when he arrived at their house, respondent confronted petitioner as to why he appeared to be cold, respondent acted irrationally and even threatened to commit suicide. Petitioner got scared so he went home again. Respondent would call by phone every now and then and became angry as petitioner does not know what to do. Respondent went to the extent of threatening to file a case against petitioner and scandalize his family in the newspaper. Petitioner asked her how he would be able to make amends and at this point in time[,] respondent brought the idea of marriage. Petitioner[,] out of frustration in life[,] agreed to her to pacify her. And so on April 23, 1996, respondent's uncle brought the parties to Valenzuela[,] and on that very same day[,] petitioner was made to sign the Marriage Contract before the Judge. Petitioner actually never applied for any Marriage License.

Respondent decided that they should stay first at their house until after arrival of the parents of petitioner. But when the parents of

petitioner arrived, respondent refused to allow petitioner to go home. Petitioner was threatened in so many ways with her uncle showing to him many guns. Respondent even threatened that if he should persist in going home, they will commission their military friends to harm his family. Respondent even made petitioner sign a declaration that if he should perish, the authorities should look for him at his parents[']and relatives[']houses. Sometime in June of 1996, petitioner was able to escape and he went home. He told his parents about his predicament and they forgave him and supported him by giving him military escort. Petitioner, however, did not inform them that he signed a marriage contract with respondent. When they knew about it[,] petitioner was referred for counseling. Petitioner[,] after the counseling[,] tried to contact respondent. Petitioner offered her to live instead to[sic] the home of petitioner's parents while they are still studying. Respondent refused the idea and claimed that she would only live with him if they will have a separate home of their own and be away from his parents. She also intimated to petitioner that he should already get his share of whatever he would inherit from his parents so they can start a new life. Respondent demanded these not knowing [that] the petitioner already settled his differences with his own family. When respondent refused to live with petitioner where he chose for them to stay, petitioner decided to tell her to stop harassing the home of his parents. He told her already that he was disinherited and since he also does not have a job, he would not be able to support her. After knowing that petitioner does not have any money anymore, respondent stopped tormenting petitioner and informed petitioner that they should live separate lives.

The said relationship between Edward and Rowena is said to be undoubtedly in the wreck and weakly-founded. The break-up was caused by both parties[']unreadiness to commitment and their young age. He was still in the state of finding his fate and fighting boredom, while she was still egocentrically involved with herself.

TESTS ADMINISTERED:

Revised Beta Examination
Bender Visual Motor Gestalt Test
Draw A Person Test
Rorschach Psychodiagnostic Test
Sach's Sentence Completion Test
M M P I

TEST RESULTS & EVALUATION:

Both petitioner and respondent are dubbed to be emotionally immature and recklessly impulsive upon swearing to their marital vows as each of them was motivated by different notions on marriage.

Edward Kenneth Ngo Te, the petitioner in this case[,] is said to be still unsure and unready so as to commit himself to marriage. He is still founded to be on the search of what he wants in life. He is absconded as an introvert as he is not really sociable and displays a lack of interest in social interactions and mingling with other individuals. He is seen too akin to this kind of lifestyle that he finds it boring and uninteresting to commit himself to a relationship especially to that of respondent, as aggravated by her dangerously aggressive moves. As he is more of the reserved and timid type of person, as he prefer to be religiously attached and spend a solemn time alone.

ROWENA GUTIERREZ YU-TE, the respondent, is said to be of the aggressive-rebellious type of woman. She is seen to be somewhat exploitative in her [plight] for a life of wealth and glamour. She is seen to take move on marriage as she thought that her marriage with petitioner will bring her good fortune because he is part of a rich family. In order to have her dreams realized, she used force and threats knowing that [her] husband is somehow weak-willed. Upon the realization that there is really no chance for wealth, she gladly finds her way out of the relationship.

REMARKS:

Before going to marriage, one should really get to know himself and marry himself before submitting to marital vows. Marriage should not be taken out of intuition as it is profoundly a serious institution solemnized by religious and law. In the case presented by petitioner and respondent[,] (sic) it is evidently clear that both parties have impulsively taken marriage for granted as they are still unaware of their own selves. He is extremely introvert to the point of weakening their relationship by his weak behavioral disposition. She, on the other hand[,] is extremely exploitative and aggressive so as to be unlawful, insincere and undoubtedly uncaring in her strides toward convenience. It is apparent that she is suffering the grave, severe, and incurable presence of Narcissistic and Antisocial Personality Disorder that started since childhood and only manifested during

marriage. Both parties display psychological incapacities that made marriage a big mistake for them to take.[15]

The trial court, on July 30, 2001, rendered its Decision[16] declaring the marriage of the parties null and void on the ground that both parties were psychologically incapacitated to comply with the essential marital obligations.[17] The Republic, represented by the OSG, timely filed its notice of appeal.[18]

On review, the appellate court, in the assailed August 5, 2003 Decision[19] in CA-G.R. CV No. 71867, reversed and set aside the trial court's ruling.[20] It ruled that petitioner failed to prove the psychological incapacity of respondent. The clinical psychologist did not personally examine respondent, and relied only on the information provided by petitioner. Further, the psychological incapacity was not shown to be attended by gravity, juridical antecedence and incurability. In sum, the evidence adduced fell short of the requirements stated in *Republic v.*

[15] *Id.* at 48-55.

[16] *Id.* at 61-66.

[17] The dispositive portion of the RTC's July 30, 2001 Decision reads:

WHEREFORE, judgment is hereby rendered declaring the marriage between plaintiff EDWARD KENNETH NGO TE and defendant ROWENA ONG GUTIERREZ UY-TE, officiated by Honorable Judge Evelyn Corpus-Cabochan, of the Metropolitan Trial Court, Branch 82, Valenzuela, Metro Manila, on April 23, 1996, NULL AND VOID, *ab initio*, on the ground of the couple's psychological incapacity under Article 36 of the Family Code; and dissolving their property regime in accordance with law, if there is any.

Let copy of this Decision be furnished the City Civil Registry of Valenzuela City where the marriage took place and City Civil Registry of Quezon City where this decision originated for proper recording.

SO ORDERED. (*Id.* at 66.)

[18] Records, pp. 67-68.

[19] *Supra* note 1.

[20] The dispositive portion of the CA's August 5, 2003 Decision reads:

WHEREFORE, foregoing premises considered, the assailed decision dated July 30, 2001 of the Regional Trial Court, National Capital Judicial Region, Branch 106, Quezon City in Civil Case No. Q-00-39720, is hereby REVERSED and SET ASIDE and a new one is entered declaring the marriage between

Court of Appeals and Molina[21] needed for the declaration of nullity of the marriage under Article 36 of the Family Code.[22] The CA faulted the lower court for rendering the decision without the required certification of the OSG briefly stating therein the OSG's reasons for its agreement with or opposition to, as the case may be, the petition.[23] The CA later denied petitioner's motion for reconsideration in the likewise assailed January 19, 2004 Resolution.[24]

Dissatisfied, petitioner filed before this Court the instant petition for review on *certiorari*. On June 15, 2005, the Court gave due course to the petition and required the parties to submit their respective memoranda.[25]

In his memorandum,[26] petitioner argues that the CA erred in substituting its own judgment for that of the trial court. He posits that the RTC declared the marriage void, not only because of respondent's psychological incapacity, but rather due to both parties' psychological incapacity. Petitioner also points out that there is no requirement for the psychologist to personally examine respondent. Further, he avers that the OSG is bound by the actions of the OCP because the latter represented it during the trial; and it had been furnished copies of all the pleadings, the trial court orders and notices.[27]

For its part, the OSG contends in its memorandum,[28] that the annulment petition filed before the RTC contains no statement

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petitioner-appellee Edward Kenneth Ngo Te and respondent Rowena Ong Gutierrez Yu-Te VALID and SUBSISTING. The petition is ordered DISMISSED.

SO ORDERED. (*Rollo*, p. 35.)

[21] 335 Phil. 664 (1997).

[22] Executive Order No. 209, entitled "The Family Code of the Philippines," enacted on July 6, 1987.

[23] *Rollo*, pp. 28-35.

[24] *Supra* note 2.

[25] *Rollo*, p. 79.

[26] *Id.* at 95-104.

[27] *Id.* at 100-102.

[28] *Id.* at 82-93.

of the essential marital obligations that the parties failed to comply with. The root cause of the psychological incapacity was likewise not alleged in the petition; neither was it medically or clinically identified. The purported incapacity of both parties was not shown to be medically or clinically permanent or incurable. And the clinical psychologist did not personally examine the respondent. Thus, the OSG concludes that the requirements in *Molina*[29] were not satisfied.[30]

The Court now resolves the singular issue of whether, based on Article 36 of the Family Code, the marriage between the parties is null and void.[31]

I.

We begin by examining the provision, tracing its origin, and charting the development of jurisprudence interpreting it.

Article 36 of the Family Code[32] provides:

> Article 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

As borne out by the deliberations of the Civil Code Revision Committee that drafted the Family Code, Article 36 was based on grounds available in the Canon Law. Thus, Justice Flerida Ruth P. Romero elucidated in her separate opinion in *Santos v. Court of Appeals:*[33]

> However, as a member of both the Family Law Revision Committee of the Integrated Bar of the Philippines and the Civil Code Revision Commission of the UP Law Center, I wish to add some observations. The letter dated April 15, 1985 of then Judge Alicia V. Sempio-Diy written in behalf of the Family Law and Civil Code Revision Committee

[29] *Supra* note 21.

[30] *Rollo*, pp. 86-92.

[31] *Supra* note 22.

[32] *Id*.

[33] G.R. No. 112019, January 4, 1995, 240 SCRA 20.

to then Assemblywoman Mercedes Cojuangco-Teodoro traced the background of the inclusion of the present Article 36 in the Family Code.

> "During its early meetings, the Family Law Committee had thought of including a chapter on absolute divorce in the draft of a new Family Code (Book I of the Civil Code) that it had been tasked by the IBP and the UP Law Center to prepare. In fact, some members of the Committee were in favor of a no-fault divorce between the spouses after a number of years of separation, legal or *de facto*. Justice J.B.L. Reyes was then requested to prepare a proposal for an action for dissolution of marriage and the effects thereof based on two grounds: (a) five continuous years of separation between the spouses, with or without a judicial decree of legal separation, and (b) whenever a married person would have obtained a decree of absolute divorce in another country. Actually, such a proposal is one for absolute divorce but called by another name. Later, even the Civil Code Revision Committee took time to discuss the proposal of Justice Reyes on this matter.
>
> Subsequently, however, when the Civil Code Revision Committee and Family Law Committee started holding joint meetings on the preparation of the draft of the New Family Code, they agreed and formulated the definition of marriage as —
>
> > 'a special contract of permanent partnership between a man and a woman entered into in accordance with law for the establishment of conjugal and family life. It is an inviolable social institution whose nature, consequences, and incidents are governed by law and not subject to stipulation, except that marriage settlements may fix the property relations during the marriage within the limits provided by law.'
>
> With the above definition, and considering the Christian traditional concept of marriage of the Filipino people as a permanent, inviolable, indissoluble social institution upon which the family and society are founded, and also realizing the strong opposition that any provision on absolute divorce would encounter from the Catholic Church and the Catholic sector of our citizenry to whom the great majority of our people belong, *the two Committees in their joint meetings did not pursue*

the idea of absolute divorce and, instead, opted for an action for judicial declaration of invalidity of marriage based on grounds available in the Canon Law. It was thought that such an action would not only be an acceptable alternative to divorce but would also solve the nagging problem of church annulments of marriages on grounds not recognized by the civil law of the State. Justice Reyes was, thus, requested to again prepare a draft of provisions on such action for celebration of invalidity of marriage. Still later, to avoid the overlapping of provisions on void marriages as found in the present Civil Code and those proposed by Justice Reyes on judicial declaration of invalidity of marriage on grounds similar to the Canon Law, the two Committees now working as a Joint Committee in the preparation of a New Family Code decided to consolidate the present provisions on void marriages with the proposals of Justice Reyes. The result was the inclusion of an additional kind of void marriage in the enumeration of void marriages in the present Civil Code, *to wit*:

> '(7) those marriages contracted by any party who, at the time of the celebration, was wanting in the sufficient use of reason or judgment to understand the essential nature of marriage or was psychologically or mentally incapacitated to discharge the essential marital obligations, even if such lack or incapacity is made manifest after the celebration.

as well as the following implementing provisions:

> 'Art. 32. The absolute nullity of a marriage may be invoked or pleaded only on the basis of a final judgment declaring the marriage void, without prejudice to the provision of Article 34.'
>
> 'Art. 33. The action or defense for the declaration of the absolute nullity of a marriage shall not prescribe.'

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It is believed that many hopelessly broken marriages in our country today may already be dissolved or annulled on the grounds proposed by the Joint Committee on declaration of nullity as well as annulment of marriages, thus rendering an absolute divorce law unnecessary. In fact, during a conference with Father Gerald Healy of the Ateneo University, as well as another meeting with Archbishop Oscar Cruz

of the Archdiocese of Pampanga, the Joint Committee was informed that since Vatican II, the Catholic Church has been declaring marriages null and void on the ground of "lack of due discretion" for causes that, in other jurisdictions, would be clear grounds for divorce, like teen-age or premature marriages; marriage to a man who, because of some personality disorder or disturbance, cannot support a family; the foolish or ridiculous choice of a spouse by an otherwise perfectly normal person; marriage to a woman who refuses to cohabit with her husband or who refuses to have children. Bishop Cruz also informed the Committee that they have found out in tribunal work that a lot of machismo among husbands are manifestations of their sociopathic personality anomaly, like inflicting physical violence upon their wives, constitutional indolence or laziness, drug dependence or addiction, and psychosexual anomaly.[34]

In her separate opinion in *Molina*,[35] she expounded:

At the Committee meeting of July 26, 1986, the draft provision read:

"(7) Those marriages contracted by any party who, at the time of the celebration, was wanting in the sufficient use of reason or judgment to understand the essential nature of marriage or was psychologically or mentally incapacitated to discharge the essential marital obligations, even if such lack of incapacity is made manifest after the celebration."

The twists and turns which the ensuing discussion took finally produced the following revised provision even before the session was over:

"(7) That contracted by any party who, at the time of the celebration, was psychologically incapacitated to discharge the essential marital obligations, even if such lack or incapacity becomes manifest after the celebration."

Noticeably, the immediately preceding formulation above has dropped any reference to "wanting in the sufficient use of reason or judgment to understand the essential nature of marriage" and to "mentally incapacitated." It was explained that these phrases refer to "defects in the mental faculties vitiating consent, which is not the idea . . . but lack of appreciation of one's marital obligation."

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[34] *Id.* at 38-41. (Italics supplied.)

[35] *Supra* note 21.

There being a defect in consent, "it is clear that it should be a ground for voidable marriage because there is the appearance of consent and it is capable of convalidation for the simple reason that there are lucid intervals and there are cases when the insanity is curable . . . Psychological incapacity does not refer to mental faculties and has nothing to do with consent; it refers to obligations attendant to marriage."

My own position as a member of the Committee then was that psychological incapacity is, in a sense, insanity of a lesser degree.

As to the proposal of Justice Caguioa to use the term "psychological or mental impotence," Archbishop Oscar Cruz opined in the earlier February 9, 1984 session that this term "is an invention of some churchmen who are moralists but not canonists, that is why it is considered a weak phrase." He said that the Code of Canon Law would rather express it as "psychological or mental incapacity to discharge . . ." Justice Ricardo C. Puno opined that sometimes a person may be psychologically impotent with one but not with another.

One of the guidelines enumerated in the majority opinion for the interpretation and application of Art. 36 is: "Such incapacity must also be shown to be medically or clinically permanent or incurable. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex."

The Committee, through Prof. Araceli T. Barrera, considered the inclusion of the phrase "and is incurable" but Prof. Esteban B. Bautista commented that this would give rise to the question of how they will determine curability and Justice Caguioa agreed that it would be more problematic. Yet, the possibility that one may be cured after the psychological incapacity becomes manifest after the marriage was not ruled out by Justice Puno and Justice Alice Sempio-Diy. Justice Caguioa suggested that the remedy was to allow the afflicted spouse to remarry.

For clarity, the Committee classified the bases for determining void marriages, *viz*.:

1. lack of one or more of the essential requisites of marriage as contract;

2. reasons of public policy;

3. special cases and special situations.

The ground of psychological incapacity was subsumed under "special cases and special situations," hence, its special treatment in Art. 36 in the Family Code as finally enacted.

Nowhere in the Civil Code provisions on Marriage is there a ground for avoiding or annulling marriages that even comes close to being psychological in nature.

Where consent is vitiated due to circumstances existing at the time of the marriage, such marriage which stands valid until annulled is capable of ratification or convalidation.

On the other hand, for reasons of public policy or lack of essential requisites, some marriages are void from the beginning.

With the revision of Book I of the Civil Code, particularly the provisions on Marriage, the drafters, now open to fresh winds of change in keeping with the more permissive mores and practices of the time, took a leaf from the relatively liberal provisions of Canon Law.

Canon 1095 which states, *inter alia*, that the following persons are incapable of contracting marriage: "3. (those) who, because of causes of a psychological nature, are unable to assume the essential obligations of marriage" provided the model for what is now Art. 36 of the Family Code: "A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization."

It bears stressing that unlike in Civil Law, Canon Law recognizes only two types of marriages with respect to their validity: valid and void. Civil Law, however, recognizes an intermediate state, the voidable or annullable marriages. When the Ecclesiastical Tribunal "annuls" a marriage, it actually declares the marriage null and void, *i.e.*, it never really existed in the first place, for a valid sacramental marriage can never be dissolved. Hence, a properly performed and consummated marriage between two living Roman Catholics can only be nullified by the formal annulment process which entails a full tribunal procedure with a Court selection and a formal hearing.

Such so-called church "annulments" are not recognized by Civil Law as severing the marriage ties as to capacitate the parties to enter

lawfully into another marriage. The grounds for nullifying civil marriage, not being congruent with those laid down by Canon Law, the former being more strict, quite a number of married couples have found themselves in limbo—freed from the marriage bonds in the eyes of the Catholic Church but yet unable to contract a valid civil marriage under state laws. Heedless of civil law sanctions, some persons contract new marriages or enter into live-in relationships.

It was precisely to provide a satisfactory solution to such anomalous situations that the Civil Law Revision Committee decided to engraft the Canon Law concept of psychological incapacity into the Family Code—and classified the same as a ground for declaring marriages void *ab initio* or totally inexistent from the beginning.

A brief historical note on the Old Canon Law (1917). This Old Code, while it did not provide directly for psychological incapacity, in effect, recognized the same indirectly from a combination of three old canons: "Canon #1081 required persons to be 'capable according to law' in order to give valid consent; Canon #1082 required that persons 'be at least not ignorant' of the major elements required in marriage; and Canon #1087 (the force and fear category) required that internal and external freedom be present in order for consent to be valid. This line of interpretation produced two distinct but related grounds for annulment called '*lack of due discretion*' and '*lack of due competence*.' Lack of due discretion means that *the person did not have the ability to give valid consent at the time of the wedding* and, therefore, the union is invalid. Lack of due competence means that the person was *incapable of carrying out the obligations of the promise he or she made during the wedding ceremony*."

Favorable annulment decisions by the Roman Rota in the 1950s and 1960s involving *sexual disorders such as homosexuality and nymphomania laid the foundation for a broader approach to the kind of proof necessary for psychological grounds for annulment*. The Rota had reasoned for the first time in several cases that the capacity to give valid consent at the time of marriage was probably not present in persons who had displayed such problems shortly after the marriage. The nature of this change was nothing short of revolutionary. Once the Rota itself had demonstrated a cautious willingness to use this kind of hindsight, the way was paved for what came after 1970. *Diocesan Tribunals began to accept proof of serious psychological problems that manifested themselves shortly*

after the ceremony as proof of an inability to give valid consent at the time of the ceremony.[36]

Interestingly, the Committee did not give any examples of psychological incapacity for fear that by so doing, it might limit the applicability of the provision under the principle of *ejusdem generis*. The Committee desired that the courts should interpret the provision on a case-to-case basis; guided by experience, the findings of experts and researchers in psychological disciplines, and by decisions of church tribunals which, although not binding on the civil courts, may be given persuasive effect since the provision itself was taken from the Canon Law.[37] The law is then so designed as to allow some resiliency in its application.[38]

Yet, as held in *Santos*,[39] the phrase "psychological incapacity" is not meant to comprehend all possible cases of psychoses. It refers to no less than a mental (not physical) incapacity that causes a party to be truly noncognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage which, as expressed by Article 68[40] of the Family Code, include their mutual obligations to live together, observe love, respect and fidelity; and render help and support. The intendment of the law has been to confine it to the most serious of cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.[41] This interpretation is, in fact, consistent with that in Canon Law, thus:

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[36] *Republic v. Court of Appeals and Molina*, *supra* note 21, at 681-685.

[37] *Salita v. Magtolis*, G.R. No. 106429, June 13, 1994, 233 SCRA 100, 107-108, quoting *Sempio-Dy*, Handbook on the Family Code of the Philippines, 1998, p. 37.

[38] *Santos v. Court of Appeals*, *supra* note 33, at 31.

[39] *Id*.

[40] Article 68 of the Family Code provides in full:

Art. 68. The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.

[41] *Santos v. Court of Appeals*, *supra* note 33, at 34.

3.5.3.1. The Meaning of Incapacity to Assume. A sharp conceptual distinction must be made between the second and third paragraphs of C.1095, namely between the grave lack of discretionary judgment and the incapacity to assume the essential obligation. Mario Pompedda, a rotal judge, explains the difference by an ordinary, if somewhat banal, example. Jose wishes to sell a house to Carmela, and on the assumption that they are capable according to positive law to enter such contract, there remains the object of the contract, *viz*, the house. The house is located in a different locality, and prior to the conclusion of the contract, the house was gutted down by fire unbeknown to both of them. This is the hypothesis contemplated by the third paragraph of the canon. The third paragraph does not deal with the psychological process of giving consent because it has been established *a priori* that both have such a capacity to give consent, and they both know well the object of their consent [the house and its particulars]. Rather, C.1095.3 deals with the object of the consent/contract which does not exist. The contract is invalid because it lacks its formal object. The consent as a psychological act is both valid and sufficient. The psychological act, however, is directed towards an object which is not available. Urbano Navarrete summarizes this distinction: the third paragraph deals not with the positing of consent but with positing the object of consent. The person may be capable of positing a free act of consent, but he is not capable of fulfilling the responsibilities he assumes as a result of the consent he elicits.

Since the address of Pius XII to the auditors of the Roman Rota in 1941 regarding psychic incapacity with respect to marriage arising from pathological conditions, there has been an increasing trend to understand as ground of nullity different from others, the incapacity to assume the essential obligations of marriage, especially the incapacity which arises from sexual anomalies. Nymphomania is a sample which ecclesiastical jurisprudence has studied under this rubric.

The problem as treated can be summarized, thus: do sexual anomalies always and in every case imply a grave psychopathological condition which affects the higher faculties of intellect, discernment, and freedom; or are there sexual anomalies that are purely so – that is to say, they arise from certain physiological dysfunction of the hormonal system, and they affect the sexual condition, leaving intact the higher faculties however, so that these persons are still capable of free human acts. The evidence from the empirical sciences is

abundant that there are certain anomalies of a sexual nature which may impel a person towards sexual activities which are not normal, either with respect to its frequency [nymphomania, satyriasis] or to the nature of the activity itself [sadism, masochism, homosexuality]. However, these anomalies notwithstanding, it is altogether possible that the higher faculties remain intact such that a person so afflicted continues to have an adequate understanding of what marriage is and of the gravity of its responsibilities. In fact, he can choose marriage freely. The question though is whether such a person can assume those responsibilities which he cannot fulfill, although he may be able to understand them. In this latter hypothesis, the incapacity to assume the essential obligations of marriage issues from the incapacity to posit the object of consent, rather than the incapacity to posit consent itself.

Ecclesiastical jurisprudence has been hesitant, if not actually confused, in this regard. The initial steps taken by church courts were not too clear whether this incapacity is incapacity to posit consent or incapacity to posit the object of consent. A case *c. Pinna*, for example, arrives at the conclusion that the intellect, under such an irresistible impulse, is prevented from properly deliberating and its judgment lacks freedom. This line of reasoning supposes that the intellect, at the moment of consent, is under the influence of this irresistible compulsion, with the inevitable conclusion that such a decision, made as it was under these circumstances, lacks the necessary freedom. It would be incontrovertible that a decision made under duress, such as this irresistible impulse, would not be a free act. But this is precisely the question: is it, as a matter of fact, true that the intellect is always and continuously under such an irresistible compulsion? It would seem entirely possible, and certainly more reasonable, to think that there are certain cases in which one who is sexually hyperaesthetic can understand perfectly and evaluate quite maturely what marriage is and what it implies; his consent would be juridically ineffective for this one reason that he cannot posit the object of consent, the exclusive *jus in corpus* to be exercised in a normal way and with usually regularity. It would seem more correct to say that the consent may indeed be free, but is juridically ineffective because the party is consenting to an object that he cannot deliver. The house he is selling was gutted down by fire.

3.5.3.2. Incapacity as an Autonomous Ground. Sabattani seems to have seen his way more clearly through this tangled mess, proposing as he did a clear conceptual distinction between the inability to give

consent on the one hand, and the inability to fulfill the object of consent, on the other. It is his opinion that nymphomaniacs usually understand the meaning of marriage, and they are usually able to evaluate its implications. They would have no difficulty with positing a free and intelligent consent. However, such persons, capable as they are of eliciting an intelligent and free consent, experience difficulty in another sphere: delivering the object of the consent. Anne, another rotal judge, had likewise treated the difference between the act of consenting and the act of positing the object of consent from the point of view of a person afflicted with nymphomania. According to him, such an affliction usually leaves the process of knowing and understanding and evaluating intact. What it affects is the object of consent: the delivering of the goods.

3.5.3.3 Incapacity as Incapacity to Posit the Object of Consent. From the selected rotal jurisprudence cited, *supra*, it is possible to see a certain progress towards a consensus doctrine that the incapacity to assume the essential obligations of marriage (that is to say, the formal object of consent) can coexist in the same person with the ability to make a free decision, an intelligent judgment, and a mature evaluation and weighing of things. The decision *coram Sabattani* concerning a nymphomaniac affirmed that such a spouse can have difficulty not only with regard to the moment of consent but also, and especially, with regard to the matrimonium *in facto esse*. The decision concludes that a person in such a condition is incapable of assuming the conjugal obligation of fidelity, although she may have no difficulty in understanding what the obligations of marriage are, nor in the weighing and evaluating of those same obligations.

Prior to the promulgation of the Code of Canon Law in 1983, it was not unusual to refer to this ground as moral impotence or psychic impotence, or similar expressions to express a specific incapacity rooted in some anomalies and disorders in the personality. These anomalies leave intact the faculties of the will and the intellect. It is qualified as moral or psychic, obviously to distinguish it from the impotence that constitutes the impediment dealt with by C.1084. Nonetheless, the anomalies render the subject incapable of binding himself in a valid matrimonial pact, to the extent that the anomaly renders that person incapable of fulfilling the essential obligations. According to the principle affirmed by the long tradition of moral theology: *nemo ad impossibile tenetur*.

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3.5.3.5 Indications of Incapacity. There is incapacity when either or both of the contractants are not capable of initiating or maintaining this consortium. One immediately thinks of those cases where one of the parties is so self-centered [*e.g.*, a narcissistic personality] that he does not even know how to begin a union with the other, let alone how to maintain and sustain such a relationship. A second incapacity could be due to the fact that the spouses are incapable of beginning or maintaining a heterosexual consortium, which goes to the very substance of matrimony. Another incapacity could arise when a spouse is unable to concretize the good of himself or of the other party. The canon speaks, not of the *bonum partium,* but of the *bonum conjugum.* A spouse who is capable only of realizing or contributing to the good of the other party *qua persona* rather than *qua conjunx* would be deemed incapable of contracting marriage. Such would be the case of a person who may be quite capable of procuring the economic good and the financial security of the other, but not capable of realizing the *bonum conjugale* of the other. These are general strokes and this is not the place for detained and individual description.

A rotal decision *c. Pinto* resolved a petition where the concrete circumstances of the case concerns a person diagnosed to be suffering from serious sociopathy. He concluded that while the respondent may have understood, on the level of the intellect, the essential obligations of marriage, he was not capable of assuming them because of his "constitutional immorality."

Stankiewicz clarifies that the maturity and capacity of the person as regards the fulfillment of responsibilities is determined not only at the moment of decision but also and especially during the moment of execution of decision. And when this is applied to constitution of the marital consent, it means that the actual fulfillment of the essential obligations of marriage is a pertinent consideration that must be factored into the question of whether a person was in a position to assume the obligations of marriage in the first place. When one speaks of the inability of the party to assume and fulfill the obligations, one is not looking at *matrimonium in fieri*, but also and especially at *matrimonium in facto esse*. In [the] decision of 19 Dec. 1985, Stankiewicz collocated the incapacity of the respondent to assume the essential obligations of marriage in the psychic constitution of the person, precisely on the basis of his irresponsibility as regards money and his apathy as regards the rights of others that he had violated. Interpersonal relationships are invariably disturbed

in the presence of this personality disorder. A lack of empathy (inability to recognize and experience how others feel) is common. A sense of entitlement, unreasonable expectation, especially favorable treatment, is usually present. Likewise common is interpersonal exploitativeness, in which others are taken advantage of in order to achieve one's ends.

Authors have made listings of obligations considered as essential matrimonial obligations. One of them is the right to the *communio vitae*. This and their corresponding obligations are basically centered around the good of the spouses and of the children. Serious psychic anomalies, which do not have to be necessarily incurable, may give rise to the incapacity to assume any, or several, or even all of these rights. There are some cases in which interpersonal relationship is impossible. Some characteristic features of inability for interpersonal relationships in marriage include affective immaturity, narcissism, and antisocial traits.

Marriage and Homosexuality. Until 1967, it was not very clear under what rubric homosexuality was understood to be invalidating of marriage – that is to say, is homosexuality invalidating because of the inability to evaluate the responsibilities of marriage, or because of the inability to fulfill its obligations. Progressively, however, rotal jurisprudence began to understand it as incapacity to assume the obligations of marriage so that by 1978, Parisella was able to consider, with charity, homosexuality as an autonomous ground of nullity. This is to say that a person so afflicted is said to be unable to assume the essential obligations of marriage. In this same rotal decision, the object of matrimonial consent is understood to refer not only to the *jus in corpus* but also the *consortium totius vitae*. The third paragraph of C.1095 [incapacity to assume the essential obligations of marriage] certainly seems to be the more adequate juridical structure to account for the complex phenomenon that homosexuality is. The homosexual is not necessarily impotent because, except in very few exceptional cases, such a person is usually capable of full sexual relations with the spouse. Neither is it a mental infirmity, and a person so afflicted does not necessarily suffer from a grave lack of due discretion because this sexual anomaly does not by itself affect the critical, volitive, and intellectual faculties. Rather, the homosexual person is unable to assume the responsibilities of marriage because he is unable to fulfill this object of the matrimonial contract. In other words, the invalidity lies, not so much in the defect of consent, as in the defect of the object of consent.

3.5.3.6 Causes of Incapacity. A last point that needs to be addressed is the source of incapacity specified by the canon: causes of a psychological nature. Pompedda proffers the opinion that the clause is a reference to the personality of the contractant. In other words, there must be a reference to the psychic part of the person. It is only when there is something in the psyche or in the psychic constitution of the person which impedes his capacity that one can then affirm that the person is incapable according to the hypothesis contemplated by C.1095.3. A person is judged incapable in this juridical sense only to the extent that he is found to have something rooted in his psychic constitution which impedes the assumption of these obligations. A bad habit deeply engrained in one's consciousness would not seem to qualify to be a source of this invalidating incapacity. The difference being that there seems to be some freedom, however remote, in the development of the habit, while one accepts as given one's psychic constitution. It would seem then that the law insists that the source of the incapacity must be one which is not the fruit of some degree of freedom.[42]

Conscious of the law's intention that it is the courts, on a case-to-case basis, that should determine whether a party to a marriage is psychologically incapacitated, the Court, in sustaining the lower court's judgment of annulment in *Tuason v. Court of Appeals*,[43] ruled that the findings of the trial court are final and binding on the appellate courts.[44]

Again, upholding the trial court's findings and declaring that its decision was not a judgment on the pleadings, the Court, in *Tsoi v. Court of Appeals*,[45] explained that when private respondent testified under oath before the lower court and was cross-examined by the adverse party, she thereby presented evidence in the form of testimony. Importantly, the Court, aware of parallel decisions of Catholic marriage tribunals, ruled that the senseless and

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[42] Dacanay, *Canon Law on Marriage: Introductory Notes and Comments*, 2000 ed., pp. 110-119.

[43] 326 Phil. 169 (1996).

[44] *Id.* at 182.

[45] 334 Phil. 294, 300-304 (1997).

protracted refusal of one of the parties to fulfill the marital obligation of procreating children is equivalent to psychological incapacity.

The resiliency with which the concept should be applied and the case-to-case basis by which the provision should be interpreted, as so intended by its framers, had, somehow, been rendered ineffectual by the imposition of a set of strict standards in *Molina*,[46] thus:

> From their submissions and the Court's own deliberations, the following guidelines in the interpretation and application of Art. 36 of the Family Code are hereby handed down for the guidance of the bench and the bar:
>
> (1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Thus, our Constitution devotes an entire Article on the Family, recognizing it "as the foundation of the nation." It decrees marriage as legally "inviolable," thereby protecting it from dissolution at the whim of the parties. Both the family and marriage are to be "protected" by the state.
>
> The Family Code echoes this constitutional edict on marriage and the family and emphasizes their permanence, inviolability and solidarity.
>
> (2) The root cause of the psychological incapacity must be (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological—not physical, although its manifestations and/or symptoms may be physical. The evidence must convince the court that the parties, or one of them, was mentally or psychically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *ejusdem generis*, nevertheless such root cause must be identified as a psychological illness and its incapacitating

[46] *Supra* note 21.

nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists.

(3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage. The evidence must show that the illness was existing when the parties exchanged their "I do's." The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto.

(4) Such incapacity must also be shown to be medically or clinically permanent or incurable. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, such incapacity must be relevant to the assumption of marriage obligations, not necessarily to those not related to marriage, like the exercise of a profession or employment in a job. Hence, a pediatrician may be effective in diagnosing illnesses of children and prescribing medicine to cure them but may not be psychologically capacitated to procreate, bear and raise his/her own children as an essential obligation of marriage.

(5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, "mild characterological peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as root causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

(6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.

(7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. It is clear that Article 36 was taken by the Family Code Revision Committee from Canon 1095 of the New Code of Canon Law, which

became effective in 1983 and which provides:

"The following are incapable of contracting marriage: Those who are unable to assume the essential obligations of marriage due to causes of psychological nature."

Since the purpose of including such provision in our Family Code is to harmonize our civil laws with the religious faith of our people, it stands to reason that to achieve such harmonization, great persuasive weight should be given to decisions of such appellate tribunal. Ideally— subject to our law on evidence—what is decreed as canonically invalid should also be decreed civilly void.

This is one instance where, in view of the evident source and purpose of the Family Code provision, contemporaneous religious interpretation is to be given persuasive effect. Here, the State and the Church—while remaining independent, separate and apart from each other—shall walk together in synodal cadence towards the same goal of protecting and cherishing marriage and the family as the inviolable base of the nation.

(8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be, to the petition. The Solicitor General, along with the prosecuting attorney, shall submit to the court such certification within fifteen (15) days from the date the case is deemed submitted for resolution of the court. The Solicitor General shall discharge the equivalent function of the *defensor vinculi* contemplated under Canon 1095.[47]

Noteworthy is that in *Molina*, while the majority of the Court's membership concurred in the *ponencia* of then Associate Justice (later Chief Justice) Artemio V. Panganiban, three justices concurred "in the result" and another three—including, as aforesaid, Justice Romero—took pains to compose their individual separate opinions. Then Justice Teodoro R. Padilla even emphasized that "each case must be judged, not on the basis of *a priori* assumptions, predelictions or generalizations, but according to its own facts. In the field of psychological incapacity as a ground

[47] *Republic v. Court of Appeals and Molina, supra* note 21, at 676-680.

for annulment of marriage, it is trite to say that no case is on 'all fours' with another case. The trial judge must take pains in examining the factual milieu and the appellate court must, as much as possible, avoid substituting its own judgment for that of the trial court."[48]

Predictably, however, in resolving subsequent cases,[49] the Court has applied the aforesaid standards, without too much regard for the law's clear intention that **each case is to be treated differently,** as "courts should interpret the provision on a case-to-case basis; guided by experience, the findings of experts and researchers in psychological disciplines, and by decisions of church tribunals."

In hindsight, it may have been inappropriate for the Court to impose a rigid set of rules, as the one in *Molina*, in resolving all cases of psychological incapacity. Understandably, the Court was then alarmed by the deluge of petitions for the dissolution of marital bonds, and was sensitive to the OSG's exaggeration

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[48] *Id.* at 680.

[49] See *Republic of the Philippines v. Lynnette Cabantug-Baguio*, G.R. No. 171042, June 30, 2008; *Nilda V. Navales v. Reynaldo Navales*, G.R. No. 167523, June 27, 2008; *Lester Benjamin S. Halili v. Chona M. Santos-Halili, et al.*, G.R. No. 165424, April 16, 2008; *Bier v. Bier*, G.R. No. 173294, February 27, 2008, 547 SCRA 123; *Paras v. Paras*, G.R. No. 147824, August 2, 2007, 529 SCRA 81; *Navarro, Jr. v. Cecilio-Navarro*, G.R. No. 162049, April 13, 2007, 521 SCRA 121; *Republic v. Tanyag-San Jose*, G.R. No. 168328, February 28, 2007, 517 SCRA 123; *Zamora v. Court of Appeals*, G.R. No. 141917, February 7, 2007, 515 SCRA 19; *Perez-Ferraris v. Ferraris*, G.R. No. 162368, July 17, 2006, 495 SCRA 396; *Republic v. Cuison-Melgar*, G.R. No. 139676, March 31, 2006, 486 SCRA 177; *Antonio v. Reyes*, G.R. No. 155800, March 10, 2006, 484 SCRA 353; *Villalon v. Villalon*, G.R. No. 167206, November 18, 2005, 475 SCRA 572; *Republic v. Iyoy*, G.R. No. 152577, September 21, 2005, 470 SCRA 508; *Carating-Siayngco*, G.R. No. 158896, October 27, 2004, 441 SCRA 422; *Republic v. Quintero-Hamano*, G.R. No. 149498, May 20, 2004, 428 SCRA 735; *Ancheta v. Ancheta*, 468 Phil. 900 (2004); *Barcelona v. Court of Appeals*, 458 Phil. 626 (2003); *Choa v. Choa*, 441 Phil. 175 (2002); *Pesca v. Pesca*, 408 Phil. 713 (2001); *Republic v. Dagdag*, G.R. No. 109975, February 9, 2001, 351 SCRA 425; *Marcos v. Marcos*, 397 Phil. 840 (2000); *Hernandez v. Court of Appeals*, G.R. No. 126010, December 8, 1999, 320 SCRA 76.

of Article 36 as the "most liberal divorce procedure in the world."[50] The unintended consequences of *Molina*, however, has taken its toll on people who have to live with deviant behavior, moral insanity and sociopathic personality anomaly, which, like termites, consume little by little the very foundation of their families, our basic social institutions. Far from what was intended by the Court, *Molina* has become a strait-jacket, forcing all sizes to fit into and be bound by it. Wittingly or unwittingly, the Court, in conveniently applying *Molina*, has allowed diagnosed sociopaths, schizophrenics, nymphomaniacs, narcissists and the like, to continuously debase and pervert the sanctity of marriage. Ironically, the Roman Rota has annulled marriages on account of the personality disorders of the said individuals.[51]

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[50] See *Republic v. Court of Appeals* and *Molina, supra* note 21, at 668.

[51] Ng, Apruebo & Lepiten, *Legal and Clinical Bases of Psychological Incapacity*, 2006 ed., pp. 14-16, cites the following:

"*Canon 1095, 3* concerning psychological incapacity pointed out cases of various psychological disorders from the *Roman Rota* as enumerated below (Fr. Bacareza, 1999).

"***6.1. From the 1917 Code of the Second Vatican Council***

1. *Coram* Teodori in Italy on January 19, 1940 on *Nymphomania.*
2. *Coram* Heard on June 5, 1941 on *Nymphomania*.
3. *Coram* Heard in Quebec on January 30, 1954 on *Lethargic Encephalitis.*
4. *Coram* Mattioli in Quebec, Canada on November 6, 1956 on *General Paralysis.*
5. *Coram* Sabbatani in Naples, Italy on June 21, 1957 on *Nymphomania.*
6. *Coram* Mattioli in Rome on November 28, 1957 on *Schizophrenia*.
7. *Coram* Lefebvre on December 19, 1959 on *Nymphomania.*
8. *Coram* De Jorio on December 19, 1961 on *Schizophrenia.*

"***6.2 From the Second Vatican Council to the Promulgation of the 1983 Code***

9. *Coram Monsigneur Charles Lefebre on the following:*
   a. *Homosexuality,*
   b. *Hypersexuality-Nymphomania,*
   c. *Hypersexuality-Satyriasis,* and

The Court need not worry about the possible abuse of the remedy provided by Article 36, for there are ample safeguards

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d. *Affective Immaturity* and *Passive Dependent Personality.*

10. *Coram* Monsigneur Lucien Anne on February 25, 1969 on *Lesbianism.*
11. *Coram* De Jorio on April 30, 1969 on *Maturity of Judgment.*
12. *Coram* Jose Maria Pinto Gomez on the following:
    a. *Serious Paranoid Schizophrenia* (November 26, 1969),
    b. *Anti-Social Personality Disorder* (March 18, 1971),
    c. *Vaginismus* or Psychic impotence; *Frigidity* (July 15, 1977)
    d. *Neurasthenic Psychopath* (April 20, 1979)
    e. *Sexual Disorder* (December 3, 1982)
13. *Coram* Bruno on the following:
    a. *Hypersexuality-Nymphomania* (December 15, 1972)
    b. *Sexual Neurosis* (March 27, 1981)
    c. *Psychoneurosis* (December 17, 1982)
14. *Coram* Jose Maria Serrano Ruiz on the following:
    a. *Hypersexuality-Satyriasis* (April 5, 1973)
    b. *Lack of Interpersonal Integration* (April 15, 1973)
    c. *Immature Personality* (July 9, 1976)
    d. *Psychic Immaturity* (November 18, 1977)
    e. *Depressive Neurosis* (July 12, 1978)
    f. *Obsessive-Compulsive Personality* (May 23, 1980)
    g. *Frigidity* (July 28, 1981)
    h. *Affective Immaturity* (January 15, 1977)
15. *Coram* Ewers on the following:
    a. *Affective Immaturity* (January 15, 1977)
    b. *Sexual Neurosis* (April 4, 1981)
16. *Coram* Pariscella on the following:
    a. *Obsessive-Compulsive Neurosis* (February 23, 1978)
    b. *Homosexuality* (June 11, 1978)
17. *Coram* Fiore (May 27, 1981)
18. *Coram* Agustoni (March 23, 1982)

"***6.3. After the Promulgation of the 1983 Code of Canon Law***

against this contingency, among which is the intervention by the State, through the public prosecutor, to guard against collusion between the parties and/or fabrication of evidence.[52] The Court should rather be alarmed by the rising number of cases involving marital abuse, child abuse, domestic violence and incestuous rape.

In dissolving marital bonds on account of either party's psychological incapacity, the Court is not demolishing the foundation of families, but it is actually protecting the sanctity of marriage, because it refuses to allow a person afflicted with a psychological disorder, who cannot comply with or assume the essential marital obligations, from remaining in that sacred bond. It may be stressed that the infliction of physical violence, constitutional indolence or laziness, drug dependence or addiction, and psychosexual anomaly are manifestations of a sociopathic personality anomaly.[53] Let it be noted that in Article 36, there

19. *Rotal Case No. 41:*c. Colagiovanni on March 3, 1983 on Homosexuality
20. *Rotal Case No. 42: c.* Huot on July 18, 1983 on *Alcoholism* and *Immature Personality.*
21. *Rotal Case No. 43:* c. Giannechini on July 19, 1983 on *Homosexuality*.
22. *Rotal Case No. 45:* c. Colagiovanni on November 22, 1983 about an ex-priest who was a *"liar, cheat and swindler" (Anti-Social Personality)*
23. *Rotal Case No. 46:* c. Stankiewiez on November 24, 1983 on *Homosexuality*.
24. *Rotal Case No. 47: c.* Egan on March 29, 1984 on Hysterical Personality.
25. *Rotal Case No. 48: c*. Di Felice on June 9, 1984 on *Psychic Immaturity*.
26. *Rotal Case No. 49: c*. Pinto on May 30, 1986 on *Alcoholism* and *Gambling.*
27. *Rotal Case No. 50: c.* Giannecchini on December 20, 1988 on *Hypersexuality*-Nymphomania.

[52] Justice Padilla's Dissenting Opinion, *Santos v. Court of Appeals*, *supra* note 33, at 36-37; *Ancheta v. Ancheta, supra* note 49, at 917.

[53] *Supra* note 34.

is no marriage to speak of in the first place, as the same is void from the very beginning.[54] To indulge in imagery, the declaration of nullity under Article 36 will simply provide a decent burial to a stillborn marriage.

The prospect of a possible remarriage by the freed spouses should not pose too much of a concern for the Court. First and foremost, because it is none of its business. And second, because the judicial declaration of psychological incapacity operates as a warning or a lesson learned. On one hand, the normal spouse would have become vigilant, and never again marry a person with a personality disorder. On the other hand, a would-be spouse of the psychologically incapacitated runs the risk of the latter's disorder recurring in their marriage.

Lest it be misunderstood, we are not suggesting the abandonment of *Molina* in this case. We simply declare that, as aptly stated by Justice Dante O. Tinga in *Antonio v. Reyes*,[55] there is need to emphasize other perspectives as well which should govern the disposition of petitions for declaration of nullity under Article 36. At the risk of being redundant, we reiterate once more the principle that each case must be judged, not on the basis of *a priori* assumptions, predilections or generalizations but according to its own facts. And, to repeat for emphasis, courts should interpret the provision on a case-to-case basis; guided by experience, the findings of experts and researchers in psychological disciplines, and by decisions of church tribunals.

II.

We now examine the instant case.

The parties' whirlwind relationship lasted more or less six (6) months. They met in January 1996, eloped in March, exchanged marital vows in May, and parted ways in June. The

[54] See Article 36 of the Family Code; see also Justice Carpio's Dissenting Opinion, *Tenebro v. Court of Appeals,* G.R. No. 150758, February 18, 2004, 423 SCRA 272, 299.

[55] *Supra* note 49, at 370.

psychologist who provided expert testimony found both parties psychologically incapacitated. Petitioner's behavioral pattern falls under the classification of dependent personality disorder, and respondent's, that of the narcissistic and antisocial personality disorder.[56]

By the very nature of Article 36, courts, despite having the primary task and burden of decision-making, **must not discount but, instead, must consider as decisive evidence the expert opinion on the psychological and mental temperaments of the parties**.[57]

Justice Romero explained this in *Molina*, as follows:

> Furthermore, and equally significant, *the professional opinion of a psychological expert became increasingly important in such cases. Data about the person's entire life, both before and after the ceremony, were presented to these experts and they were asked to give professional opinions about a party's mental capacity at the time of the wedding*. These opinions were rarely challenged and tended to be accepted as decisive evidence of lack of valid consent.
>
> The Church took pains to point out that its new openness in this area did not amount to the addition of new grounds for annulment, but rather was an accommodation by the Church to the *advances made in psychology during the past decades. There was now the expertise to provide the all-important connecting link between a marriage breakdown and premarital causes*.
>
> During the 1970s, the Church broadened its whole idea of marriage from that of a legal contract to that of a covenant. The result of this was that *it could no longer be assumed* in annulment cases *that a person who could intellectually understand the concept of marriage*

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[56] Records, pp. 54-55; TSN, November 7, 2000, pp. 5-6.

[57] Archbishop Oscar V. Cruz, D.D., of the Archdiocese of Lingayen-Dagupan, explains in *Marriage Tribunal Ministry*, 1992 ed., that "[s]tandard practice shows the marked advisability of Expert intervention in Marriage Cases accused of nullity on the ground of defective matrimonial consent on account of natural incapacity by reason of any factor causative of lack of sufficient use of reason, grave lack of due discretion and inability to assume essential obligations—although the law categorically mandates said intervention only in the case of impotence and downright mental disorder x x x." (p. 106).

could necessarily give valid consent to marry. The ability to both grasp and assume the real obligations of a mature, lifelong commitment are now considered a necessary prerequisite to valid matrimonial consent.

Rotal decisions continued applying the concept of incipient psychological incapacity, "not only to sexual anomalies but to all kinds of personality disorders that incapacitate a spouse or both spouses from assuming or carrying out the essential obligations of marriage. For marriage . . . is not merely cohabitation or the right of the spouses to each other's body for heterosexual acts, but is, *in its totality the right to the community of the whole of life; i.e., the right to a developing lifelong relationship. Rotal decisions since 1973 have refined the meaning of psychological or psychic capacity for marriage* as presupposing the development of an adult personality; as *meaning the capacity of the spouses to give themselves to each other and to accept the other as a distinct person; that the spouses must be 'other oriented' since the obligations of marriage are rooted in a self-giving love; and that the spouses must have the capacity for interpersonal relationship* because marriage is more than just a physical reality but involves a true intertwining of personalities. *The fulfillment of the obligations of marriage depends, according to Church decisions, on the strength of this interpersonal relationship.* A serious incapacity for interpersonal sharing and support is held to impair the relationship and consequently, the ability to fulfill the essential marital obligations. *The marital capacity of one spouse is not considered in isolation but in reference to the fundamental relationship to the other spouse.*

Fr. Green, in an article in *Catholic Mind*, lists six elements necessary to the mature marital relationship:

> "The courts consider the following elements crucial to the marital commitment: (1) a permanent and faithful commitment to the marriage partner; (2) openness to children and partner; (3) stability; (4) emotional maturity; (5) financial responsibility; (6) an ability to cope with the ordinary stresses and strains of marriage, *etc*."

Fr. Green goes on to speak about some of the psychological conditions that might lead to the failure of a marriage:

> "At stake is a type of constitutional impairment precluding conjugal communion even with the best intentions of the parties.

> Among the psychic factors possibly giving rise to his or her inability to fulfill marital obligations are the following: (1) antisocial personality with its fundamental lack of loyalty to persons or sense of moral values; (2) hyperesthesia, where the individual has no real freedom of sexual choice; (3) the inadequate personality where personal responses consistently fall short of reasonable expectations.
>
> xxx xxx xxx
>
> The psychological grounds are the best approach for anyone who doubts whether he or she has a case for an annulment on any other terms. A situation that does not fit into any of the more traditional categories often fits very easily into the psychological category.
>
> As new as the psychological grounds are, experts are already detecting a shift in their use. Whereas originally the emphasis was on the parties' inability to exercise proper judgment at the time of the marriage (lack of due discretion), recent cases seem to be concentrating *on the parties' incapacity to assume or carry out their responsibilities and obligations as promised* (lack of due competence). An advantage to using the ground of lack of due competence is that at the time the marriage was entered into *civil divorce and breakup of the family almost always is proof of someone's failure to carry out marital responsibilities as promised* at the time the marriage was entered into."[58]

Hernandez v. Court of Appeals[59] emphasizes the importance of presenting expert testimony to establish the precise cause of a party's psychological incapacity, and to show that it existed at the inception of the marriage. And as *Marcos v. Marcos*[60] asserts, there is no requirement that the person to be declared psychologically incapacitated be personally examined by a

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[58] *Republic v. Court of Appeals and Molina*, *supra* note 21, at 685-688.

[59] *Supra* note 49, at 88; see also *Republic v. Quintero-Hemano*, *supra* note 49, at 743.

[60] *Supra* note 49, at 850; see also *Republic v. Quintero-Hemano*, *supra* note 49, at 742; *Republic v. Iyoy*, *supra* note 49, at 526; *Zamora v. Court of Appeals*, *supra* note 49, at 27; *Paras v. Paras*, *supra* note 49, at 96-97.

physician, if the totality of evidence presented is enough to sustain a finding of psychological incapacity.[61] Verily, the evidence must show a link, medical or the like, between the acts that manifest psychological incapacity and the psychological disorder itself.

This is not to mention, but we mention nevertheless for emphasis, that the presentation of expert proof presupposes a thorough and in-depth assessment of the parties by the psychologist or expert, for a conclusive diagnosis of a grave, severe and incurable presence of psychological incapacity.[62]

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[61] The Court, however, by saying—

> [T]he assessment of petitioner by Dr. Gauzon was based merely on descriptions communicated to him by respondent. The doctor never conducted any psychological examination of her. Neither did he ever claim to have done so. In fact, his Professional Opinion began with the statement "[I]f what Alfonso Choa said about his wife Leni is true, x x x"
>
> xxx xxx xxx
>
> Obviously, Dr. Guanzon had no personal knowledge of the facts he testified to, as these had merely been relayed to him by respondent. The former was working on pure suppositions and secondhand information fed to him by one side. Consequently, his testimony can be dismissed as unscientific and unreliable.
>
> Dr. Guanzon tried to save his credibility by asserting that he was able to assess petitioner's character, not only through the descriptions given by respondent, but also through the former's at least fifteen hours of study of the voluminous transcript of records of this case. Even if it took the good doctor a whole day or a whole week to examine the records of this case, we still find his assessment of petitioner's psychological state sorely insufficient and methodologically flawed.
>
> In *Choa v. Choa* (*Supra* note 49, at 190-191), in effect, required the personal examination of the person to be declared psychologically incapacitated.

[62] Psychologists of the *Psychological Extension Evaluation Research Services* (PEERS) enumerate the segments of the psychological evaluation report for psychological incapacity as follows:

- *Identifying Data:* Personal Information
- *Referral Question:* Data coming from informants and significant others (psychologists, psychiatrists, physicians, parents, brothers, sisters, relatives, friends, *etc*.).
- *Test Administered (Dates):* List by name

Parenthetically, the Court, at this point, finds it fitting to suggest the inclusion in the *Rule on Declaration of Absolute Nullity of*

- *Background Information:*

Current Life Situation: Presenting complaint (personal and marital conflict), history of problem, and consequences in client's life.

Life History Information: Childhood development, educational history, vocational history, medical history, sexual and marital history, personal goals.

- *Behavior Observations:* Description of client, relationship with examiner, and test related behaviors.
- *Interpretation of Test Results:*

Intellectual Functioning: Wechsler tests, Stanford-Binet, *etc*. Obtained IQ scores and specific strengths and deficits.

Cognitive Functioning: Rorschach, TAT, MMPI, *etc*. Perception of reality or perceptual efficiency, conceptual organization, psychological needs, conflicts, preoccupations, suspiciousness, hallucinations, or delusions.

Emotional Functioning (MMPI, Rorschach, etc.): Liability of emotions, impulse control, predominant concerns like aggression, anxiety, depression, guilt, dependency, and hostility.

Relationship Patterns (MMPI, Rorschach, TAT, etc.): Problem areas in work or school, friendships, intimate relationships, difficulties such as immaturity, irresponsibility, cooperativeness, sociability, introversion, impulsivity, aggression, dangerousness to self or others.

Defenses and compensations: Evidence of any strength, any coping mechanisms, or any useful compensation that might be helping the client maintain himself/herself.

- *Integration of Test Results with Life History*: Presenting a clinical picture of the client as a total person against the background of his marital discords and life circumstances. Hypotheses posed through the referral question and generated and integrated via test results and other reliable information.
- Summary, Conclusion, Diagnosis, Prognosis:

Summary: Emphasis should be on conciseness and accuracy so that the reader can quickly find the essential information and overall impression.

Conclusion: Integrating the material (data) into a more smoothly stated conceptualization of the client's personality and problem areas as regards root causes and characteristics as ground for nullity of marriage.

Diagnosis: Diagnostic impression is evolved form the data obtained, formed impression of personality disorders, and classified mental disorders based on the criteria and multi axial system of the DSM IV.

Prognosis: Predicting the behavior based on the data obtained that are relevant to the current functioning of the client, albeit under ideal conditions.

Void Marriages and Annulment of Voidable Marriages,[63] an option for the trial judge to refer the case to a court-appointed psychologist/expert for an independent assessment and evaluation of the psychological state of the parties. This will assist the courts, who are no experts in the field of psychology, to arrive at an intelligent and judicious determination of the case. The rule, however, does not dispense with the parties' prerogative to present their own expert witnesses.

Going back, in the case at bench, the psychological assessment, which we consider as adequate, produced the findings that both parties are afflicted with personality disorders—to repeat, dependent personality disorder for petitioner, and narcissistic and antisocial personality disorder for respondent. We note that *The Encyclopedia of Mental Health* discusses personality disorders as follows—

> A group of disorders involving behaviors or traits that are characteristic of a person's recent and long-term functioning. Patterns of perceiving and thinking are not usually limited to isolated episodes but are deeply ingrained, inflexible, maladaptive and severe enough to cause the individual mental stress or anxieties or to interfere with interpersonal relationships and normal functioning. Personality disorders are often recognizable by adolescence or earlier, continue through adulthood and become less obvious in middle or old age. An individual may have more than one personality disorder at a time.
>
> The common factor among individuals who have personality disorders, despite a variety of character traits, is the way in which the disorder leads to pervasive problems in social and occupational adjustment. Some individuals with personality disorders are perceived

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- *Recommendation:* Providing a careful specific recommendation is based on the referral sources and obtained data in dealing with a particular client that may be ameliorative, remedial, or unique treatment/intervention approaches. As to psychological incapacity, specific recommendation on the nullity of marriage based on Article 36 of the Family Code and expertise and clinical judgment of the Clinical Psychologist should be given emphasis. (Ng, Apruebo & Lepiten, *Legal and Clinical Bases of Psychological Incapacity*, *supra* note 51, at 179-181.)

[63] A.M. No. 02-11-10-SC, effective March 15, 2003.

by others as overdramatic, paranoid, obnoxious or even criminal, without an awareness of their behaviors. Such qualities may lead to trouble getting along with other people, as well as difficulties in other areas of life and often a tendency to blame others for their problems. Other individuals with personality disorders are not unpleasant or difficult to work with but tend to be lonely, isolated or dependent. Such traits can lead to interpersonal difficulties, reduced self-esteem and dissatisfaction with life.

Causes of Personality Disorders Different mental health viewpoints propose a variety of causes of personality disorders. These include Freudian, genetic factors, neurobiologic theories and brain wave activity.

Freudian Sigmund Freud believed that fixation at certain stages of development led to certain personality types. Thus, some disorders as described in the *Diagnostic and Statistical Manual of Mental Disorders* (3d ed., rev.) are derived from his oral, anal and phallic character types. Demanding and dependent behavior (dependent and passive-aggressive) was thought to derive from fixation at the oral stage. Characteristics of obsessionality, rigidity and emotional aloofness were thought to derive from fixation at the anal stage; fixation at the phallic stage was thought to lead to shallowness and an inability to engage in intimate relationships. However, later researchers have found little evidence that early childhood events or fixation at certain stages of development lead to specific personality patterns.

Genetic Factors Researchers have found that there may be a genetic factor involved in the etiology of antisocial and borderline personality disorders; there is less evidence of inheritance of other personality disorders. Some family, adoption and twin studies suggest that schizotypal personality may be related to genetic factors.

Neurobiologic Theories In individuals who have borderline personality, researchers have found that low cerebrospinal fluid 5-hydroxyindoleacetic acid (5-HIAA) negatively correlated with measures of aggression and a past history of suicide attempts. Schizotypal personality has been associated with low platelet monoamine oxidase (MAO) activity and impaired smooth pursuit eye movement.

Brain Wave Activity Abnormalities in electroencephalograph (EEG) have been reported in antisocial personality for many years; slow wave is the most widely reported abnormality. A study of

borderline patients reported that 38 percent had at least marginal EEG abnormalities, compared with 19 percent in a control group.

Types of Disorders According to the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* (3d ed., rev., 1987), or DSM-III-R, personality disorders are categorized into three major clusters:

Cluster A: Paranoid, schizoid and schizotypal personality disorders. Individuals who have these disorders often appear to have odd or eccentric habits and traits.

Cluster B: Antisocial, borderline, histrionic and narcissistic personality disorders. Individuals who have these disorders often appear overly emotional, erratic and dramatic.

Cluster C: Avoidant, dependent, obsessive-compulsive and passive-aggressive personality disorders. Individuals who have these disorders often appear anxious or fearful.

The DSM-III-R also lists another category, "personality disorder not otherwise specified," that can be used for other specific personality disorders or for mixed conditions that do not qualify as any of the specific personality disorders.

Individuals with diagnosable personality disorders usually have long-term concerns, and thus therapy may be long-term.[64]

Dependent personality disorder is characterized in the following manner—

A personality disorder characterized by a pattern of dependent and submissive behavior. Such individuals usually lack self-esteem and frequently belittle their capabilities; they fear criticism and are easily hurt by others' comments. At times they actually bring about dominance by others through a quest for overprotection.

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[64] Kahn and Fawcett, *The Encyclopedia of Mental Health*, 1993 ed., pp. 291-292. See Bernstein, Penner, Clarke-Stewart, Roy, *Psychology*, 7th ed., 2006, pp. 613-614, defining personality disorders as "long-standing, inflexible ways of behaving that are not so much severe mental disorders as dysfunctional styles of living. These disorders affect all areas of functioning and, beginning in childhood or adolescence, create problems for those who display them and for others. Some psychologists view personality disorders as interpersonal strategies or as extreme, rigid, and maladaptive expressions of personality traits." (Citations omitted.)

Dependent personality disorder usually begins in early adulthood. Individuals who have this disorder may be unable to make everyday decisions without advice or reassurance from others, may allow others to make most of their important decisions (such as where to live), tend to agree with people even when they believe they are wrong, have difficulty starting projects or doing things on their own, volunteer to do things that are demeaning in order to get approval from other people, feel uncomfortable or helpless when alone and are often preoccupied with fears of being abandoned.[65]

and antisocial personality disorder described, as follows—

Characteristics include a consistent pattern of behavior that is intolerant of the conventional behavioral limitations imposed by a society, an inability to sustain a job over a period of years, disregard for the rights of others (either through exploitiveness or criminal behavior), frequent physical fights and, quite commonly, child or spouse abuse without remorse and a tendency to blame others. There is often a façade of charm and even sophistication that masks disregard, lack of remorse for mistreatment of others and the need to control others.

Although characteristics of this disorder describe criminals, they also may befit some individuals who are prominent in business or politics whose habits of self-centeredness and disregard for the rights of others may be hidden prior to a public scandal.

During the 19th century, this type of personality disorder was referred to as moral insanity. The term described immoral, guiltless behavior that was not accompanied by impairments in reasoning.

According to the classification system used in the *Diagnostic and Statistical Manual of Mental Disorders* (3d ed., rev. 1987), anti-social personality disorder is one of the four "dramatic" personality disorders, the others being borderline, histrionic and narcissistic.[66]

The seriousness of the diagnosis and the gravity of the disorders considered, the Court, in this case, finds as decisive the psychological evaluation made by the expert witness; and, thus, rules that the marriage of the parties is null and void on ground

[65] *Id.* at 131.

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

of both parties' psychological incapacity. We further consider that the trial court, which had a first-hand view of the witnesses' deportment, arrived at the same conclusion.

Indeed, petitioner, who is afflicted with dependent personality disorder, cannot assume the essential marital obligations of living together, observing love, respect and fidelity and rendering help and support, for he is unable to make everyday decisions without advice from others, allows others to make most of his important decisions (such as where to live), tends to agree with people even when he believes they are wrong, has difficulty doing things on his own, volunteers to do things that are demeaning in order to get approval from other people, feels uncomfortable or helpless when alone and is often preoccupied with fears of being abandoned.[67] As clearly shown in this case, petitioner followed everything dictated to him by the persons around him. He is insecure, weak and gullible, has no sense of his identity as a person, has no cohesive self to speak of, and has no goals and clear direction in life.

Although on a different plane, the same may also be said of the respondent. Her being afflicted with antisocial personality disorder makes her unable to assume the essential marital obligations. This finding takes into account her disregard for the rights of others, her abuse, mistreatment and control of others without remorse, her tendency to blame others, and her intolerance of the conventional behavioral limitations imposed by society.[68] Moreover, as shown in this case, respondent is impulsive and domineering; she had no qualms in manipulating petitioner with her threats of blackmail and of committing suicide.

Both parties being afflicted with grave, severe and incurable psychological incapacity, the precipitous marriage which they contracted on April 23, 1996 is thus, declared null and void.

WHEREFORE, premises considered, the petition for review on *certiorari* is *GRANTED*. The August 5, 2003 Decision and the January 19, 2004 Resolution of the Court of Appeals in

[67] *Supra* note 65.

[68] *Supra* note 66.

CA-G.R. CV No. 71867 are *REVERSED* and *SET ASIDE*, and the Decision, dated July 30, 2001, *REINSTATED*.

SO ORDERED.

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

EN BANC

[G.R. Nos. 162335 & 162605. February 13, 2009]

SEVERINO MANOTOK IV, FROILAN M. MANOTOK, FERNANDO M. MANOTOK, FAUSTO M. MANOTOK III, MARIA MAMERTA M. MANOTOK, PATRICIA L. TIONGSON, PACITA L. GO, ROBERTO LAPERAL III, MICHAEL MARSHALL V. MANOTOK, MARY ANN V. MANOTOK, FELISA MYLENE V. MANOTOK, IGNACIO V. MANOTOK, JR., MILAGROS V. MANOTOK, SEVERINO MANOTOK III, ROSA R. MANOTOK, MIGUEL A.B. SISON, GEORGE M. BOCANEGRA, MA. CRISTINA E. SISON, PHILIPP L. MANOTOK, JOSE CLEMENTE L. MANOTOK, RAMON SEVERINO L. MANOTOK, THELMA R. MANOTOK, JOSE MARIA MANOTOK, JESUS JUDE MANOTOK, JR., and MA. THERESA L. MANOTOK, represented by their Attorney-in-fact, ROSA R. MANOTOK, *petitioners, vs.* **HEIRS OF HOMER L. BARQUE, represented by TERESITA BARQUE-HERNANDEZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; "CONCURRING OPINION," DEFINED; CASE AT BAR.— Associate Justice Carpio's opinion is labeled a "Separate Concurring Opinion."

A "concurring opinion" has been defined as "[a] separate opinion delivered by one or more judges which agrees with the decision of the majority of the court but offering its own reason for reaching that decision." Indeed, the tenor of Associate Justice Carpio's opinion, as well as that of Associate Justice Corona, reflects their agreement with the action taken by the Court. In addition, it can be gleaned from the Resolution that Associate Justice Carpio Morales signed the same with the statement: "I also concur with J. Carpio's Separate Opinion." It is evident that by the use of "also," Associate Justice Carpio Morales manifested that she had concurred in the Resolution penned by Justice Tinga and joined the other members of the Court who were of the same persuasion as regards the Resolution.

2. CIVIL LAW; LAND REGISTRATION; NEITHER THE LAND REGISTRATION AUTHORITY NOR THE COURT OF APPEALS HAS JURISDICTION TO CANCEL CERTIFICATES OF TITLE IN AN ADMINISTRATIVE RECONSTITUTION PROCEEDING.— The other arguments raised in the Omnibus Motion are bereft of merit and are not cause for us to set aside the 18 December 2008 Resolution. These arguments do not detract from the Court's central ruling—that neither the Land Registration Authority nor the Court of Appeals has jurisdiction to cancel certificates of title in an administrative reconstitution proceeding.

APPEARANCES OF COUNSEL

Felix B. Lerio, Florentino P. Feliciano and *Sycip Salazar Hernandez & Gatmaitan* for petitioners.

Jose B. Flaminiano and *Saguisag Carao & Associates* for respondents.

Romeo C. Dela Cruz & Associates for Intervenors.

R E S O L U T I O N

TINGA, *J.*:

This treats of respondents' Omnibus Motion dated 5 January 2009.

Respondents convey therein that the Court's Resolution dated 18 December 2008 did not obtain the requisite number of votes

for its adoption, citing in particular the Separate Concurring Opinion of Associate Justice Antonio T. Carpio, which was joined by Associate Justice Conchita Carpio Morales, and the Separate Opinion filed by Associate Justice Renato C. Corona. It would be recalled that the Resolution was penned by Associate Justice Dante O. Tinga, who was joined without qualification by four (4) other Justices namely: Chief Justice Reynato S. Puno, and Associate Justices Alicia Austria-Martinez, Presbitero J. Velasco, Jr. and Arturo D. Brion.

Associate Justice Carpio's opinion is labeled a "Separate Concurring Opinion." A "concurring opinion" has been defined as "[a] separate opinion delivered by one or more judges which agrees with the decision of the majority of the court but offering its own reason for reaching that decision."[1] Indeed, the tenor of Associate Justice Carpio's opinion, as well as that of Associate Justice Corona, reflects their agreement with the action taken by the Court. In addition, it can be gleaned from the Resolution that Associate Justice Carpio Morales signed the same with the statement: "I also concur with J. Carpio's Separate Opinion."[2] It is evident that by the use of "also," Associate Justice Carpio Morales manifested that she had concurred in the Resolution penned by Justice Tinga and joined the other members of the Court who were of the same persuasion as regards the Resolution.

Likewise notable is the fact that Justice Corona's Separate Opinion reaches the same conclusions and substantially favors the same relief granted by the Court. He concludes and substantially favors the same relief granted by the Court. He concludes that the 12 December 2005 Decision of the Court's First Division should not be affirmed[3] as it unduly enlarged the scope of authority of the Land Registration Authority in administrative reconstitution proceedings.[4]

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[1] Black's Law Dictionary (6th ed.), at 291.

[2] Resolution, p. 36.

[3] Separate Opinion, Justice Corona, p. 10.

[4] *Id.* at 3.

To dispel whatever misgiving, if any there be, as to whether the Resolution dated 18 December 2008 was adopted by a majority of the members of the Court *en banc*, the Court through this Resolution attests that eight (8) Justices have affirmed their vote in favor of the relief extended in the Resolution dated December 18, 2008, to wit:

> WHEREFORE, the Decision dated 12 June 2005, and the Resolutions dated 19 April and 19 June 2006 of the Court's First Division are hereby SET ASIDE, and the Entry of Judgment recorded on 2 May 2006 is RECALLED. The Amended Decision dated 24 February 2004 in CA-G.R. SP No. 66642, the Amended Decision dated 7 November 2003 and the Resolution dated 12 March 2004 in CA-G.R. SP No. 66700, and the Resolutions of the Land Registration Authority dated 24 June 1998 and 14 June 1998 in Admin. Recons. No. Q-547-A[97] are all REVERSED and SET ASIDE.
>
> The instant cases are hereby REMANDED to the Court of Appeals for further proceedings in accordance with this Resolution. The Court of Appeals is directed to raffle these remanded cases immediately upon receipt of this Resolution.
>
> This Resolution is immediately executory.

The other arguments raised in the Omnibus Motion are bereft of merit and are not cause for us to set aside the 18 December 2008 Resolution. These arguments do not detract from the Court's central ruling—that neither the Land Registration Authority nor the Court of Appeals has jurisdiction to cancel certificates of title in an administrative reconstitution proceeding.

With respect to arguments that raise factual issues concerning the validity of the Barque or Manotok titles, the same can be duly brought before the Court of Appeals to which the cases have been remanded for further reception of evidence.

WHEREFORE, the *OMNIBUS MOTION* is *DENIED* with *FINALITY***.**

SO ORDERED.

Puno, C.J. Quisumbing, Carpio, Austria-Martinez, Corona, Carpio Morales, Velasco, Jr., Brion, and *Peralta, JJ.,* concur.

Ynares-Santiago, Azcuna, Chico-Nazario, and *Leonardo-de Castro, JJ.,* maintains their dissent.

Nachura, J., no part.

THIRD DIVISION

[G.R. Nos. 166086-92. February 13, 2009]

ELENO T. REGIDOR, JR. and CAMILO B. ZAPATOS, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES and THE HONORABLE SANDIGANBAYAN (First Division),** *respondents.*

SYLLABUS

1. CRIMINAL LAW; FALSIFICATION OF PUBLIC DOCUMENTS; ELEMENTS.— Thus, for falsification of a public document to be established, the following elements must concur: 1) that the offender is a public officer, employee, or notary public; 2) that he takes advantage of his official position; and 3) that he falsifies a document by committing any of the aforementioned acts. Likewise, in falsification of public or official documents, it is not necessary that there be present the idea of gain or the intent to injure a third person because in the falsification of a public document, what is punished is the violation of the public faith and the destruction of the truth as therein solemnly proclaimed. We hold that all the elements of the offense punishable under Article 171, paragraphs 2 and 7 of the Revised Penal Code are present in this case.

2. POLITICAL LAW; LOCAL GOVERNMENT CODE OF 1983; ORDINANCES; VETO POWER OF THE CITY MAYOR; THE CONCURRENCE OF A LOCAL CHIEF EXECUTIVE IN THE ENACTMENT OF AN ORDINANCE REQUIRES

NOT ONLY A FLOURISH OF THE PEN, BUT THE APPLICATION OF JUDGMENT AFTER METICULOUS ANALYSIS AND INTELLIGENCE.— The petitioners took advantage of their respective official positions because they had the duty to make or to prepare, or otherwise to intervene in the preparation of the document, or have the official custody of the document which they falsified. Zapatos, as a member and, at the time, Temporary Presiding Officer of the *Sangguniang Panglungsod*, had the duty to make or prepare or intervene in the preparation of the assailed resolutions. In like manner, Mayor Regidor cannot claim that as mayor he had no participation in the making, or preparation of, nor any intervention in the assailed resolutions. Under Section 180 of *Batas Pambansa Blg*. 337, or the Local Government Code of 1983, which was in effect at the time the crimes imputed were committed, the city mayor had the power to veto the ordinances and resolutions enacted or adopted by the *Sangguniang Panglungsod*. Contrary to Mayor Regidor's submission, the veto power confers authority beyond the simple mechanical act of signing an ordinance or resolution as a requisite to its enforceability. Thus, this Court held that the concurrence of a local chief executive in the enactment of an ordinance or resolution requires not only a flourish of the pen, but the application of judgment after meticulous analysis and intelligence as well.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S FINDINGS OF FACT WITH RESPECT THERETO IS BINDING UPON THE SUPREME COURT.— It must be borne in mind that weighing heavily against the petitioners' defense is the well-settled doctrine that findings of fact of trial courts — in this case, the Sandiganbayan — particularly in the assessment of the credibility of witnesses, is binding upon this Court, absent any arbitrariness, abuse or palpable error.

4. POLITICAL LAW; LOCAL GOVERNMENT CODE OF 1983; ORDINANCES; MINUTES OF THE SESSIONS; ACCORDED GREAT WEIGHT IN RESOLVING CONFLICTING CLAIMS OF PARTIES.— While the petitioners do not wish to impute much significance to the minutes, they are important in the resolution of this case. In a similar case, *De los Reyes v. Sandiganbayan, Third Division*,

this Court, citing a number of cases, highlighted the importance of the minutes taken in the pertinent proceeding, relying thereon to ascertain the truth when confronted by conflicting claims of parties. Hence, this Court held: Thus, the Court accords full recognition to the minutes as the official repository of what actually transpires in every proceeding. It has happened that the minutes may be corrected to reflect the true account of a proceeding, thus giving the Court more reason to accord them great weight for such subsequent corrections, if any, are made precisely to preserve the accuracy of the records. In light of the conflicting claims of the parties in the case at bar, the Court, without resorting to the minutes, will encounter difficulty in resolving the dispute at hand. We see no reason to deviate from this ruling.

5. REMEDIAL LAW; EVIDENCE; AFFIDAVIT OF DESISTANCE; VIEWED WITH SUSPICION AND RESERVATION; RATIONALE; CASE AT BAR.— Likewise, petitioners' reliance on the affidavits of desistance executed by the private complainants fails to impress this Court. Our ruling in *Balderama v. People* is instructive: A recantation or an affidavit of desistance is viewed with suspicion and reservation. The Court looks with disfavor upon retractions of testimonies previously given in court. It is settled that an affidavit of desistance made by a witness after conviction of the accused is not reliable, and deserves only scant attention. The rationale for the rule is obvious: affidavits of retraction can easily be secured from witnesses, usually through intimidation or for a monetary consideration. Recanted testimony is exceedingly unreliable. There is always the probability that it will later be repudiated. Only when there exist special circumstances in the case which when coupled with the retraction raise doubts as to the truth of the testimony or statement given, can retractions be considered and upheld. The affidavits of desistance cannot prevail over the categorical statements of the private complainants, the very same affiants who executed the same. Moreover, based on the testimonies of the private complainants, they merely executed the affidavits of desistance after the DILG dismissed the administrative complaint and after Mayor Regidor asked them to execute the same, because they had the impression that the DILG ruling would, in one way or another, be binding on the Sandiganbayan,

and they simply wanted to avoid having to spend for their fare in going to the Sandiganbayan for the trial.

6. POLITICAL LAW; ADMINISTRATIVE LAW; LAW ON PUBLIC OFFICERS; THREE-FOLD LIABILITY RULE.— It is a fundamental principle in the law on public officers that administrative liability is separate from and independent of criminal liability. A simple act or omission can give rise to criminal, civil or administrative liability, each independently of the others. This is known as the "threefold liability rule." Thus, absolution from a criminal charge is not a bar to an administrative prosecution, and vice-versa. In this criminal prosecution, the dismissal of the administrative cases against the petitioners will not necessarily result in the dismissal of the criminal complaints filed against them.

7. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE SANDIGANBAYAN ARE BINDING AND CONCLUSIVE; EXCEPTIONS; NOT PRESENT IN CASE AT BAR.— Based on the foregoing disquisitions, the Sandiganbayan's conviction of petitioners had ample factual mooring, after the prosecution presented both documentary and testimonial pieces of evidence. Time and again, we held that we are not a trier of facts; hence, we defer to the factual findings of the Sandiganbayan which had more opportunity and facilities to examine and evaluate the evidence presented. To repeat, settled is the rule that findings of fact of the Sandiganbayan in cases before this Court are binding and conclusive in the absence of a showing that they come under the established exceptions, among them: 1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; 2) the inference made is manifestly mistaken; 3) there is a grave abuse of discretion; 4) the judgment is based on misapprehension of facts; 5) said findings of fact are conclusions without citation of specific evidence on which they are based; and 6) the findings of fact of the Sandiganbayan are premised on the absence of evidence on record. We found none of these exceptions in the present case.

APPEARANCES OF COUNSEL

Michael P. Moralde for petitioners.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition[1] for Review on *Certiorari* under Rule 45 of the Rules of Civil Procedure seeking the reversal of the Sandiganbayan Decision[2] dated September 24, 2004, convicting petitioners Eleno T. Regidor, Jr. (Mayor Regidor), former City Mayor, and Camilo B. Zapatos (Zapatos), former member of the *Sangguniang Panglungsod* of Tangub City (petitioners), of the crime of falsification of public documents.

The Facts

Petitioners, along with Aniceto T. Siete, former Vice-Mayor, and one Marlene L. Mangao,[3] then Acting Secretary of the *Sangguniang Panglungsod* of Tangub City, were charged with the crime of falsification of public documents in the following Informations:[4]

Criminal Case No. 13689 filed on May 10, 1989

That on or about the 23rd day of June, 1988, in the City of Tangub, Philippines, and within the jurisdiction of this Honorable Court, the accused **Eleno T. Regidor, Jr.**, Aniceto T. Siete, **Camilo B. Zapatos** and Marlene Mangao, all public officers being then the City Mayor, Vice Mayor and Presiding Officer of the Sangguniang Panglungsod, Temporary Presiding Officer, and Acting Sangguniang Panglungsod Secretary, respectively, of said City, and as such are authorized to attest and approve resolutions of the Sangguniang

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[1] *Rollo*, pp. 3-22.

[2] Particularly docketed as Crim. Cases Nos. 13689-95, penned by Associate Justice Diosdado M. Peralta (now a member of this Court), with Associate Justices Teresita Leonardo-De Castro (now a member of this Court) and Roland B. Jurado, concurring; *id.* at 26-42.

[3] Marlene L. Mangao is still at-large. Thus, an Order of Arrest was issued by the Sandiganbayan which, however, remains to be unserved up to this day; records, p. 483.

[4] Records, unpaged. (Emphasis supplied.)

Panglungsod, and committing the crime herein charged in relation to their office, with grave abuse of confidence and taking advantage of their official/public positions, conspiring and confabulating with one another, did then and there willfully, unlawfully and feloniously falsify Resolution 50-A, of the Sangguniang Panglungsod of Tangub City, entitled: "A RESOLUTION GRANTING A SALARY INCREASE OF ALL EMPLOYEES EXCEPT CHIEFS, ASSISTANT CHIEF OF OFFICERS (sic) AND CITY OFFICIALS OF TANGUB CITY AT ONE HUNDRED PESOS (₱100) A MONTH EFFECTIVE JULY 1, 1988," by then and there making it appear that the aforesaid Resolution was deliberated upon, passed and approved by the Sangguniang Panglungsod when in truth and in fact as accused well knew it was never taken up by said body, to the damage and prejudice of the Government.

Contrary to law.

Criminal Case No. 13690 filed on May 10, 1989

That on or about the 30th day [of] June, 1988, in Tangub City, Philippines, and within the jurisdiction of this Honorable Court, accused **Eleno T. Regidor, Jr.**, Aniceto T. Siete and Marlene L. Mangao, all public officers being the City Mayor, Vice-Mayor, and Presiding Officer of the Sangguniang Panglungsod and Acting Sangguniang Panglungsod Secretary, respectively, of the said City, and as such are authorized to attest and approve resolutions of the Sangguniang Panglungsod, and committing the crime herein charged in relation to their office, with grave abuse of confidence and taking advantage of their official/public positions, conspiring and confabulating with one another, did then and there willfully, unlawfully and feloniously falsify Resolution No. 56, of the Sangguniang Panglungsod of Tangub, entitled: RESOLUTION APPROVING SUPPLEMENTAL BUDGET NO. 2 OF THE SANGGUNIANG PANGLUNGSOD OF TANGUB CITY FOR THE CALENDAR YEAR 1988," by then and there making it appear that the aforesaid Resolution was deliberated upon, passed and approved by the Sangguniang Panglungsod when in truth and in fact as accused well knew it was never taken up by the said body, to the damage and prejudice of the government.

Contrary to law.

Criminal Case No. 13691 filed on May 10, 1989

That on or about the 30th day of June, 1988, in Tangub City, Philippines, and within the jurisdiction of this Honorable Court,

accused **Eleno T. Regidor, Jr.**, Aniceto T. Siete, and Marlene L. Mangao, all public officers being the City Mayor, Vice-Mayor and Presiding Officer of the Sangguniang Panglungsod, and Acting Sangguniang Panglungsod Secretary, respectively, of said City, and as such are authorized to attest and approve resolutions of the Sangguniang Panglungsod, and committing the crime herein charged in relation to their office, with grave abuse of confidence and taking advantage of their official/public positions, conspiring and confabulating with one another, did then and there, willfully, unlawfully and feloniously falsify Resolution No. 56-A of the Sangguniang Panglungsod of Tangub entitled: "RESOLUTION APPROVING SUPPLEMENTAL BUDGET NO. 2 OF THE INFRA FUND OF TANGUB CITY FOR THE CALENDAR YEAR 1988," by then and there making it appear that the aforesaid Resolution was deliberated upon, passed and approved by the Sangguniang Panglungsod when in truth and in fact as accused well knew it was never taken up by said body, to the damage and prejudice of the government.

Contrary to law.

Criminal Case No. 13692 filed on May 11, 1989

That on or about the 14th day of July, 1988, in Tangub City, Philippines, and within the jurisdiction of this Honorable Court, accused **Eleno T. Regidor, Jr.**, Aniceto T. Siete, and Marlene L. Mangao, all public officers, being the City Mayor, Vice-Mayor and Presiding Officer of the Sangguniang Panglungsod and Acting Sangguniang Panglungsod Secretary, respectively of said City, and as such, are authorized to attest and approve resolutions of the Sangguniang Panglungsod, and committing the crime herein charged in relation to their office, with grave abuse of confidence and taking advantage of their official/public positions, conspiring and confabulating with one another, did then and there willfully, unlawfully and feloniously falsify Resolution No. 63 of the Sangguniang Panglungsod of Tangub, entitled: "A RESOLUTION EARNESTLY REQUESTING HONORABLE ALFREDO BENGZON, SECRETARY, DEPARTMENT OF HEALTH, MANILA, THRU THE REGIONAL DIRECTOR, CANDIDO TAN, DEPARTMENT OF HEALTH, REGION X, CAGAYAN DE ORO CITY, TO APPOINT DR. SINFORIANA DEL CASTILLO AS CITY HEALTH OFFICER IN TANGUB CITY HEALTH OFFICE," by then and there making it appear that the aforesaid Resolution was deliberated upon, passed and approved by the Sangguniang Panglungsod when in truth and in fact

as accused well knew it was never taken up by said body, to the damage and prejudice of the government.

Contrary to law.

Criminal Case No. 13693 filed on May 10, 1989

That on or about the 14th day of July, 1988, in Tangub City, Philippines, and within the jurisdiction of this Honorable Court, accused **Eleno T. Regidor, Jr.**, Aniceto T. Siete and Marlene L. Mangao, all public officers being the City Mayor, Vice-Mayor and Presiding Officer of the Sangguniang Panglungsod and Acting Sangguniang Panglungsod Secretary, respectively, of said City, and as such, are authorized to attest and approve resolutions of the Sangguniang Panglungsod, and committing the crime herein charged in relation to their office, with grave abuse of confidence and taking advantage of their official/public positions, conspiring and confabulating with one another, did then and there willfully, unlawfully and feloniously falsify Resolution No. 61 of the Sangguniang Panglungsod of Tangub, entitled: "A RESOLUTION REVERTING THE AMOUNT OF ONE HUNDRED THOUSAND PESOS (₱100,000) FROM THE CONSTRUCTION OF SPORT CENTER TO COVER UP DEFICIENCIES OF APPROPRIATION IN THE INFRASTRUCTURE FUND," by then and there making it appear that the aforesaid Resolution was deliberated upon, passed and approved by the Sangguniang Panglungsod when in truth and in fact as accused well knew it was never taken up by the said body, to the damage and prejudice of the government.

Contrary to law.

Criminal Case No. 13694 filed on May 10, 1989

That on or about the 21st day of July, 1988, in the City of Tangub, Philippines, and within the jurisdiction of this Honorable Court, accused **Eleno T. Regidor, Jr., Camilo B. Zapatos** and Marlene Mangao, all public officers being the City Mayor, Temporary Presiding Officer of the Sangguniang Panglungsod and Acting Sangguniang Panglungsod Secretary, respectively, and as such, are authorized to attest and approve resolutions of the Sangguniang Panglungsod, and committing the crime herein charged on relation to their office, with grave abuse of confidence and taking advantage of their official/public positions, conspiring and confabulating with one another, did then and there willfully, unlawfully and feloniously falsify Resolution No. 64, of the Sangguniang Panglungsod entitled: "A RESOLUTION

ADOPTING A POSITION PAPER REGARDING THE CONTINUED EXISTENCE AND OPERATION OF TANGUB CITY AND REQUESTING HONORABLE LOURDES R. QUISUMBING FOR A RECONSIDERATION OF HER MEMORANDA," by then and there making it appear that the aforesaid resolution was deliberated upon, passed and approved by the Sangguniang Panglungsod when in truth and in fact as accused well knew it was never taken up by the said body, to the damage and prejudice of the government.

Contrary to law.

Criminal Case No. 13695 filed on May 11, 1989

That on or about the 21st day of July, 1988, in Tangub City, Philippines, and within the jurisdiction of this Honorable Court, accused **Eleno T. Regidor, Jr., Camilo B. Zapatos** and Marlene L. Mangao, all being public officers being City Mayor, Sangguniang Panlalawigan Member and concurrently Temporary Presiding Officer and Sangguniang Panlalawigan Secretary, respectively, of said City and as such, are authorized to attest and approve resolutions of the Sangguniang Panglungsod, and committing the crime herein charged in relation to their office, with grave abuse of confidence and taking advantage of their official/public positions, conspiring and confabulating with one another, did then and there, willfully, unlawfully and feloniously falsify Resolution No. 68, of the Sangguniang Panglungsod of Tangub, entitled: "RESOLUTION REQUESTING THE HONORABLE SECRETARY, DEPARTMENT OF BUDGET AND MANAGEMENT, MALACANANG, MANILA FOR AUTHORITY TO PURCHASE TEN (10) UNITS OF MOTORCAB, ONE (1) DOZEN MICROSCOPE COMPOUND, ONE (1) SET ENCYCLOPEDIA TEXTBOOKS, ONE (1) SET BRITANICA DICTIONARY, SEVEN (7) UNITS ELECTRIC TYPEWRITER (20" CARRIAGE), ONE (1) UNIT ELECTRIC FAN AND ONE (1) UNIT LOMBARDINI DIESEL ENGINE 4ID 820 FOR USE OF VARIOUS OFFICES OF TANGUB CITY," by then and there making it appear that the aforesaid Resolution was deliberated upon, passed and approved by the Sangguniang Panglungsod when in truth and in fact as accused well knew it was never taken up by the said body, to the damage and prejudice of the government.

Contrary to law.

Upon their arraignment on July 8, 1991, petitioners entered a plea of not guilty to all the charges. Marlene L. Mangao was

not arraigned as the Sandiganbayan did not acquire jurisdiction over her person. Hence, an order for her arrest was issued which remains unserved up to the present. On the other hand, Aniceto T. Siete passed away on March 12, 1991 before he could be arraigned.[5] Upon agreement of the parties, no pre-trial conference was conducted. Thereafter, trial on the merits ensued. In the course of trial, two varying versions arose and, as found by the Sandiganbayan, are culled as follows:

Evidence for the Prosecution

The accused are all public officers in the City Government of Tangub City. Accused Eleno T. Regidor, Jr. was then the incumbent Mayor who assumed office on May 5, 1988, while accused Aniceto T. Siete as the incumbent Vice-Mayor and Presiding Officer of the Sangguniang Panglungsod. Accused Camilo B. Zapatos was the Acting Presiding Officer of the Sangguniang Panglungsod, while accused Marlene L. Mangao, who was a clerk in the Office of the Mayor, was designated as Acting Secretary of the City Council during the period corresponding to the alleged commission of the crimes charged against the accused.

When accused Eleno T. Regidor, Jr. assumed the mayoral post on May 5, 1988, it has been the practice that the proposals for resolutions and ordinances originated from him or his office. Often, when a proposal is put in the agenda of the Sangguniang Panglungsod, a prepared resolution is already available so that it will be easier for the City Council to just accept or adopt the resolutions.

During the session of the Sangguniang Panglungsod on July 27, 1988, the Council was presented with the Minutes for the sessions held on June 23, 30, July 14 and 21, respectively. The minutes of said sessions reflected resolutions and ordinances allegedly taken up, deliberated and passed upon by the Sangguniang Panglungsod namely: Resolution 50-A on June 23, 1988, Resolution 56 and 56-A on June 30, Resolution No. 63 and 61 on July 14, Resolution 64 and 68 on July 21. The actual copies of the Resolutions, Appropriations and Ordinances all contained the signatures of the four (4) accused and approving the same.

However, some of the Council Members questioned the validity of the said Resolutions and Ordinances. They alleged that the

[5] Records, p. 200.

Resolutions and Ordinances were neither taken up, deliberated nor passed upon during the above-mentioned dates. Roberto O. [Taclob],[6] [private complainant] a former council member, testified that the questioned Resolutions were not taken up and thus could not have been deliberated nor passed upon. His testimony was corroborated by prosecution witnesses, Estrelita M. Pastrano, Elizabeth L. Duroy, Albarico and Agustin L. Opay, all former members of the Sangguniang Panglungsod of Tangub City [private complainants]. Although the questioned resolutions were subsequently ratified by the Sanggunian through Resolution 94 by a vote of five (5) to four (4), with the four (4) complaining witnesses abstaining, dated October 15, 1988, the Council Members still filed a complaint with the Department of the Interior and Local Government (DILG) an administrative case against the four (4) accused for misconduct in office and neglect of duty. The councilors claim that they were prevented from [attending] the sessions of the Sanggunian for seven (7) months because the schedule of sessions was randomly changed without them being notified. Accused Mayor Eleno T. Regidor, Jr., together with the other co-accused were preventively suspended from July to September of 1989 but were subsequently not found guilty by the DILG. Despite signing an Affidavit of Desistance, thinking that the Sandiganbayan is bound by the findings of the DILG, the complainants pursued the cases against the four (4) accused. Thus, the criminal complaints filed with the Sandiganbayan were continued and trial ensued on January 8, 1992.

Evidence for the Defense

In his defense, Mayor Eleno T. Regidor, Jr. testified that before approving resolutions or ordinances, he consults his legal counsel to check if there are any irregularities in the resolutions and whether or not the resolutions are beneficial to the City of Tangub. He also stated that he did not attend or participate in the sessions of the City Council, asserting that, as Mayor, he did not, in any way, influence the deliberations of the Sanggunian. He stressed that the Sangguniang Panglungsod is totally independent of his office and as the approving officer of the Municipal Government, he relies on the certification of the Presiding Officer that the resolutions and the ordinances are valid and lawful before affixing his signature. The accused, Eleno T. Regidor, Jr. contends that he signed the questioned resolutions in good faith and with the belief that they were deliberated and passed upon.

[6] Also referred to as Roberto Taclub in other pleadings and documents.

It is further contended by accused Eleno T. Regidor, Jr. that the questioned Resolutions were taken up and passed upon during the sessions. The same accused further claimed that the minutes of the sessions of the Sanggunian were inaccurate since the entire proceedings were not completely and accurately taken down by the stenographer or Council Secretary present during the meetings, thus, the deliberations on the questioned resolutions were not entirely recorded. Lastly, the same accused claimed that the complainants even admitted in their Affidavit of Desistance the inaccuracy of the minutes "x x x although the matters taken during the sessions of the Sangguniang Panglungsod wherein we were present, were discussed and deliberated upon, we are not sure whether or not said deliberations and discussions were recorded in the minutes x x x." The defense of the accused Eleno T. Regidor, Jr. is corroborated by the testimony of Rogelio Taburada,[7] [Taburada] who was then a Councilor of Tangub City.

As for the other accused Sanggunian Member and Acting Presiding Officer Camilo B. Zapatos, he opted not to take the witness stand and instead adopted the evidence of his co-accused Eleno T. Regidor Jr.

The Sandiganbayan's Decision

On September 24, 2004, the Sandiganbayan held that the petitioners' defenses of good faith and lack of intent failed to cast doubt on the allegations of the prosecution. The pieces of evidence and the testimonies of the prosecution's witnesses revealed that Resolution Nos. 50-A,[8] 56,[9] 56-A,[10] 63,[11]

[7] Also referred to as Rogelio Taborada in other pleadings and documents.

[8] Entitled: A RESOLUTION GRANTING A SALARY INCREASE OF ALL EMPLOYEES EXCEPT THE CHIEFS, ASSISTANT CHIEFS OF OFFICES AND CITY OFFICIALS OF TANGUB CITY AT ONE HUNDRED PESOS (₱100.00) A MONTH EFFECTIVE JULY 1, 1988; Exhibit "A", folder of exhibits.

[9] Entitled: A RESOLUTION APPROVING SUPPLEMENTAL BUDGET NO. 2 OF THE GENERAL FUND OF TANGUB CITY FOR THE CALENDAR YEAR 1988; Exhibit "B", folder of exhibits.

[10] Entitled: RESOLUTION APPROVING SUPPLEMENTAL BUDGET NO. 2 OF THE INFRA FUND OF TANGUB CITY FOR THE CALENDAR YEAR 1988; Exhibit "C", folder of exhibits.

[11] Entitled: A RESOLUTION EARNESTLY REQUESTING HONORABLE ALFREDO BENGZON, SECRETARY, DEPARTMENT OF HEALTH, MANILA THRU THE REGIONAL DIRECTOR CANDIDO TAN,

61,[12] 64[13] and 68[14] (assailed Resolutions) established the moral certainty or degree of proof which would produce conviction in an unprejudiced mind. Thus, it disposed of this case in this wise:

WHEREFORE, judgment is hereby rendered in the above cases as follows:

1. In Criminal Case No. 13689, the Court finds the accused Eleno T. Regidor, Jr. and Camilo B. Zapatos, GUILTY beyond reasonable doubt of the crime of Falsification of Public Document as defined in and penalized by Article 171 of the Revised Penal Code and, there being no modifying circumstances, are hereby sentenced to each suffer an indeterminate penalty of imprisonment from TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of *Prision Correccional* medium as the minimum penalty to EIGHT (8) YEARS of *Prision Mayor* minimum as the maximum penalty and to each pay a FINE of FIVE THOUSAND PESOS (₱5,000.00).

DEPARTMENT OF HEALTH, REGION X, CAGAYAN DE ORO CITY TO APPOINT DR. SINFORIANA DEL CASTILLO AS CITY HEALTH OFFICER IN TANGUB CITY HEALTH OFFICE; Exhibit "D", folder of exhibits.

[12] Entitled: A RESOLUTION REVERTING THE AMOUNT OF ONE HUNDRED THOUSAND PESOS (₱100,000.00) FROM THE CONSTRUCTION OF SPORT CENTER TO COVER UP DEFICIENCIES OF APPROPRIATION IN THE INFRASTRUCTURE FUND; Exhibit "E", folder of exhibits.

[13] Entitled: A RESOLUTION ADOPTING A POSITION PAPER REGARDING THE CONTINUED EXISTENCE AND OPERATION OF TANGUB CITY DIVISION IN TANGUB CITY AND REQUESTING HONORABLE LOURDES R. QUISUMBING FOR A RECONSIDERATION OF HER ORDER/MEMORANDA; Exhibit "F", folder of exhibits.

[14] Entitled: RESOLUTION REQUESTING THE HONORABLE SECRETARY, DEPARTMENT OF BUDGET AND MANAGEMENT, MALACAÑANG, MANILA FOR AUTHORITY TO PURCHASE TEN (10) UNITS MOTORCAB, ONE (1) DOZEN MICROSCOPE COMPOUND, ONE (1) SET ENCYCLOPEDIA TEXTBOOKS, ONE (1) SET BRITANNICA DICTIONARY, SEVEN (7) UNITS ELECTRIC TYPEWRITER (20" CARRIAGE) ONE (1) UNIT ELECTRIC FAN AND ONE (1) UNIT LOMBARDINI DIESEL ENGINE 4ID 820 FOR USE IN THE VARIOUS OFFICES OF TANGUB CITY; Exhibit "G", folder of exhibits.

2. In Criminal Case No. 13690, the Court finds the accused Eleno T. Regidor, Jr., GUILTY beyond reasonable doubt of the crime of Falsification of Public Document was (sic) defined in and penalized by Article 171 of the Revised Penal Code and, there being no modifying circumstances, is hereby sentenced to suffer an indeterminate penalty of imprisonment from TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of *Prision Correccional* medium as the minimum penalty to EIGHT (8) YEARS of *Prision Mayor* minimum as the maximum penalty and to pay a FINE of FIVE THOUSAND PESOS (₱5,000.00).

3. In Criminal Case No. 13691, the Court finds the accused Eleno T. Regidor, Jr., GUILTY beyond reasonable doubt of the crime of Falsification of Public Document as defined in and penalized by Article 171 of the Revised Penal Code and, there being no modifying circumstances, is hereby sentenced to suffer an indeterminate penalty of imprisonment from TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of *Prision Correccional* medium as the minimum penalty to EIGHT (8) YEARS of *Prision Mayor* minimum as the maximum penalty and to pay a FINE of FIVE THOUSAND PESOS (₱5,000.00).

4. In Criminal Case No. 13692, the Court finds the accused Eleno T. Regidor, Jr., GUILTY beyond reasonable doubt of the crime of Falsification of Public Document as defined in and penalized by Article 171 of the Revised Penal Code and, there being no modifying circumstances, is hereby sentenced to suffer an indeterminate penalty of imprisonment from TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of *Prision Correccional* medium as the minimum penalty to EIGHT (8) years of *Prision Mayor* minimum as the maximum penalty and to pay a FINE of FIVE THOUSAND PESOS (₱5,000.00).

5. In Criminal Case No. 13693, the Court finds the accused Eleno T. Regidor, Jr., GUILTY beyond reasonable doubt of the crime of Falsification of Public Document as defined in and penalized by Article 171 of the Revised Penal Code and, there being no modifying circumstances, is hereby sentenced to suffer an indeterminate penalty of imprisonment from TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of *Prision Correccional* medium as the minimum penalty to EIGHT (8) YEARS of *Prision Mayor* minimum as the maximum penalty and to pay a FINE of FIVE THOUSAND PESOS (₱5,000.00).

6. In Criminal Case No. 13694, the Court finds the accused Eleno T. Regidor, Jr. and Camilo B. Zapatos, GUILTY beyond reasonable doubt of the crime of Falsification of Public Document as defined in and penalized by Article 171 of the Revised Penal Code and, there being no modifying circumstances, are hereby sentenced to each suffer an indeterminate penalty of imprisonment from TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of *Prision Correccional* medium as the minimum penalty to EIGHT (8) YEARS of *Prision Mayor* minimum as the maximum penalty and to each pay a FINE of FIVE THOUSAND PESOS (₱5,000.00).

7. In Criminal Case No. 13695, the Court finds the accused Eleno T. Regidor, Jr. and Camilo B. Zapatos, GUILTY beyond reasonable doubt of the crime of Falsification of Public Document as defined in and penalized by Article 171 of the Revised Penal Code and, there being no modifying circumstances, are hereby sentenced to each suffer an indeterminate penalty of imprisonment from TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of *Prision Correccional* medium as the minimum penalty to EIGHT (8) YEARS of *Prision Mayor* minimum as the maximum penalty and to each pay a FINE of FIVE THOUSAND PESOS (₱5,000.00).

In so far as Aniceto T. Siete is concerned, who died before arraignment could be held, the case against him is hereby considered dismissed by reason of his death.

Let a Warrant of Arrest issue against Marlene L. Mangao for her immediate apprehension and in order to answer the charges leveled against her.

SO ORDERED.

The Issues

Petitioners filed their Motion for Reconsideration[15] which was, however, denied by the Sandiganbayan in its Resolution[16] dated November 26, 2004. Hence, this Petition based on the following grounds:

I. THE LOWER COURT GRAVELY AND SERIOUSLY ERRED IN CONVICTING THE ACCUSED AMOUNTING TO EXCESS OR LACK OF JURISDICTION AS NO CRIME OF

[15] *Rollo,* pp. 43-50.

[16] *Id.* at 24-25.

FALSIFICATION WAS COMMITTED BY THEM;

II. THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE PETITIONERS WHEN THE EVIDENCE OF THE PROSECUTION WAS TOO WEAK TO WARRANT CONVICTION [BECAUSE] IT MISERABLY FAILED TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT;

III. THE TRIAL COURT GRAVELY ERRED IN NOT GIVING WEIGHT/VALUE TO THE AFFIDAVIT OF DESISTANCE OF THE COMPLAINANTS AND THE EXONERATION BY THE DILG OF THE ADMINISTRATIVE CHARGE AGAINST THEM;

IV. THE RESPONDENT COURT ERRED IN NOT APPRECIATING THE TESTIMONIAL EVIDENCE OF REGIDOR THAT HE HAS NO PARTICIPATION IN THE PREPARATION, BEING THE CITY MAYOR HIS RULE WAS ONLY TO APPROVE THE RESOLUTIONS; [AND]

V. THE EVIDENCE OF THE PROSECUTION IS INCREDIBLE THAT ACCUSED TOOK ADVANTAGE OF THEIR POSITION[.] CONSPIRACY WAS NOT ESTABLISHED.[17]

Moreover, petitioners asseverate that there is no falsification in this case under Article 171, paragraph 2 of the Revised Penal Code because they did not cause it to appear that other persons participated in an act or proceeding when they did not in fact so participate. Petitioners submit that they did not feign such participation because the private complainants physically and actually participated in passing the assailed resolutions. The participation of Mayor Regidor came only after the assailed resolutions were submitted to him for approval. Likewise, there is no falsification under paragraph 7 of Article 171 because petitioners passed and approved authentic, genuine and original documents. Petitioners submit that paragraph 7 involves falsification of a non-existent document and the falsifier produces one purporting to be the original. Petitioners also opine that the DILG's dismissal[18] of the administrative complaint and the private

[17] *Supra* note 1, at 8-9.

[18] Dated April 15, 1991; Exhibit "13", folder of exhibits.

complainants' act of executing affidavits of desistance[19] should be given weight. Intent to gain and/or bad faith were not shown by petitioners as some of the assailed resolutions do not involve money matters. Further, petitioners argue that Taburada's testimony should have been accorded more weight and credence than the testimony of private complainant Taclob. Petitioners claim that Taburada, as a former member of the *Sangguniang Panglungsod*, clearly testified that he was present at the time all the assailed resolutions were deliberated upon and approved,[20] while Taclob's testimony was not credible and trustworthy considering that he executed two (2) affidavits of desistance. Taburada's testimony was not at all discussed by the Sandiganbayan; hence, its decision was not supported by evidence. Most importantly, petitioners reiterate their contention that the minutes[21] were defective and inaccurate. Thus, petitioners pray that they be acquitted in the name of due process and based on the long-standing policy of the State to acquit the accused if the quantum of evidence is insufficient to convict, as in the case at bench.[22]

On the other hand, respondent People of the Philippines, through the Office of the Special Prosecutor (OSP), claims that the issues raised by the petitioners were purely questions of fact because the same would entail the review of all pieces of evidence and evaluation of the weight and probative value thereof. The OSP also claims that petitioners questioned the sufficiency of evidence presented by the prosecution which were relied upon by the Sandiganbayan. Thus, the OSP submits that the instant Petition should be denied outright for it is not the function of this Court under Rule 45 of the Rules of Civil Procedure to re-examine the pieces of evidence duly submitted by the parties. On the merits, the OSP argues that petitioners by virtue of their respective offices and functions, held positions

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[19] Exhibits "16", "17", folder of exhibits.

[20] TSN, January 9, 1992, pp. 17-18.

[21] Exhibits "H", "I", "J", "K" and "L", folder of exhibits.

[22] *Supra* note 1; petitioners' Memorandum dated November 25, 2006, *rollo*, pp. 176-183.

directly connected with the proposal, deliberation, passage and approval of the assailed resolutions as found by the Sandiganbayan and as duly supported by evidence. Intent to gain and/or bad faith is inconsequential, as the law punishes the act of falsification as a violation of public faith. The OSP alleges that the petitioners deliberately attempted to and, in fact, did conceal the falsity of the documents by making it appear that the assailed resolutions were valid on their face, as the same were approved and signed by the petitioners. Moreover, the DILG ruling dismissing the administrative complaint filed against the petitioners and the affidavits of desistance executed by the private complainants were of no moment. Thus, the OSP posits that the prosecution's evidence was overwhelming and sufficient to prove the guilt of the petitioners beyond reasonable doubt of the crime of falsification defined and penalized under Article 171 of the Revised Penal Code.[23]

The ultimate issue in this case is whether petitioners are guilty beyond reasonable doubt of the crime of falsification of public documents.

Our Ruling

The instant Petition is bereft of merit.

The law in point is Article 171 of the Revised Penal Code, which clearly provides:

Art. 171. *Falsification by public officer, employee or notary or ecclesiastic 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:

1. Counterfeiting or imitating any handwriting, signature or rubric;

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

3. Attributing to persons who have participated in any act or proceeding statements other than those in fact made by them;

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[23] OSP's Memorandum dated November 15, 2006; *id.* at 193-223.

4. Making untruthful statements in a narration of facts;

5. Altering true dates;

6. Making any alteration or intercalation in a genuine document which changes its meaning;

7. **Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such a copy a statement contrary to, or different from, that of the genuine original**; or

8. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.

The same penalty shall be imposed upon any ecclesiastical minister who shall commit any of the offenses enumerated in the preceding paragraphs of this article, with respect to any record or document of such character that its falsification may affect the civil status of persons.[24]

Thus, for falsification of a public document to be established, the following elements must concur: 1) that the offender is a public officer, employee, or notary public; 2) that he takes advantage of his official position; and 3) that he falsifies a document by committing any of the aforementioned acts. Likewise, in falsification of public or official documents, it is not necessary that there be present the idea of gain or the intent to injure a third person because in the falsification of a public document, what is punished is the violation of the public faith and the destruction of the truth as therein solemnly proclaimed.[25]

In this case, the petitioners are charged under Article 171, paragraphs 2 and 7 of the Revised Penal Code. Petitioners Regidor and Zapatos, as Mayor, and Member and Temporary Presiding Officer of the *Sangguniang Panglungsod,* respectively, made it appear that private complainants, among others, participated in the *Sangguniang Panglungsod* sessions when they did not

[24] Emphasis supplied.

[25] *Lastrilla v. Granda*, G.R. No. 160257, January 31, 2006, 481 SCRA 324, 345, citing *Lumancas v. Uriarte*, 347 SCRA 22, 33-34 (2000), further citing *People v. Po Giok To*, 96 Phil. 913, 918 (1955).

in fact so participate,[26] and issued, in authenticated forms, the assailed resolutions purporting to be copies of original documents when no such originals exist.

We hold that all the elements of the offense punishable under Article 171, paragraphs 2 and 7 of the Revised Penal Code are present in this case.

First. Petitioners were public officers at the time of the commission of the offenses charged. Mayor Regidor was then Mayor of Tangub City, while Zapatos was a member of the *Sangguniang Panglungsod* and was a Temporary Presiding Officer thereof.

Second. The petitioners took advantage of their respective official positions because they had the duty to make or to prepare, or otherwise to intervene in the preparation of the document, or have the official custody of the document which they falsified.[27] Zapatos, as a member and, at the time, Temporary Presiding Officer of the *Sangguniang Panglungsod*, had the duty to make or prepare or intervene in the preparation of the assailed resolutions. In like manner, Mayor Regidor cannot claim that as mayor he had no participation in the making, or preparation of, nor any intervention in the assailed resolutions.

Under Section 180[28] of *Batas Pambansa Blg*. 337, or the Local Government Code of 1983, which was in effect at the

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[26] *Bernardino v. People*, G.R. Nos. 170453 and 170518, October 30, 2006, 506 SCRA 237, 247-248.

[27] *Giron, Jr. v. Sandiganbayan*, G.R. Nos. 145357-59, August 23, 2006, 499 SCRA 594, 605.

[28] Section 180 of *Batas Pambansa Blg.* 337 provides:

SECTION 180. *Approval of Ordinances by the Mayor; Veto Power*. — (1) All ordinances, and any resolution or motion directing the payment of money or creating liability, enacted or adopted by the *sangguniang panlungsod* shall be forwarded to the mayor. Within ten days after the receipt of the ordinance, resolution or motion, the mayor shall return it with his approval or veto. If he does not return it within that time, it shall be deemed approved. If he returns it with his veto, his reasons therefor in writing shall accompany it. A vetoed ordinance, if repassed by a two-thirds vote of all the members of the s*angguniang panlungsod*, shall take effect as provided in this Code.

time the crimes imputed were committed, the city mayor had the power to veto the ordinances and resolutions enacted or adopted by the *Sangguniang Panglungsod.* Contrary to Mayor Regidor's submission, the veto power confers authority beyond the simple mechanical act of signing an ordinance or resolution as a requisite to its enforceability. Thus, this Court held that the concurrence of a local chief executive in the enactment of an ordinance or resolution requires not only a flourish of the pen, but the application of judgment after meticulous analysis and intelligence as well.[29]

Third. While petitioners' witness, Taburada, testified that he was present during the *Sangguniang*'s deliberations of the assailed resolutions,[30] private complainant Taclob also testified that the resolutions were not discussed and approved during the respective sessions of the *Sangguniang Panglungsod*.[31] The minutes of the sessions, as well, do not reflect any deliberation and/or approval by the *Sangguniang Panglungsod* of the assailed resolutions. Initially, when Taburada was asked if the minutes faithfully recorded all the matters deliberated upon during the sessions of the *Sangguniang Panglungsod* on June 23, June 30, July 14, and July 21, 1988, he readily affirmed it. But after the Sandiganbayan called for a recess when the counsel for the parties had a heated discussion, Taburada claimed that the minutes of the sessions on said dates did not contain all the matters taken up during those sessions, particularly the deliberation and

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(2) The mayor shall have the power to veto any particular item or items of an appropriation ordinance, or of an ordinance, resolution or motion directing the payment of money or creating liability, but the veto shall not affect the item or items to which he does not object. The item or items objected to shall not take effect except in the manner provided in the preceding section. Should an item or items in an appropriation ordinance be disapproved by the mayor, the corresponding item or items in the appropriation ordinance of the previous year shall be deemed reenacted.

[29] *De los Reyes v. Sandiganbayan, Third Division*, G.R. No. 121215, November 13, 1997, 281 SCRA 631, 635.

[30] TSN, January 9, 1992, pp. 17-18.

[31] TSN, March 4, 1992, p. 5.

approval of the assailed resolutions.[32] Yet, the resolutions were questioned by private complainants precisely because the alleged deliberation and voting thereon were not at all conducted as reflected in the minutes[33] of the *Sanggunian* session of July 27, 1988. On said date, after taking up other matters, the *Sangguniang Panglungsod*, upon motion of Taclob, went into a closed-door session. Then a nominal voting was conducted in order to determine "whether said resolutions were brought before the session for deliberation or [if] the nature of said resolutions [was] reflected in the minutes."[34] Majority of the members voted "no," while Taburada answered "no comment"[35] because he did not actually read the minutes at the time, but he nonetheless signed the same.[36] To the same question, Zapatos also answered "no comment." These material inconsistencies in Taburada's testimony, pitted against the testimonies of the private complainants and the documentary evidence, proved fatal to petitioners' cause.

It must be borne in mind that weighing heavily against the petitioners' defense is the well-settled doctrine that findings of fact of trial courts — in this case, the Sandiganbayan — particularly in the assessment of the credibility of witnesses, is binding upon this Court, absent any arbitrariness, abuse or palpable error.[37]

While the petitioners do not wish to impute much significance to the minutes, they are important in the resolution of this case.

In a similar case, *De los Reyes v. Sandiganbayan, Third Division*,[38] this Court, citing a number of cases,[39] highlighted

[32] TSN, January 9, 1992, pp. 21-32.

[33] Exhibit "L", folder of exhibits.

[34] *Id.*

[35] TSN, January 9, 1992, pp. 36-45.

[36] TSN, January 10, 1992, pp. 9-11.

[37] *Filoteo, Jr. v. Sandiganbayan*, 331 Phil. 531, 580 (1996).

[38] *Supra* note 29.

[39] *Id.* at 636-637, citing, *Malinao v. Reyes*, 255 SCRA 616 (1996); *Velarma v. Court of Appeals*, 252 SCRA 406 (1996); *Drilon, v. Lin*, 235 SCRA 135 (1994); *Pimentel v. Garchitorena*, 208 SCRA 122 (1992); *Dizon v. Tizon*, 22 SCRA 1317 (1968); *Subido v. City of Manila*, 108 Phil. 462 (1960).

the importance of the minutes taken in the pertinent proceeding, relying thereon to ascertain the truth when confronted by conflicting claims of parties. Hence, this Court held:

> Thus, the Court accords full recognition to the minutes as the official repository of what actually transpires in every proceeding. It has happened that the minutes may be corrected to reflect the true account of a proceeding, thus giving the Court more reason to accord them great weight for such subsequent corrections, if any, are made precisely to preserve the accuracy of the records. In light of the conflicting claims of the parties in the case at bar, the Court, without resorting to the minutes, will encounter difficulty in resolving the dispute at hand.[40]

We see no reason to deviate from this ruling.

Added to this is the Memorandum of Agreement[41] entered into by the Office of the Mayor and the *Sangguniang Panglungsod* on August 12, 1988, "recalling all SP resolutions not duly passed and/or approved by the majority of the members thereat." Further, the *Sangguniang Panglungsod*, in its Resolution No. 94[42] dated October 15, 1988, opted to re-approve the assailed resolutions "which were alleged to [have been] implemented but not discussed," rather than move for the amendment of the minutes. These acts belie petitioners' claims that the minutes were inaccurate for failing to include therein the deliberations and approval of the assailed resolutions. Indeed, if the minutes merely omitted any mention of the discussion on, and approval of, the subject resolutions, there would have been no need to resubmit them for the approval of the *Sanggunian*. It would have been more convenient to simply effect the correction of the minutes.

Likewise, petitioners' reliance on the affidavits of desistance executed by the private complainants fails to impress this Court. Our ruling in *Balderama v. People*[43] is instructive:

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[40] *Id.* at 638.

[41] Exhibit "18", folder of exhibits.

[42] Exhibit "14", folder of exhibits.

[43] G.R. Nos. 147578-85 and G.R. Nos. 147598-605, January 28, 2008, 542 SCRA 423, 432-433. (Citations omitted.)

A recantation or an affidavit of desistance is viewed with suspicion and reservation. The Court looks with disfavor upon retractions of testimonies previously given in court. It is settled that an affidavit of desistance made by a witness after conviction of the accused is not reliable, and deserves only scant attention. The rationale for the rule is obvious: affidavits of retraction can easily be secured from witnesses, usually through intimidation or for a monetary consideration. Recanted testimony is exceedingly unreliable. There is always the probability that it will later be repudiated. Only when there exist special circumstances in the case which when coupled with the retraction raise doubts as to the truth of the testimony or statement given, can retractions be considered and upheld.

The affidavits of desistance cannot prevail over the categorical statements of the private complainants, the very same affiants who executed the same. Moreover, based on the testimonies of the private complainants, they merely executed the affidavits of desistance after the DILG dismissed the administrative complaint and after Mayor Regidor asked them to execute the same, because they had the impression that the DILG ruling would, in one way or another, be binding on the Sandiganbayan, and they simply wanted to avoid having to spend for their fare in going to the Sandiganbayan for the trial.

This impression was likewise noted by the Sandiganbayan in its assailed Decision. The impression was so prevalent that even the petitioners themselves relied on the DILG dismissal of the administrative charge, contending that it should have been given greater weight by the Sandiganbayan, at least to create a serious and reasonable doubt to warrant their acquittal.

The petitioners' contention lacks merit.

It is a fundamental principle in the law on public officers that administrative liability is separate from and independent of criminal liability. A simple act or omission can give rise to criminal, civil or administrative liability, each independently of the others. This is known as the "threefold liability rule." Thus, absolution from a criminal charge is not a bar to an administrative prosecution, and vice-versa. In this criminal prosecution, the dismissal of the administrative cases against the petitioners will

not necessarily result in the dismissal of the criminal complaints filed against them.

Based on the foregoing disquisitions, the Sandiganbayan's conviction of petitioners had ample factual mooring, after the prosecution presented both documentary and testimonial pieces of evidence. Time and again, we held that we are not a trier of facts; hence, we defer to the factual findings of the Sandiganbayan which had more opportunity and facilities to examine and evaluate the evidence presented.[44]

To repeat, settled is the rule that findings of fact of the Sandiganbayan in cases before this Court are binding and conclusive in the absence of a showing that they come under the established exceptions, among them: 1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; 2) the inference made is manifestly mistaken; 3) there is a grave abuse of discretion; 4) the judgment is based on misapprehension of facts; 5) said findings of fact are conclusions without citation of specific evidence on which they are based; and 6) the findings of fact of the Sandiganbayan are premised on the absence of evidence on record.[45] We found none of these exceptions in the present case. Thus, we accord respect and weight to the Sandiganbayan's findings, a portion of which aptly and judiciously states, to wit:

Based on the foregoing, this Court finds the contentions of the accused untenable. Their defense of good faith and lack of intent has failed to cast doubt on the allegations of the prosecution. In the falsification of public or official documents, whether by public officials or by private persons, it is not that there be present the idea of gain or intent to injure a third person. Verily, the pieces of evidence reveal the specific acts of the four (4) accused in the commission of the crime of falsification. Firstly, the accused caused it to appear in a document that members of the *Sangguniang Panglungsod* participated in the sessions, deliberations and passed the questioned

[44] *Atty. Rodolfo D. Pactolin v. The Honorable Fourth Division of the Sandiganbayan*, G.R. No. 161455, May 20, 2008.

[45] *Supra* note 43, at 432, citing *Gil v. People*, 177 SCRA 229, 236 (1989), further citing *Cesar v. Sandiganbayan*, 134 SCRA 105 (1985).

resolutions. The said resolutions reflect the attendance of all the members of the *Sanggunian* on the dates thereon, including their unanimous approval of the resolutions. The pieces of evidence and the testimonies of the prosecution witnesses, however, reveal otherwise. If, in truth and in fact, Resolutions 50-A, 56, 56-A, 63, 61, 64 and 68 were indeed taken up and passed upon on their respective dates, it would be contrary to human reason why the members of the *Sangguniang Panglungsod* who approved it unanimously, to suddenly file a case against the accused and deny the existence of a legislative act they authored. Secondly, the accused are found to have committed the act of issuing in authenticated form, a document purporting to be a copy of an original document when no such document exists. In issuing the subject Resolutions, Mayor Eleno T. Regidor, Jr., Vice-Mayor Aniceto T. Siete and SP Camilo B. Zapatos, consummated the crime of falsification by purporting them to be original copies of valid, deliberated and approved resolutions when no such documents exist and no proceedings regarding them ever took place as established by the prosecution. Their defense that the minutes of the sessions were inaccurate and did not reflect the deliberations concerning the questioned resolutions, does not convince this Court. The testimonies of complainants Roberto O. [Taclob], Estrelita M. Pastrano, Elizabeth L. Duroy and Agustin L. Opay, all former members of the City Council during the terms of the accused, must be given great weight and credence. In falsification of a public document, the falsification need not be made on an official form. It is sufficient that the document is given the appearance of, or made to appear similar to the official form.

All told, the Sandiganbayan committed no reversible error in ruling that the petitioners are guilty beyond reasonable doubt of the crime of falsification of public documents.

WHEREFORE, the instant Petition is *DENIED* and the Sandiganbayan Decision dated September 24, 2004 in Criminal Cases Nos. 13689, 13690, 13691, 13692, 13693, 13694 and 13695 is **AFFIRMED** *in toto*. Costs against the petitioners.

SO ORDERED.

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

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[*] Additional member in lieu of Associate Justice Diosdado M. Peralta per Special Raffle dated February 2, 2009.

SECOND DIVISION

[G.R. No. 169352. February 13, 2009]

COMMISSIONER OF CUSTOMS, *petitioner, vs.* **GELMART INDUSTRIES PHILIPPINES, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; COURTS; COURT OF TAX APPEALS; A PARTY ASSAILING THE RULING OF A DIVISION OF THE COURT OF TAX APPEALS MUST FILE A MOTION FOR RECONSIDERATION OR NEW TRIAL BEFORE THE SAME DIVISION.— Under Sec. 9 of R.A. No. 9282, "…A party adversely affected by a ruling, order or decision of a Division of the CTA may file a motion for reconsideration or new trial before the same Division of the CTA within fifteen (15) from thereof…" In this case, no motion was filed by petitioner to seek the reconsideration of the assailed decision of the CTA.

2. ID.; ID.; ID.; A PARTY ADVERSELY AFFECTED BY A DECISION OF THE COURT OF TAX APPEALS *EN BANC* MAY FILE WITH THE SUPREME COURT A VERIFIED PETITION FOR REVIEW ON *CERTIORARI*.— Sec. 11 of the same law provides that, "x x x A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial may file a petition for review with the CTA *en banc*." In turn, "A party adversely affected by a decision or ruling of the CTA *en banc* may file with the Supreme Court a verified petition for review on *certiorari* pursuant to Rule 45 of the 1997 Rules of Civil Procedure" as ordained under Sec. 12 of R.A. No. 9282.

3. ID.; ID.; ID.; AFFIRMATIVE VOTE OF FOUR (4) MEMBERS OF THE COURT OF TAX APPEALS *EN BANC* IS NECESSARY FOR THE RENDITION OF A DECISION.— Again, this procedure was not followed by petitioner and no adequate explanation was offered to justify his disregard of the rules. Petitioner vaguely suggests that filing a petition for review with the CTA *en banc* would have been futile because the assailed decision was concurred in by three (3) associate

justices. This is obviously not a defensible argument considering that the affirmative vote of four (4) members of the CTA *en banc* is necessary for the rendition of a decision. Even if three (3) members had already concurred in the assailed decision, it cannot be predicted how the deliberations of the CTA *en banc* could have gone had petitioner rid himself of his blasé attitude towards the rules and followed the tiered appeals procedure laid out in the law.

4. ID.; ID.; ID.; THE SUPREME COURT IS WITHOUT JURISDICTION TO REVIEW A DECISION RENDERED BY A DIVISION OF THE COURT OF TAX APPEALS.— Sec. 2, Rule 4 of the Revised Rules of the Court of Tax Appeals reiterates the exclusive appellate jurisdiction of the CTA *en banc* relative to the review of decisions or resolutions on motion for reconsideration or new trial of the court's two (2) divisions in cases arising from administrative agencies such as the Bureau of Customs. Hence, the Court is without jurisdiction to review decisions rendered by a division of the CTA, exclusive appellate jurisdiction over which is vested in the CTA *en banc.*

5. ID.; ID.; ID.; THE DECISION OF A DIVISION OF THE COURT OF TAX APPEALS BECOMES FINAL AND EXECUTORY WHERE THE PARTY FAILED TO FILE A MOTION FOR RECONSIDERATION OR A PETITION FOR REVIEW WITH THE COURT OF TAX APPEALS *EN BANC*.— Petitioner's failure to file a motion for reconsideration of the assailed decision of the CTA First Division, or at least a petition for review with the CTA *en banc*, invoking the latter's exclusive appellate jurisdiction to review decisions of the CTA divisions, rendered the assailed decision final and executory. Necessarily, all the arguments professed by petitioner on the validity of the seizure, detention and ultimate forfeiture of the subject shipments have been foreclosed.

6. REMEDIAL LAW; DEFAULT; DEFAULT ORDER AGAINST A PARTY WILL NOT RESULT IN DEPRIVING HIM OF STANDING TO FILE A PETITION FOR REVIEW.— It should be noted at this juncture, however, that the order of default against petitioner (which had not been lifted) did not result in depriving him of standing to file a petition for review. A defaulted party's right to appeal from a judgment by default on the ground that the amount of the judgment is excessive, or is different in kind from that prayed for, or that the plaintiff

failed to prove the material allegations of his complaint, or that the decision is contrary to law, has been consistently acknowledged by the Court.

7. TAXATION; BUREAU OF CUSTOMS; FORFEITURE OF THE RESPONDENT'S SHIPMENTS, UNWARRANTED.— In a Certification dated September 6, 1999, the GTEB itself clarified that respondent is authorized to import polyester, acrylic, cotton and other natural or synthetic piece-goods; various types of yarns and threads, nylon, polyester, wool and other synthetic or natural piece-goods; all types of leather and synthetic leathers; non-woven fabrics and similar items; various types of staple fibers (synthetic and natural); various drystuffs and chemicals; and various accessories and supplies. The goods contained in the subject shipments undoubtedly fall under the category of raw materials which respondent is authorized to import under the licenses which it had indubitably obtained prior to the importation of the subject shipments. As such, there is no basis for the forfeiture of the subject shipments on the ground of misdeclaration.

8. ID.; ID.; GARMENT AND TEXTILE EXPORT BOARD (GTEB) RULES AND REGULATIONS; RESPONDENT'S SUB-CONTRACTING OF A PART OF ITS MANUFACTURING PROCESS, NOT A VIOLATION THEREOF.— As regards the contention that respondent had unlawfully sub-contracted a part of the manufacturing process for which the subject shipments were intended, Republic Act No. 3137 (R.A. No. 3137), which governs respondent's operations as a bonded manufacturing warehouse, as well as the pertinent rules of the GTEB, allow respondent to manufacture garments and apparel articles intended for exportation in whole or in part in its bonded manufacturing warehouse. xxx Sec. 1(19), Part 1 of the Rules and Regulations of the GTEB defines a manufacturer as a firm manufacturing textile and/or garments for export and provides that, **"Manufacturers under R.A. No. 3137 may perform a portion of the manufacturing processes within the premises while other processes to complete his finished products may be done through subcontractors and/or homeworkers."** Thus, unlike other manufacturers who are required to have at least one complete production line within his manufacturing premises, which Gelmart nonetheless had complied with because it has a complete manufacturing line for its lace and bra divisions,

> Gelmart is actually required only to ensure that the goods released from its bonded manufacturing warehouse for embroidery **had been previously stamped or cut in accordance with the pattern to be manufactured** in accordance with Sec. 4, par. XI of R.A. No. 3137. Moreover, note should be taken of the fact that the sub-contractors engaged by Gelmart were also duly certified by the GTEB.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Angara Abello Concepcion Regala & Cruz for respondent.

D E C I S I O N

TINGA, *J.*:

The Commissioner of Customs assails the Decision[1] of the Court of Tax Appeals (CTA) dated August 15, 2005, which reversed the decree of forfeiture issued by petitioner, lifted the Warrants of Seizure and Detention (WSD) issued by petitioner, and ordered the release to Gelmart Industries Philippines, Inc. of its imported fabrics on the condition that the correct duties, taxes, fees and other charges thereon be paid to the Bureau of Customs.

The narration of facts by the CTA, although rather lengthy, is quoted hereunder for its accuracy:

> Petitioner is a corporation established in the year 1953 and is duly registered in accordance with Philippine laws, with office address at Km. 15 South Superhighway, Parañaque City. It is represented by its Corporate Secretary, Atty. Roberto V. Artadi.
>
> It is primarily engaged in the manufacturing of embroidery and apparel products for the export market. It is, likewise, authorized to operate a Bonded Manufacturing Warehouse (BMW), BMW No. 39, as evidenced by the Certification dated January 16, 1991, issued by the Garments and Textile Export Board (GTEB). It is, likewise,

[1] *Rollo*, pp. 48-73; penned by Associate Justice Lovell R. Bautista with the concurrence of Associate Justices Ernesto D. Acosta and Caesar A. Casanova.

granted two licenses to import tax and duty-free materials and accessories for re-exportation under License to Import No. 077-99 dated May 13, 1999 and valid until February 13, 2000 and Import License No. 048468 dated July 7, 1999 and valid until April 7, 2000. Under these licenses, petitioner was authorized to import "FABRICS/ YARNS/LEATHERS/SUBMATERIALS" from various foreign principals with a total value of US$4,771,308.00 and $2,472,579.20, respectively, with the limitation that these licenses do not entitle the manufacturer to import finished and semi-finished goods, cut-to-panel/knit to shape materials, and cut-piece goods.

Since the start of its operations, petitioner has manufactured several product lines. It started manufacturing embroidered handkerchiefs' branched out to infants' and children's wear, knitted blouse and apparel products, shirts, ladies dresses, night gown, pajama, swim wear, nylon stockings, brassieres and intimate ladies' underwear. For the year 1999, petitioner stopped manufacturing some of the lines which were not viable anymore. It, however, maintained the manufacturing of brassieres and related intimate ladies garments, children's and infants' wear products, knitted gloves, socks and the like.

During the year 1999, petitioner, in the course of its operations and on three (3) different occasions in 1999, received consignments of various textile materials and accessories from its supplier, to be manufactured into finished products for subsequent exportation to principals abroad.

The three shipments of imported various textile materials and accessories were declared in the BOC Entry, Internal Declaration and the attached Bill of Lading, Commercial Invoice and/or Packing List, detailed as follows:

1. Entry No.	44780-99 PO2A Port of Manila
Date of Arrival	August 8, 1999
Number and Kind	2x40' Container S.T.C. 646 Rolls of 100% Polyester Knitted Fabrics Weight: 265-270 GM/M2 Width: 60" Usable, 62" Edge to Edge PIO#99K668
Color	Midnite - 2,253.30 lbs. Royal Blue - 5,573.20 lbs.

	Midnite - 6,069.10 lbs. Royal Blue - 7,390.00 lbs. Royal Blue - 1,840.30 lbs. Midnite - 4,330.30 lbs. AND 100% Polyester Knitted Fabrics Weight: 130-140 GM/M2 Width: 60" Usable, 62" Edge to Edge Royal Blue - 507.70 lbs. Cardinal - 591.40 lbs. Midnite - 676.20 lbs.
2. Entry No. Date of Arrival	46269-99, PO2A Port of Manila August 14, 1999
Number and Kind	1x40' Container S.T.C. 276 Rolls of
Color	100% Polyester Knitted Fabric Weight: 265-270 GM/M2 Width: 60" Usable, 62" Edge to Edge PO#99K667 Midnite – 3,752.70 lbs. Cardinal – 8,625.80 lbs.
3. Entry No.	46297-99, PO2A Port of Manila
Date of Arrival	August 14, 1999
Number and Kind	1x20' Container S.T.C. 142 packages, 20 Rolls of 100% Cotton Knitted Fabric Weight 813.90 lbs. Thread Cones - 4,833.00 Cones Elastic - 553.00 GR Velcro - 8,333.00 Yds. Poly Tape - 9000 Yds. Woven Tape (ST73) - 23400 Yds. Neck Tape (TCP 507) - 12020 Yds. Main Label - 6,147.50 Doz. Care Label - 2,060.00 Doz.

	Price Ticket	-	75.00 K
	Carton Sticker	-	3,127.00 PR

On August 20, 1999, then Commissioner of Customs Nelson Tan, issued a Memorandum requiring the 100% examination of all shipments consigned to petitioner on its transfer/release from the piers to CBW No. G-39. This Memorandum was prompted by the Indorsement of the Warehouse and Assessment Monitoring Unit (WAMU) which recommended the examination of the subject shipments by the examiner of the Warehouse and Assessment Division (WAD) for alleged misdeclaration.

On August 31, 1999, Inspector Rodolfo Alfaro submitted a report stating that the shipments under Entry Nos. 46297-99 and 46269-99 were examined at pier 3, South Harbor, Manila, while Entry No. 44780-99 was examined inside the Bonded Manufacturing Warehouse of petitioner, CBW No. G-39. After the inspection, a report was issued stating that the subject shipments contained cotton fabrics with three (3%) percent spandex for shirting and fleece textile materials. The Inspection Report concluded that these articles are not normally used for the manufacture of brassieres and/or lace, for the Bra and Lace Division of petitioner, which according to the BOC, is the only operational division. In the same Inspection report, Mr. Alfaro recommended that the Import License of petitioner be verified to determine if the subject shipments should be seized for violation of existing Customs Rules and Regulations. Thereafter, respective representatives from the GTEB and the BOC conducted an ocular inspection of the Bonded Manufacturing Warehouse of petitioner.

During the ocular inspection, it was discovered that petitioner was operating the Bra and Lace Division as well as the Auxiliary Division. It was likewise found that only machineries for the two divisions exist and that there were no facilities for the other lines of products.

In a letter dated September 3, 1999, petitioner's Corporate Secretary and in-house counsel requested the GTEB for a Certification to clarify the description of "FABRICS/YARNS/LEATHERS/SUBMATERIALS" or the articles petitioner is authorized to import based on its License No. 077-99.

On September 6, 1999, a Certification was issued by the GTEB, certifying petitioner's license to import the following raw materials, to wit:

a. Polyester, acrylic, cotton and other natural or synthetic piece-goods

b. Various types of yarns and threads, nylon, polyester, wool and other synthetic or natural piece-good

c. All types of leather and synthetic leathers

d. Non-woven fabrics and similar items

e. Various types of staple fibers (synthetic and natural)

f. Various drystuffs and chemical

g. Various accessories and supplies

On September 14, 1999, a certification was likewise issued by the Garments/Textile Mfg. Bonded Warehouse Division-Port of Manila (GTMBWD-POM) that "Import License Nos. 48468 and 77-99 are the current licenses being utilized by GELMART INDUSTRIES PHILS., INC." which covers fabrics/yarn/leathers sub materials but "does not entitle the manufacturer to import finished and semi-finished goods, cut-to-panel/knit to shape materials, and cut-piece goods."

On September 15, 1999, Atty. Tugday of the BOC presented the following observations and recommended the seizure of the subject shipments:

1. The subject shipments which actually contained cotton fabrics with 3% spandex for shirtings and 100% spun polyester polar fleece with one side anti-pilling, 2 side brush are not needed in the operation of the existing divisions of GIPI, namely: the bra and lace divisions.

2. Upon the closure of the Infant's Wear Division, Children's Wear Division, Swimwear Division, Knit Glove Division, all of GIPI, the import licenses on articles not consistent in the operation of its remaining divisions for bra and lace are deemed cancelled. In short, the importations of the subject shipments were made without authority.

3. In renewing its license to operate a customs manufacturing bonded warehouse, GIPI submitted documents misrepresenting that it has machineries and operating a division capable of manufacturing the questioned shipments into finished products.

4. GIPI has no facilities to comply with Rule VIII, Section1(d) of the GTEB Rules and Regulations, *i.e.*, the requirement on the "production, capacity geared for export of at least 70%." With this, GIPI would be transferring 100% of these subject materials to third parties under the guise of subcontracting, a practice violative of the GTEB and Customs regulations.

5. GIPI abused the privileges given to operate a manufacturing, bonded warehouse by unjustly interpreting the phrase "fabrics" in the import license issued by the GTEB to cover any kind of fabrics or textile materials even though not consistent in the operations of its existing bra and lace divisions.

6. Observations 1, 2, 3, 4 and 5 constitute *prima faci*e evidence that without authority, GIPI is allowing third parties to utilize its import license and consequently its export quota.

7. Misrepresentations and/or use of false or fraudulent entries and details in all document applications, papers submitted to the Board for consideration and approval as well as unauthorized importations and transfer of export quotas, all are classified as major violations of GTEB rules and regulations.

8. Importation of raw materials such as knitted or woven fabrics, yarn, leather, ribbings, interlining, pocket lining, polyfill, thread, collars, cuffs and laces with the width of more than 10 inches shall require an import license from the GTEB. In short these are regulated raw materials that would require import license.

Furthermore, Atty. Tugday of the WAMU questioned petitioner's authority to manufacture the particular garments for which the imported articles may be used on the ground that most of the production processes for these garments would be done outside the bonded warehouse by petitioner's subcontractors. WAMU is of the opinion that this act would contravene Rule VIII, Section1.d of the GTEB Rules, which provides that:

> SECTION 1. REQUIREMENTS. The following are the requirements for the application for operation of a bonded manufacturing warehouse (BMW):

xxx xxx xxx

d. Production capacity geared for export of at least 70%.

In a letter dated September 14, 1999, the BOC, through Atty. Rustom L. Pacardo requested from the GTEB an interpretation of Rule VIII, Section1.d of the GTEB Rules.

On September 16, 1999, the GTEB interpreted the foregoing provision as follows:

Please be informed that said provision requires that the production capacity of the applicant for bonded manufacturing warehouse is at least 70% for export and 30% is allowed for local market, subject to payment of taxes and duties. Further, said provision does not relate to the limit that the applicant for bonded warehouse may produce in-house and through subcontractors.

On October 1, 1999, petitioner assailed the recommendation for the issuance of the Warrant of Seizure and Detention against shipments covered by Entry Nos. 46297-99, 46269-99, and 44780-99. In the same letter, petitioner requested the BOC to allow the re-shipment of the subject shipments, contending, among others, that "GELMART have subcontractors duly approved by the GTEB for the manufacture of Boy's pants and tops which requires the subject shipments (of) raw materials."

Meanwhile, a letter dated September 9, 1999 was received by petitioner from one of its principals for the imported articles, PADA Industrial (Far East) Co. Ltd. Of Hong Kong (PADA), informing the former of the latter's intention to cancel the order and instructed petitioner to return the shipment of raw materials back to PADA. Petitioner, thus, requested the District Collector of Customs for authority to effect the reshipment of the subject shipments back to PADA.

On October 21, 1999, Bureau of Customs Deputy Commissioner Emma M. Rosqueta upheld the favorable recommendation of the Port of Manila for the return of the shipment, declaring that:

We agree with your position that re-shipment may be allowed to a country other than the country of origin. We believe that it is the right of the Principal to determine where his shipment should go unless it would violate our laws or any rule or regulation. In fact we allow said re-shipment under CMO 85-91. It states:

2.1 Bonded manufacturing warehouse operators may request for re-shipment of raw materials and accessories to its foreign supplier in cases where they are defective, sub-standard or not in accordance with given specification. Likewise, return shipment may be allowed if the said raw materials are no longer required for production.

On November 19, 1999, the BOC issued the following seizure orders, Seizure Identification No. 99-281 for Warehousing Entry No. 46269-99; Seizure Identification No. 99-280 for Warehousing Entry No. 44780-99 and Seizure Identification No. 99-279 for Warehousing Entry No. 46297-99, for alleged violation of Section 2530 paragraphs (f) and (l) subparagraphs 3, 4 and 5 of the Tariff and Customs Code of the Philippines (TCCP).

A Memorandum dated January 10, 2001 was filed by petitioner with the District Collector of Customs on January 12, 2001 in order to protest the seizure orders issued by the BOC.

In a Decision dated August 9, 2001, and which was received by petitioner on August 20, 2001, the District Collector of Customs ordered that the shipments be forfeited in favor of the government for alleged violation of Section 2530 paragraphs (f) and (l) subparagraphs 3, 4 and 5 of the TCCP, as amended.

Petitioner filed its Memorandum of Appeal with the Customs Commissioner on August 28, 2001, and in a Decision dated May 16, 2002, a copy of which was received by petitioner on June 29, 2002, the respondent affirmed the forfeiture orders issued by the Collector of Customs.[2] (Citations omitted)

As previously mentioned, the CTA reversed the decree of forfeiture issued by petitioner and lifted the latter's WSDs. It also ordered the release of respondent's importation subject to the condition that the correct duties, taxes, fees and other charges shall be paid to the Bureau of Customs. The dispositive portion of the decision states:

WHEREFORE, the decree of forfeiture of respondent Commissioner of Customs is hereby REVERSED and the Warrants of Seizure and Detention Nos. 99-279, 99-280 and 99-281 are hereby LIFTED. Accordingly, the subject importation covered by Import Entry Nos. 44780-99; 46269-99 and 46297-99 are hereby RELEASED to petitioner subject to the condition that the correct

[2] *Id.* at 49-58.

duties, taxes, fees and other charges thereon be paid to the Bureau of Customs based on the actual quantity and condition of the articles at the time of filing of the corresponding import entry in compliance with this decision.

SO ORDERED.[3]

Upon respondent's motion, the CTA amended its decision and directed the release of the subject shipments without the payment of duties and taxes on the ground that the same were imported tax and duty-free subject to the condition that the imported materials will subsequently be re-exported as finished products. The dispositive portion of the Resolution of the CTA dated January 6, 2006 provides:

WHEREFORE, the Court hereby GRANTS petitioner's "Motion for Clarification." Accordingly, the dispositive portion of the decision promulgated on August 15, 2005 is hereby amended as follows:

> "WHEREFORE, the decree of forfeiture of respondent Commissioner of Customs is hereby REVERSED and the Warrants of Seizure and Detention Nos. 99-279, 99-280 and 99-281 are hereby LIFTED. Accordingly, the subject importation covered by Import Entry Nos. 44780-99; 46269-99 and 46297-99 are hereby RELEASED to petitioner sans the payment of duties and taxes.
>
> SO ORDERED.[4]

In the instant Petition[5] dated October 4, 2005, petitioner, through the Office of the Solicitor General, argues that the subject shipments were misdeclared as "100% polyester knitted fabrics" and "100% cotton knitted fabrics" when they were, in fact, 100% polyester polar fleece, fleece textile materials, and cotton fabrics with 3% spandex skirtings.[6] The shipments were allegedly correctly forfeited in favor of the government in accordance with Sec. 2503 of the Tariff and Customs Code. Moreover,

[3] *Id.* at 72-73.

[4] *Id.* at 480-481.

[5] *Id.* at 10-47.

[6] *Id.* at 30-31.

the subject shipments which allegedly consisted of regulated items violated or exceeded the import permits of respondent.

Petitioner also asserts that although respondent is allowed to subcontract a portion of the manufacturing process (involving the subject shipments), it violated the rules of the Garment and Textile Export Board (GTEB) and the Bureau of Customs which allegedly allowed respondent to subcontract only a small or incidental portion of the manufacturing process.

In its Comment[7] dated February 10, 2006, respondent points out that the instant petition questions the decision of a division of the CTA in contravention of Republic Act No. 9282 (R.A. No. 9282),[8] which provides that this Court exercises appellate jurisdiction over *en banc* decisions or rulings of the CTA. Respondent avers that petitioner does not have standing to appeal the judgment of the CTA as it had been declared in default by the latter. The decision of the CTA had allegedly attained finality as petitioner failed to move for the reconsideration thereof or to file a petition for review with the CTA *en banc*. Further, the instant petition allegedly raises factual questions beyond the province of the Court to review.

On the substantive issues, respondent claims that the goods contained in the subject shipments correspond to the articles described in the import entries and are covered by respondent's import licenses. Respondent insists that the GTEB rules do not prevent it from engaging the services of sub-contractors. On the contrary, the rules allegedly allow it to perform a portion of the manufacturing process within its premises while the other processes to complete the finished products are permitted to be done through sub-contractors.

[7] *Id.* at 267-304.

[8] Entitled, "AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES," which took effect on April 23, 2004.

Petitioner filed a Reply[9] dated August 10, 2006, reiterating his arguments and pleading that the Court exercise its equity jurisdiction notwithstanding the procedural lapses in this petition. He claims that despite the default order against him, he is still allowed to file an appeal.

In its Rejoinder[10] dated October 3, 2006, respondent reiterates the procedural infirmities in the petition.

Petitioner had indeed committed procedural missteps on his way to this Court.

First. Under Sec. 9 of R.A. No. 9282, "…A party adversely affected by a ruling, order or decision of a Division of the CTA may file a motion for reconsideration or new trial before the same Division of the CTA within fifteen (15) from thereof…"[11] In this case, no motion was filed by petitioner to seek the reconsideration of the assailed decision of the CTA.

Second. Sec. 11 of the same law provides that, "x x x A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial may file a petition for review with the CTA *en banc*." In turn, "A party adversely affected by a decision or ruling of the CTA *en banc* may file with the Supreme Court a verified petition for review on *certiorari* pursuant to Rule 45 of the 1997 Rules of Civil Procedure" as ordained under Sec. 12 of R.A. No. 9282.

Again, this procedure was not followed by petitioner and no adequate explanation was offered to justify his disregard of the rules. Petitioner vaguely suggests that filing a petition for review with the CTA *en banc* would have been futile because the assailed decision was concurred in by three (3) associate justices. This is obviously not a defensible argument considering that the affirmative vote of four (4) members of the CTA *en banc* is necessary for the rendition of a decision.[12] Even if three (3) members had already

[9] *Rollo*, pp. 505-515.

[10] *Id.* at 521-528.

[11] Sec. 9 amended Sec. 11 of R.A. No. 1125, the law creating the CTA.

[12] Republic Act No. 9282 (2004), Sec. 2.

concurred in the assailed decision, it cannot be predicted how the deliberations of the CTA *en banc* could have gone had petitioner rid himself of his blasé attitude towards the rules and followed the tiered appeals procedure laid out in the law.

Third. Sec. 2, Rule 4 of the Revised Rules of the Court of Tax Appeals reiterates the exclusive appellate jurisdiction of the CTA *en banc* relative to the review of decisions or resolutions on motion for reconsideration or new trial of the court's two (2) divisions in cases arising from administrative agencies such as the Bureau of Customs.[13] Hence, the Court is without jurisdiction to review decisions rendered by a division of the CTA, exclusive appellate jurisdiction over which is vested in the CTA *en banc.*

Petitioner's failure to file a motion for reconsideration of the assailed decision of the CTA First Division, or at least a petition for review with the CTA *en banc*, invoking the latter's exclusive appellate jurisdiction to review decisions of the CTA divisions, rendered the assailed decision final and executory. Necessarily, all the arguments professed by petitioner on the validity of the seizure, detention and ultimate forfeiture of the subject shipments have been foreclosed. [14]

It should be noted at this juncture, however, that the order of default against petitioner (which had not been lifted) did not result in depriving him of standing to file a petition for review.

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[13] The provision, which was left unchanged by the Resolution promulgated by the Court on September 16, 2008, which approved the Amendments to the 2005 Rules of the Court of Tax Appeals, reads:

Sec. 2. *Cases within the jurisdiction of the Court en banc.*—The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies—Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;…

[14] *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007, 522 SCRA 144.

A defaulted party's right to appeal from a judgment by default on the ground that the amount of the judgment is excessive, or is different in kind from that prayed for, or that the plaintiff failed to prove the material allegations of his complaint, or that the decision is contrary to law, has been consistently acknowledged by the Court.[15]

Nonetheless, let it be reiterated that the instant petition is so procedurally flawed that its outright denial is warranted. Furthermore, after a review of the argued merits of the case, the Court is all the more convinced that the petition is truly a lost cause.

Petitioner claims that the subject shipments as described in their import entries do not correspond to those as found by the Bureau of Customs upon examination. The "100% polyester knitted fabrics" declared under Warehousing Entry Nos. 44780-99 and 46269-99, and "100% cotton knitted fabrics" declared under Warehouse Entry No. 46297-99 are allegedly not the same as the "100% polyester polar fleece" (for the shipment covered by Warehousing Entry No. 44780-99), "fleece textile materials" (for the shipment under Warehousing Entry No. 46269-99), and "cotton fabrics with 3% spandex for skirtings" (for Warehousing Entry No. 46297-99) as discovered upon examination. However, petitioner did not present any evidence to substantiate the variance between the subject shipments as declared and those as actually found.

At any rate, the matter was settled by a letter from the Philippine Textile Research Institute presented by respondent, showing that "100% PES knitted fabric" and "polar fleece fabric" are both classified as "100% polyester." This letter was given full faith and credence by the CTA and we have no reason, again absent any evidence presented by petitioner, to hold otherwise.

We cannot overlook the fact that respondent had been granted two licenses to import tax and duty-free materials and accessories

[15] *Martinez v. Republic*, G.R. No. 160895, October 30, 2006, 506 SCRA 134, 147-148, 150, citing *Lina v. Court of Appeals*, No. 63397, April 9, 1985, 135 SCRA 637 and *Rural Bank of Sta. Catalina v. Land Bank of the Philippines*, G.R. No. 148019, July 26, 2004, 435 SCRA 183.

for re-exportation under License to Import No. 077-99 dated May 13, 1999 and Import License No. 048468 dated July 7, 1999. These import licenses authorize respondent to import "FABRICS/YARNS/LEATHERS/SUBMATERIALS" from various foreign principals with the limitation that these licenses do not entitle respondent to import finished and semi-finished goods, cut-to-panel/knit-to shape materials, and cut-piece goods.

In a Certification dated September 6, 1999, the GTEB itself clarified that respondent is authorized to import polyester, acrylic, cotton and other natural or synthetic piece-goods; various types of yarns and threads, nylon, polyester, wool and other synthetic or natural piece-goods; all types of leather and synthetic leathers; non-woven fabrics and similar items; various types of staple fibers (synthetic and natural); various drystuffs and chemicals; and various accessories and supplies.[16]

The goods contained in the subject shipments undoubtedly fall under the category of raw materials which respondent is authorized to import under the licenses which it had indubitably obtained prior to the importation of the subject shipments. As such, there is no basis for the forfeiture of the subject shipments on the ground of misdeclaration.

As regards the contention that respondent had unlawfully sub-contracted a part of the manufacturing process for which the subject shipments were intended, Republic Act No. 3137 (R.A. No. 3137),[17] which governs respondent's operations as a bonded manufacturing warehouse, as well as the pertinent rules of the GTEB, allow respondent to manufacture garments and apparel articles intended for exportation in whole or in part in its bonded manufacturing warehouse.

Sec. 2(A), Rule VIII of the GTEB Rules and Regulations provides:

Sec. 2. Conditions. The following are the conditions for the operation of a BMW:

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[16] *Rollo*, p. 351.

[17] THE EMBROIDERY LAW.

A. All garment and apparel articles manufactured in whole or in part out of bonded raw materials and intended for exportation may be manufactured in whole or in part in a bonded manufacturing warehouse; Provided that the manufacturer-exporter of such articles has secured a permit from the Board to operate such warehouse and has posted a bond in the amount of Two Hundred Thousand Pesos (₱200,000.00) from a reputable bonding company acceptable to the Bureau of Customs guaranteeing faithful compliance with all laws, rules and regulations applicable thereto.

Sec. 1(19), Part 1 of the Rules and Regulations of the GTEB defines a manufacturer as a firm manufacturing textile and/or garments for export and provides that, "**Manufacturers under R.A. No. 3137 may perform a portion of the manufacturing processes within the premises while other processes to complete his finished products may be done through subcontractors and/or homeworkers**." Thus, unlike other manufacturers who are required to have at least one complete production line within his manufacturing premises, which Gelmart nonetheless had complied with because it has a complete manufacturing line for its lace and bra divisions, Gelmart is actually required only to ensure that the goods released from its bonded manufacturing warehouse for embroidery **had been previously stamped or cut in accordance with the pattern to be manufactured** in accordance with Sec. 4, par. XI of R.A. No. 3137. Moreover, note should be taken of the fact that the sub-contractors engaged by Gelmart were also duly certified by the GTEB.

In sum, the procedural infirmities and insubstantial legal argumentation in the petition combine to defeat petitioner's claims.

WHEREFORE, the Petition dated October 4, 2005 is *DENIED*. The Decision dated August 15, 2005 of the Court of Tax Appeals in C.T.A. Case No. 6518, as clarified in the Resolution dated January 6, 2006, is *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

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

FIRST DIVISION

[G.R. Nos. 171516-17. February 13, 2009]

COMMISSIONER OF CUSTOMS, *petitioner, vs.* **COURT OF TAX APPEALS, LAS ISLAS FILIPINAS FOOD CORPORATION and PAT-PRO OVERSEAS CO., LTD.,** *respondents.*

SYLLABUS

1. TAXATION; TARIFF AND CUSTOMS CODE OF THE PHILIPPINES; SEIZED ARTICLES MAY NOT BE RELEASED UNDER BOND IF THERE IS *PRIMA FACIE* EVIDENCE OF FRAUD IN THE IMPORTATION; TERM "FRAUD," EXPLAINED.— Section 2301 of the TCCP states that seized articles may not be released under bond if there is *prima facie* evidence of fraud in their importation. Fraud is a "generic term embracing all multifarious means which human ingenuity can devise and which are resorted to by one individual to secure an advantage and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated." Since fraud is a state of mind, its presence can only be determined by examining the attendant circumstances.

2. ID.; ID.; SECTION 1202 THEREOF; WHEN IMPORTATION TAKES PLACE; EXCEPTION; WHEN ENTRY FOR IMMEDIATE EXPORTATION ALLOWED.— Under Section 1202 of the TCCP, importation takes place when merchandise is brought into the customs territory of the Philippines with the intention of unloading the same at port. An exception to this rule is transit cargo entered for immediate exportation. Section 2103 of the TCCP provides: Section 2103. *Articles Entered for Immediate Exportation.* — xxx. For an entry for immediate exportation to be allowed under this provision, the following must concur: (a) there is a clear intent to export the article as shown in the bill of lading, invoice, cargo manifest or other satisfactory evidence; (b) the Collector must designate the vessel or aircraft wherein the articles are laden as a constructive warehouse to facilitate the direct transfer of the articles to the exporting vessel or aircraft; (c) the imported articles are directly transferred from the vessel or aircraft

designated as a constructive warehouse to the exporting vessel or aircraft and (d) an irrevocable domestic letter of credit, bank guaranty or bond in an amount equal to the ascertained duties, taxes and other charges is submitted to the Collector (unless it appears in the bill of lading, invoice, manifest or satisfactory evidence that the articles are destined for transshipment).

3. ID.; ID.; ID.; ENTRY FOR IMMEDIATE EXPORTATION; REQUISITES NOT PRESENT IN CASE AT BAR.— None of the requisites above was present in this case. While respondents insist that the shipment was sent to the Philippines only for temporary storage and warehousing, *the bill of lading clearly denominated "South Manila, Philippines" as the port of discharge*. This not only negated any intent to export but also contradicted LIFFC's representation. Moreover, *the shipment was unloaded from the carrying vessel for the purpose of storing the same at LIFFC's warehouse*. Importation therefore took place and the only logical conclusion is that the refined sugar was truly intended for domestic consumption. Furthermore, while respondents insisted that an import allocation was unnecessary, they filed an application, albeit belatedly, in the SRA for the shipment of refined sugar. Respondents' web of conflicting statements and actuations undoubtedly proves bad faith, if not outright fraud.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
I.C. Garcia & Associates for private respondents.

R E S O L U T I O N

CORONA, *J.*:

Respondent Las Islas Filipinas Food Corporation (LIFFC) owned and operated an industry-specific customs bonded warehouse catering to food manufacturers.[1] Among the conditions

[1] Memorandum signed by Geminiano D. Jara and noted with concurrence by Alvin R. Guiam. Dated January 22, 2004. Annex "J", *rollo*, pp. 68-73. See also letter addressed to LIFFC signed by Cecil R. Sison. Dated March 3, 2004. Annex "O," *id.*, p. 85.

for its establishment and operations was securing an import allocation from the Sugar Regulatory Administration (SRA) every time it imported sugar for its clients.[2]

On February 20, 2004, Pat-Pro Overseas Company, Ltd. (PPOC), a Thai company, appointed LIFFC as its "exclusive offshore trading, storage and transfer facility" in the Philippines for its local and foreign transshipment[3] operations.[4] Pursuant to this appointment, it shipped ten (10) twenty-foot containers of refined sugar to LIFFC.

The shipment of refined sugar arrived in Manila on April 24, 2004. Because LIFFC failed to present an import allocation from the SRA, the shipment became subject of Alert Order No. A/IE/20040719-101.[5] On July 16, 2004, a decree of abandonment was issued due to LIFFC's failure to file an import entry.[6] Thereafter, the Collector of Customs issued a warrant of seizure and detention[7] on July 27, 2004 in view of the SRA's advice that no import allocation had been granted to LIFFC.[8]

On September 23, 2004, the Bureau of Customs (BoC) suspended LIFFC's license to operate an ICBW. Annex "LL", *id.*, pp. 117-118.

[2] Disposition form dated February 23, 2004. Annex "M", *id.*, pp. 81-82.

[3] Transshipment is defined as the act of sending an exported product through an intermediate country before routing it to the country intended to be its final destination. In maritime law, it is the act of taking the cargo out of one ship and loading it in another. See Nague, *HANDBOOK ON THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES*, AS AMENDED, AND THE CUSTOMS BROKERS ACT OF 2004 AND ITS IMPLEMENTING RULES AND REGULATIONS 1st ed., 412 citing BLACK'S LAW DICTIONARY, 5th ed.

[4] Memorandum of Agreement between LIFFC and PPOC. Annex "L", *rollo*, pp. 79-80.

[5] Annex "X", *id.*, p. 95.

[6] Decree of abandonment no. 2004-065 issued by district collector Ronnie C. Silvestre of Customs District II-A (South Harbor, Manila). Annexes "U" and "EE", *id.*, pp. 91-92, 103-104.

[7] Issued by district collector Reynaldo S. Nicolas of Customs District II-B (Manila International Container Port). Dated July 27, 2004. Annex "AA", *id.*, p. 98.

[8] SRA administrator James C. Ledesma in his July 19, 2004 letter to the Bureau of Customs stated:

On August 16, 2004, LIFFC and PPOC (respondents) moved to quash the decree of abandonment.[9] However, in an order dated September 21, 2004,[10] the motion was denied (for being filed out of time as the decree of abandonment had already attained finality on August 3, 2004).

Respondents appealed the September 21, 2004 order to the Commissioner of Customs asserting that they were deprived of due process. They alleged that they were never notified of the issuance of the decree of abandonment.

After reviewing the evidence on record, the Commissioner found that respondents were not informed of the abandonment proceedings. Thus, in a decision dated February 4, 2005, he set aside the decree of abandonment and ordered the institution of proceedings for seizure and forfeiture.[11]

Pursuant to the February 4, 2005 decision of the Commissioner, the Republic instituted proceedings for the seizure and forfeiture of respondents' importation.[12] It contended that, because respondents imported the refined sugar without securing an import allocation from the SRA, the shipment should be forfeited pursuant to Section 2530 (f) and (1)-5 of the Tariff and Customs Code of the Philippines (TCCP).[13]

"[M]ay we inform you that as of the date hereof, **our office has not issued any authority/clearance to [LIFFC] to import sugar for domestic market**. Additionally, the SRA has no sugar importation program for the year 2004 and has even exported our excess sugar to the world market. LIFFC has a pending application with this office for import allocation as CBW operator but has yet to meet certain requirements." (emphasis supplied) Annex "W", *id.*, p. 94.

The SRA subsequently disapproved LIFFC's application for import allocation. Since LIFFC applied for an allocation only after the sugar arrived in the Philippines, it was not in good faith. Letter dated July 29, 2004. Annex "BB", *id.*, p. 99.

[9] Annex "II", *id.*, pp. 112-113.

[10] Annex "JJ", *id.*, pp. 114-115.

[11] Penned by Customs Commissioner George M. Jereos. *Id.*, pp. 120-123.

[12] Docketed as Seizure Identification Nos. 2005-013 (in Customs District II-A) and 04-066 (in Customs District II-B).

[13] CUSTOMS CODE, Sec. 2530 states:

Respondents, on the other hand, asserted that the refined sugar was merely transshipped to the Philippines while PPOC was looking for a buyer in the international market. Thus, an import allocation from the SRA was unnecessary.

In decisions dated February 14, 2005 and February 16, 2005, the Collectors held that because LIFFC did not secure an import allocation from the SRA, the shipment was an illegal importation of refined sugar. They ordered its forfeiture in favor of the government.[14]

On appeal,[15] the Commissioner affirmed the decisions of both Collectors.[16]

On April 15, 2005, respondents appealed to the Court of Tax Appeals (CTA) via petitions for review[17] contending that

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Section 2530. *Property Subject to Forfeiture Under Tariff and Customs Laws.*—Any vehicle, vessel or aircraft, cargo, article and other objects shall, under the following conditions be subjected to forfeiture:

xxx xxx xxx

(f) **Any article the importation** or exportation **of which is effected** or attempted **contrary to law**, or any article of prohibited importation or exportation, and all other articles, which, in the opinion of the Collector have been used, are or were entered to be used as instruments in the importation or exportation of the former;

xxx xxx xxx

(1) Any article sought to be imported or exported:

xxx xxx xxx

(5) Through any other practice or device contrary to law by means of which such articles were entered through a customshouse to the prejudice of the government. (emphasis supplied)

[14] Decision penned by district collector Felipe A. Bartolome of Collection District II-B dated February 14, 2005 and decision penned by district collector Ronnie C. Silvestre of Collection District II-A dated February 16, 2005. Annexes "QQ" and "RR", respectively, *rollo*, pp. 130-145.

[15] Docketed as Customs Case Nos. 2-2005 and 1-2005, respectively.

[16] Decisions penned by Commissioner Alberto D. Lina. Dated March 21, 2005. Annexes "TT" and "UU" respectively, *rollo*, pp. 140-151.

[17] Section 7 of RA 1125 (as amended) grants exclusive appellate jurisdiction to the CTA to review by appeal decisions of the Commissioner of Customs

the Commissioner erred in affirming the February 14, 2005 and February 16, 2005 decisions of the Collectors.[18] They insisted that an import allocation from the SRA was unnecessary inasmuch as the refined sugar was sent to the Philippines only for temporary storage and warehousing and would be shipped eventually to PPOC's final buyer.

On April 20, 2005, respondents filed a motion to release cargo for exportation upon filing of a surety bond. The Commissioner opposed the said motion on the basis of Section 2301 of the TCCP which provides:

> Section 2301. *Warrant for Detention of Property-Cash Bond.* — Upon making any seizure, the Commissioner shall issue a warrant for the detention of the property; and if the owner or importer desires to secure the release of the property for legitimate use, the Collector shall, with the approval of the Commissioner of Customs, surrender it upon the filing of a cash bond, in an amount fixed by him, conditioned upon the payment of the appraised value of the article and/or any fine, expenses and costs which may be adjudged in the case: *Provided,* **That such importation shall not be released under any bond when there is *prima facie* evidence of fraud in the importation of the article***: Provided,* further, That articles the importation of which is prohibited by law shall not be released under any circumstances whatsoever*: Provided,* finally, That nothing in this section shall be construed as relieving the owner or importer from any criminal liability which may arise from any violation of law committed in connection with the importation of the article. (emphasis supplied)

The Commissioner argued that the shipment could not be released inasmuch as respondents had no import allocation from the SRA. Thus, there was *prima facie* evidence of fraud in the importation of refined sugar.

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involving the detention or release of property. Section 11 thereof provides that the appeal shall be made by filing a petition for review under a procedure analogous to Rule 42 of the Rules of Court.

[18] Docketed as CTA Case Nos. 7198 and 7199. The petitions were subsequently consolidated.

In a resolution dated July 12, 2005, the CTA granted the motion and ordered the release of the shipment subject to LIFFC's filing of a continuing surety bond.[19]

The Commissioner moved for reconsideration but it was denied.[20] The CTA ordered respondents to comply with the July 12, 2005 resolution within 10 days. However, the release of the shipment was held in abeyance for several months as respondents failed to comply with the conditions imposed by the said resolution.[21] It was released only on January 6, 2006[22] when respondents finally complied with all the conditions stated in the July 12, 2005 resolution.

On March 1, 2006, the Commissioner filed this petition[23] seeking the annulment of the six resolutions (dated July 12, 2005, July 20, 2005, September 27, 2005, November 8, 2005, December 13, 2005 and January 6, 2006) issued in CTA Case Nos. 7198 and 7199.[24]

On March 20, 2006, we issued a temporary restraining order enjoining the implementation of the said resolutions.

The Commissioner basically contends that the CTA committed grave abuse of discretion when it disregarded Section 2301 of the TCCP and ordered the release of respondents' shipment of refined sugar.

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[19] Resolution penned by Presiding Justice Ernesto D. Acosta and concurred in by Associate Justices Lovell R. Bautista and Caesar A. Casanova of the First Division of the Court of Tax Appeals. Dated July 12, 2005. Annex "A", *rollo,* pp. 50-52.

See amendment as per the July 20, 2005 resolution. Annex "B", *id.*, pp. 53-54.

[20] Resolution dated September 27, 2005. Annex "C", *id.*, pp. 55-56.

[21] Resolutions dated November 8, 2005 and December 13, 2005. Annexes "D" and "E" respectively, *id.*, pp. 57-62.

[22] Resolution dated January 6, 2006. Annex "F", *id.*, pp. 63-64.

[23] Under Rule 65 of the Rules of Court.

[24] *Rollo,* pp. 2-49. The petition was accompanied by a prayer for the issuance of temporary restraining order and/or writ of preliminary injunction to enjoin the implementation of the six assailed orders.

We grant the petition.

Section 2301 of the TCCP states that seized articles may not be released under bond if there is *prima facie* evidence[25] of fraud in their importation. Fraud is a "generic term embracing all multifarious means which human ingenuity can devise and which are resorted to by one individual to secure an advantage and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated."[26] Since fraud is a state of mind, its presence can only be determined by examining the attendant circumstances.

Under Section 1202 of the TCCP,[27] importation takes place when merchandise is brought into the customs territory of the Philippines with the intention of unloading the same at port.

An exception to this rule is transit cargo[28] entered for immediate exportation. Section 2103 of the TCCP provides:

Section 2103. *Articles Entered for Immediate Exportation.*— Where an intent to export the article is shown by the bill of lading, invoice, manifest or other satisfactory evidence, the whole or part of a bill (not less than one package) may be entered for immediate exportation under bond. The Collector shall designate the vessel or aircraft in which the articles are laden constructively as warehouse to facilitate the direct transfer of the articles to the exporting vessel or aircraft.

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[25] *Prima facie* evidence is defined as "evidence which, if unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue it supports, but which may be contradicted by other evidence." See *Wa-acon v. People*, G.R. No. 164575, 6 December 2006, 510 SCRA 429, 438.

[26] *Yap-Sumnidad v. Harrigan*, 430 Phil. 612 (2002).

[27] Section 1202. *When Importation Begins and Deemed Terminated.*— **Importation begins when the carrying vessels or aircraft enters the jurisdiction of the Philippines with intention to unlade therein.** Importation is deemed terminated upon payment of duties, taxes and other charges due upon the articles or secured to be paid, at a port of entry and the legal permit for withdrawal shall have been granted, or in case said articles are free of duties, taxes and other charges, until they have legally left the jurisdiction. (emphasis supplied)

[28] See Customs Code, Sec. 3519 which provides:

Sec. 3519. *Words and Phrases Defined.*

xxx xxx xxx

Unless it shall appear by the bill of lading, invoice, manifest, or other satisfactory evidence, that the articles arriving in the Philippines are destined for transshipment, no exportation thereof shall be permitted except under entry for immediate exportation under irrevocable domestic letter of credit, bank guaranty or bond in an amount equal to the ascertained duties, taxes and other charges.

Upon the exportation of the articles, and the production of proof of lading of same beyond the limits of the Philippines, the irrevocable domestic letter of credit, bank guaranty or bond shall be released.

For an entry for immediate exportation to be allowed under this provision, the following must concur:

(a) there is a clear intent to export the article as shown in the bill of lading, invoice, cargo manifest or other satisfactory evidence;

(b) the Collector must designate the vessel or aircraft wherein the articles are laden as a constructive warehouse to facilitate the direct transfer of the articles to the exporting vessel or aircraft;

(c) the imported articles are directly transferred from the vessel or aircraft designated as a constructive warehouse to the exporting vessel or aircraft and

(d) an irrevocable domestic letter of credit, bank guaranty or bond in an amount equal to the ascertained duties, taxes and other charges is submitted to the Collector (unless it appears in the bill of lading, invoice, manifest or satisfactory evidence that the articles are destined for transshipment).

None of the requisites above was present in this case. While respondents insist that the shipment was sent to the Philippines only for temporary storage and warehousing, *the bill of lading clearly denominated "South Manila, Philippines" as the port*

"Transit cargo" is article arriving at any port from another port or place noted in the carrier's manifest and destined for transshipment to another local or foreign port.

xxx xxx xxx

of discharge.[29] This not only negated any intent to export but also contradicted LIFFC's representation. Moreover, *the shipment was unloaded from the carrying vessel for the purpose of storing the same at LIFFC's warehouse*. Importation therefore took place and the only logical conclusion is that the refined sugar was truly intended for domestic consumption.

Furthermore, while respondents insisted that an import allocation was unnecessary, they filed an application, albeit belatedly, in the SRA for the shipment of refined sugar. Respondents' web of conflicting statements and actuations undoubtedly proves bad faith, if not outright fraud.

All things considered, pursuant to Section 2301 of the TCCP, the shipment of refined sugar should not be released under bond.

WHEREFORE, the petition is hereby *GRANTED*. The July 12, 2005, July 20, 2005, September 27, 2005, November 8, 2005, December 13, 2005 and January 6, 2006 resolutions of the Court of Tax Appeals in CTA Case Nos. 7198 and 7199 are *REVERSED* and *SET ASIDE*.

The March 20, 2006 temporary restraining order enjoining the implementation of the assailed CTA resolutions is hereby made permanent.

The Court of Tax Appeals is ordered to expeditiously decide CTA Case Nos. 7198 and 7199.

Costs against respondents Las Islas Filipinas Food Corporation and Pat-Pro Overseas Co., Ltd.

SO ORDERED.

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

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[29] Annex "S", *rollo,* p. 89.

SECOND DIVISION

[G.R. No. 172628. February 13, 2009]

COATS MANILA BAY, INC., *petitioner, vs.* **PURITA M. ORTEGA (represented by ALEJANDRO SAN PEDRO, JR.) and MARINA A. MONTERO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; REDUNDANCY, EXPLAINED.— For purposes of the Labor Code, redundancy exists where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise. Succinctly put, a position is redundant where it is superfluous, and superfluity of a position or positions may be the outcome of a number of factors, such as over hiring of workers, decreased volume of business, or dropping of a particular product line or service activity previously manufactured or undertaken by the enterprise. That no other person was holding the same position prior to the termination of one's services, does not show that his position had not become redundant. Indeed, in any well-organized business enterprise, it would be surprising to find duplication of work and two (2) or more people doing the work of one person. Just like installation of labor-saving devices, the ground of redundancy does not require the exhibition of proof of losses or imminent losses.

2. ID.; ID.; ID.; ID.; REASONABLE CRITERIA IN IMPLEMENTING A REDUNDANCY PROGRAM.— The Court recognizes that a host of relevant factors comes into play in determining cost-efficient saving measures and in choosing who among the employees should be retained or separated. It is well settled that the characterization of an employee's services as no longer necessary or sustainable, and, therefore, properly terminable, is an exercise of business judgment on the part of the employer. However, the wisdom or soundness of such characterization or decision is not subject to discretionary review provided, of course, that violation of law or arbitrary or malicious action is not shown. In several instances, the Court has held that it is important for a company to have fair and reasonable criteria

in implementing its redundancy program, such as but not limited to, (a) preferred status, (b) efficiency and (c) seniority.

3. ID.; ID.; ID.; ID.; ID.; REASONABLE CRITERIA EMPLOYED IN CASE AT BAR.— We are satisfied that petitioner employed reasonable criteria in choosing which positions to declare redundant. The Court notes that considerable deliberations were made before the redundancy program was implemented. As early as 22 April 2000, management had been upfront regarding its plans to implement a redundancy program, issuing a memorandum informing its employees that imminent "serious business downturn" had forced it to take "urgent steps to reduce (its) workforce." The memorandum also mentioned the criteria for selection of employees to be made redundant. Thus: "x x x primarily performance, *viz* absenteeism, record of disciplinary action, efficiency and work attitude. All other things being equal, the basis will be seniority." Records also show that petitioner held a labor-management meeting on 31 May 2000, wherein it discussed with the Union the redundant positions as well as the possible placement of the would-be displaced employees, the wage rate and work hours. Obviously, the redundancy program was carried out with the full consent and participation of the duly recognized labor union, which represents the employees-members. x x x Moreover, a review of the records shows that respondents' positions were abolished because there was duplicity of functions of clerk analysts in the Industrial Engineering Section and finishing production clerks in the Operations Department. Even the union representatives agreed that respondents' positions were redundant. Petitioner found that it was more cost-efficient to maintain only one employee to handle the computation of incentives of the production employees with the use of computers. Respondents, as well as the Court of Appeals, insist that petitioner did not present a clear criteria in implementing its redundancy program. We do not agree. Petitioner's failure to exactly state in the memorandum or in the termination notices that respondents do not enjoy a "preferred status," or are not "efficient" or do not possess "seniority," cannot be equated with failure to apply reasonable criteria. A simple reading of the memorandum and the deliberations during the labor-management meeting shows that the fate of the affected employees was deliberated upon and decided with circumspection. The totality of the actions of petitioner shows

that the redundancy program was fair, well-thought of, and made in good faith. Neither is the claim of discrimination well-founded. Respondents compare themselves to the other employees who were included in the redundancy program and allegedly "reinstated" by petitioner. Upon closer scrutiny, however, we find that said employees were indeed part of the redundancy program but were taken back, upon the agreement between the Union and petitioner. Of the 135 terminated employees, only 11 were taken back. It must be stressed, however, that true, the 11 employees were re-employed but they were not reinstated in their former positions. Aside from agreeing to a reduced workweek, these employees conceded to pay cuts, and accepted positions which were different from the ones they originally held prior to the implementation to the redundancy program.

4. ID.; ID.; ID.; WAIVER AND QUITCLAIM; NOT ALL QUITCLAIMS ARE *PER SE* INVALID OR AGAINST PUBLIC POLICY; EXCEPTIONS.— Not all quitclaims are *per se* invalid or against policy, except: (1) where there is clear proof that the waiver was wangled from an unsuspecting or gullible person; or (2) where the terms of settlement are unconscionable on their face; in these cases, the law will step in to annul the questionable transaction. Indeed, there are legitimate waivers that represent a voluntary and reasonable settlement of laborers' claims which should be respected by the Court as the law between the parties. Where the person making the waiver has done so voluntarily, with a full understanding thereof, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as being a valid and binding undertaking, and may not later be disowned simply because of a change of mind.

5. ID.; ID.; ID.; ID.; "DIRE NECESSITY" IS NOT AN ACCEPTABLE GROUND FOR ANNULLING THE RELEASE WHEN IT IS NOT SHOWN THAT THE EMPLOYEE HAS BEEN FORCED TO EXECUTE IT.— In the case at bar, the release waivers and quitclaims were executed by respondents without any force or duress exerted on them. Respondents merely alleged that they voluntarily executed the documents by reason of dire economic necessity. "Dire necessity" may be an acceptable ground to annul quitclaims if the consideration is unconscionably low and the employee

was tricked into accepting it, but is not an acceptable ground for annulling the release when it is not shown that the employee has been forced to execute it. The release documents embodied reasonable settlement of the parties' claims. Respondents received hefty sums—Ortega received ₱363,594.28 while Montero got ₱348,975.97—the said amounts being what they are by law entitled to receive, much higher than the separation pay they would have received had petitioner's hand been forced and a retrenchment program initiated. Respondents were made fully aware of the implications of release documents. They are not unlearned nor gullible. They even wrote down in Filipino that they understood the terms of the release document and attested that they have received all the benefits due them. There would have been no question on their right to file their complaint had they not signed and executed the Release Waiver and Quitclaim. In the absence of any showing that they were forced or tricked into signing the release documents, the Court cannot set aside the same merely because respondents had subsequently changed their minds.

APPEARANCES OF COUNSEL

Marbibi & Associates Law Office and *CRC Law Firm* for petitioner.

Jose Sonny G. Matula for respondents.

D E C I S I O N

TINGA, *J.*:

In this Petition for Review,[1] Coats Manila Bay, Inc. (petitioner) assails the decision[2] of the Court of Appeals dated 25 January 2002 which ruled that respondents were illegally dismissed by petitioner as the latter failed to substantiate its claim that it observed fair and reasonable criteria in selecting employees for dismissal as part of its redundancy program. The appellate court

[1] *Rollo*, pp. 24-48 with annexes.

[2] Justice Hakim S. Abdulwahid *ponente*, Justices Remedios A. Salazar-Fernando and Estele M. Perlas-Bernabe members, *id.* at 49-58.

set aside the decision and resolution of the National Labor Relations Commission (NLRC) reversing the labor arbiter's decision granting respondents' complaints for illegal dismissal.

The facts are as follows:

Petitioner, a corporation registered under Philippine laws, is primarily engaged in the business of thread production. Purita M. Ortega and Marina A. Montero (respondents) were both employed by petitioner as Clerk Analysts in the Industrial Engineering Department. Both were members of Anglo-KMU Monthly Union (Union).[3]

On 27 April 2000, petitioner issued a memorandum announcing that a redundancy plan would be implemented.[4] It was stated that the redundancy program was necessary to prevent further losses. Petitioner assured its employees that implementing a redundancy program rather than a retrenchment program would result in better benefits to those dismissed.

As a result of this redundancy program, 135 employees were terminated, including respondents. They were advised on 9 May 2000 that they would be dismissed effective 15 June 2000.[5] On 10 May 2000, petitioner filed with the Department of Labor and Employment its *Establishment Termination Report*,[6] indicating that it was terminating 135 of its employees, including respondents, on the ground of redundancy. On 31 May 2000, petitioner and the Union held a labor-management meeting to discuss the fate of the employees affected by the redundancy program.[7] On 1 June 2000, respondents received their respective separation payments and thereafter executed release waivers and quitclaims in favor of petitioner.[8] In the meantime, 11 of

[3] *Id.* at 50.

[4] *Id.* at 61.

[5] *Id.* at 72-73.

[6] *Id.* at 66-71.

[7] Minutes of the Meeting , *id*. at 62-65.

[8] Purita Ortega received ₱360,844.28 while Marina Montero received ₱348,975.97. The amounts consisted of their retirement pay, AVLB, 13th month pay and tax refund. *Id.* at 74-79.

the terminated employees were rehired by petitioner to different positions but with lower salaries.

On 8 June 2000, respondents filed a complaint for illegal dismissal, backwages, reinstatement, vacation/sick leave, 13th month pay, moral and exemplary damages, attorney's fees, litigation expenses and CBA benefits with the NLRC against petitioner and/or its Chief Executive Officer Arsenio N. Tanco (Tanco).[9]

Respondents asserted in their position paper that despite their dismissal due to redundancy, their functions were assigned to other workers.[10] They also claimed that they were constrained to sign the quitclaims and release waivers due to their pressing need for the separation pay. They further alleged that as a result of their termination they had suffered humiliation, wounded feelings, mental anguish and thus prayed for exemplary and moral damages as well as attorney's fees.

Petitioner and Tanco claimed that they had the management prerogative to implement a redundancy program as per Article 283 of the Labor Code.[11] They aver that both respondents were notified that they would be subject to redundancy and that they never objected thereto as shown by the execution of their respective waivers/quitclaims.

On 21 October 2002, the Labor Arbiter rendered a decision[12] declaring illegal respondents' dismissal and directing petitioner to reinstate respondents to their former positions. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, the complainants are hereby declared illegally dismissed, and respondent Coats Manila Bay, Inc. is thereby directed to reinstate them to their former positions without loss of seniority rights and other benefits, to pay their full backwages, including their 13th month pay, from the time of their termination

[9] *Id.* at 80-81.

[10] *Id.* at 82-99.

[11] *Id.* at 110-114.

[12] *Id.* at 158-163.

up to the time of their actual reinstatement, and to pay each complainant 10% of the total award as attorney's fees.

Nevertheless, the sums of money already paid by and received from the respondents by the complainants when they were terminated from the service shall be deducted from the total amount of their respective awards in this case, in the amount as computed by the NLRC NCR Computation Unit.

All other claims are dismissed for lack of merit.

SO ORDERED.[13]

On 18 November 2002, petitioner appealed the decision of the Labor Arbiter to the NLRC. On 21 January 2004, the NLRC reversed the decision of the Labor Arbiter and held that the dismissal was valid due to redundancy. Respondents moved for reconsideration but this was denied by the NLRC in a resolution dated 30 March 2005.

Undaunted, respondents filed a petition for *certiorari* with the Court of Appeals. The Court of Appeals granted their petition, reversed the decision of the NLRC and reinstated the decision of the Labor Arbiter. The dispositive portion of the decision states:

WHEREFORE, the petition, being meritorious is GRANTED. The decision of the NLRC dated January 21, 2004 and its Resolution dated March 30, 2005 in NLRC NCR CA No. 033967-03 (NLRC NCR Case No. 06-03132-2000) are hereby REVERSED and SET ASIDE. The decision of the Labor Arbiter dated October 21, 2002 (NLRC NCR Case No. 06-03132-2000) is REINSTATED and AFFIRMED.

SO ORDERED.

The Court of Appeals ratiocinated that the record is bare of any evidence that fair and reasonable criteria in selecting the respondents were used. Moreover, the waivers and quitclaims executed by respondents did not negate their right to pursue their claims, the appellate court stated.

In the instant petition, petitioner asserts that the implementation of its redundancy program was not discriminatory, and that it

[13] *Id.* at 162-163.

implemented reasonable criteria in selecting employees to be retrenched. Moreover, the decision to dismiss respondents was reached after consultations with the Union. Petitioner also maintains that the quitclaims executed by respondents, in which the latter acknowledged receipt of their salaries, 13th month pay, vacation leave conversion, retrenchment pay and refund of withholding taxes, were not procured through fraud or deceit on its part, and that respondents had better educational attainment than the other workers; hence, the two understood what they were signing.

Respondents filed their comment,[14] asserting that petitioner raised no substantial argument to warrant reconsideration.[15] They contend that petitioner cannot invoke redundancy since there was no showing that the functions of respondents are duplicitous or superfluous. They also assert that petitioner failed to show that it was suffering from a serious downturn in business that would warrant redundancy given that such serious business downturn was the cause given by petitioner in the termination letters sent to respondents. They also assert that their educational attainment is irrelevant since the compelling factor in their acceptance of separation pay was the dire economic necessity to be caused by their impending loss of jobs.

The issues posed before the Court may thus be simplified into two: (i) the propriety of the redundancy program implemented by petitioner; and (ii) the validity of the waivers and quitclaims executed by respondents.

The petition is meritorious.

Propriety of redundancy program

For purposes of the Labor Code, redundancy exists where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise. Succinctly put, a position is redundant where it is superfluous, and superfluity of a position or positions may be the outcome of a number of

[14] *Id.* at 382-399.

[15] *Id.*

factors, such as over hiring of workers, decreased volume of business, or dropping of a particular product line or service activity previously manufactured or undertaken by the enterprise.[16] That no other person was holding the same position prior to the termination of one's services, does not show that his position had not become redundant. Indeed, in any well-organized business enterprise, it would be surprising to find duplication of work and two (2) or more people doing the work of one person.[17] Just like installation of labor-saving devices, the ground of redundancy does not require the exhibition of proof of losses or imminent losses. In fact, of all the statutory grounds provided in Article 283 of the Labor Code, it is only retrenchment which requires proof of losses or possible losses as justification for termination of employment.[18]

The Court recognizes that a host of relevant factors comes into play in determining cost-efficient saving measures and in choosing who among the employees should be retained or separated. It is well settled that the characterization of an employee's services as no longer necessary or sustainable, and, therefore, properly terminable, is an exercise of business judgment on the part of the employer. However, the wisdom or soundness of such characterization or decision is not subject to discretionary review provided, of course, that violation of law or arbitrary or malicious action is not shown.[19] In several instances, the Court has held that it is important for a company to have fair and reasonable criteria in implementing its redundancy program, such as but not limited to, (a) preferred status, (b) efficiency and (c) seniority.[20]

We are satisfied that petitioner employed reasonable criteria in choosing which positions to declare redundant.

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[16] *Wiltshire File Co., Inc., v. NLRC*, G.R. No. 82249, 7 February 1991, 193 SCRA 665.

[17] *Escareal v. National Labor Relations Commission, et al.*, G.R. No. 99359, September 2, l992, 213 SCRA 472, 485.

[18] CHAN, *LAW ON LABOR RELATIONS AND TERMINATION OF EMPLOYMENT*, SECOND REVISED EDITION, 2000, pp. 803, 804.

[19] *DOLE Phils. Inc. v. NLRC*, 417 Phil. 428, 440 (2001).

[20] *Panlilio v. NLRC*, 346 Phil. 30, 35 (1997).

The Court notes that considerable deliberations were made before the redundancy program was implemented. As early as 22 April 2000, management had been upfront regarding its plans to implement a redundancy program, issuing a memorandum informing its employees that imminent "serious business downturn" had forced it to take "urgent steps to reduce (its) workforce." The memorandum also mentioned the criteria for selection of employees to be made redundant. Thus: "x x x primarily performance, *viz* absenteeism, record of disciplinary action, efficiency and work attitude. All other things being equal, the basis will be seniority."[21]

Records also show that petitioner held a labor-management meeting on 31 May 2000, wherein it discussed with the Union the redundant positions as well as the possible placement of the would-be displaced employees, the wage rate and work hours. Obviously, the redundancy program was carried out with the full consent and participation of the duly recognized labor union, which represents the employees-members. The minutes of the meeting which were duly signed by both the management and the union panels read in part:

> Marina Montero and Purita Ortega's positions are redundant. The same is true with Robert Higado's position. As earlier mentioned, Management told the Union there are no more available monthly positions but should they wish to take up daily jobs Management is willing to accommodate them.
>
> xxx xxx xxx
>
> On the case of Marina Montero, Mr. Dequito suggested that Management accommodate M. Montero for one or two more years since she is already retirable. Engr. Valle told the Union that they have checked the records and found out that M. Montero's service is not even close to 28 years.[22]

Moreover, a review of the records shows that respondents' positions were abolished because there was duplicity of functions of clerk analysts in the Industrial Engineering Section and finishing

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[21] *Rollo*, p. 61.

[22] *Id.* at 63.

production clerks in the Operations Department. Even the union representatives agreed that respondents' positions were redundant. Petitioner found that it was more cost-efficient to maintain only one employee to handle the computation of incentives of the production employees with the use of computers.[23]

Respondents, as well as the Court of Appeals, insist that petitioner did not present a clear criteria in implementing its redundancy program. We do not agree. Petitioner's failure to exactly state in the memorandum or in the termination notices that respondents do not enjoy a "preferred status," or are not "efficient" or do not possess "seniority," cannot be equated with failure to apply reasonable criteria. A simple reading of the memorandum and the deliberations during the labor-management meeting shows that the fate of the affected employees was deliberated upon and decided with circumspection. The totality of the actions of petitioner shows that the redundancy program was fair, well-thought of, and made in good faith.

Neither is the claim of discrimination well-founded. Respondents compare themselves to the other employees who were included in the redundancy program and allegedly "reinstated" by petitioner. Upon closer scrutiny, however, we find that said employees were indeed part of the redundancy program but were taken back, upon the agreement between the Union and petitioner. Of the 135 terminated employees, only 11 were taken back. It must be stressed, however, that true, the 11 employees were re-employed but they were not reinstated in their former positions. Aside from agreeing to a reduced workweek, these employees conceded to pay cuts, and accepted positions which were different from the ones they originally held prior to the implementation to the redundancy program.[24]

Moreover, of the remaining terminated employees who were not re-employed, only respondents complained of illegal dismissal and discrimination. It would probably be a different matter had petitioner re-employed each and every terminated employee, save for respondents. Had such been the case, it would have

[23] *Id.* at 297.

[24] *Id.* at 146-156.

been easy to infer that respondents were singled out and discriminated against, and more important, it would prove that there was no valid reason to implement a redundancy program. But, precisely, that is not the case here. Besides, petitioner and the Union had exercised business judgment in choosing who should be re-employed. Absent any showing of arbitrariness or bad faith, the Court will not interfere with their decision.

Validity of Release Waiver and Quitclaim

The Court of Appeals ruled that the release waivers and quitclaims had not negated respondents' right to pursue their claims, ratiocinating that:

> What appears is that petitioners by reason of dire economic necessity were constrained to accept their separation pay and signed the quitclaims. When petitioners signed the quitclaims, they faced the impending threat of losing their jobs after June 15, 2000. This dilemma placed petitioners in no position to resist their employer's offer of separation pay. The fact, however, is that petitioners continue to press their claims against private respondent company, which negates the idea that they waived their rights or claims. 'The reason for this is that the employee does not really stand on an equal footing with his employer. In some cases, he may be so penurious that he is willing to bargain even rights secured to him by law.[25] (emphasis supplied)

The Court disagrees. Not all quitclaims are *per se* invalid or against policy, except: (1) where there is clear proof that the waiver was wangled from an unsuspecting or gullible person; or (2) where the terms of settlement are unconscionable on their face; in these cases, the law will step in to annul the questionable transaction.[26] Indeed, there are legitimate waivers that represent a voluntary and reasonable settlement of laborers' claims which should be respected by the Court as the law between the parties. Where the person making the waiver has done so voluntarily, with a full understanding thereof, and the consideration for the quitclaim is credible and reasonable, the transaction must

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[25] *Id.* at 57.

[26] *Bogo-Medellin Sugarcane Planters Association, Inc. v. NLRC*, 357 Phil. 110, 126 (1998).

be recognized as being a valid and binding undertaking,[27] and may not later be disowned simply because of a change of mind.[28]

In the case at bar, the release waivers and quitclaims were executed by respondents without any force or duress exerted on them. Respondents merely alleged that they voluntarily executed the documents by reason of dire economic necessity. "Dire necessity" may be an acceptable ground to annul quitclaims if the consideration is unconscionably low and the employee was tricked into accepting it,[29] but is not an acceptable ground for annulling the release when it is not shown that the employee has been forced to execute it.[30]

The release documents embodied reasonable settlement of the parties' claims. Respondents received hefty sums—Ortega received ₱363,594.28 while Montero got ₱348,975.97—the said amounts being what they are by law entitled to receive,[31] much higher than the separation pay they would have received had petitioner's hand been forced and a retrenchment program initiated. Respondents were made fully aware of the implications of release documents. They are not unlearned nor gullible. They even wrote down in Filipino that they understood the terms of the release document and attested that they have received all the benefits due them.[32] There would have been no question

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[27] *Magsalin v. National Organization of Working Men*, 451 Phil. 254, 263-264 (2003).

[28] *Periquet v. NLRC*, G.R. No. 91298, 22 June 1990, 186 SCRA 724, 730-731; *Accord, Loadstar Shipping Inc. v. Gallo*, G.R. No. 102845, 4 February 1994, 229 SCRA 654; *Sicangco v. NLRC*, G.R. No. 110261, 4 August 1994, 235 SCRA 96 .

[29] *Veloso v. Department of Labor and Employment*, G.R. No. 87297, 5 August 1991, 200 SCRA 201, 205.

[30] *Magsalin v. National Organization of Working Men*, 451 Phil. 255 (2003).

[31] Under Art. 283 of the Labor Code, a worker terminated due to redundancy is entitled to a separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher.

[32] "*Nauunawaan ko pong lahat ang nakasulat dito at pinatutunayan ko na natanggap kong lahat ang biyaya na nauukol sa akin*."

on their right to file their complaint had they not signed and executed the Release Waiver and Quitclaim. In the absence of any showing that they were forced or tricked into signing the release documents, the Court cannot set aside the same merely because respondents had subsequently changed their minds.

WHEREFORE, the petition is *GRANTED*. The Decision of the Court of Appeals dated January 25, 2002 in C.A. G.R. SP No. 89754 is *REVERSED* and *SET ASIDE* and the Decision of the NLRC dated 21 January 2004 is *REINSTATED*. No costs.

SO ORDERED.

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

EN BANC

[G.R. No. 174244. February 13, 2009]

MAYOR MARCEL S. PAN, representing THE MUNICIPALITY OF GOA, CAMARINES SUR AS MAYOR, *petitioner, vs.* **YOLANDA O. PEÑA, MARIVIC P. ENCISO, MELINDA S. CANTOR, ROMEO ASOR, and EDGAR A. ENCISO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CIVIL SERVICE; REMOVAL DUE TO REORGANIZATION; REORGANIZATION, EXPLAINED.— A reorganization "involves the reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions." It alters the existing structure of government offices or units therein, including the lines of control, authority and responsibility between them to

make the bureaucracy more responsive to the needs of the public clientele as authorized by law. It could result in the loss of one's position through removal or abolition of an office. For a reorganization for the purpose of economy or to make the bureaucracy more efficient to be valid, however, it must pass the test of good faith, otherwise it is *void ab initio.*

2. ID.; ID.; ID.; CIRCUMSTANCES SHOWING BAD FAITH IN THE REMOVAL OF EMPLOYEES DUE TO REORGANIZATION; APPLICATION.— Section 2 of R.A. No. 6656 cites certain circumstances showing bad faith in the removal of employees as a result of any reorganization, thus: **The existence of any or some of the following circumstances may be considered as evidence of bad faith in the removals made as a result of the reorganization, giving rise to a claim for reinstatement or reappointment by an aggrieved party**: x x x b) **Where an office is abolished and another performing substantially the same functions is created;** c) **Where incumbents are replaced by those *less qualified* in terms of status of appointment, performance and merit;** d) **Where there is a reclassification of offices in the department or agency concerned and the reclassified offices perform substantially the same functions as the original offices;** x x x In the case at bar, petitioner claims that there has been a drastic reduction of *plantilla* positions in the new staffing pattern in order to address the LGU's gaping budgetary deficit. Thus, he states that in the municipal treasurer's office and waterworks operations unit where respondents were previously assigned, only 11 new positions were created out of the previous 35 which had been abolished; and that the new staffing pattern had 98 positions only, as compared with the old which had 129. The CSC, however, highlighted the recreation of six (6) *casual* positions for clerk II and utility worker I, which positions were previously held by respondents Marivic, Cantor, Asor and Enciso. Petitioner inexplicably never disputed this finding nor proffered any proof that the new positions do not perform the same or substantially the same functions as those of the abolished. And nowhere in the records does it appear that these *recreated* positions were first offered to respondents. The appointment of casuals to these *recreated* positions violates R.A. 6656, as Section 4 thereof instructs that: Sec. 4. Officers and employees holding **permanent** appointments shall be **given preference** for appointment to

the new positions in the approved staffing pattern **comparable to** their former positions **or** in case there are not enough comparable positions, *to* **positions next lower in rank. No new employees shall be taken until all permanent officers and employees have been appointed,** including temporary and casual employees who possess the necessary qualification requirement, among which is the appropriate civil service eligibility, for permanent appointment to positions in the approved staffing pattern, in case there are still positions to be filled, unless such positions are policy-determining, primarily confidential or highly technical in nature. In the case of respondent Peña, petitioner claims that the position of waterworks supervisor had been abolished during the reorganization. Yet, petitioner appointed an officer-in-charge in 1999 for its waterworks operations even after a supposed new staffing pattern had been effected in 1998. Notably, this position of waterworks supervisor does not appear in the new staffing pattern of the LGU. Apparently, the Municipality of Goa never intended to do away with such position wholly and permanently as it appointed another person to act as officer-in-charge vested with similar functions. While the CSC never found the new appointees to be unqualified, and never disapproved nor recalled their appointments as they presumably met all the minimum requirements therefor, there is nothing contradictory in the CSC's course of action as it is limited only to the *non-discretionary* authority of determining whether the personnel appointed meet all the required conditions laid down by law. Congruently, the CSC can very well order petitioner to reinstate respondents to their former positions (as these were never actually abolished) or to appoint them to comparable positions in the new staffing pattern. In fine, the reorganization of the government of the Municipality of Goa was not entirely undertaken in the interest of efficiency and austerity but appears to have been marred by other considerations in order to circumvent the constitutional security of tenure of civil service employees like respondents.

APPEARANCES OF COUNSEL

Lazaro Law Firm for petitioner.

Estanislao L. Cesa, Jr., Marc Raymund S. Cesa and Maria Rosario S. Cesa for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Marcel Pan (the mayor), after winning the mayoralty post in the Municipality of Goa, Camarines Sur in the 1998 Elections, initiated a reorganization of the local government, allegedly due to the large budgetary deficit of the municipality brought about by a bloated bureaucracy.[1]

To start the bureaucratic shake-up, the *Sangguniang Bayan (Sanggunian)* passed Resolution No. 025-98[2] authorizing the mayor to partly reorganize the bureaucracy. This resolution was eventually amended by Resolution No. 046-98[3] to give the mayor full authority to restructure the local government unit (LGU).

The *Sanggunian* thereafter created a Placement Committee via Resolution No. 054-98[4] to oversee the LGU reorganization in terms of selection and placement of personnel, in consonance with the procedures laid down in Republic Act (R.A.) No. 6656,[5] the *Act to Protect the Security of Tenure of Civil Service Officers and Employees in the Implementation of Government Reorganization* of 1988, and its implementing rules.[6]

Affected by this reorganization were herein respondents Yolanda Peña (Peña), Marivic Enciso (Marivic), Melinda Cantor (Cantor), Romeo Asor (Asor) and Edgar Enciso (Enciso), who were *permanent* employees assigned at the various departments of the LGU but whose positions were abolished. The positions held by respondents were: local revenue collection officer I

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[1] *Rollo*, p. 188.

[2] *Id.* at 51-52, Annex "E".

[3] *Id.* at 53, Annex "F".

[4] *Id.* at 54, Annex "G".

[5] Approved on June 10, 1988; 84 OFFICIAL GAZETTE No. 24, p. S-1.

[6] Implementing Rules on Government Reorganization, promulgated by the Civil Service Commission on June 30, 1988.

(waterworks supervisor) for Peña; utility worker II for Marivic; revenue collection clerk II for Cantor; utility worker II for Asor; and utility worker I for Enciso.[7]

Respondents applied for the newly created positions in the LGU's new organization and staffing pattern, — Peña as cashier II; Marivic as local legislative staff or bookbinder; Cantor as revenue collection clerk; Asor as local legislative staff; and Enciso as bookbinder.

The Placement Committee did not approve respondents' applications. Instead, it recommended, and the mayor appointed Evelyn Granadino, Salvacion Asor, Myrna Macuja, Ma. Christina Mendoza and Mina Natalia Vargas to fill up the ranks.[8]

After due notice and hearing, a total of thirty one (31) employees, including respondents, were separated from the service effective October 30, 1998.[9]

Respondents filed an appeal with the Civil Service Commission (CSC) which, after consideration of the qualifications of the parties involved, noted as follows:

> Romeo Asor, fourteen (14) years in government service and with 112 training hours, applied for local legislative staff, but was denied. Instead, Myrna Macuja, who has three (3) years government service was appointed.
>
> Mayor Pan's only justification was that Asor has no civil service eligibility. Records, [sic] show that Macuja also has no civil service eligibility. He likewise did not dispute Asor's allegation.
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> Edgardo Enciso, a college level (engineering third year) [sic] who has six (6) years government service and with 16 training hours, applied for Bookbinder position, but was denied. In his stead, C[h]ristina Mendoza, a graduate of midwifery[,] was appointed.
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> Again, Mayor Pan justified that Edgardo Enciso is non-eligible. However, records reveal that Mendoza is likewise a non-civil service eligible. Under the Qualification Standard (QS), civil service eligibility

[7] *Rollo*, p. 219.

[8] *Id.* at 27-28.

[9] *Supra* note 7.

is not required for the said position. Enciso's allegation was also uncontested.

xxx xxx xxx

Yolanda Peña, an Accounting graduate with Civil Service Eligibility (Professional) and has been in the government service for twenty five (25) years and 289 hours of training [sic], applied for Cashier II position. She was not appointed to said position and neither to any position and, instead Evelyn Granadino who has only eleven (11) years in the service was preferred and appointed to Cashier II.

The justification by Mayor Marcel Pan for not appointing Peña to Cashier II is self-serving. There was no proof shown to support his allegation that the Municipality of Goa incurred losses of Four Hundred Thousand Pesos (₱400,000.00) during Peña's incumbency as Supervisor of Waterworks System.

Marivic Enciso, who has been in the government service for ten years and eight months (10 years & 8 months) and with 119 hours of training, applied for Local Legislative Staff and in the alternative for Bookbinder but her application was denied. Instead, Myrna Macuja, who is new in the service[,] was appointed. Natalia Vargas, who has seven years in service[,] was appointed as Bookbinder.

The only justification Mayor Pan gave for not appointing [Marivic] was that the latter has no civil service eligibility. Records, however, show that Macuja and Vargas also have no civil service eligibilities. Further, Mayor Pan did not rebut [Marivic's] allegation regarding Macuja['s] and Vargas' length of service.

Melinda Cantor, civil service eligible (Subprofessional) and who has seven (7) years government service and 104 hours training, likewise applied for Clerk II position. The same was denied. Instead[,] Salvacion Asor, with only four (4) months government service, and Fernando Pardinas and Leticia Parpan, both High School graduates were appointed.[10]

The CSC, by Resolution No. 992183 dated September 23, 1999, found for respondents, disposing as follows:

WHEREFORE, the appeal is hereby granted. The Commission rules that the separation of herein appellants, except Aurora Pacis,

[10] *Id.* at 59, 62.

was **in violation of the provisions** of Republic Act No. 6656. Accordingly, Yolanda O. Peña, Marivic Enciso, Melinda Cantor, Romeo Asor and Edgar Enciso shall be **reinstated or reappointed to their former positions** or **their equivalent** under the new staffing pattern without loss of seniority rights and shall **be paid backwages** from the time they were separated until their actual reinstatement. Aurora Pacis' non-appointment was, however, justified. (Emphasis and underscoring supplied)

Via Motion for Reconsideration,[11] the mayor adduced additional evidence and grounds in support of his decision not to appoint respondents, such as Peña's poor job performance as former waterworks supervisor resulting in financial losses; Cantor's lack of actual experience in the work of a revenue collections clerk; and Marivic's, Asor's and Enciso's failure to submit their respective performance evaluation reports for them to be considered by the Placement Committee, as well as their questionable promotions to their last stated positions.

And the mayor informed:

When the present administration reorganized, the most affected department was the Municipal Treasurer's Office where Melinda Cantor, Romeo Asor and Marivic Enciso belonged to make the local treasury more viable. **From twenty-seven (27) employees, this department was reduced to nine (9) employees**. Another office affected heavily by the reorganization is the Waterworks operation where Yolanda Pe[ñ]a and Edgar Enciso were formerly connected. **From eight (8) employees, this office was trimmed down to two (2) employees**. (Emphasis and underscoring supplied)

The motion for reconsideration having been denied by Resolution No. 000617,[12] he went up to the Court of Appeals for recourse.

In sustaining the CSC, the appellate court, by Decision[13] of July 14, 2005, took note of why the new positions were filled

[11] *Id.* at 165-168.

[12] *Id.* at 65-75.

[13] Penned by Justice Roberto A. Barrios with Justices Amelita G. Tolentino and Vicente S.E. Veloso, concurring. *Rollo*, pp. 34-42.

up by others "who are less preferred or qualified in terms of status of appointment, training, education and length of service,"[14] instead of by respondents who were holding permanent positions.

Reconsideration of the appellate court's Decision having been denied by Resolution[15] of August 14, 2006, the present petition was filed by the mayor "representing the municipality of Goa" (hereafter petitioner) on the following contentions:

I

THE DECISION OF THE HONORABLE COURT OF APPEALS IS NOT SUPPORTED BY EVIDENCE ON RECORD AND IS BASED ON SURMISES AND CONJECTURES.

II

THE PRINCIPLE OF FINALITY OF FACTUAL FINDINGS OF ADMINISTRATIVE AGENCIES SHOULD HAVE BEEN FIRST APPLIED TO THE DECISION OF THE PLACEMENTS BOARD. (Underscoring supplied)

Petitioner insists that all those retained in the reorganization are permanent employees holding permanent positions who are equally, if not better, qualified compared with respondents.[16] And he questions the conflicting actions of the CSC when it

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[14] CA *rollo*, p. 264.

[15] *Id.* at 304-307.

[16] *Rollo*, pp. 113-117. The qualifications of the appointees are: Evelyn Granadino as cashier II (1986 Sub-Prof Examination-74%, 1990 Prof. Exam-80.27%, Accountancy degree holder and completed academic requirements for a masters degree in Business Administration; Salvacion Asor as revenue collection clerk (Midwifery graduate and passed the licensure examinations, and revenue collection clerk for at least 10 years); Myrna Macuja as local legislative staff (Bachelor of Science in Elementary Education and Library Science Information, with 21 units undertaken in Masters in Library Science, and 3 years actual legislative work experience); Ma. Christina Mendoza as bookbinder (Midwifery graduate, worked for 7 years at the mayor's office where the position is assigned); and Mina Natalia Vargas as bookbinder (Library Science graduate, with secretarial course and previous experience with the *Sanggunian* where the position is assigned).

still ordered the reinstatement of respondents despite its approval of the appointment of the new appointees.[17]

In their Comment[18] on the petition, respondents prefatorily contend that the petition calls for a re-assessment of the evidence adduced before the CSC and the appellate court which this Court, so they argue, is not permitted to do in the absence of any of the recognized exceptions.[19] On the substantive aspect, respondents merely quote, for the most part, the appellate court's conclusions.

The issue arising from petitioner's first contention is whether petitioner complied with the provisions of R.A. 6656 in effecting respondents' separation from the service. The second contention raised by petitioner is misplaced as the findings of facts of the CSC pertain to whether the Municipality of Goa undertook a reorganization in good faith, and not whether the qualifications of the appointees are on a par with, or even above par respondents', wherein there lies no dispute.

The petition is bereft of merit.

A reorganization "involves the reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions."[20] It alters the existing structure of government offices or units therein, including the lines of control, authority and responsibility between them[21] to make the bureaucracy more responsive to the needs of the public clientele as authorized by law.[22] It could result in the loss of

[17] *Id.* at 120.

[18] *Id.* at 192-203.

[19] *Rosario v. PCI Leasing and Finance*, G.R. No. 139233, 474 SCRA 500, 506 (2005) citing *Sarmiento v. CA*, G.R. No. 110871, 291 SCRA 656 (1998).

[20] *Canonizado v. Aguirre*, G.R. No. 133132, January 25, 2000, 323 SCRA 312.

[21] *Vide: Buklod ng Kawanihang EIIB v. Zamora*, G.R. Nos. 142801-802, July 10, 2001, 360 SCRA 718, 726 citing Martin, *PHILIPPINE POLITICAL LAW* 276.

[22] *Sinon v. Civil Service Commission*, G.R. No. 101251, November 5, 1992, 215 SCRA 410, 420.

one's position through removal or abolition of an office. For a reorganization for the purpose of economy or to make the bureaucracy more efficient to be valid, however, it must pass the test of good faith, otherwise it is *void ab initio*.[23]

> . . . As a general rule, a reorganization is carried out in "good faith" if it is for the purpose of economy or to make bureaucracy more efficient. In that event, no dismissal (in case of a dismissal) or separation actually occurs because the position itself ceases to exist. And in that case, security of tenure would not be a Chinese wall. Be that as it may, if the "abolition," which is nothing else but a separation or removal, is done for political reasons or purposely to defeat security of tenure, or otherwise not in good faith, no valid "abolition" takes place and whatever "abolition" is done, is void *ab initio*. There is an invalid "abolition" as where there is merely a change of nomenclature of positions, or where claims of economy are belied by the existence of ample funds. (Underscoring supplied)

Section 2 of R.A. No. 6656 cites certain circumstances showing bad faith in the removal of employees as a result of any reorganization, thus:

> Sec. 2. No officer or employee in the career service shall be removed except for a valid cause and after due notice and hearing. A valid cause for removal exist when, pursuant to a bona fide reorganization, a position has been abolished or rendered redundant or there is a need to merge, divide, or consolidate positions in order to meet the exigencies of the service, or other lawful causes allowed by the Civil Service Law. **The existence of any or some of the following circumstances may be considered as evidence of bad faith in the removals made as a result of the reorganization, giving rise to a claim for reinstatement or reappointment by an aggrieved party**:
>
> a) Where there is a significant increase in the number of positions in the new staffing pattern of the department or agency concerned;

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[23] *Dario v. Mison*, 176 SCRA 84 (1989). *Vide*: *Dytiapco v. Civil Service Commission*, G.R. No. 92136, July 3, 1992, 211 SCRA 88 (1992); *Domingo v. Development Bank of the Philippines*, G.R. No. 93355, April 7, 1992, 207 SCRA 766 and *Pari-an v. Civil Service Commission*, G.R.No. 96535, October 15, 1991, 202 SCRA 772 (1991).

b) **Where an office is abolished and another performing substantially the same functions is created;**

c) **Where incumbents are replaced by those *less qualified* in terms of status of appointment, performance and merit;**

d) **Where there is a reclassification of offices in the department or agency concerned and the reclassified offices perform substantially the same functions as the original offices;**

e) Where the removal violates the order of separation provided in Section 3 hereof. (Emphasis, italics and underscoring supplied)

And Section 3 of the same law provides for the order of removal of employees as follows:

Sec. 3. In the separation of personnel pursuant to reorganization, the following order of removal shall be followed:

(a) Casual employees with less than five (5) years of government service;

(b) Casual employees with five (5) years or more of government service;

(c) Employees holding temporary appointments; and

(d) Employees holding permanent appointments: Provided, That those in the same category as enumerated above, who are least qualified in terms of performance and merit shall be laid first, length of service notwithstanding.

In the case at bar, petitioner claims that there has been a drastic reduction of *plantilla* positions in the new staffing pattern in order to address the LGU's gaping budgetary deficit. Thus, he states that in the municipal treasurer's office and waterworks operations unit where respondents were previously assigned, only 11 new positions were created out of the previous 35 which had been abolished; and that the new staffing pattern had 98 positions only, as compared with the old which had 129.

The CSC, however, highlighted the recreation of six (6) *casual* positions for clerk II and utility worker I, which positions were previously held by respondents Marivic, Cantor, Asor and Enciso. Petitioner inexplicably never disputed this finding nor proffered

any proof that the new positions do not perform the same or substantially the same functions as those of the abolished. And nowhere in the records does it appear that these *recreated* positions were first offered to respondents.

The appointment of casuals to these *recreated* positions violates R.A. 6656, as Section 4 thereof instructs that:

> Sec. 4. Officers and employees holding **permanent** appointments shall be **given preference** for appointment to the new positions in the approved staffing pattern **comparable to** their former positions **or** in case there are not enough comparable positions, to **positions next lower in rank.**
>
> **No new employees shall be taken until all permanent officers and employees have been appointed,** including temporary and casual employees who possess the necessary qualification requirement, among which is the appropriate civil service eligibility, for permanent appointment to positions in the approved staffing pattern, in case there are still positions to be filled, unless such positions are policy-determining, primarily confidential or highly technical in nature. (Emphasis and underscoring supplied)

In the case of respondent Peña, petitioner claims that the position of waterworks supervisor had been abolished during the reorganization. Yet, petitioner appointed an officer-in-charge in 1999 for its waterworks operations[24] even after a supposed new staffing pattern had been effected in 1998. Notably, this position of waterworks supervisor does not appear in the new staffing pattern of the LGU.[25] Apparently, the Municipality of Goa never intended to do away with such position wholly and permanently as it appointed another person to act as officer-in-charge vested with similar functions.

While the CSC never found the new appointees to be unqualified, and never disapproved nor recalled their appointments as they presumably met all the minimum requirements therefor, there is nothing contradictory in the CSC's course of action as it is

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[24] *Rollo*, pp. 82-85. Vicente Garchitorena appears therein as officer-in-charge of the Office of the Goa Municipal Water System.

[25] CA *rollo*, pp. 234-236.

limited only to the *non-discretionary* authority of determining whether the personnel appointed meet all the required conditions laid down by law.[26]

Congruently, the CSC can very well order petitioner to reinstate respondents to their former positions (as these were never actually abolished) or to appoint them to comparable positions in the new staffing pattern.

In fine, the reorganization of the government of the Municipality of Goa was not entirely undertaken in the interest of efficiency and austerity but appears to have been marred by other considerations in order to circumvent the constitutional security of tenure of civil service employees like respondents.

WHEREFORE, the petition is *DENIED*. The challenged July 14, 2005 Decision of the Court of Appeals is *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

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

EN BANC

[G.R. No. 175603. February 13, 2009]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RENATO ESPAÑOL,** *appellant.*

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[26] *Luego v. Civil Service Commission*, No. 69137, August 5, 1986, 143 SCRA 327, 333.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; CIRCUMSTANCES THAT PROVED BEYOND REASONABLE DOUBT THAT THE ACCUSED WAS GUILTY OF PARRICIDE.— In convicting the appellant, the RTC and CA found that the following circumstances proved beyond reasonable doubt that he was guilty of parricide: 1. appellant admitted that he was the one who brought his wife to the scene of the crime minutes before the latter's body was discovered. In other words, appellant was with the victim around the time she was shot and killed. 2. the tricycle which he used in transporting his wife was seen by Harold Villanueva and Domingo Petilla traveling at a high speed coming from the direction where the gunshots were heard. 3. appellant, immediately after the incident, was wearing the same dark jacket and blue jeans worn by the driver of the speeding tricycle. 4. appellant asserted that his wife was robbed, even before the investigation had started. However, the victim's purse and other belongings were all found intact. 5. appellant did not respond to his brother-in-law's query as to why the tricycle's sidecar which appellant had used in transporting his wife was wet. 6. appellant isolated himself during the nine-day wake of his wife. 7. appellant repeatedly asked to be forgiven by Felicidad and spared from imprisonment during the investigation of the case, which was corroborated by SPO1 Ico, and during the first night of the wake. 8. appellant had a paramour, a certain Eva Seragas. A month prior to the killing, the victim confided to her sister, Norma Fernandez, that she had a confrontation with her husband's paramour at the latter's home, but appellant dragged and pulled her away. A few days after, the two crossed paths again and quarreled. We agree with the CA. These circumstances are proven facts. We are convinced that at around 2:00 a.m. of February 2, 2000, appellant shot his wife twice on the head and breast, causing her death. Though there is no direct evidence, we have previously ruled that direct evidence of the actual killing is not indispensable for convicting an accused when circumstantial evidence can adequately establish his or her guilt. Circumstantial evidence is sufficient for conviction if (a) there is more than one circumstance; (b) the facts from which the inferences are derived have been proven and (c) the combination of all the circumstances is such as to

produce a conviction beyond reasonable doubt. None of the prosecution witnesses saw the actual killing of the victim by appellant. However, their separate and detailed accounts of the surrounding circumstances reveal only one conclusion: that it was appellant who killed his wife.

2. ID.; ID.; CREDIBILITY OF WITNESSES; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT THEREON.— Well-entrenched is the rule that the trial court's evaluation of the testimonies of witnesses is accorded great respect in the absence of proof that it was arrived at arbitrarily or that the trial court overlooked material facts. The rationale behind this rule is that the credibility of a witness can best be determined by the trial court since it has the direct opportunity to observe the candor and demeanor of the witnesses at the witness stand and detect if they are telling the truth or not. We will not interfere with the trial court's assessment of the credibility of witnesses.

3. ID.; ID.; CREDIBILITY OF WITNESSES; BARE DENIAL CANNOT BE GIVEN GREATER WEIGHT THAN AFFIRMATIVE TESTIMONY.— Appellant's bare denial that he did not kill his wife is a negative and self-serving assertion which merits no weight in law and cannot be given greater evidentiary value than the testimony of credible witnesses who testified on affirmative matters. The prosecution witnesses were not shown to have any ill-motive to fabricate the charge of parricide against appellant nor to falsely testify against him.

4. ID.; ID.; ALIBI; PHYSICAL IMPOSSIBILITY TO BE AT THE SCENE OF THE CRIME AT THE TIME OF COMMISSION, NOT SHOWN.— Appellant's defense of alibi is likewise weak. He alleged that he went home after he went downtown to buy his medications. His children attested that he was with them in their house at the time of the commission of the crime. However, [alibi] is easy to fabricate but difficult to prove. xxx We have held that for the defense of alibi to prosper, the requirements of time and place (or distance) must be strictly met. It is not enough to prove that the accused was somewhere else when the crime was committed. He must also demonstrate by clear and convincing evidence that it was physically impossible for him to have been at the scene of the crime during its commission. Appellant's house was merely minutes away from the place where the crime took place. Assuming that the

children actually knew that appellant was home when their mother was killed, this did not prove that he was not guilty. It was easy for him to hurry home right after the crime. In fact, this is a reasonable conclusion from the circumstantial evidence gathered.

5. ID.; ID.; ADMISSIONS; SILENCE ON THE ACCUSATION IS DEEMED AN ADMISSION.— Another piece of evidence against appellant was his silence when his wife's nephew asked him why he killed his wife. His silence on this accusation is deemed an admission under Section 32, Rule 130 of the Rules of Court: Section 32. Admission by silence. — An act or declaration made in the presence and within the hearing observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, and when proper and possible for him to do so, may be given in evidence against him.

6. ID.; ID.; ID.; ASKING FOR FORGIVENESS IS ANALOGOUS TO AN ATTEMPT TO COMPROMISE WHICH IS CONSIDERED AS AN IMPLIED ADMISSION OF GUILT.— In addition, appellant's act of pleading for his sister-in-law's forgiveness may be considered as analogous to an attempt to compromise, which in turn can be received as an implied admission of guilt under Section 27, Rule 130: Section 27. Offer of compromise not admissible. — xxx xxx xxx In criminal cases, except those involving quasi-offenses (criminal negligence) or those allowed by law to be compromised, an offer of compromise by the accused may be received in evidence as an implied admission of guilt.

7. CRIMINAL LAW; PARRICIDE; CIVIL INDEMNITY, MORAL AND EXEMPLARY DAMAGES, AWARDED.— The heirs of the victim are entitled to a civil indemnity *ex delicto* of ₱50,000, which is mandatory upon proof of the fact of death of the victim and the culpability of the accused for the death. Likewise, moral damages in the amount of ₱50,000 should be awarded even in the absence of allegation and proof of the emotional suffering by the victim's heirs. Although appellant's two children sided with him in his defense, this did not negate the fact that the family suffered emotional pain brought about by the death of their mother. We also award them exemplary damages in the sum of ₱25,000 considering that the qualifying circumstance of relationship is present, this being a case of parricide.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Conrado P. Aoanan for appellant.

D E C I S I O N

CORONA, *J.*:

This is an appeal of the November 30, 2005 decision[1] and June 29, 2006 resolution[2] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 1375 which affirmed the decision of the Regional Trial Court (RTC) of Dagupan City, Branch 42 convicting appellant of the crime of parricide and sentencing him to *reclusion perpetua*.

Appellant Renato Español was charged with killing his wife, Gloria Pascua Español, in an Information that read:

That on or about the 2nd day of February, 2000, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, RENATO ESPAÑOL @ Atong, being then legally married to one GLORIA ESPAÑOL, with intent to kill the latter, did then and there, [willfully], unlawfully and criminally, attack, assault and use personal violence upon the latter by shooting her, hitting her on vital part of her body, thereby causing her death shortly thereafter due to "Hypovolemic shock, hemorrhage, massive, due to multiple gunshot wound" as per Autopsy Report issued by Dr. Benjamin Marcial Bautista, Rural Health Physician, to the damage and prejudice of the legal heirs of said deceased, GLORIA ESPAÑOL, in the amount of not less than FIFTY THOUSAND PESOS (₱50,000.00), Philippine Currency, and other consequential damages.

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[1] Penned by then Court of Appeals Associate Justice Ruben T. Reyes (now retired Supreme Court Associate Justice) and concurred in by Associate Justices Rebecca de Guia-Salvador and Aurora Santiago-Lagman of the Fourth Division of the Court of Appeals. *Rollo*, pp. 3-24.

[2] CA *rollo*, pp. 364-365.

[3] *Rollo*, p. 5.

Contrary to Article 246 of the Revised Penal Code.[3]

When arraigned, appellant pleaded "not guilty" to the charge. During the pre-trial, the prosecution and defense agreed on the following stipulations and admissions:

1. That the appellant under detention and named in the information was the accused who had been arraigned;

2. That the victim, Gloria Pascua Español, was the legal wife of appellant;

3. That Gloria and appellant were living together as husband and wife prior to February 2, 2000 and that she was shot to death at the early dawn of February 2, 2000 at Pantal, Dagupan City;

4. That before the victim was shot, appellant borrowed the tricycle of Federico Ferrer and drove said tricycle with his wife inside the cab thereof from their house towards the house of Felicidad Ferrer, sister of the victim;

5. That appellant and the victim lived in their own house with their four children.[4]

Thereafter, trial ensued.

The factual antecedents follow.

At about 2:00 a.m. of February 2, 2000, Domingo Petilla was waiting for his companions at Pantal Road, Dagupan City. They were on their way to Manila. All of a sudden, he heard two successive gunshots. A few moments later, a yellow tricycle sped past him along Pantal Road headed towards Sitio Guibang, Dagupan City. The tricycle was driven by a man wearing a dark-colored long-sleeved shirt.[5]

Petilla's companions arrived shortly thereafter on board a van. As they started loading their things, they saw, through the lights of their vehicle, a person lying on the pavement along Pantal Road. Upon closer scrutiny, they discovered the lifeless

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[4] *Id.*

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

[6] *Id.*

body of Gloria Español. They immediately reported the matter to the police.[6]

The gunshots were also heard by Harold Villanueva,[7] a boatman working at the Pantal River, while he was waiting for passengers at the dock about 100 meters away from the crime scene. The shots were followed by the sound of a motorcycle's revving engine. He then saw a speeding yellow tricycle. The tricycle bore the name "Rina" in front of its cab. Its driver was wearing a dark jacket and blue pants. The boatman was later told by a tricycle driver that there was a dead body nearby. Out of curiosity, he (the boatman) went there and recognized the victim as one of his regular passengers.[8]

Felicidad Pascua Ferrer, sister of the victim, was told by the police and neighbors that her sister was dead. She immediately proceeded to the place. Upon confirming that it was indeed her sister, she asked bystanders to inform appellant about the death of his wife.[9]

A few minutes later, appellant arrived. Even before he saw his dead wife, he shouted "She is my wife, she is my wife. Who killed her? Vulva of your mother! She was held up." Appellant stepped across the body and saluted the police investigator. He told the police that he brought the victim to the place where she was found and that she could have been robbed of the ₱2,000 he had earlier given her.[10]

Meanwhile, Villanueva noticed that the appellant seemed to be wearing the same clothes as those worn by the driver of the speeding tricycle he saw along Pantal Road right after he heard the gunshots.[11]

At around 3:00 a.m., appellant went to the house of Mateo Pascua, brother of Gloria, to inform him that Gloria was held

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[7] Also referred to as Ronald Villanueva; CA *rollo*, p. 45.

[8] *Rollo*, pp. 6-7.

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

[10] *Id.*, CA *rollo*, p. 275.

[11] CA *rollo*, p. 275.

up and killed. They then proceeded to the scene of the crime using the yellow tricycle of their brother-in-law, Federico Ferrer. The tricycle had the name "Rina" emblazoned in front. On the way, Mateo noticed that the seats and floor of the tricycle were wet. When asked about it, appellant did not answer.[12]

Thereafter, at the morgue, appellant refused to look at the body and preferred to stay outside.[13] The autopsy yielded the following results:

EXTERNAL FINDINGS

CADAVER WAS IN RIGOR MORTIS AND REGULAR BUILT.

GUNSHOT WOUND, POE, 0.7 CM, MID FRONTAL AREA, LEVEL 5 CM ABOVE THE EYEBROW, COLLAR ABRASION, NO GUNPOWDER BURN, PENETRATING, SKULL FRACTURE, BRAIN TISSUE.

POEx: NONE

GUNSHOT WOUND, POE, 1.5 CM, RIGHT MID AXILLIARY LINE, LEVEL 2 CM BELOW THE RIGHT NIPPLE, LESS DENSE, GUNPOWDER BURN PERIPHERY, COLLAR ABRASION, SKIN ABRASION POSTERIOR, PENETRATING.

POEx: NONE

CONTUSION HEMATOMA AT THE RIGHT EYE AREA.

INTERNAL FINDINGS

INTRACRANIAL HEMORRHAGE, MODERATE
PENETRATING PERFORATING BRAIN TISSUE
INTRATHORACIC RIGHT, HEMORRHAGE MASSIVE
PENETRATING AND PERFORATING THRU AND THRU RIGHT [LUNG] AND HEART.
6TH [RIB] FRACTURE, 2.5 CM, LEFT MID CLAVICULAR LINE, MEDIAL
SLUG FOUND ABOVE THE 6TH [RIB], WITHIN THE MUSCLES, LEFT THORACIC AREA.[14]

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[12] *Rollo*, p. 9, CA *rollo*, p. 274.

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

[14] CA *rollo*, pp. 45-46.

Disturbed by appellant's actuations, Felicidad asked the police to interrogate her brother-in-law. At the police station, while appellant was being investigated, he requested Senior Police Officer (SPO)1 Isagani Ico if he could talk privately with Felicidad. During their talk, appellant begged Felicidad's forgiveness and asked that he be spared from imprisonment.[15]

During the victim's wake in their house, appellant hardly looked at his wife's remains. He chose to remain secluded at the second floor. He repeatedly asked for Felicidad's forgiveness during the first night of the wake. At one point, Delfin Hernandez, a nephew of the victim, approached appellant and asked why the latter killed his aunt. Appellant just kept silent.[16]

It was also disclosed by Norma Pascua Hernandez, Gloria's other sister, that Gloria confided to her appellant's illicit relationship with a woman named Eva Seragas. Gloria went to Eva's house and confronted her about the adulterous relationship but appellant came to Eva's defense and forcibly dragged Gloria away. Later, Gloria had another heated argument with Eva. Norma pacified her sister and brought her home.[17]

After the presentation of the prosecution's evidence in-chief, the defense filed a demurrer to evidence. The RTC denied the demurrer in an order dated August 21, 2000.[18]

For his defense, appellant testified that he had been an employee of the Dagupan City Water District since 1990. In the early morning of February 2, 2000, he and his wife were on their way to downtown Dagupan City on board a tricycle driven by him to buy *binuburan* (fermented cooked rice), a local medication for his ulcer. However, upon reaching Quimosing Alley along Pantal Road, Gloria decided to alight and wake up her sister Felicidad

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[15] *Rollo*, p. 8, CA *rollo*, p. 276.

[16] *Id.*, pp. 8-9, CA *rollo*, p. 276.

[17] *Id.*, p. 9, CA *rollo*, p. 272.

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

[19] *Id*.

who lived nearby. Gloria and Felicidad were engaged in the trading of fish in Dagupan City.[19]

After saying their goodbyes, appellant proceeded to the city proper alone. He bought *binuburan* and other ulcer medications and went home. Around 2:30 a.m., a passing tricycle driver informed him that the water engine of the Dagupan Water District was creating too much noise. He decided to verify the information.[20]

On his way there, appellant noticed a commotion along Pantal Road. An unidentified man later told him, "Español, come here. Your wife is dead." He immediately proceeded to the scene of the crime. As he was about to embrace the dead body of his wife, someone tapped him on the shoulder and said "No, don't touch her, she is still to be investigated." At the morgue, he noticed that his wife had a bruise above her right elbow and that her zipper was partially opened. After a few minutes, he asked to be excused for he could not bear the pain and sorrow.[21]

He denied that he asked forgiveness from his sister-in-law Felicidad for killing his wife; that he was barely around during his wife's wake and that he did not respond to his nephew's accusation. He likewise denied having an adulterous relationship with Eva Seragas.[22]

Rachel and Richwell Español, appellant's children, corroborated their father's story and maintained that he was at their house resting at the time of the commission of the crime. They insisted that he was always beside the coffin of their mother during the wake and that he had no other woman. Rachel testified that she and her mother were close. If it were true that her father had illicit relations with another woman, her mother would have confided in her.

On February 19, 2001, the RTC convicted appellant:

WHEREFORE, premises considered, the accused RENATO

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[20] *Id.*, pp. 10-11.

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

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

ESPAÑOL *alias* "Atong" is hereby found guilty beyond reasonable doubt of the crime of PARRICIDE as defined by Article 246 of the Revised Penal Code and penalized by R.A. 7659 otherwise known as the Heinous Crime Law. Under the latter law, the offense is punishable by *reclusion perpetua* to death and there being no aggravating circumstance alleged in the information, accused is hereby sentenced to suffer the lesser penalty of *reclusion perpetua*. In addition, the death (sic) his wife has to be indemnified by him in the amount of ₱50,000.00 and is further ordered to pay to Felicidad Ferrer the amount of ₱20,000.00 as actual and compensatory damages. No moral damages is awarded for the reason stated above.

SO ORDERED.

Aggrieved, appellant filed an appeal in this Court which we referred to the CA in accordance with *People v. Mateo*.[23] The CA affirmed the RTC in a decision promulgated on November 30, 2005. It denied reconsideration in a resolution dated June 29, 2006.

Hence this appeal.

The issue for our resolution is whether appellant is guilty of the crime of parricide.

Under Article 246 of the Revised Penal Code, parricide is the killing of one's legitimate or illegitimate father, mother, child, any ascendant, descendant or spouse and is punishable by the single indivisible penalty of *reclusion perpetua* to death:

Article 246. Parricide. — Any person who shall kill his father, mother or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death.

In convicting the appellant, the RTC and CA found that the following circumstances proved beyond reasonable doubt that he was guilty of parricide:

1. appellant admitted that he was the one who brought his wife to the scene of the crime minutes before the latter's body was discovered. In other words, appellant was with the victim around the time she was shot and killed.

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

2. the tricycle which he used in transporting his wife was seen by Harold Villanueva and Domingo Petilla traveling at a high speed coming from the direction where the gunshots were heard.

3. appellant, immediately after the incident, was wearing the same dark jacket and blue jeans worn by the driver of the speeding tricycle.

4. appellant asserted that his wife was robbed, even before the investigation had started. However, the victim's purse and other belongings were all found intact.

5. appellant did not respond to his brother-in-law's query as to why the tricycle's sidecar which appellant had used in transporting his wife was wet.

6. appellant isolated himself during the nine-day wake of his wife.

7. appellant repeatedly asked to be forgiven by Felicidad and spared from imprisonment during the investigation of the case, which was corroborated by SPO1 Ico, and during the first night of the wake.

8. appellant had a paramour, a certain Eva Seragas. A month prior to the killing, the victim confided to her sister, Norma Fernandez, that she had a confrontation with her husband's paramour at the latter's home, but appellant dragged and pulled her away. A few days after, the two crossed paths again and quarreled.[24]

We agree with the CA.

These circumstances are proven facts. We are convinced that at around 2:00 a.m. of February 2, 2000, appellant shot his wife twice on the head and breast, causing her death. Though there is no direct evidence, we have previously ruled that direct evidence of the actual killing is not indispensable for convicting

[24] *Rollo,* pp. 20-21.

[25] *People v. Mactal*, 449 Phil. 653, 660 (2003), citing *People v. Abella, et al.*, G.R. No. 127803, 28 August 2000, 339 SCRA 129 and *People v. Bago,* G.R. No. 122290, 6 April 2000, 330 SCRA 115.

an accused when circumstantial evidence can adequately establish his or her guilt.[25]

Circumstantial evidence is sufficient for conviction if (a) there is more than one circumstance; (b) the facts from which the inferences are derived have been proven and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[26]

> Circumstantial as it is, conviction based thereon can be upheld, provided the circumstances proven constitute an unbroken chain which leads to one fair and reasonable conclusion that points to accused-appellant, to the exclusion of all others, as the guilty person. Direct evidence of the commission of the crime is not the only matrix from which the trial court may draw its conclusions and findings of guilt. Circumstantial evidence is of a nature identical to direct evidence. It is equally direct evidence of minor facts of such a nature that the mind is led, intuitively or by a conscious process of reasoning, to a conclusion from which some other fact may be inferred. No greater degree of certainty is required when the evidence is circumstantial than when it is direct. In either case, what is required is that there be proof beyond reasonable doubt that a crime was committed and that accused-appellant committed it.[27]

None of the prosecution witnesses saw the actual killing of the victim by appellant. However, their separate and detailed accounts of the surrounding circumstances reveal only one conclusion: that it was appellant who killed his wife.[28]

Appellant argues that the lower courts should not have given weight to the testimonies of the prosecution witnesses because they were incredible and illogical.[29] We disagree.

Well-entrenched is the rule that the trial court's evaluation

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[26] RULES OF COURT, Rule 133, Section 4.

[27] *People v. Bernal*, G.R. Nos. 132791 & 140465-66, 2 September 2002, 388 SCRA 211, 218, citing *People v. Espina*, G.R. No. 123102, 29 February 2000, 326 SCRA 753 and *People v. Oliva, et al.*, G.R. No. 106826, 18 January 2001, 349 SCRA 435.

[28] *Id.*

[29] *Rollo,* p. 16.

of the testimonies of witnesses is accorded great respect in the absence of proof that it was arrived at arbitrarily or that the trial court overlooked material facts. The rationale behind this rule is that the credibility of a witness can best be determined by the trial court since it has the direct opportunity to observe the candor and demeanor of the witnesses at the witness stand and detect if they are telling the truth or not.[30] We will not interfere with the trial court's assessment of the credibility of witnesses.

Appellant's bare denial that he did not kill his wife is a negative and self-serving assertion which merits no weight in law and cannot be given greater evidentiary value than the testimony of credible witnesses who testified on affirmative matters.[31] The prosecution witnesses were not shown to have any ill-motive to fabricate the charge of parricide against appellant nor to falsely testify against him.

Appellant's defense of alibi is likewise weak. He alleged that he went home after he went downtown to buy his medications. His children attested that he was with them in their house at the time of the commission of the crime. However,

> [alibi] is easy to fabricate but difficult to prove. xxx We have held that for the defense of alibi to prosper, the requirements of time and place (or distance) must be strictly met. It is not enough to prove that the accused was somewhere else when the crime was committed. He must also demonstrate by clear and convincing evidence that it was physically impossible for him to have been at the scene of the crime during its commission.[32]

Appellant's house was merely minutes away from the place

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[30] *Navarrete v. People*, G.R. No. 147913, 31 January 2007, 513 SCRA 509, 523, citing *People v. Balgos*, 380 Phil. 343, 351 (2000).

[31] *People v. Caparas*, G.R. No. 134633, 14 April 2004, 427 SCRA 286, 297, citing *People v. Serrano*, G.R. No. 137480, 28 February 2001, 353 SCRA 161.

[32] *People v. de Guzman*, G.R. Nos. 135779-81, 21 November 2003, 416 SCRA 341, 352, citing *People v. Pareja*, G.R. No. 88043, 9 December 1996, 265 SCRA 429 and *People v. Pallarco*, G.R. No. 119971, 26 March 1998, 288 SCRA 151.

where the crime took place. Assuming that the children actually knew that appellant was home when their mother was killed, this did not prove that he was not guilty. It was easy for him to hurry home right after the crime. In fact, this is a reasonable conclusion from the circumstantial evidence gathered.

Another piece of evidence against appellant was his silence when his wife's nephew asked him why he killed his wife. His silence on this accusation is deemed an admission under Section 32, Rule 130 of the Rules of Court:

> Section 32. Admission by silence. — An act or declaration made in the presence and within the hearing observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, and when proper and possible for him to do so, may be given in evidence against him.

In addition, appellant's act of pleading for his sister-in-law's forgiveness may be considered as analogous to an attempt to compromise, which in turn can be received as an implied admission of guilt under Section 27, Rule 130:[33]

> Section 27. Offer of compromise not admissible. —
>
> xxx xxx xxx
>
> In criminal cases, except those involving quasi-offenses (criminal negligence) or those allowed by law to be compromised, an offer of compromise by the accused may be received in evidence as an implied admission of guilt.
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> xxx xxx xxx

In sum, the guilt of appellant was sufficiently established by circumstantial evidence. *Reclusion perpetua* was correctly imposed considering that there was neither any mitigating nor aggravating circumstance present.[34] The heirs of the victim are

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[33] *People v. Castillo*, G.R. No. 172695, 29 June 2007, 526 SCRA 215, 228, citing *People v. Abadies*, G.R. Nos. 139346-50, 11 July 2002, 384 SCRA 442, 449.

[34] REVISED PENAL CODE, Article 63 (2).

[35] *People v. Baño*, G.R. No. 148710, 15 January 2004, 419 SCRA 697, 707.

entitled to a civil indemnity *ex delicto* of ₱50,000, which is mandatory upon proof of the fact of death of the victim and the culpability of the accused for the death.[35]

Likewise, moral damages in the amount of ₱50,000 should be awarded even in the absence of allegation and proof of the emotional suffering by the victim's heirs. Although appellant's two children sided with him in his defense, this did not negate the fact that the family suffered emotional pain brought about by the death of their mother.[36] We also award them exemplary damages in the sum of ₱25,000 considering that the qualifying circumstance of relationship is present, this being a case of parricide.[37]

WHEREFORE, the decision and resolution of the Court of Appeals in CA-G.R. CR-H.C. No. 1375 finding the appellant, Renato Español, guilty beyond reasonable doubt of the crime of parricide is hereby *AFFIRMED WITH MODIFICATION*. Appellant is sentenced to suffer the penalty of *reclusion perpetua* and to pay the heirs of the victim, Gloria Español, in the amounts of ₱50,000 as civil indemnity, ₱20,000 as actual damages, ₱50,000 as moral damages and ₱25,000 as exemplary damages.

Costs against appellant.

SO ORDERED.

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

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[36] *People v. Panado*, G.R. No. 133439, 26 December 2000, 348 SCRA 679, 691.

[37] *People v. Ayuman*, G.R. No. 133436, 14 April 2004, 427 SCRA 248, 260, citing *People v. Arnante*, G.R. No. 148724, 15 October 2002, 391 SCRA 155, 161.

THIRD DIVISION

[G.R. No. 175885. February 13, 2009]

ZENAIDA G. MENDOZA, *petitioner, vs.* **ENGR. EDUARDO PAULE, ENGR. ALEXANDER COLOMA and NATIONAL IRRIGATION ADMINISTRATION (NIA MUÑOZ, NUEVA ECIJA),** *respondents.*

[G.R. No. 176271. February 13, 2009]

MANUEL DELA CRUZ, *petitioner, vs.* **ENGR. EDUARDO M. PAULE, ENGR. ALEXANDER COLOMA and NATIONAL IRRIGATION ADMINISTRATION (NIA MUÑOZ, NUEVA ECIJA),** *respondents.*

SYLLABUS

1. CIVIL LAW; PARTNERSHIP; EXCEEDED AUTHORITY, NOT A CASE OF.— Records show that PAULE (or, more appropriately, EMPCT) and MENDOZA had entered into a partnership in regard to the NIA project. PAULE's contribution thereto is his contractor's license and expertise, while MENDOZA would provide and secure the needed funds for labor, materials and services; deal with the suppliers and sub-contractors; and in general and together with PAULE, oversee the effective implementation of the project. For this, PAULE would receive as his share three *per cent* (3%) of the project cost while the rest of the profits shall go to MENDOZA. PAULE admits to this arrangement in all his pleadings. Although the SPAs limit MENDOZA's authority to such acts as representing EMPCT in its business transactions with NIA, participating in the bidding of the project, receiving and collecting payment in behalf of EMPCT, and performing other acts in furtherance thereof, the evidence shows that when MENDOZA and CRUZ met and discussed (at the EMPCT office in Bayuga, Muñoz, Nueva Ecija) the lease of the latter's heavy equipment for use in the project, PAULE was present and interposed no objection to MENDOZA's actuations. In his pleadings, PAULE does not even deny this. Quite the contrary, MENDOZA's actions were in accord with what she and PAULE originally agreed

upon, as to division of labor and delineation of functions within their partnership. Under the Civil Code, every partner is an agent of the partnership for the purpose of its business; each one may separately execute all acts of administration, unless a specification of their respective duties has been agreed upon, or else it is stipulated that any one of them shall not act without the consent of all the others. At any rate, PAULE does not have any valid cause for opposition because his only role in the partnership is to provide his contractor's license and expertise, while the sourcing of funds, materials, labor and equipment has been relegated to MENDOZA. Moreover, it does not speak well for PAULE that he reinstated MENDOZA as his attorney-in-fact, this time with broader powers to implement, execute, administer and supervise the NIA project, to collect checks and other payments due on said project, and act as the Project Manager for EMPCT, even after CRUZ has already filed his complaint. Despite knowledge that he was already being sued on the SPAs, he proceeded to execute another in MENDOZA's favor, and even granted her broader powers of administration than in those being sued upon. If he truly believed that MENDOZA exceeded her authority with respect to the initial SPA, then he would not have issued another SPA. If he thought that his trust had been violated, then he should not have executed another SPA in favor of MENDOZA, much less grant her broader authority. Given the present factual milieu, CRUZ has a cause of action against PAULE and MENDOZA. Thus, the Court of Appeals erred in dismissing CRUZ's complaint on a finding of exceeded agency.

2. ID.; ID.; WILLFUL AND DELIBERATE BREACH OF A CONTRACTUAL DUTY TO A PARTNER, COMMITTED.— There was no valid reason for PAULE to revoke MENDOZA's SPAs. Since MENDOZA took care of the funding and sourcing of labor, materials and equipment for the project, it is only logical that she controls the finances, which means that the SPAs issued to her were necessary for the proper performance of her role in the partnership, and to discharge the obligations she had already contracted prior to revocation. Without the SPAs, she could not collect from NIA, because as far as it is concerned, EMPCT – and not the PAULE-MENDOZA partnership – is the entity it had contracted with. Without these payments from NIA, there would be no source of funds to complete the project and to pay off obligations incurred.

As MENDOZA correctly argues, an agency cannot be revoked if a bilateral contract depends upon it, or if it is the means of fulfilling an obligation already contracted, or if a partner is appointed manager of a partnership in the contract of partnership and his removal from the management is unjustifiable. PAULE's revocation of the SPAs was done in evident bad faith. Admitting all throughout that his only entitlement in the partnership with MENDOZA is his 3% royalty for the use of his contractor's license, he knew that the rest of the amounts collected from NIA was owing to MENDOZA and suppliers of materials and services, as well as the laborers. Yet, he deliberately revoked MENDOZA's authority such that the latter could no longer collect from NIA the amounts necessary to proceed with the project and settle outstanding obligations. From the way he conducted himself, PAULE committed a willful and deliberate breach of his contractual duty to his partner and those with whom the partnership had contracted. Thus, PAULE should be made liable for moral damages.

3. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT, CONCLUSIVENESS OF; DOCTRINE APPLIED.— [T]hat PAULE could be held liable under the SPAs for transactions entered into by MENDOZA with laborers, suppliers of materials and services for use in the NIA project, has been settled with finality in G.R. No. 173275. What has been adjudged in said case as regards the SPAs should be made to apply to the instant case. Although the said case involves different parties and transactions, it finally disposed of the matter regarding the SPAs – specifically their effect as among PAULE, MENDOZA and third parties with whom MENDOZA had contracted with by virtue of the SPAs – a disposition that should apply to CRUZ as well. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit. Identity of cause of action is not required but merely identity of issues.

4. ID.; ID.; COUNTERCLAIM; WHERE THE DEFENDANT INTERPOSED A CROSS-CLAIM WHICH IS PROPERLY A COUNTERCLAIM, THE PLAINTIFF CANNOT DISMISS THE ACTION SO AS TO AFFECT THE RIGHT OF THE

DEFENDANT IN HIS COUNTERCLAIM; REASON.— PAULE should be made civilly liable for abandoning the partnership, leaving MENDOZA to fend for her own, and for unduly revoking her authority to collect payments from NIA, payments which were necessary for the settlement of obligations contracted for and already owing to laborers and suppliers of materials and equipment like CRUZ, not to mention the agreed profits to be derived from the venture that are owing to MENDOZA by reason of their partnership agreement. Thus, the trial court erred in disregarding and dismissing MENDOZA's cross-claim – which is properly a counterclaim, since it is a claim made by her as defendant in a third-party complaint – against PAULE, just as the appellate court erred in sustaining it on the justification that PAULE's revocation of the SPAs was within the bounds of his discretion under Article 1920 of the Civil Code. Where the defendant has interposed a counterclaim (whether compulsory or permissive) or is seeking affirmative relief by a cross-complaint, the plaintiff cannot dismiss the action so as to affect the right of the defendant in his counterclaim or prayer for affirmative relief. The reason for that exception is clear. When the answer sets up an independent action against the plaintiff, it then becomes an action by the defendant against the plaintiff, and, of course, the plaintiff has no right to ask for a dismissal of the defendant's action. The present rule embodied in Sections 2 and 3 of Rule 17 of the 1997 Rules of Civil Procedure ordains a more equitable disposition of the counterclaims by ensuring that any judgment thereon is based on the merit of the counterclaim itself and not on the survival of the main complaint. Certainly, if the counterclaim is palpably without merit or suffers jurisdictional flaws which stand independent of the complaint, the trial court is not precluded from dismissing it under the amended rules, provided that the judgment or order dismissing the counterclaim is premised on those defects. At the same time, if the counterclaim is justified, the amended rules now unequivocally protect such counterclaim from peremptory dismissal by reason of the dismissal of the complaint. Notwithstanding the immutable character of PAULE's liability to MENDOZA, however, the exact amount thereof is yet to be determined by the trial court, after receiving evidence for and in behalf of MENDOZA on her counterclaim, which must be considered pending and unresolved.

APPEARANCES OF COUNSEL

Soller Peig Escat & Peig Law Offices for Z.G. Mendoza.
Evelyn J. Magno for M. Dela Cruz and Z.G. Mendoza.
Albert M. Rasalan for Engr. E.M. Paule.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

These consolidated petitions assail the August 28, 2006 Decision[1] of the Court of Appeals in CA-G.R. CV No. 80819 dismissing the complaint in Civil Case No. 18-SD (2000),[2] and its December 11, 2006 Resolution[3] denying the herein petitioners' motion for reconsideration.

Engineer Eduardo M. Paule (PAULE) is the proprietor of E.M. Paule Construction and Trading (EMPCT). On May 24, 1999, PAULE executed a special power of attorney (SPA) authorizing Zenaida G. Mendoza (MENDOZA) to participate in the pre-qualification and bidding of a National Irrigation Administration (NIA) project and to represent him in all transactions related thereto, to wit:

1. To represent E.M. PAULE CONSTRUCTION & TRADING of which I (PAULE) am the General Manager in all my business transactions with National Irrigation Authority, Muñoz, Nueva Ecija.

2. To participate in the bidding, to secure bid bonds and other documents pre-requisite in the bidding of Casicnan Multi-Purpose Irrigation and Power Plant (CMIPPL 04-99), National Irrigation Authority, Muñoz, Nueva Ecija.

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[1] *Rollo* in G.R. No. 175885, pp. 44-58; penned by Associate Justice Myrna Dimaranan-Vidal and concurred in by Associate Justices Bienvenido L. Reyes and Fernanda Lampas Peralta.

[2] Entitled "*Manuel dela Cruz v. Engr. Eduardo Paule, Engr. Alexander Coloma and the National Irrigation Administration (Muñoz, Nueva Ecija)*."

[3] *Rollo* in G.R. No. 175885, pp. 60-61.

3. To receive and collect payment in check in behalf of E.M. PAULE CONSTRUCTION & TRADING.

4. To do and perform such acts and things that may be necessary and/or required to make the herein authority effective.[4]

On September 29, 1999, EMPCT, through MENDOZA, participated in the bidding of the NIA-Casecnan Multi-Purpose Irrigation and Power Project (NIA-CMIPP) and was awarded Packages A-10 and B-11 of the NIA-CMIPP Schedule A. On November 16, 1999, MENDOZA received the Notice of Award which was signed by Engineer Alexander M. Coloma (COLOMA), then Acting Project Manager for the NIA-CMIPP. Packages A-10 and B-11 involved the construction of a road system, canal structures and drainage box culverts with a project cost of ₱5,613,591.69.

When Manuel de la Cruz (CRUZ) learned that MENDOZA is in need of heavy equipment for use in the NIA project, he met up with MENDOZA in Bayuga, Muñoz, Nueva Ecija, in an apartment where the latter was holding office under an EMPCT signboard. A series of meetings followed in said EMPCT office among CRUZ, MENDOZA and PAULE.

On December 2 and 20, 1999, MENDOZA and CRUZ signed two Job Orders/Agreements[5] for the lease of the latter's heavy equipment (dump trucks for hauling purposes) to EMPCT.

On April 27, 2000, PAULE revoked[6] the SPA he previously issued in favor of MENDOZA; consequently, NIA refused to make payment to MENDOZA on her billings. CRUZ, therefore, could not be paid for the rent of the equipment. Upon advice of MENDOZA, CRUZ addressed his demands for payment of lease rentals directly to NIA but the latter refused to acknowledge the same and informed CRUZ that it would be remitting payment only to EMPCT as the winning contractor for the project.

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[4] *Id*. at 68.

[5] *Id*. at 69

[6] *Id*. at 71.

In a letter dated April 5, 2000, CRUZ demanded from MENDOZA and/or EMPCT payment of the outstanding rentals which amounted to ₱726,000.00 as of March 31, 2000.

On June 30, 2000, CRUZ filed Civil Case No. 18-SD (2000) with Branch 37 of the Regional Trial Court of Nueva Ecija, for collection of sum of money with damages and a prayer for the issuance of a writ of preliminary injunction against PAULE, COLOMA and the NIA. PAULE in turn filed a third-party complaint against MENDOZA, who filed her answer thereto, with a cross-claim against PAULE.

MENDOZA alleged in her cross-claim that because of PAULE's "whimsical revocation" of the SPA, she was barred from collecting payments from NIA, thus resulting in her inability to fund her checks which she had issued to suppliers of materials, equipment and labor for the project. She claimed that estafa and B.P. Blg. 22 cases were filed against her; that she could no longer finance her children's education; that she was evicted from her home; that her vehicle was foreclosed upon; and that her reputation was destroyed, thus entitling her to actual and moral damages in the respective amounts of ₱3 million and ₱1 million.

Meanwhile, on August 23, 2000, PAULE again constituted MENDOZA as his attorney-in-fact –

1. To represent me (PAULE), in my capacity as General Manager of the E.M. PAULE CONSTRUCTION AND TRADING, in all meetings, conferences and transactions exclusively for the construction of the projects known as Package A-10 of Schedule A and Package No. B-11 Schedule B, which are 38.61% and 63.18% finished as of June 21, 2000, per attached Accomplishment Reports x x x;

2. To implement, execute, administer and supervise the said projects in whatever stage they are in as of to date, to collect checks and other payments due on said projects and act as the Project Manager for E.M. PAULE CONSTRUCTION AND TRADING;

3. To do and perform such acts and things that may be necessary and required to make the herein power and authority effective.[7]

[7] *Id*. at 122; Special Power of Attorney executed by PAULE in favor of MENDOZA notarized on August 23, 2000.

At the pre-trial conference, the other parties were declared as in default and CRUZ was allowed to present his evidence *ex parte*. Among the witnesses he presented was MENDOZA, who was impleaded as defendant in PAULE's third-party complaint.

On March 6, 2003, MENDOZA filed a motion to declare third-party plaintiff PAULE non-suited with prayer that she be allowed to present her evidence *ex parte*.

However, without resolving MENDOZA's motion to declare PAULE non-suited, and without granting her the opportunity to present her evidence *ex parte*, the trial court rendered its decision dated August 7, 2003, the dispositive portion of which states, as follows:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff as follows:
>
> 1. Ordering defendant Paule to pay the plaintiff the sum of ₱726,000.00 by way of actual damages or compensation for the services rendered by him;
>
> 2. Ordering defendant Paule to pay plaintiff the sum of ₱500,000.00 by way of moral damages;
>
> 3. Ordering defendant Paule to pay plaintiff the sum of ₱50,000.00 by way of reasonable attorney's fees;
>
> 4. Ordering defendant Paule to pay the costs of suit; and
>
> 5. Ordering defendant National Irrigation Administration (NIA) to withhold the balance still due from it to defendant Paule/E.M. Paule Construction and Trading under NIA-CMIPP Contract Package A-10 and to pay plaintiff therefrom to the extent of defendant Paule's liability herein adjudged.
>
> SO ORDERED.[8]

In holding PAULE liable, the trial court found that MENDOZA was duly constituted as EMPCT's agent for purposes of the NIA project and that MENDOZA validly contracted with CRUZ for the rental of heavy equipment that was to be used therefor. It found unavailing PAULE's assertion that MENDOZA merely

[8] *Id.* at 177.

borrowed and used his contractor's license in exchange for a consideration of 3% of the aggregate amount of the project. The trial court held that through the SPAs he executed, PAULE clothed MENDOZA with apparent authority and held her out to the public as his agent; as principal, PAULE must comply with the obligations which MENDOZA contracted within the scope of her authority and for his benefit. Furthermore, PAULE knew of the transactions which MENDOZA entered into since at various times when she and CRUZ met at the EMPCT office, PAULE was present and offered no objections. The trial court declared that it would be unfair to allow PAULE to enrich himself and disown his acts at the expense of CRUZ.

PAULE and MENDOZA both appealed the trial court's decision to the Court of Appeals.

PAULE claimed that he did not receive a copy of the order of default; that it was improper for MENDOZA, as third-party defendant, to have taken the stand as plaintiff CRUZ's witness; and that the trial court erred in finding that an agency was created between him and MENDOZA, and that he was liable as principal thereunder.

On the other hand, MENDOZA argued that the trial court erred in deciding the case without affording her the opportunity to present evidence on her cross-claim against PAULE; that, as a result, her cross-claim against PAULE was not resolved, leaving her unable to collect the amounts of ₱3,018,864.04, ₱500,000.00, and ₱839,450.88 which allegedly represent the unpaid costs of the project and the amount PAULE received in excess of payments made by NIA.

On August 28, 2006, the Court of Appeals rendered the assailed Decision which dismissed CRUZ's complaint, as well as MENDOZA's appeal. The appellate court held that the SPAs issued in MENDOZA's favor did not grant the latter the authority to enter into contract with CRUZ for hauling services; the SPAs limit MENDOZA's authority to only represent EMPCT in its business transactions with NIA, to participate in the bidding of the project, to receive and collect payment in behalf of EMPCT, and to perform such acts as may be necessary and/or required

to make the said authority effective. Thus, the engagement of CRUZ's hauling services was done beyond the scope of MENDOZA's authority.

As for CRUZ, the Court of Appeals held that he knew the limits of MENDOZA's authority under the SPAs yet he still transacted with her. Citing *Manila Memorial Park Cemetery, Inc. v. Linsangan*,[9] the appellate court declared that the principal (PAULE) may not be bound by the acts of the agent (MENDOZA) where the third person (CRUZ) transacting with the agent knew that the latter was acting beyond the scope of her power or authority under the agency.

With respect to MENDOZA's appeal, the Court of Appeals held that when the trial court rendered judgment, not only did it rule on the plaintiff's complaint; in effect, it resolved the third-party complaint as well;[10] that the trial court correctly dismissed the cross-claim and did not unduly ignore or disregard it; that MENDOZA may not claim, on appeal, the amounts of ₱3,018,864.04, ₱500,000.00, and ₱839,450.88 which allegedly represent the unpaid costs of the project and the amount PAULE received in excess of payments made by NIA, as these are not covered by her cross-claim in the court *a quo*, which seeks reimbursement only of the amounts of ₱3 million and ₱1 million, respectively, for actual damages (debts to suppliers, laborers, lessors of heavy equipment, lost personal property) and moral damages she claims she suffered as a result of PAULE's revocation of the SPAs; and that the revocation of the SPAs is a prerogative that is allowed to PAULE under Article 1920[11] of the Civil Code.

CRUZ and MENDOZA's motions for reconsideration were denied; hence, these consolidated petitions:

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[9] G.R. No. 151319, November 22, 2004, 443 SCRA 377.

[10] Citing *Firestone Tire and Rubber Company of the Philippines v. Tempongko*, G.R. No. L-24399, March 28, 1969, 27 SCRA 418.

[11] Article 1920. The principal may revoke the agency at will, and compel the agent to return the document evidencing the agency. Such revocation may be express or implied.

G.R. No. 175885 (MENDOZA PETITION)

a) The Court of Appeals erred in sustaining the trial court's failure to resolve her motion praying that PAULE be declared non-suited on his third-party complaint, as well as her motion seeking that she be allowed to present evidence *ex parte* on her cross-claim;

b) The Court of Appeals erred when it sanctioned the trial court's failure to resolve her cross-claim against PAULE; and,

c) The Court of Appeals erred in its application of Article 1920 of the Civil Code, and in adjudging that MENDOZA had no right to claim actual damages from PAULE for debts incurred on account of the SPAs issued to her.

G.R. No. 176271 (CRUZ PETITION)

CRUZ argues that the decision of the Court of Appeals is contrary to the provisions of law on agency, and conflicts with the Resolution of the Court in G.R. No. 173275, which affirmed the Court of Appeals' decision in CA-G.R. CV No. 81175, finding the existence of an agency relation and where PAULE was declared as MENDOZA's principal under the subject SPAs and, thus, liable for obligations (unpaid construction materials, fuel and heavy equipment rentals) incurred by the latter for the purpose of implementing and carrying out the NIA project awarded to EMPCT.

CRUZ argues that MENDOZA was acting within the scope of her authority when she hired his services as hauler of debris because the NIA project (both Packages A-10 and B-11 of the NIA-CMIPP) consisted of construction of canal structures, which involved the clearing and disposal of waste, acts that are necessary and incidental to PAULE's obligation under the NIA project; and that the decision in a civil case involving the same SPAs, where PAULE was found liable as MENDOZA's principal already became final and executory; that in Civil Case No. 90-SD filed by MENDOZA against PAULE,[12] the latter was adjudged liable to the former for unpaid rentals of heavy equipment and for construction materials which MENDOZA obtained for use in the subject NIA project. On September 15, 2003, judgment was rendered in said civil case against PAULE, to wit:

[12] Instituted on August 15, 2001 with the RTC of Nueva Ecija, Branch 37.

WHEREFORE, judgment is hereby rendered in favor of the plaintiff (MENDOZA) and against the defendant (PAULE) as follows:

1. Ordering defendant Paule to pay plaintiff the sum of ₱138,304.00 representing the obligation incurred by the plaintiff with LGH Construction;

2. Ordering defendant Paule to pay plaintiff the sum of ₱200,000.00 representing the balance of the obligation incurred by the plaintiff with Artemio Alejandrino;

3. Ordering defendant Paule to pay plaintiff the sum of ₱520,000.00 by way of moral damages, and further sum of ₱100,000.00 by way of exemplary damages;

4. Ordering defendant Paule to pay plaintiff the sum of ₱25,000.00 as for attorney's fees; and

5. To pay the cost of suit.[13]

PAULE appealed[14] the above decision, but it was dismissed by the Court of Appeals in a Decision[15] which reads, in part:

As to the finding of the trial court that the principle of agency is applicable in this case, this Court agrees therewith. It must be emphasized that appellant (PAULE) authorized appellee (MENDOZA) to perform any and all acts necessary to make the business transaction of EMPCT with NIA effective. Needless to state, said business transaction pertained to the construction of canal structures which necessitated the utilization of construction materials and equipments. Having given said authority, appellant cannot be allowed to turn its back on the transactions entered into by appellee in behalf of EMPCT.

The amount of moral damages and attorney's fees awarded by the trial court being justifiable and commensurate to the damage suffered by appellee, this Court shall not disturb the same. It is well-settled that the award of damages as well as attorney's fees lies upon the

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[13] *Rollo* in G.R. No. 176271, pp. 50-51.

[14] Docketed as CA-G.R. CV No. 81175 and assigned to the Sixth Division of the Court of Appeals.

[15] *Rollo* in G.R. No. 176271. Dated December 12, 2005, and penned by Associate Justice Magdangal M. de Leon and concurred in by Associate Justices Portia Aliño-Hormachuelos and Mariano C. del Castillo.

discretion of the court in the context of the facts and circumstances of each case.

WHEREFORE, the appeal is DISMISSED and the appealed Decision is AFFIRMED.

SO ORDERED.[16]

PAULE filed a petition to this Court docketed as G.R. No. 173275 but it was denied with finality on September 13, 2006.

MENDOZA, for her part, claims that she has a right to be heard on her cause of action as stated in her cross-claim against PAULE; that the trial court's failure to resolve the cross-claim was a violation of her constitutional right to be apprised of the facts or the law on which the trial court's decision is based; that PAULE may not revoke her appointment as attorney-in-fact for and in behalf of EMPCT because, as manager of their partnership in the NIA project, she was obligated to collect from NIA the funds to be used for the payment of suppliers and contractors with whom she had earlier contracted for labor, materials and equipment.

PAULE, on the other hand, argues in his Comment that MENDOZA's authority under the SPAs was for the limited purpose of securing the NIA project; that MENDOZA was not authorized to contract with other parties with regard to the works and services required for the project, such as CRUZ's hauling services; that MENDOZA acted beyond her authority in contracting with CRUZ, and PAULE, as principal, should not be made civilly liable to CRUZ under the SPAs; and that MENDOZA has no cause of action against him for actual and moral damages since the latter exceeded her authority under the agency.

We grant the consolidated petitions.

Records show that PAULE (or, more appropriately, EMPCT) and MENDOZA had entered into a partnership in regard to the NIA project. PAULE's contribution thereto is his contractor's

[16] *Id*. at 57.

license and expertise, while MENDOZA would provide and secure the needed funds for labor, materials and services; deal with the suppliers and sub-contractors; and in general and together with PAULE, oversee the effective implementation of the project. For this, PAULE would receive as his share three *per cent* (3%) of the project cost while the rest of the profits shall go to MENDOZA. PAULE admits to this arrangement in all his pleadings.[17]

Although the SPAs limit MENDOZA's authority to such acts as representing EMPCT in its business transactions with NIA, participating in the bidding of the project, receiving and collecting payment in behalf of EMPCT, and performing other acts in furtherance thereof, the evidence shows that when MENDOZA and CRUZ met and discussed (at the EMPCT office in Bayuga, Muñoz, Nueva Ecija) the lease of the latter's heavy equipment for use in the project, PAULE was present and interposed no objection to MENDOZA's actuations. In his pleadings, PAULE does not even deny this. Quite the contrary, MENDOZA's actions were in accord with what she and PAULE originally agreed upon, as to division of labor and delineation of functions within their partnership. Under the Civil Code, every partner is an agent of the partnership for the purpose of its business;[18] each one may separately execute all acts of administration, unless a specification of their respective duties has been agreed upon, or else it is stipulated that any one of them shall not act without the consent of all the others.[19] At any rate, PAULE does not have any valid cause for opposition because his only role in the partnership is to provide his contractor's license and expertise, while the sourcing of funds, materials, labor and equipment has been relegated to MENDOZA.

Moreover, it does not speak well for PAULE that he reinstated MENDOZA as his attorney-in-fact, this time with broader powers to implement, execute, administer and supervise the NIA project,

[17] *Rollo* in G.R. No. 175885, pp. 84 and 110; PAULE's Answer to the CRUZ Complaint, and his Third-Party Complaint against MENDOZA.

[18] Article 1818.

[19] Article 1801.

to collect checks and other payments due on said project, and act as the Project Manager for EMPCT, even after CRUZ has already filed his complaint. Despite knowledge that he was already being sued on the SPAs, he proceeded to execute another in MENDOZA's favor, and even granted her broader powers of administration than in those being sued upon. If he truly believed that MENDOZA exceeded her authority with respect to the initial SPA, then he would not have issued another SPA. If he thought that his trust had been violated, then he should not have executed another SPA in favor of MENDOZA, much less grant her broader authority.

Given the present factual milieu, CRUZ has a cause of action against PAULE and MENDOZA. Thus, the Court of Appeals erred in dismissing CRUZ's complaint on a finding of exceeded agency. Besides, that PAULE could be held liable under the SPAs for transactions entered into by MENDOZA with laborers, suppliers of materials and services for use in the NIA project, has been settled with finality in G.R. No. 173275. What has been adjudged in said case as regards the SPAs should be made to apply to the instant case. Although the said case involves different parties and transactions, it finally disposed of the matter regarding the SPAs – specifically their effect as among PAULE, MENDOZA and third parties with whom MENDOZA had contracted with by virtue of the SPAs – a disposition that should apply to CRUZ as well. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit. Identity of cause of action is not required but merely identity of issues.[20]

There was no valid reason for PAULE to revoke MENDOZA's SPAs. Since MENDOZA took care of the funding and sourcing of labor, materials and equipment for the project, it is only

[20] *Heirs of Clemencia Parasac v. Republic*, G.R. No. 159910, May 4, 2006, 489 SCRA 498, 517-518, citing *Nabus v. Court of Appeals*, G.R. No. 91670, February 7, 1991, 193 SCRA 732.

logical that she controls the finances, which means that the SPAs issued to her were necessary for the proper performance of her role in the partnership, and to discharge the obligations she had already contracted prior to revocation. Without the SPAs, she could not collect from NIA, because as far as it is concerned, EMPCT – and not the PAULE-MENDOZA partnership – is the entity it had contracted with. Without these payments from NIA, there would be no source of funds to complete the project and to pay off obligations incurred. As MENDOZA correctly argues, an agency cannot be revoked if a bilateral contract depends upon it, or if it is the means of fulfilling an obligation already contracted, or if a partner is appointed manager of a partnership in the contract of partnership and his removal from the management is unjustifiable.[21]

PAULE's revocation of the SPAs was done in evident bad faith. Admitting all throughout that his only entitlement in the partnership with MENDOZA is his 3% royalty for the use of his contractor's license, he knew that the rest of the amounts collected from NIA was owing to MENDOZA and suppliers of materials and services, as well as the laborers. Yet, he deliberately revoked MENDOZA's authority such that the latter could no longer collect from NIA the amounts necessary to proceed with the project and settle outstanding obligations.

From the way he conducted himself, PAULE committed a willful and deliberate breach of his contractual duty to his partner and those with whom the partnership had contracted. Thus, PAULE should be made liable for moral damages.

Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of a sworn duty through some motive or intent or ill-will; it partakes of the nature of fraud (*Spiegel v. Beacon Participation*, 8 NE 2nd Series, 895, 1007). It contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes (*Air France v. Carrascoso*, 18 SCRA 155, 166-167). Evident bad faith connotes

[21] *Id.*, Article 1927.

a manifest deliberate intent on the part of the accused to do wrong or cause damage.[22]

Moreover, PAULE should be made civilly liable for abandoning the partnership, leaving MENDOZA to fend for her own, and for unduly revoking her authority to collect payments from NIA, payments which were necessary for the settlement of obligations contracted for and already owing to laborers and suppliers of materials and equipment like CRUZ, not to mention the agreed profits to be derived from the venture that are owing to MENDOZA by reason of their partnership agreement. Thus, the trial court erred in disregarding and dismissing MENDOZA's cross-claim – which is properly a counterclaim, since it is a claim made by her as defendant in a third-party complaint – against PAULE, just as the appellate court erred in sustaining it on the justification that PAULE's revocation of the SPAs was within the bounds of his discretion under Article 1920 of the Civil Code.

Where the defendant has interposed a counterclaim (whether compulsory or permissive) or is seeking affirmative relief by a cross-complaint, the plaintiff cannot dismiss the action so as to affect the right of the defendant in his counterclaim or prayer for affirmative relief. The reason for that exception is clear. When the answer sets up an independent action against the plaintiff, it then becomes an action by the defendant against the plaintiff, and, of course, the plaintiff has no right to ask for a dismissal of the defendant's action. The present rule embodied in Sections 2 and 3 of Rule 17 of the 1997 Rules of Civil Procedure ordains a more equitable disposition of the counterclaims by ensuring that any judgment thereon is based on the merit of the counterclaim itself and not on the survival of the main complaint. Certainly, if the counterclaim is palpably without merit or suffers jurisdictional flaws which stand independent of the complaint, the trial court is not precluded from dismissing it under the amended rules, provided that the judgment or order dismissing the counterclaim is premised on those defects. At the same

[22] *Canson v. Garchitorena*, SB-99-9-J, July 28, 1999, 311 SCRA 268.

time, if the counterclaim is justified, the amended rules now unequivocally protect such counterclaim from peremptory dismissal by reason of the dismissal of the complaint.[23]

Notwithstanding the immutable character of PAULE's liability to MENDOZA, however, the exact amount thereof is yet to be determined by the trial court, after receiving evidence for and in behalf of MENDOZA on her counterclaim, which must be considered pending and unresolved.

WHEREFORE, the petitions are *GRANTED*. The August 28, 2006 Decision of the Court of Appeals in CA-G.R. CV No. 80819 dismissing the complaint in Civil Case No. 18-SD (2000) and its December 11, 2006 Resolution denying the motion for reconsideration are *REVERSED and SET ASIDE*. The August 7, 2003 Decision of the Regional Trial Court of Nueva Ecija, Branch 37 in Civil Case No. 18-SD (2000) finding PAULE liable is *REINSTATED*, with the *MODIFICATION* that the trial court is *ORDERED* to receive evidence on the counterclaim of petitioner Zenaida G. Mendoza.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and *Peralta, JJ.*, concur.

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[23] *Pinga v. Heirs of German Santiago*, G.R. No. 170354, June 30, 2006, 494 SCRA 393, 416; 421.

THIRD DIVISION

[G.R. No. 176246. February 13, 2009]

PREMIERE DEVELOPMENT BANK, *petitioner, vs.* **CENTRAL SURETY & INSURANCE COMPANY, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS; APPLICATION OF PAYMENTS; THE DEBTOR'S RIGHT TO APPLY PAYMENT IS NOT MANDATORY; THE CREDITOR WAS GIVEN THE SAME RIGHT IN CASE THE DEBTOR FAILS TO ELECT.— At the hub of the controversy is the statutory provision on application of payments, specifically Article 1252 of the Civil Code. x x x The debtor's right to apply payment is not mandatory. This is clear from the use of the word "may" rather than the word "shall" in the provision which reads: "He who has various debts of the same kind in favor of one and the same creditor, ***may*** declare at the time of making the payment, to which of the same must be applied." Indeed, the debtor's right to apply payment has been considered merely directory, and not mandatory, following this Court's earlier pronouncement that "the ordinary acceptation of the terms 'may' and 'shall' may be resorted to as guides in ascertaining the mandatory or directory character of statutory provisions." Article 1252 gives the right to the debtor to choose to which of several obligations to apply a particular payment that he tenders to the creditor. But likewise granted in the same provision is the right of the creditor to apply such payment in case the debtor fails to direct its application. This is obvious in Art. 1252, par. 2, *viz.: "If the debtor accepts from the creditor a receipt in which an application of payment is made, the former cannot complain of the same."* It is the directory nature of this right and the subsidiary right of the creditor to apply payments when the debtor does not elect to do so that make this right, like any other right, waivable. Rights may be waived, unless the waiver is contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law. A debtor, in making a voluntary payment, may at the

time of payment direct an application of it to whatever account he chooses, unless he has assigned or waived that right. If the debtor does not do so, the right passes to the creditor, who may make such application as he chooses.

2. ID.; ID.; ID.; DEBTOR'S RIGHT TO APPLY PAYMENT MAY BE WAIVED BY AGREEMENT.— [T]he debtor's right to apply payment can be waived and even granted to the creditor if the debtor so agrees. This was explained by former Senator Arturo M. Tolentino, an acknowledged expert on the Civil Code, thus: The following are some limitations on the right of the debtor to apply his payment: x x x 5) when there is an agreement as to the debts which are to be paid first, the debtor cannot vary this agreement. Relevantly, in a Decision of the Supreme Court of Kansas in a case with parallel facts, it was held that: The debtor requested Planters apply the payments to the 1981 loan rather than to the 1978 loan. Planters refused. Planters notes it was expressly provided in the security agreement on the 1981 loan that Planters had a legal right to direct application of payments in its sole discretion. Appellees do not refute this. Hence, the debtors had no right by agreement to direct the payments. This also precludes the application of the U.S. Rule, which applies only in absence of a statute or specific agreement. Thus the trial court erred. Planters was entitled to apply the Hi-Plains payments as it saw fit. In the case at bench, the records show that Premiere Bank and Central Surety entered into several contracts of loan, securities by way of pledges, and suretyship agreements. In at least two (2) promissory notes between the parties, Promissory Note No. 714-Y and Promissory Note No. 376-X, Central Surety expressly agreed to grant Premiere Bank the authority to apply any and all of Central Surety's payments, thus: In case I/We have several obligations with [Premiere Bank], I/We hereby empower [Premiere Bank] to apply without notice and in any manner it sees fit, any or all of my/our deposits and payments to any of my/our obligations whether due or not. Any such application of deposits or payments shall be conclusive and binding upon us. This proviso is representative of all the other Promissory Notes involved in this case. It is in the exercise of this express authority under the Promissory Notes, and following *Bangko Sentral ng Pilipinas* Regulations, that Premiere Bank applied payments made by Central Surety, as it deemed fit, to the several debts of the latter.

3. ID.; ID.; ID.; EQUITABLE PRINCIPLE OF WAIVER OF THE CREDITOR'S RIGHT TO APPLY PAYMENTS, NOT APPLICABLE.— Neither can it be said that Premiere Bank waived its right to apply payments when it specifically demanded payment of the ₱6,000,000.00 loan under Promissory Note No. 714-Y. It is an elementary rule that the existence of a waiver must be positively demonstrated since a waiver by implication is not normally countenanced. The norm is that a waiver must not only be voluntary, but must have been made knowingly, intelligently, and with sufficient awareness of the relevant circumstances and likely consequences. There must be persuasive evidence to show an actual intention to relinquish the right. Mere silence on the part of the holder of the right should not be construed as a surrender thereof; the courts must indulge every reasonable presumption against the existence and validity of such waiver. Besides, in this case, any inference of a waiver of Premiere Bank's, as creditor, right to apply payments is eschewed by the express provision of the Promissory Note that: *"no failure on the part of [Premiere Bank] to exercise, and no delay in exercising* ***any*** *right hereunder, shall operate as a waiver thereof."* Thus, we find it unnecessary to rule on the applicability of the equitable principle of waiver that the Court of Appeals ascribed to the demand made by Premiere Bank upon Central Surety to pay the amount of ₱6,000,000.00, in the face of both the express provisions of the law and the agreements entered into by the parties. After all, a diligent creditor should not needlessly be interfered with in the prosecution of his legal remedies.

4. ID.; CONTRACTS; CONTRACT OF ADHESION, HELD VALID.— To the extent that the subject promissory notes were prepared by the Premiere Bank and presented to Central Surety for signature, these agreements were, indeed, contracts of adhesion. But contracts of adhesion are not invalid *per se*. Contracts of adhesion, where one party imposes a ready-made form of contract on the other, are not entirely prohibited. The one who adheres to the contract is, in reality, free to reject it entirely; if he adheres, he gives his consent. In interpreting such contracts, however, courts are expected to observe greater vigilance in order to shield the unwary or weaker party from deceptive schemes contained in ready-made covenants. Thus, Article 24 of the Civil Code pertinently states: In all contractual, property or other relations, when one of the parties is at a

disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age or other handicap, the courts must be vigilant for his protection. But in this case, Central Surety does not appear so weak as to be placed at a distinct disadvantage *vis-à-vis* the bank. As found by the lower court: Considering that [Central Surety] is a known business entity, the [Premiere Bank] was right in assuming that the [Central Surety] could not have been cheated or misled in agreeing thereto, it could have negotiated with the bank on a more favorable term considering that it has already established a certain reputation with the [Premiere Bank] as evidenced by its numerous transactions. It is therefore absurd that an established company such as the [Central Surety] has no knowledge of the law regarding bank practice in loan transactions.

5. ID.; ID.; TERMS AND CONDITIONS; *"DRAGNET CLAUSE"* OR *"BLANKET MORTGAGE CLAUSE,"* HELD VALID; RULING IN CASE OF *PRUDENTIAL BANK V. ALVIAR,* APPLIED.— [I]t is more than apparent that when, on August 29, 1999, the parties executed the Deed of Assignment with Pledge (of the Wack Wack Membership), to serve as security for an obligation in the amount of ₱15,000,000.00 (when the actual loan covered by PN No. 714-Y was only ₱6,000,000.00), the intent of the parties was for the Wack Wack Membership to serve as security also for future advancements. The subsequent loan was nothing more than a fulfillment of the intention of the parties. Of course, because the subsequent loan was for a much greater amount (₱40,898,000.00), it became necessary to put up another security, in addition to the Wack Wack Membership. Thus, the subsequent surety agreement and the specific security for PN No. 367-X were, like the Wack Wack Membership, meant to secure the ballooning debt of the Central Surety. The above-quoted provision in the Deed of Assignment, also known as the "dragnet clause" in American jurisprudence, would subsume all debts of respondent of past and future origins. It is a valid and legal undertaking, and the amounts specified as consideration in the contracts do not limit the amount for which the pledge or mortgage stands as security, if from the four corners of the instrument, the intent to secure future and other indebtedness can be gathered. A pledge or mortgage given to secure future advancements is a continuing security and is not discharged by the repayment of the amount named in the mortgage until the full amount of all advancements

shall have been paid. Our ruling in *Prudential Bank v. Alviar* is instructive: x x x The security clause involved in the case at bar x x x is comparable with the security clause in the case of *Prudential* x x x and there is no substantive difference between the terms utilized in both clauses securing future advances. To recall, the critical issue resolved in *Prudential* was whether the "blanket mortgage" clause applies even to subsequent advancements for which other securities were intended. We then declared that the special security for subsequent loans must first be exhausted in a situation where the creditor desires to foreclose on the "subsequent" loans that are due. However, the "dragnet clause" allows the creditor to hold on to the first security in case of deficiency after foreclosure on the special security for the subsequent loans. In *Prudential*, we disallowed the petitioner's attempt at multiple foreclosures, as it foreclosed on all of the mortgaged properties serving as individual securities for each of the three loans. x x x However, this does not prevent the creditor from foreclosing on the security for the first loan if that loan is past due, because there is nothing in law that prohibits the exercise of that right. Hence, in the case at bench, Premiere Bank has the right to foreclose on the Wack Wack Membership, the security corresponding to the first promissory note, with the deed of assignment that originated the "dragnet clause." This conforms to the doctrine in *Prudential*.

6. ID.; ID.; WHEN THE SECURITY IN THE FORM OF A PLEDGE CANNOT BE RELEASED.— [E]ven without this Court's prescription in *Prudential*, the release of the Wack Wack Membership as the pledged security for Promissory Note 714-Y cannot yet be done as sought by Central Surety. The chain of contracts concluded between Premiere Bank and Central Surety reveals that the Wack Wack Membership, which stood as security for Promissory Note 714-Y, and which also stands as security for subsequent debts of Central Surety, is a security in the form of a pledge. Its return to Central Surety upon the pretext that Central Surety is entitled to pay only the obligation in Promissory Note No. 714-Y, will result in the extinguishment of the pledge, even with respect to the subsequent obligations, because Article 2110 of the Civil Code provides: (*I)f the thing pledged is returned by the pledgor or owner, the pledge is extinguished. Any stipulation to the contrary is void.* This is contrary to the express agreement of the parties, something

which Central Surety wants this Court to undo. We reiterate that, as a rule, courts cannot intervene to save parties from disadvantageous provisions of their contracts if they consented to the same freely and voluntarily.

7. ID.; DAMAGES; ATTORNEY'S FEES; AWARD THEREOF NOT WARRANTED IN THE ABSENCE OF MALICE; MALICIOUS PROSECUTION, NOT A CASE OF.— The final issue is the propriety of attorney's fees. The trial court based its award on the supposed malice of Central Surety in instituting this case against Premiere Bank. We find no malice on the part of Central Surety; indeed, we are convinced that Central Surety filed the case in the lower court in good faith, upon the honest belief that it had the prerogative to choose to which loan its payments should be applied. Malicious prosecution, both in criminal and civil cases, requires the presence of two elements, to wit: (a) malice and (b) absence of probable cause. Moreover, there must be proof that the prosecution was prompted by a sinister design to vex and humiliate a person; and that it was initiated deliberately, knowing that the charge was false and baseless. Hence, the mere filing of what turns out to be an unsuccessful suit does not render a person liable for malicious prosecution, for the law could not have meant to impose a penalty on the right to litigate. Malice must be proved with clear and convincing evidence, which we find wanting in this case.

APPEARANCES OF COUNSEL

Tagalog De Villa and Associates for petitioner.
Jaime C. Opinion for respondent.

D E C I S I O N

NACHURA, *J.*:

Before us is a petition for review on *certiorari* assailing the Court of Appeals (CA) Decision[1] in CA-G.R. CV No. 85930, which

[1] Penned by Presiding Justice Ruben T. Reyes (now a retired member of this Court), with Associate Justices Rebecca de Guia-Salvador and Monina Arevalo-Zenarosa, concurring; *rollo,* pp. 45-69.

reversed and set aside the decision of the Regional Trial Court (RTC), Branch 132, Makati City in Civil Case No. 0051306.[2]

On August 20, 1999, respondent Central Surety & Insurance Company (Central Surety) obtained an industrial loan of ₱6,000,000.00 from petitioner Premiere Development Bank (Premiere Bank) with a maturity date of August 14, 2000. This ₱6,000,000.00 loan, evidenced by Promissory Note (PN) No. 714-Y,[3] stipulates payment of 17% interest *per annum* payable monthly in arrears and the principal payable on due date. In addition, PN No. 714-Y provides for a penalty charge of 24% interest *per annum* based on the unpaid amortization/installment or the entire unpaid balance of the loan. In all, should Central Surety fail to pay, it would be liable to Premiere Bank for: (1) unpaid interest up to maturity date; (2) unpaid penalties up to maturity date; and (3) unpaid balance of the principal.

To secure payment of the ₱6,000,000.00 loan, Central Surety executed in favor of Premiere Bank a Deed of Assignment with Pledge[4] covering Central Surety's Membership Fee Certificate No. 217 representing its proprietary share in Wack Wack Golf and Country Club Incorporated (Wack Wack Membership). In both PN No. 714-Y and Deed of Assignment, Constancio T. Castañeda, Jr. and Engracio T. Castañeda, president and vice-president of Central Surety, respectively, represented Central Surety and solidarily bound themselves to the payment of the obligation.

Parenthetically, Central Surety had another commercial loan with Premiere Bank in the amount of ₱40,898,000.00 maturing on October 10, 2001. This loan was, likewise, evidenced by a PN numbered 376-X[5] and secured by a real estate mortgage over Condominium Certificate of Title No. 8804, Makati City. PN No. 376-X was availed of through a renewal of Central Surety's prior loan, then covered by PN No. 367-Z.[6] As with the ₱6,000,000.00 loan and the constituted pledge over the

[2] Penned by Judge Rommel O. Baybay.

[3] Annex "A" of the Complaint, records, p. 11.

[4] Annex "B" of the Complaint, *id.* at 12-13.

[5] Annex "E", formal offer of exhibits, *id.* at 206.

[6] Ro*llo,* p. 11.

Wack Wack Membership, the ₱40,898,000.00 loan with real estate mortgage was transacted by Constancio and Engracio Castañeda on behalf of Central Surety.

It appears that on August 22, 2000, Premiere Bank sent a letter to Central Surety demanding payment of the ₱6,000,000.00 loan, to wit:

August 22, 2000

CENTRAL SURETY AND INSURANCE CO.
2nd Floor Universalre Bldg.
No. 106 Paseo de Roxas, Legaspi Village
Makati City

Attention: Mr. Constancio T. Castaneda, Jr.
President

Mr. Engracio T. Castaneda
Vice President

Gentlemen:

This has reference to your overdue loan of ₱6.0 Million.

We regret to inform you that despite efforts to restructure the same, you have failed up to this time, to submit the required documents and come up with equity necessary to implement the restructuring scheme.

In view thereof, we regret that unless the above loan is settled on or before five (5) days from the date hereof, we shall exercise our option to have the Stock Certificate No. 217 with Serial No. 1793 duly issued by Wack Wack Golf and Country Club, Inc. transferred in the name of Premiere Development Bank in accordance with the terms and conditions of the Deed of Assignment with Pledge executed in favor of Premiere Development Bank.

We shall appreciate your prompt compliance.

Very truly yours,

(sgd.)
IGNACIO R. NEBRIDA, JR.
Senior Asst. Vice President/
Business Development Group - Head[7]

[7] Annex "D" of the Complaint, records, p. 15. (Italics supplied.)

Posthaste, Central Surety responded and sent the following letter dated August 24, 2000:

24 August 2000

Mr. Ignacio R. Nebrida, Jr.
Senior Asst. Vice President/
Business Development Group – Head
Premiere Bank
EDSA cor. Magallanes Avenue
Makati City

Sir:

With reference to this 6.0 Million loan account, we have informed Ms. Evangeline Veloira that we are intending to settle the account by the end of September. As of 14 August 2000 we made payment to your bank as per receipt attached.

As you may know, present conditions have been difficult for the insurance industry whose performance is so closely linked to the nation's economic prosperity; and we are now asking for some consideration and leeway on your very stiff and immediate demands.

Kindly extend to us your favorable approval.

Very truly yours,

(sgd.)
ENGRACIO T. CASTANEDA
Vice President[8]

Accordingly, by September 20, 2000, Central Surety issued Bank of Commerce (BC) Check No. 08114[9] dated September 22, 2000 in the amount of ₱6,000,000.00 and payable to Premiere Bank. The check was received by Premiere Bank's Senior Account Manager, Evangeline Veloira, with the notation "full payment of loan-Wack Wack," as reflected in Central Surety's Disbursement Voucher.[10] However, for undisclosed reasons, Premiere Bank returned BC Check No. 08114 to Central Surety, and in its letter dated September 28, 2000, demanded from the latter, not just payment of the ₱6,000,000.00 loan, but also the

[8] Annex "E" of the Complaint, *id.* at 16. (Italics supplied.)

[9] Annex "G" of the Complaint, *id.* at 18.

[10] Annex "G-1" of the Complaint, *id.* at 18.

₱40,898,000.00 loan which was originally covered by PN No. 367-Z.[11] In the same letter, Premiere Bank threatened foreclosure of the loans' respective securities, the pledge and real estate mortgage, should Central Surety fail to pay these within ten days from date, thus:

28 September 2000

CENTRAL SURETY & INSURANCE CO.
By: Constancio T. Castañeda Jr. – President
Engracio T. Castañeda – Vice President
2nd Floor Universalre Bldg. No. 106
Paseo de Roxas, Legaspi Village, Makati City

RE: *YOUR COMMERCIAL LOAN OF ₱40,898,000.00 & ₱6,000,000.00 WITH PREMIERE DEVELOPMENT BANK UNDER ACCOUNT NOS. COM-367-Z AND COM 714-Y*

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Dear Sirs:

We write on behalf of our client, Premiere Development Bank, in connection with your above-captioned loan account.

While our client has given you all the concessions, facilities and opportunities to service your loans, we regret to inform you that you have failed to settle the same despite their past due status.

In view of the foregoing and to protect the interest of our client, please be advised that *unless the outstanding balances of your loan accounts as of date plus interest, penalties and other fees and charges are paid in full or necessary arrangements acceptable to our client is made by you within ten (10) days from date hereof,* we shall be constrained much to our regret, to file foreclosure proceedings against the collateral of the loan mortgaged to the Bank or pursue such action necessary in the premises.

We trust, therefore, that you will give this matter your preferential attention.

Very truly yours,
(sgd.)
PACITA M. ARAOS[12]

(italics supplied)

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[11] Now covered by PN No. 376-X to mature on October 20, 2001.

[12] Annex "H" of the Complaint, records, p. 19.

The very next day, on September 29, 2000, Central Surety, through its counsel, wrote Premiere Bank and re-tendered payment of the check:

29 September 2000

PREMIERE BANK
EDSA cor. Magallanes Avenue
Makati City

Attention: Mr. Ignacio R. Nebrida, Jr.
Senior Asst. Vice President/
Business Development Group – Head

Re : Promissory Note No. 714-Y

Sir:

This is further to our client's letter to you dated 24 August 2000, informing you that it would settle its account by the end of September 2000.

Please be advised that on 20 September 2000 our client delivered to your bank BC cheque no. 08114 payable to Premiere Bank in the amount of **SIX MILLION PESOS (₱6,000,000.00)**, which was received by your Senior Account Manager, Ms. Evangeline Veloira. However, for unexplained reasons the cheque was returned to us.

We are again tendering to you the said cheque of **SIX MILLION PESOS (₱6,000,000.00)**, in payment of **PN#714-Y**. Please accept the cheque and issue the corresponding receipt thereof. Should you again refuse to accept this cheque, then I shall advise my client to deposit it in court for proper disposition.

Thank you.

Very truly yours,

(sgd.)
EPIFANIO E. CUA
Counsel for Central Surety & Insurance Company[13]

(italics supplied)

On even date, a separate letter with another BC Check No. 08115 in the amount of ₱2,600,000.00 was also tendered to Premiere

[13] Annex "I" of the Complaint, *id.* at 20.

Bank as payment for the Spouses Engracio and Lourdes Castañeda's (Spouses Castañeda's) personal loan covered by PN No. 717-X and secured by Manila Polo Club, Inc. membership shares.

On October 13, 2000, Premiere Bank responded and signified acceptance of Central Surety's checks under the following application of payments:

13 October 2000

ATTY. EPIFANIO E. CUA
2/F Universalre Condominium
106 Paseo de Roxas
Legaspi Village, Makati City

Dear Atty. Cua:

Thank you for your two (2) letters both dated 29 September 2000 on behalf of your clients with the enclosed check nos. 0008114 and 0008115 for the total of ₱8,600,000.00.

As previously relayed to your client, Premiere Bank cannot accept the two (2) checks as full settlement of the obligation under Account Nos. PN #714-Y and PN # 717-X, as the amount is insufficient.

In accordance with the terms and conditions of the Promissory Notes executed by your clients in favor of Premiere Development Bank, we have applied the two (2) checks to the due obligations of your clients as follows:

1)	Account No.: COM 235-Z[14]	₱1,044,939.45
2)	Account No.: IND 717-X	₱1,459,693.15
3)	Account No.: COM 367-Z[15]	₱4,476,200.18
4)	Account No.: COM 714-Y	₱1,619,187.22
	TOTAL	₱8,600,000.00

We are enclosing Xerox copy each of four (4) official receipts covering the above payments. The originals are with us which your

[14] Loan of ₱40,000,000.00 to Casent Realty and Development Corporation with Engracio Castañeda signing the PN as president thereof.

[15] *Supra* notes 3, 4.

clients or their duly authorized representative may pick-up anytime during office hours.

We shall appreciate the settlement in full of the accounts of your client or necessary arrangements for settlement thereof be made as soon as possible to put the accounts on up to-date status.

Thank you.

Very truly yours,

(sgd.)
MS. ELSA M. SAPAPO
Manager
Loans Accounting and
Control Department[16]

Significantly, the ₱8,600,000.00 check payments were not applied in full to Central Surety's ₱6,000,000.00 loan under PN No. 714-Y and the Spouses Castañeda's personal loan of ₱2,600,000.00 under PN No. 717-X. Premiere Bank also applied proceeds thereof to a commercial loan under PN No. 235-Z taken out by Casent Realty and Development Corporation (Casent Realty),[17] and to Central Surety's loan originally covered by PN No. 367-Z, renewed under PN No. 376-X, maturing on October 20, 2001.

Strongly objecting to Premiere Bank's application of payments, Central Surety's counsel wrote Premiere Bank and reiterated Central Surety's demand for the application of the check payments to the loans covered by PN Nos. 714-X and 714-Y. Additionally, Central Surety asked that the Wack Wack Membership pledge, the security for the ₱6,000,000.00 loan, should be released.

In the final exchange of correspondence, Premiere Bank, through its SAVP/Acting Head-LGC, Atty. Pacita Araos, responded and refused to accede to Central Surety's demand. Premiere Bank insisted that the PN covering the ₱6,000,000.00 loan granted Premiere Bank sole discretion respecting: (1) debts to which payments should be applied in cases of several obligations

[16] Annexes "J", "J-1" of the Complaint, records, pp. 21-22.

[17] An affiliate company of Central Surety with Engracio Castañeda as president thereof.

by an obligor and/or debtor; and (2) the initial application of payments to other costs, advances, expenses, and past due interest stipulated thereunder.

As a result, Central Surety filed a complaint for damages and release of security collateral, specifically praying that the court render judgment: (1) declaring Central Surety's ₱6,000,000.00 loan covered by PN No. 714-Y as fully paid; (2) ordering Premiere Bank to release to Central Surety its membership certificate of shares in Wack Wack; (3) ordering Premiere Bank to pay Central Surety compensatory and actual damages, exemplary damages, attorney's fees, and expenses of litigation; and (4) directing Premiere Bank to pay the cost of suit.

On July 12, 2005, the RTC rendered a decision dismissing Central Surety's complaint and ordering it to pay Premiere Bank ₱100,000.00 as attorney's fees. The RTC ruled that the stipulation in the PN granting Premiere Bank sole discretion in the application of payments, although it partook of a contract of adhesion, was valid. It disposed of the case, to wit:

> Now that the issue as to the validity of the stipulation is settled, [Premiere Bank] was right in contending that it had the right to apply [Central Surety's] payment to the most onerous obligation or to the one it sees fit to be paid first from among the several obligations. The application of the payment to the other two loans of Central Surety namely, account nos. COM 367-Z and IND 714-Y was within [Premiere Bank's] valid exercise of its right according the stipulation. However, [Premiere Bank] erred in applying the payment to the loan of Casent Realty and to the personal obligation of Mr. Engracio Castañeda despite their connection with one another. Therefore, [Premiere Bank] cannot apply the payment tendered by Central Surety to the other two entities capriciously and expressly violating the law and pertinent Central Bank rules and regulations. **Hence, the application of the payment to the loan of Casent Realty (Account No. COM 236-Z) and to the loan of Mr. Engracio Castañeda (Account No. IND 717-X) is void and must be annulled.**
>
> As to the issue of whether or not [Central Surety] is entitled to the release of Membership Fee Certificate in the Wack Wack Golf and Country Club, considering now that [Central Surety] cannot compel [Premiere Bank] to release the subject collateral.

With regard to the issue of damages and attorney's fees, the court finds no basis to grant [Premiere Bank's] prayer for moral and exemplary damages but deems it just and equitable to award in its favor attorney's fees in the sum of Php 100,000.00.

WHEREFORE, judgment is hereby rendered **dismissing** the complaint and ordering [Central Surety] to pay [Premiere Bank] Php 100,000.00 as attorney's fees.[18] (emphasis supplied)

On appeal by Central Surety, the CA reversed and set aside the trial court's ruling. The appellate court held that with Premiere Bank's letter dated August 22, 2000 specifically demanding payment of Central Surety's ₱6,000,000.00 loan, it was deemed to have waived the stipulation in PN No. 714-Y granting it the right to solely determine application of payments, and was, consequently, estopped from enforcing the same. In this regard, with the holding of full settlement of Central Surety's ₱6,000,000.00 loan under PN No. 714-Y, the CA ordered the release of the Wack Wack Membership pledged to Premiere Bank.

Hence, this recourse by Premiere Bank positing the following issues:

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE AND PALPABLE ERROR WHEN IT APPLIED THE PRINCIPLE OF WAIVER AND ESTOPPEL IN THE PRESENT CASE INSOFAR AS THE DEMAND LETTER SENT TO [CENTRAL SURETY] IS CONCERNED NULLIFYING THE APPLICATION OF PAYMENTS EXERCISED BY [PREMIERE BANK]

WHETHER OR NOT THE FINDING OF WAIVER AND ESTOPPEL BY THE HONORABLE COURT OF APPEALS COULD PREVAIL OVER THE CLEAR AND UNMISTAKABLE STATUTORY AND CONTRACTUAL RIGHT OF [PREMIERE BANK] TO EXERCISE APPLICATION OF PAYMENT AS WARRANTED BY THE PROMISSORY NOTE

EVEN ASSUMING *EX GRATIA* THAT THE 6 MILLION SHOULD BE APPLIED TO THE SUBJECT LOAN OF RESPONDENT, WHETHER OR NOT THE SUBJECT WACK-WACK SHARES COULD BE RELEASE[D] DESPITE THE CROSS DEFAULT AND

[18] *Rollo*, pp. 79-80.

CROSS GUARANTEE PROVISIONS OF THE DEED OF ASSIGNMENT WITH PLEDGE AND RELEVANT REAL ESTATE MORTGAGE CONTRACTS EXECUTED BY [CENTRAL SURETY], CASENT REALTY AND SPS. CASTAÑEDA.

WHETHER OR NOT THERE IS A VALID TENDER OF PAYMENT AND CONSIGNATION OF THE SUBJECT TWO CHECK PAYMENTS BY [CENTRAL SURETY].

WHETHER OR NOT, AS CORRECTLY FOUND BY THE COURT *A QUO* [CENTRAL SURETY] IS ESTOPPED FROM CONTESTING THE STIPULATIONS OR PROVISIONS OF THE PROMISSORY NOTES AUTHORIZING [PREMIERE BANK] TO MAKE SUCH APPLICATION OF PAYMENTS

WHETHER OR NOT AS CORRECTLY FOUND BY THE LOWER COURT [PREMIERE BANK] IS ENTITLED TO AN AWARD OF DAMAGES AS OCCASIONED BY THE MALICIOUS FILING OF THIS SUIT.[19]

At the outset, we qualify that this case deals only with the extinguishment of Central Surety's ₱6,000,000.00 loan secured by the Wack Wack Membership pledge. We do not dispose herein the matter of the ₱2,600,000.00 loan covered by PN No. 717-X subject of BC Check No. 08115.

We note that both lower courts were one in annulling Premiere Bank's application of payments to the loans of Casent Realty and the Spouses Castañeda under PN Nos. 235-Z and 717-X, respectively, thus:

> It bears stressing that the parties to PN No. 714-Y secured by Wack Wack membership certificate are only Central Surety, as debtor and [Premiere Bank], as creditor. Thus, when the questioned stipulation speaks of "several obligations", it only refers to the obligations of [Central Surety] and nobody else.
>
> [I]t is plain that [Central Surety] has only two loan obligations, namely: 1.) **Account No. 714-Y** – secured by **Wack Wack membership certificate**; and 2.) **Account No. 367-Z** – secured by **Condominium Certificate of Title**. The two loans are secured by separate and different collaterals. The collateral for Account No. 714-Y, which is the Wack Wack membership certificate answers

[19] *Id.* at 9-10.

only for that account and nothing else. The collateral for Account No. 367-Z, which is the Condominium Certificate of Title, is answerable only for the said account.

The fact that the loan obligations of [Central Surety] are secured by separate and distinct collateral simply shows that each collateral secures only a particular loan obligation and does not cover loans including future loans or advancements.

As regards the loan covered by Account No. 235-Z, this was obtained by Casent Realty, not by [Central Surety]. Although Mr. Engracio Castañeda is the vice-president of [Central Surety], and president of Casent Realty, it does not follow that the two corporations are one and the same. Both are invested by law with a personality separate and distinct from each other.

Thus, [Central Surety] cannot be held liable for the obligation of Casent Realty, absent evidence showing that the latter is being used to defeat public convenience, justify wrong, protect fraud or defend crime; or used as a shield to confuse the legitimate issues, or when it is merely an adjunct, a business conduit or an alter ego of [Central Surety] or of another corporation; or used as a cloak to cover for fraud or illegality, or to work injustice, or where necessary to achieve equity or for the protection of creditors.

Likewise, [Central Surety] cannot be held accountable for the loan obligation of spouses Castañeda under Account No. IND 717-X. Settled is the rule that a corporation is invested by law with a personality separate and distinct from those of the persons composing it. The corporate debt or credit is not the debt or credit of the stockholder nor is the stockholder's debt or credit that of the corporation.

The mere fact that a person is a president of the corporation does not render the property he owns or possesses the property of the corporation, since that president, as an individual, and the corporation are separate entities.[20]

In fact, Premiere Bank did not appeal or question the RTC's ruling specifically annulling the application of the ₱6,000,000.00 check payment to the respective loans of Casent Realty and the Spouses Castañeda. Undoubtedly, Premiere Bank cannot

[20] *Id.* at 61-64.

be allowed, through this petition, to surreptitiously include the validity of its application of payments concerning the loans to Casent Realty and the Spouses Castañeda.

Thus, we sift through the issues posited by Premiere Bank and restate the same, to wit:

1. Whether Premiere Bank waived its right of application of payments on the loans of Central Surety.
2. In the alternative, whether the ₱6,000,000.00 loan of Central Surety was extinguished by the encashment of BC Check No. 08114.
3. Corollarily, whether the release of the Wack Wack Membership pledge is in order.

The Petition is meritorious.

We shall take the first and the second issues in tandem.

Creditor given right to apply payments

At the hub of the controversy is the statutory provision on application of payments, specifically Article 1252 of the Civil Code, *viz.*:

> *Article 1252.* He who has various debts of the same kind in favor of one and the same creditor, **may** declare at the time of making the payment, to which of them the same must be applied. Unless the parties so stipulate, or when the application of payment is made by the party for whose benefit the term has been constituted, application shall not be made as to debts which are not yet due.
>
> If the debtor accepts from the creditor a receipt in which an application of the payment is made, the former cannot complain of the same, unless there is a cause for invalidating the contract.

The debtor's right to apply payment is not mandatory. This is clear from the use of the word "may" rather than the word "shall" in the provision which reads: "He who has various debts of the same kind in favor of one and the same creditor, ***may*** declare at the time of making the payment, to which of the same must be applied."

Indeed, the debtor's right to apply payment has been considered merely directory, and not mandatory,[21] following this Court's earlier pronouncement that "the ordinary acceptation of the terms 'may' and 'shall' may be resorted to as guides in ascertaining the mandatory or directory character of statutory provisions."[22]

Article 1252 gives the right to the debtor to choose to which of several obligations to apply a particular payment that he tenders to the creditor. But likewise granted in the same provision is the right of the creditor to apply such payment in case the debtor fails to direct its application. This is obvious in Art. 1252, par. 2, *viz.: "If the debtor accepts from the creditor a receipt in which an application of payment is made, the former cannot complain of the same."* It is the directory nature of this right and the subsidiary right of the creditor to apply payments when the debtor does not elect to do so that make this right, like any other right, waivable.

Rights may be waived, unless the waiver is contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law.[23]

A debtor, in making a voluntary payment, may at the time of payment direct an application of it to whatever account he chooses, unless he has assigned or waived that right. If the debtor does not do so, the right passes to the creditor, who may make such application as he chooses. But if neither party has exercised its option, the court will apply the payment according to the justice and equity of the case, taking into consideration all its circumstances.[24]

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[21] *Baltazar v. Lingayen Gulf Electric Power Co., Inc.,* 121 Phil. 1308, 1321 (1965).

[22] *Social Security Commission v. Court of Appeals,* G.R. No. 152058, September 27, 2004, 439 SCRA 239.

[23] CIVIL CODE, Art. 6.

[24] *Allen & Robinson v. F. H. Redward and Hawaiian Lodge, No. 21, of Free and Accepted Masons,* April 25, 1896, 10 Haw. 273, 1896 WL 1624 (Hawaii Rep.).

Verily, the debtor's right to apply payment can be waived and even granted to the creditor if the debtor so agrees.[25] This was explained by former Senator Arturo M. Tolentino, an acknowledged expert on the Civil Code, thus:

> The following are some limitations on the right of the debtor to apply his payment:
>
> xxx xxx xxx
>
> 5) when there is an agreement as to the debts which are to be paid first, the debtor cannot vary this agreement.[26]

Relevantly, in a Decision of the Supreme Court of Kansas in a case with parallel facts, it was held that:

> The debtor requested Planters apply the payments to the 1981 loan rather than to the 1978 loan. Planters refused. Planters notes it was expressly provided in the security agreement on the 1981 loan that Planters had a legal right to direct application of payments in its sole discretion. Appellees do not refute this. Hence, the debtors had no right by agreement to direct the payments. This also precludes the application of the U.S. Rule, which applies only in absence of a statute or specific agreement. Thus the trial court erred. Planters was entitled to apply the Hi-Plains payments as it saw fit.[27]

In the case at bench, the records show that Premiere Bank and Central Surety entered into several contracts of loan, securities by way of pledges, and suretyship agreements. In at least two (2) promissory notes between the parties, Promissory Note No. 714-Y and Promissory Note No. 376-X, Central Surety expressly agreed to grant Premiere Bank the authority to apply any and all of Central Surety's payments, thus:

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[25] IV Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, 311 (1985), citing Salvat 104-105, 7 Planiol & Ripert 542, De Buen, 3 Colin & Capitant, 188, 296.

[26] *Id*.

[27] *The Ram Company, Inc. v. The Estate of Clyde K. Kobbeman, et al. and Planters Bank and Trust Company, Appellant,* No. 56408, March 2, 1985, 236 Kan. 751, 696 P. 2d 936, citing *Gray v. Amoco Production Company,* 1 Kan. App. 2d 338, P 11, 564 P. 2d 579 (1977) aff'd in part, rev'd in part 223 Kan. 441, 573 P. 2d 1080 (1978).

In case I/We have several obligations with [Premiere Bank], I/We hereby empower [Premiere Bank] to apply without notice and in any manner it sees fit, any or all of my/our deposits and payments to any of my/our obligations whether due or not. Any such application of deposits or payments shall be conclusive and binding upon us.

This proviso is representative of all the other Promissory Notes involved in this case. It is in the exercise of this express authority under the Promissory Notes, and following *Bangko Sentral ng Pilipinas* Regulations, that Premiere Bank applied payments made by Central Surety, as it deemed fit, to the several debts of the latter.

All debts were due; There was no waiver on the part of petitioner

Undoubtedly, at the time of conflict between the parties material to this case, Promissory Note No. 714-Y dated August 20, 1999, in the amount of ₱6,000,000.00 and secured by the pledge of the Wack Wack Membership, was past the due and demand stage. By its terms, Premiere Bank was entitled to declare said Note and all sums payable thereunder immediately due and payable, without need of *"presentment, demand, protest or notice of any kind."* The subsequent demand made by Premiere Bank was, therefore, merely a superfluity, which cannot be equated with a waiver of the right to demand payment of all the matured obligations of Central Surety to Premiere Bank.

Moreover, this Court may take judicial notice that the standard practice in commercial transactions to send demand letters has become part and parcel of every collection effort, especially in light of the legal requirement that demand is a prerequisite before default may set in, subject to certain well-known exceptions, including the situation where the law or the obligations expressly declare it unnecessary.[28]

Neither can it be said that Premiere Bank waived its right to apply payments when it specifically demanded payment of the ₱6,000,000.00 loan under Promissory Note No. 714-Y. It is an elementary rule that the existence of a waiver must be positively

[28] CIVIL CODE, Art. 1169.

demonstrated since a waiver by implication is not normally countenanced. The norm is that a waiver must not only be voluntary, but must have been made knowingly, intelligently, and with sufficient awareness of the relevant circumstances and likely consequences. There must be persuasive evidence to show an actual intention to relinquish the right. Mere silence on the part of the holder of the right should not be construed as a surrender thereof; the courts must indulge every reasonable presumption against the existence and validity of such waiver.[29]

Besides, in this case, any inference of a waiver of Premiere Bank's, as creditor, right to apply payments is eschewed by the express provision of the Promissory Note that: *"no failure on the part of [Premiere Bank] to exercise, and no delay in exercising* ***any*** *right hereunder, shall operate as a waiver thereof."*

Thus, we find it unnecessary to rule on the applicability of the equitable principle of waiver that the Court of Appeals ascribed to the demand made by Premiere Bank upon Central Surety to pay the amount of ₱6,000,000.00, in the face of both the express provisions of the law and the agreements entered into by the parties. After all, a diligent creditor should not needlessly be interfered with in the prosecution of his legal remedies.[30]

When Central Surety directed the application of its payment to a specific debt, it knew it had another debt with Premiere Bank, that covered by Promissory Note 367-Z, which had been renewed under Promissory Note 376-X, in the amount of ₱40.898 Million. Central Surety is aware that Promissory Note 367-Z (or 376-X) contains the same provision as in Promissory Note No. 714-Y which grants the Premiere Bank authority to apply payments made by Central Surety, *viz.*:

In case I/We have several obligations with [Premiere Bank], I/We hereby empower [Premiere Bank] to apply without notice and in

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[29] *Valderama v. Macalde,* G.R. No. 165005, September 16, 2005, 470 SCRA 168, 183, citing *People v. Bodoso,* 446 Phil. 838 (2003).

[30] *Francis Saul II, Trustee, et al. v. Vaughn & Co., Ltd.,* Nos. L-32433, L-32462, December 5, 1977, 240 Ga. 301, 241 S.e. 2d 180.

any manner it sees fit, any or all of my/our deposits and payments **to any of my/our obligations whether due or not**. Any such application of deposits or payments shall be conclusive and binding upon us.[31]

Obviously, Central Surety is also cognizant that Promissory Note 367-Z contains the proviso that:

the bank shall be entitled to declare this Note and all sums payable hereunder to be immediately due and payable, without need of presentment, demand, protest or notice of nay kind, all of which I/We hereby expressly waive, upon occurrence of any of the following events: x x x (ii) My/Our failure to pay any **amortization or installment due hereunder**; (iii) My/Our failure to pay money due under **any other document or agreement evidencing obligations for borrowed money** x x x.[32]

by virtue of which, it follows that the obligation under Promissory Note 367-Z had become past due and demandable, with further notice expressly waived, when Central Surety defaulted on its obligations under Promissory Note No. 714-Y.

Mendoza v. Court of Appeals[33] forecloses any doubt that an acceleration clause is valid and produces legal effects. In fact, in *Selegna Management and Development Corporation v. United Coconut Planters Bank*,[34] we held that:

Considering that the contract is the law between the parties, respondent is justified in invoking the acceleration clause declaring the entire obligation immediately due and payable. That clause obliged petitioners to pay the entire loan on January 29, 1999, the date fixed by respondent.

It is worth noting that after the delayed payment of ₱6,000,000.00 was tendered by Central Surety, Premiere Bank returned the amount as insufficient, ostensibly because there

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[31] Emphasis supplied.

[32] Emphasis supplied.

[33] G.R. No. 116216, June 20, 1997, 274 SCRA 527.

[34] G.R. No. 165662, May 3, 2006, 489 SCRA 125.

was, at least, another account that was likewise due. Obviously, in its demand of 28 September 2000, petitioner sought payment, not just of the ₱6,000,000.00, but of all these past due accounts. There is extant testimony to support this claim, as the transcript of stenographic notes on the testimony of Atty. Araos reveals:

> *Atty. Opinion*: Q. But you accepted this payment of Six Million (₱6,000,000.00) later on when together with this was paid another check for 1.8 Million?
>
> *Witness:* A. We accepted.
>
> *Atty. Opinion:* Q. And you applied this to four (4) other accounts three (3) other accounts or to four (4) accounts mentioned in Exhibit "J". Is that correct?
>
> *Atty. Tagalog:* We can stipulate on that. Your Honor.
>
> *Court:* This was stipulated?
>
> *Atty. Tagalog:* Yes, Your Honor. In fact, there is already stipulation that we confirm that those are the applications of payments made by the defendant Bank on those loan accounts.
>
> *Atty. Opinion:* Q. Were these accounts due already when you made this application, distribution of payments?
>
> *Witness:* A. Yes sir.[35]

Conversely, in its evidence-in-chief, Central Surety did not present any witness to testify on the payment of its obligations. In fact, the record shows that after marking its evidence, Central Surety proceeded to offer its evidence immediately. Only on the rebuttal stage did Central Surety present a witness; but even then, no evidence was adduced of payment of any other obligation. In this light, the Court is constrained to rule that all obligations of Central Surety to Premiere Bank were due; and thus, the application of payments was warranted.

Being in receipt of amounts tendered by Central Surety, which were insufficient to cover its more onerous obligations, Premiere Bank cannot be faulted for exercising the authority granted to it under the Promissory Notes, and applying payment to the

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[35] TSN, July 9, 2004, pp. 42-43.

obligations as it deemed fit. Subject to the *caveat* that our ruling herein shall be limited only to the transactions entered into by the parties to this case, the Court will not disturb the finding of the lower court that Premiere Bank rightly applied the payments that Central Surety had tendered. Corollary thereto, and upon the second issue, the tender of the amount of ₱6,000,000.00 by Central Surety, and the encashment of BC Check No. 08114 did not totally extinguish the debt covered by PN No. 714-Y.

Release of the pledged

Wack Wack Membership

Contract of Adhesion

To the extent that the subject promissory notes were prepared by the Premiere Bank and presented to Central Surety for signature, these agreements were, indeed, contracts of adhesion. But contracts of adhesion are not invalid *per se*. Contracts of adhesion, where one party imposes a ready-made form of contract on the other, are not entirely prohibited. The one who adheres to the contract is, in reality, free to reject it entirely; if he adheres, he gives his consent.

In interpreting such contracts, however, courts are expected to observe greater vigilance in order to shield the unwary or weaker party from deceptive schemes contained in ready-made covenants.[36] Thus, Article 24 of the Civil Code pertinently states:

> In all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age or other handicap, the courts must be vigilant for his protection.

But in this case, Central Surety does not appear so weak as to be placed at a distinct disadvantage *vis-à-vis* the bank. As found by the lower court:

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[36] *Everett Steamship Corporation v. Court of Appeals,* 358 Phil. 129, 137 (1998), citing *Ong Yiu v. Court of Appeals,* 91 SCRA 223 (1979).

Considering that [Central Surety] is a known business entity, the [Premiere Bank] was right in assuming that the [Central Surety] could not have been cheated or misled in agreeing thereto, it could have negotiated with the bank on a more favorable term considering that it has already established a certain reputation with the [Premiere Bank] as evidenced by its numerous transactions. It is therefore absurd that an established company such as the [Central Surety] has no knowledge of the law regarding bank practice in loan transactions.

The Dragnet Clause.

The factual circumstances of this case showing the chain of transactions and long-standing relationship between Premiere Bank and Central Surety militate against the latter's prayer in its complaint for the release of the Wack Wack Membership, the security attached to Promissory Note 714-Y.

A tally of the facts shows the following transactions between Premiere Bank and Central Surety:

Date	Instrument	Amount covered	Stipulation
August 20, 1999	PN 714-Y	₱ 6 M	As security for PN 714-Y and/ or such Promissory Note/s which the ASSIGNOR/ PLEDGOR shall hereafter execute in favor of the ASSIGNEE/PLEDGEE
August 29, 1999	Deed of Assignment with Pledge	₱ 15 M	

From these transactions and the proviso in the Deed of Assignment with Pledge, it is clear that the security, which peculiarly specified an amount at ₱15,000,000.00 (notably greater than the amount of the promissory note it secured), was intended to guarantee not just the obligation under PN 714-Y, but also future advances. Thus, the said deed is explicit:

As security for the payment of loan obtained by the ASSIGNOR/ PLEDGOR from the ASSIGNEE/PLEDGEE in the amount of FIFTEEN MILLION PESOS (15,000,000.00) Philippine Currency in accordance with the Promissory Note attached hereto and made an integral part hereof as Annex "A" *and/or such Promissory Note/ s which the ASSIGNOR/PLEDGOR shall hereafter execute in favor*

of the ASSIGNEE/PLEDGEE, the ASSIGNOR/PLEDGOR hereby transfers, assigns, conveys, endorses, encumbers and delivers by way of first pledge unto the ASSIGNEE/PLEDGEE, its successors and assigns, that certain Membership fee Certificate Share in Wack Wack Golf and Country Club Incorporate covered by Stock Certificate No. 217 with Serial No. 1793 duly issue by Wack Wack Golf and Country Club Incorporated on August 27, 1996 in the name of the ASSIGNOR." (Emphasis made in the Petition.)

Then, a Continuing Guaranty/Comprehensive Surety Agreement was later executed by Central Surety as follows:

Date	Instrument	Amount	Stipulation
Notarized, Sept. 22, 1999	Continuing Guaranty/Comprehensive Surety Agreement	₱40,898,000.00	In consideration of the loan and/ or any credit accommodation which you (petitioner) have extended and/or will extend to Central Surety and Insurance Co.

And on October 10, 2000, Promissory Note 376-X was entered into, a renewal of the prior Promissory Note 367-Z, in the amount of ₱40,898,000.00. In all, the transactions that transpired between Premiere Bank and Central Surety manifest themselves, thusly:

Date	Instrument	Amount covered	Stipulation
August 20, 1999	PN 714-Y	₱ 6 M	As security for PN 714-Y and/or such Promissory Note/s which the ASSIGNOR / PLEDGOR shall hereafter execute in favor of the ASSIGNEE / PLEDGEE
August 29, 1999	Deed of Assignment with Pledge	₱ 15 M	

Notarized, Sept. 22, 1999	Continuing Guaranty/ Comprehensive Surety Agreement	₱40,898,000.00	In consideration of the loan and/ or any credit accommodation which you (petitioner) have extended and/or will extend to Central Surety and Insurance Co.

October 10, 2000 Promissory Note 376-X (PN 367-Z) ₱40,898,000.00

From the foregoing, it is more than apparent that when, on August 29, 1999, the parties executed the Deed of Assignment with Pledge (of the Wack Wack Membership), to serve as security for an obligation in the amount of ₱15,000,000.00 (when the actual loan covered by PN No. 714-Y was only ₱6,000,000.00), the intent of the parties was for the Wack Wack Membership to serve as security also for future advancements. The subsequent loan was nothing more than a fulfillment of the intention of the parties. Of course, because the subsequent loan was for a much greater amount (₱40,898,000.00), it became necessary to put up another security, in addition to the Wack Wack Membership. Thus, the subsequent surety agreement and the specific security for PN No. 367-X were, like the Wack Wack Membership, meant to secure the ballooning debt of the Central Surety.

The above-quoted provision in the Deed of Assignment, also known as the "dragnet clause" in American jurisprudence, would subsume all debts of respondent of past and future origins. It is a valid and legal undertaking, and the amounts specified as consideration in the contracts do not limit the amount for which the pledge or mortgage stands as security, if from the four corners of the instrument, the intent to secure future and other indebtedness can be gathered. A pledge or mortgage given to secure future advancements is a continuing security and is not

discharged by the repayment of the amount named in the mortgage until the full amount of all advancements shall have been paid.[37]

Our ruling in *Prudential Bank v. Alviar*[38] is instructive:

> A "blanket mortgage clause," also known as a "dragnet clause" in American jurisprudence, is one which is specifically phrased to subsume all debts of past or future origins. Such clauses are "carefully scrutinized and strictly construed." Mortgages of this character enable the parties to provide continuous dealings, the nature or extent of which may not be known or anticipated at the time, and they avoid the expense and inconvenience of executing a new security on each new transaction. A "dragnet clause" operates as a convenience and accommodation to the borrowers as it makes available additional funds without their having to execute additional security documents, thereby saving time, travel, loan closing costs, costs of extra legal services, recording fees, *et cetera*. Indeed, it has been settled in a long line of decisions that mortgages given to secure future advancements are valid and legal contracts, and the amounts named as consideration in said contracts do not limit the amount for which the mortgage may stand as security if from the four corners of the instrument the intent to secure future and other indebtedness can be gathered.
>
> The "blanket mortgage clause" in the instant case states:
>
> > That for and in consideration of certain loans, overdraft and other credit accommodations obtained from the Mortgagee by the Mortgagor and/or _____ hereinafter referred to, irrespective of number, as DEBTOR, and to secure the payment of the same and those that may hereafter be obtained**,** the principal or all of which is hereby fixed at Two Hundred Fifty Thousand (₱250,000.00) Pesos, Philippine Currency, as well as those that the Mortgagee may extend to the Mortgagor and/or DEBTOR, including interest and expenses or any other obligation owing to the Mortgagee, whether direct or indirect, principal or secondary as appears in the accounts, books and records of the Mortgagee, the Mortgagor does hereby transfer and convey by way of mortgage unto the Mortgagee, its

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[37] *Republic Planters Bank v. Sarmiento,* G.R. No. 170785, October 19, 2007, 537 SCRA 303, 314.

[38] G.R. No. 150197, July 28, 2005, 464 SCRA 353.

> successors or assigns, the parcels of land which are described in the list inserted on the back of this document, and/or appended hereto, together with all the buildings and improvements now existing or which may hereafter be erected or constructed thereon, of which the Mortgagor declares that he/it is the absolute owner free from all liens and incumbrances.
> . . .
>
> xxx xxx xxx

In the case at bar, the subsequent loans obtained by respondents were secured by other securities, thus: PN BD#76/C-345, executed by Don Alviar was secured by a "hold-out" on his foreign currency savings account, while PN BD#76/C-430, executed by respondents for Donalco Trading, Inc., was secured by "Clean-Phase out TOD CA 3923" and eventually by a deed of assignment on two promissory notes executed by Bancom Realty Corporation with Deed of Guarantee in favor of A.U. Valencia and Co., and by a chattel mortgage on various heavy and transportation equipment. The matter of PN BD#76/C-430 has already been discussed. Thus, the critical issue is whether the "blanket mortgage" clause applies even to subsequent advancements for which other securities were intended, or particularly, to PN BD#76/C-345.

Under American jurisprudence, two schools of thought have emerged on this question. One school advocates that a "dragnet clause" so worded as to be broad enough to cover all other debts in addition to the one specifically secured will be construed to cover a different debt, although such other debt is secured by another mortgage. The contrary thinking maintains that a mortgage with such a clause will not secure a note that expresses on its face that it is otherwise secured as to its entirety, at least to anything other than a deficiency after exhausting the security specified therein, such deficiency being an indebtedness within the meaning of the mortgage, in the absence of a special contract excluding it from the arrangement.

The latter school represents the better position. The parties having conformed to the "blanket mortgage clause" or "dragnet clause," it is reasonable to conclude that they also agreed to an implied understanding that subsequent loans need not be secured by other securities, as the subsequent loans will be secured by the first mortgage. In other words, the sufficiency of the first security is a

corollary component of the "dragnet clause." But of course, there is no prohibition, as in the mortgage contract in issue, against contractually requiring other securities for the subsequent loans. Thus, when the mortgagor takes another loan for which another security was given it could not be inferred that such loan was made in reliance solely on the original security with the "dragnet clause," but rather, on the new security given. This is the "reliance on the security test."

Hence, based on the "reliance on the security test," the California court in the cited case made an inquiry whether the second loan was made in reliance on the original security containing a "dragnet clause." Accordingly, finding a different security was taken for the second loan no intent that the parties relied on the security of the first loan could be inferred, so it was held. The rationale involved, the court said, was that the "dragnet clause" in the first security instrument constituted a continuing offer by the borrower to secure further loans under the security of the first security instrument, and that when the lender accepted a different security he did not accept the offer.

In another case, it was held that a mortgage with a "dragnet clause" is an "offer" by the mortgagor to the bank to provide the security of the mortgage for advances of and when they were made. Thus, it was concluded that the "offer" was not accepted by the bank when a subsequent advance was made because (1) the second note was secured by a chattel mortgage on certain vehicles, and the clause therein stated that the note was secured by such chattel mortgage; (2) there was no reference in the second note or chattel mortgage indicating a connection between the real estate mortgage and the advance; (3) the mortgagor signed the real estate mortgage by her name alone, whereas the second note and chattel mortgage were signed by the mortgagor doing business under an assumed name; and (4) there was no allegation by the bank, and apparently no proof, that it relied on the security of the real estate mortgage in making the advance.

Indeed, in some instances, it has been held that in the absence of clear, supportive evidence of a contrary intention, a mortgage containing a "dragnet clause" will not be extended to cover future advances unless the document evidencing the subsequent advance refers to the mortgage as providing security therefor.

It was therefore improper for petitioner in this case to seek foreclosure of the mortgaged property because of non-payment of all the three promissory notes. While the existence and validity of the "dragnet clause" cannot be denied, there is a need to respect the existence of the other security given for PN BD#76/C-345. The foreclosure of the mortgaged property should only be for the ₱250,000.00 loan covered by PN BD#75/C-252, and for any amount not covered by the security for the second promissory note. As held in one case, where deeds absolute in form were executed to secure any and all kinds of indebtedness that might subsequently become due, a balance due on a note, after exhausting the special security given for the payment of such note, was in the absence of a special agreement to the contrary, within the protection of the mortgage, notwithstanding the giving of the special security. This is recognition that while the "dragnet clause" subsists, the security specifically executed for subsequent loans must first be exhausted before the mortgaged property can be resorted to.

The security clause involved in the case at bar shows that, by its terms:

As security for the payment of loan obtained by the ASSIGNOR/ PLEDGOR from the ASSIGNEE/PLEDGEE in the amount of FIFTEEN MILLION PESOS (15,000,000.00) Philippine Currency in accordance with the Promissory Note attached hereto and made an integral part hereof as Annex "A" and/or such Promissory Note/ s which the ASSIGNOR/PLEDGOR shall hereafter execute in favor of the ASSIGNEE/PLEDGEE, the ASSIGNOR/ PLEDGOR hereby transfers, assigns, conveys, endorses, encumbers and delivers by way of first pledge unto the ASSIGNEE/PLEDGEE, its successors and assigns, that certain Membership fee Certificate Share in Wack Wack Golf and Country Club Incorporated covered by Stock Certificate No. 217 with Serial No. 1793 duly issue by Wack Wack Golf and Country Club Incorporated on August 27, 1996 in the name of the ASSIGNOR."

it is comparable with the security clause in the case of *Prudential*, *viz.*:

That for and in consideration of certain loans, overdraft and other credit accommodations obtained from the Mortgagee by the Mortgagor and/or _____ hereinafter referred to,

irrespective of number, as DEBTOR, and to secure the payment of the same and those that may hereafter be obtained**,** the principal or all of which is hereby fixed at Two Hundred Fifty Thousand (₱250,000.00) Pesos, Philippine Currency, as well as those that the Mortgagee may extend to the Mortgagor and/or DEBTOR, including interest and expenses or any other obligation owing to the Mortgagee, whether direct or indirect, principal or secondary as appears in the accounts, books and records of the Mortgagee, the Mortgagor does hereby transfer and convey by way of mortgage unto the Mortgagee, its successors or assigns, the parcels of land which are described in the list inserted on the back of this document, and/or appended hereto, together with all the buildings and improvements now existing or which may hereafter be erected or constructed thereon, of which the Mortgagor declares that he/it is the absolute owner free from all liens and incumbrances. . . .

and there is no substantive difference between the terms utilized in both clauses securing future advances.

To recall, the critical issue resolved in *Prudential* was whether the "blanket mortgage" clause applies even to subsequent advancements for which other securities were intended. We then declared that the special security for subsequent loans must first be exhausted in a situation where the creditor desires to foreclose on the "subsequent" loans that are due. However, the "dragnet clause" allows the creditor to hold on to the first security in case of deficiency after foreclosure on the special security for the subsequent loans.

In *Prudential,* we disallowed the petitioner's attempt at multiple foreclosures, as it foreclosed on all of the mortgaged properties serving as individual securities for each of the three loans. This Court then laid down the rule, thus:

where deeds absolute in form were executed to secure any and all kinds of indebtedness that might subsequently become due, a balance due on a note, after exhausting the special security given for the payment of such note, was, in the absence of a special agreement to the contrary, within the protection of the mortgage, notwithstanding the giving of the special security. This is recognition that while the "dragnet clause" subsists, the security specifically executed for

subsequent loans must first be exhausted before the mortgaged property can be resorted to.

However, this does not prevent the creditor from foreclosing on the security for the first loan if that loan is past due, because there is nothing in law that prohibits the exercise of that right. Hence, in the case at bench, Premiere Bank has the right to foreclose on the Wack Wack Membership, the security corresponding to the first promissory note, with the deed of assignment that originated the "dragnet clause." This conforms to the doctrine in *Prudential*, as, in fact, acknowledged in the decision's penultimate paragraph, *viz.*:

> Petitioner, however, is not without recourse. Both the Court of Appeals and the trial court found that respondents have not yet paid the ₱250,000.00 and gave no credence to their claim that they paid the said amount when they paid petitioner ₱2,000,000.00. Thus, the mortgaged property could still be properly subjected to foreclosure proceedings for the unpaid ₱250,000.00 loan, and as mentioned earlier, for any deficiency after D/A SFDX#129, security for PN BD#76/C-345, has been exhausted, subject of course to defenses which are available to respondents.

In any event, even without this Court's prescription in *Prudential*, the release of the Wack Wack Membership as the pledged security for Promissory Note 714-Y cannot yet be done as sought by Central Surety. The chain of contracts concluded between Premiere Bank and Central Surety reveals that the Wack Wack Membership, which stood as security for Promissory Note 714-Y, and which also stands as security for subsequent debts of Central Surety, is a security in the form of a pledge. Its return to Central Surety upon the pretext that Central Surety is entitled to pay only the obligation in Promissory Note No. 714-Y, will result in the extinguishment of the pledge, even with respect to the subsequent obligations, because Article 2110 of the Civil Code provides:

> (*I)f the thing pledged is returned by the pledgor or owner, the pledge is extinguished. Any stipulation to the contrary is void.*

This is contrary to the express agreement of the parties, something which Central Surety wants this Court to undo. We reiterate that, as a rule, courts cannot intervene to save parties from disadvantageous provisions of their contracts if they consented to the same freely and voluntarily.[39]

Attorney's Fees

The final issue is the propriety of attorney's fees. The trial court based its award on the supposed malice of Central Surety in instituting this case against Premiere Bank. We find no malice on the part of Central Surety; indeed, we are convinced that Central Surety filed the case in the lower court in good faith, upon the honest belief that it had the prerogative to choose to which loan its payments should be applied.

Malicious prosecution, both in criminal and civil cases, requires the presence of two elements, to wit: (a) malice and (b) absence of probable cause. Moreover, there must be proof that the prosecution was prompted by a sinister design to vex and humiliate a person; and that it was initiated deliberately, knowing that the charge was false and baseless. Hence, the mere filing of what turns out to be an unsuccessful suit does not render a person liable for malicious prosecution, for the law could not have meant to impose a penalty on the right to litigate.[40] Malice must be proved with clear and convincing evidence, which we find wanting in this case.

WHEREFORE, the instant petition is *PARTIALLY GRANTED*. The assailed Decision of the Court of Appeals in CA-G.R. CV No. 85930 dated July 31, 2006, as well as its Resolution dated January 4, 2007, are *REVERSED* and *SET ASIDE*. The Decision of the Regional Trial Court of Makati City, Branch 132, in Civil Case No. 00-1536, dated July 12, 2005, is *REINSTATED*

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[39] *Development Bank of the Philippines v. Court of Appeals,* G.R. No. 138703, June 30, 2006, 494 SCRA 25, 46.

[40] *Ceballos v. Intestate Estate of the Late Emigdio Mercado,* G.R. No. 155856, May 28, 2004, 430 SCRA 323, 336, citing *China Banking Corporation v. Court of Appeals,* 231 SCRA 472 (1994).

with the *MODIFICATION* that the award of attorney's fees to petitioner is *DELETED*. No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Chico-Nazario, and *Leonardo-de Castro,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 177828. February 13, 2009]

ANNABELLE DELA PEÑA and ADRIAN VILLAREAL, *petitioners, vs.* **THE COURT OF APPEALS and RURAL BANK OF BOLINAO, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; A DECISION MUST CITE ANY LEGAL AUTHORITY OR PRINCIPLE IN REACHING ITS CONCLUSION; RELEVANT RULING, CITED.— We agree with the petitioners that the above decision did not conform to the requirements of the Constitution and of the Rules of Court. The decision contained no reference to any legal basis in reaching its conclusions. It did not cite any legal authority or principle to support its conclusion that petitioners are liable to pay respondent the amount claimed including interests, penalties, attorney's fees and the costs of suit. In *Yao v. Court of Appeals,* we held: Faithful adherence to the requirements of Section 14, Article VIII of the Constitution is indisputably a paramount component of due process and fair play. It is likewise demanded by the due process clause of the Constitution. The parties to a litigation should be informed of how it was decided, with an explanation of the factual and legal reasons

[*] Per Raffle dated February 18, 2008.

that led to the conclusions of the court. The court cannot simply say that judgment is rendered in favor of X and against Y and just leave it at that without any justification whatsoever for its action. The losing party is entitled to know why he lost, so he may appeal to the higher court, if permitted, should he believe that the decision should be reversed. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached and is precisely prejudicial to the losing party, who is unable to pinpoint the possible errors of the court for review by a higher tribunal. More than that, the requirement is an assurance to the parties that, in reaching judgment, the judge did so through the processes of legal reasoning. It is, thus, a safeguard against the impetuosity of the judge, preventing him from deciding *ipse dixit*. Vouchsafed neither the sword nor the purse by the Constitution but nonetheless vested with the sovereign prerogative of passing judgment on the life, liberty or property of his fellowmen, the judge must ultimately depend on the power of reason for sustained public confidence in the justness of his decision. Thus, the Court has struck down as void, decisions of lower courts and even of the Court of Appeals whose careless disregard of the constitutional behest exposed their sometimes cavalier attitude not only to their magisterial responsibilities but likewise to their avowed fealty to the Constitution. x x x The CA, therefore, erred in upholding the validity of and in reinstaining the MTC decision.

2. ID.; ACTIONS; REMAND OF THE CASE, NOT ALLOWED; INSTANCES WHEN REMAND IS AVOIDED.— [W]e cannot grant petitioners' plea to reinstate the RTC decision remanding the case to the MTC for further proceedings. Jurisprudence dictates that remand of a case to a lower court does not follow if, in the interest of justice, the Supreme Court itself can resolve the dispute based on the records before it. As a rule, remand is avoided in the following instances: (a) where the ends of justice would not be subserved by a remand; or (b) where public interest demands an early disposition of the case; or (c) where the trial court had already received all the evidence presented by both parties, and the Supreme Court is in a position, based upon said evidence, to decide the case on its merits.

3. ID.; EVIDENCE; BURDEN OF PROOF; HE WHO ALLEGES PAYMENT HAS THE BURDEN OF PROVING THAT SUCH

PAYMENT HAS BEEN MADE.— Jurisprudence is replete with rulings that in civil cases, the party who alleges a fact has the burden of proving it. Burden of proof is the duty of a party to present evidence of the facts in issue necessary to prove the truth of his claim or defense by the amount of evidence required by law. Thus, a party who pleads payment as a defense has the burden of proving that such payment has, in fact, been made. When the plaintiff alleges nonpayment, still, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove nonpayment. In *Alonzo v. San Juan*, we held that the receipts of payment, although not exclusive, are deemed the best evidence of the fact of payment. In this case, no receipt was presented to substantiate the claim of payment as petitioners did not take advantage of all the opportunities to present their evidence in the proceedings *a quo*. Not even a photocopy of the alleged proof of payment was appended to their answer. Verily, petitioners failed to discharge the burden. Accordingly, we reject their defense of payment.

4. POLITICAL LAW; CONSTITUTIONAL LAW; DUE PROCESS; DENIAL, NOT A CASE OF.— We perused the record of the case and we failed to see the lack of due process claimed by the petitioners. On the contrary, petitioners had been afforded more than what is due them. This case was remanded to the MTC twice to give petitioners an opportunity to be heard. Lest it be forgotten, petitioners were first declared as in default on October 17, 1995 for their failure to appear at the pre-trial conference. The MTC thereafter rendered judgment in favor of the respondent. However, on appeal, the RTC set aside the judgment and remanded the case for further proceedings. Upon remand, the MTC set the case for hearing, but again petitioners failed to appear at the scheduled hearing. Accordingly, respondent was allowed to present its evidence *ex parte*, and a judgment in favor of the respondent was issued. But again on appeal, the RTC set aside the MTC decision and remanded the case, for the second time, to the MTC, to give petitioners ample opportunity to present countervailing evidence. Upon remand, respondent caused the re-service of summons to petitioners, who filed their answer to the complaint. When the case was set for pre-trial conference, petitioners repeatedly moved for its postponement; and despite several postponements, petitioners still failed to appear at the pre-trial conference set on January 30, 2004. Clearly, petitioners abused the legal

processes, effectively defeating the justice which had long been denied the respondent. We note that this case was filed on September 13, 1994, and petitioners, through legal maneuverings, managed to delay its resolution.

APPEARANCES OF COUNSEL

Romarico F. Lutap for petitioners.
Tanopo & Serafica for private respondent.

D E C I S I O N

NACHURA, *J.*:

This petition for review on *certiorari* filed by petitioners Annabelle dela Peña and Adrian Villareal (petitioners) seeks to nullify and set aside the October 31, 2006 Decision[1] and May 8, 2007 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 91338.

On October 20, 1983, respondent Rural Bank of Bolinao, Inc. (respondent) extended a loan of Eighty-One Thousand Pesos (₱81,000.00) to petitioners. The loan was evidenced by a promissory note,[3] and was payable on or before October 14, 1984.

Petitioners failed to pay their obligation in full when it became due. Demands for payment[4] were made by respondent, but these were not heeded. Consequently, respondent filed a collection case against the petitioners with the Municipal Trial Court (MTC) of Bolinao, Pangasinan, docketed as Civil Case No. 838.[5]

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[1] Penned by Presiding Justice Ruben T. Reyes (a retired member of this Court), with Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso, concurring, *rollo*, pp. 19-41.

[2] *Id.* at 46.

[3] Records, p. 5.

[4] *Id.* at 53-54.

[5] *Id.* at 1-3.

At the pre-trial conference set on October 17, 1995, petitioners did not appear. Consequently, upon motion by respondent, petitioners were declared as in default, and respondent was allowed to present its evidence *ex parte*.

On November 2, 1995, the MTC rendered a Decision[6] decreeing that:

> WHEREFORE, the Court hereby renders judgment in favor of the [respondent] and against the [petitioners], to wit:
>
> 1. ORDERING, the [petitioners] to jointly and severally pay the [respondent] the remaining principal loan in the sum of ₱77,722.67 outstanding as of October 17, 1995, plus interest of 12% per annum and penalty of 3% per annum, until full payment of the principal loan thereof;
>
> 2. ORDERING, the [petitioners] to jointly and severally pay the [respondent] the interest due as of October 17, 1995, in the sum of ₱105,951.91;
>
> 3. ORDERING, the [petitioners] to jointly and severally pay the [respondent] the penalty due as of October 17, 1995, in the sum of ₱25,670.21;
>
> 4. ORDERING, the [petitioners] to jointly and severally pay the [respondent] the litigation expenses, in the sum of ₱4,500.00;
>
> 5. ORDERING, the [petitioners] to jointly and severally pay attorney's fees in the sum of ₱7,722.27;
>
> 6. ORDERING, the [petitioners] to jointly and severally pay the [respondent bank] the collection fees in the sum of ₱50.00; and
>
> 7. To pay the cost of suit.
>
> SO ORDERED.[7]

On appeal by petitioners, the Regional Trial Court (RTC) remanded the case to the MTC for further proceedings, *viz.*:

> This Court finds Exhibit A, which is Annex A to the complaint, as not material to the allegations in paragraph 2 of the complaint

[6] *Id.* at 60-62.

[7] *Id.* at 62.

since the Promissory Note was allegedly granted on October 20, 1983 and the due date October 14, 1984. By the allegations of paragraph 2 of the complaint stating that the [petitioners] obtained a loan from the [respondent] on October 20, 1993 for ₱81,000.00 which was to be paid on October 20, 1984, hence, it is indeed a very great error to state in the complaint the date of October 20, 1993 as the date of the loan was obtained when the evidence shows that it was granted on October 20, 1983.

WHEREFORE, in view of the foregoing, this case is ordered remanded back to the lower court for further proceedings in order to determine what was the exact date when the loan was taken from the [respondent] by the [petitioners] and the due date of such Promissory Note and for other matters. The declaration of the petitioners as in default is hereby set aside for purposes of continuation of reception of parties.

IT IS SO ORDERED.[8]

After the case was remanded, respondent moved for leave to amend its complaint to conform to the promissory note.[9] The motion was granted by the MTC[10] and the amended complaint[11] was admitted. The case was then set for hearing on November 16, 2000,[12] but petitioners failed to appear, thus, respondent introduced and offered the pieces of evidence which it had earlier presented *ex parte*. Subsequently, on November 28, 2000, the MTC promulgated a Decision[13] reiterating in full its November 2, 1995 judgment.

Petitioners again elevated this adverse decision to the RTC. On June 14, 2001, the RTC set aside the MTC decision and remanded the case for further proceedings. In so ruling, it held that the MTC did not adhere to the RTC order to conduct further proceedings. Despite its earlier ruling setting aside the

[8] *Id.* at 103.

[9] *Id.* at 113-114.

[10] *Id.* at 149.

[11] *Id.* at 115-119.

[12] *Id.* at 150.

[13] *Id.* at 154-158.

declaration of default against the petitioners, the MTC did not require petitioners to file their answer. Likewise, it did not set the case anew for pre-trial and presentation of evidence of both parties. Petitioners' failure to attend the scheduled hearing can only be construed as waiver of their right to cross-examine the witnesses, but not a waiver of their right to present evidence. The RTC declared that petitioners' right to due process had been violated when they were not given an opportunity to present countervailing evidence.[14] The dispositive portion of the decision reads:

> In view of the foregoing consideration, the Court renders judgment declaring the proceedings of the MTC of Bolinao in this case from after its admission of [respondent's] amended [complaint] as null and void; and setting aside the decision dated November 28, 2000, and ordering the remand of this case to the said Court for further proceedings by allowing the [petitioners] to file their answer to the amended complaint conducting the mandatory pre-trial conference of the parties and hearing their respective evidences before rendering decision thereon.
>
> SO ORDERED.[15]

Upon remand, respondent caused the re-service of summons upon petitioners,[16] who filed their Answer[17] on July 7, 2003. Petitioners admitted obtaining a loan from respondent bank, but alleged that they substantially paid their obligation.

On July 28, 2003, the MTC issued a notice setting the case for pre-trial on August 29, 2003.[18] However, a day before the scheduled pre-trial, petitioners moved for postponement;[19] thus, the pre-trial was reset to September 26, 2003.[20] On September

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[14] *Id.* at 211-217.

[15] *Id.* at 217.

[16] *Id.* at 228.

[17] *Id.* at 243-244.

[18] *Id.* at 254.

[19] *Id.* at 259.

[20] *Id.* at 256.

16, 2003, petitioners again moved for postponement of pre-trial,[21] which was also granted by the MTC. The pre-trial was again reset to November 14, 2003.[22]

On November 14, 2003, respondent appeared, but no pre-trial was held because petitioners, for the third time, moved for its postponement in a motion filed on November 11, 2003.[23] The MTC again granted the motion and rescheduled the pre-trial to December 12, 2003,[24] but again no pre-trial was held as it was further moved to January 30, 2004. On December 17, 2003, petitioners filed another motion for postponement reiterating their request to conduct pre-trial on January 30, 2004.[25]

On January 30, 2004, respondent appeared, while petitioners did not. Consequently, the MTC, upon motion of respondent, allowed the presentation of its evidence *ex parte*. Thereafter, on February 9, 2004, respondent filed a Motion to Render Judgment.[26]

Petitioners then filed a Motion for Reconsideration (with Motion to Set Aside Order of Default).[27] They averred that they were not able to attend the pre-trial conference on January 30, 2004 because petitioner Villareal suddenly felt weak, and petitioner Dela Peña took care of him. They were not able to inform the court that they could not make it to the pre-trial because there was no way they could immediately communicate with the court. Finally, they averred that they have a meritorious defense. Accordingly, they prayed that they be allowed to regain their standing in court.

Respondent opposed the motion. Citing Section 5, Rule 18 of the 1997 Revised Rules of Civil Procedure, respondent averred that the MTC was correct in allowing the presentation of evidence

[21] *Id.* at 265.

[22] *Id.* at 267.

[23] See Order dated November 14, 2003, *id.* at 271.

[24] *Id.*

[25] Records, pp. 278-279.

[26] *Id.* at 283-284.

[27] *Id.* at 285-288.

ex parte in view of petitioners' failure to appear at the pre-trial conference. It also claimed that the motion for reconsideration is already moot and academic, considering that the case had already been submitted for resolution.[28]

On March 12, 2004, the MTC issued an Order[29] denying petitioners' motion for reconsideration for lack of merit. It agreed with respondent that the motion is already moot and academic, and further declared that granting the motion would give rise to endless litigation.

On August 16, 2004, the MTC rendered a Decision[30] ordering petitioners to pay respondent bank their unpaid obligation of ₱77,722.67 with interest at 3% per annum, from October 17, 1995 until its full payment. Petitioners were likewise held liable for the payment of the interests and penalties due as of October 17, 1995 amounting to ₱105,951.91 and ₱25,670.21, respectively, litigation expenses of ₱4,500.00, attorney's fees of ₱7,722.27, collection fees of ₱50.00 and the cost of suit.

Petitioners appealed to the RTC. They objected to the form and substance of the MTC decision on the ground that it did not state the law on which its findings were based, in utter disregard of Section 1, Rule 36 of the 1997 Rules of Civil Procedure. Petitioners further claimed denial of due process, for they were not given an opportunity to present countervailing evidence.[31]

On May 25, 2005, the RTC set aside the MTC decision and remanded the case for further proceedings.[32] It declared that the assailed MTC decision was a nullity for lack of legal basis. According to the RTC, the MTC failed to clearly and distinctly state the law which was made the basis of its decision. The RTC also found that petitioners were not duly notified of the scheduled pre-trial conference as the record is bereft of proof

[28] *Id.* at 291-292.

[29] *Id.* at 293-294.

[30] *Id.* at 299-300.

[31] *Id.* at 320-335.

[32] *Id.* at 348-351.

that an order setting the case for pre-trial conference on January 30, 2004 was issued. Neither was there any order allowing the respondent to adduce evidence *ex parte* in view of petitioners' failure to appear on the said date. The RTC concluded that the MTC decision was issued without due process. Accordingly, the case was remanded for pre-trial conference and for presentation of evidence.

Dissatisfied with the RTC decision, respondent appealed to the CA. On October 31, 2006, the CA rendered the assailed Decision. Reversing the RTC, the CA found that petitioners had sufficient notice that the pre-trial conference will be held on January 30, 2004 for this setting had been chosen and confirmed twice by the petitioners. According to the CA, petitioners should have appointed a representative, armed with a special power of attorney, to appear on their behalf if they could not make it to the scheduled pre-trial, especially in this case where several postponements had already been granted. It added that petitioners cannot repeatedly ask for the postponement of a pre-trial on account of their insistence to personally attend and participate in the same; otherwise, the entire proceedings would be left at the mercy and whims of a cunning litigant. Accordingly, the CA upheld the MTC in allowing the *ex parte* presentation of evidence, and in rendering judgment on the basis of the evidence presented.

Petitioners filed a motion for reconsideration, but the CA denied the same on May 8, 2007.

Hence, this recourse by petitioners arguing that:

1. THE COURT OF APPEALS ERRED IN REIN[S]TATING THE DECISION OF THE MUNICIPAL TRIAL COURT OF BOLINAO WHICH IS NULL AND VOID FOR FAILURE TO STATE THE LAW ON WHICH ITS FINDINGS OF FACTS ARE BASED CONTRARY TO THE REQUIREMENT UNDER SECTION 1, RULE 36 OF THE 1997 RULES OF CIVIL PROCEDURE.

2. THE COURT OF APPEALS ERRED WHEN IT REINSTATED THE DECISION OF THE MUNICIPAL TRIAL COURT OF BOLINAO EVEN WHEN THE LOWER COURT OMITTED AND FAILED TO

ISSUE AN ORDER AFTER THE PRE-TRIAL CONFERENCE PROCEEDINGS.

3. THE COURT OF APPEALS' AFFIRMATION OF THE DECISION OF THE MUNICIPAL TRIAL COURT OF BOLINAO AMOUNTS TO DENIAL OF THE PETITIONERS' CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW ON MERE TECHNICALITY.[33]

Petitioners fault the CA for reversing the RTC, and for reinstating and upholding the MTC decision. Reiterating their arguments before the RTC, they assert that the MTC decision is null and void for it does not conform to the requirement of Section 14, Article VIII of the Constitution and of the Rules of Court.

Section 14, Article VIII of the 1987 Constitution directs that:

> SEC. 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

Section 1, Rule 36 of the Rules of Court reflects the foregoing mandate, thus:

> SECTION 1. *Rendition of judgments and final orders.*— A judgment or final order determining the merits of the case shall be in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of court.

The August 16, 2004 MTC decision reads in full:

> This is an inherited case by the undersigned Judge-Designate, filed way back in September 14, 1994.
>
> Likewise, the instant case is an off-shoot of the appealed decision of this court to the Regional Trial Court, Alaminos, Pangasinan, which remanded back in its order dated August 29, 1996 x x x.
>
> Proceedings were held whereby [respondent] moved with leave of court to amend paragraph 2 of the complaint to conform to evidence.

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[33] *Rollo*, p. 11.

Accordingly, the amended complaint was granted by the court during the hearing on September 18, 2000. With the admission of the amended complaint of the respondent, the case was set for hearing with due notices to [petitioners] and counsel for further reception of evidence the [respondent] may desire to adduce. On the said scheduled date of hearing, the [petitioners] and counsel did not show up in court. [Respondent], thru counsel, re-introduced *in toto* the documentary evidences which they have previously presented which they then re-offered in evidence and prayed for their re-admission and thereafter rested their case. There being no more supervening facts or new documentary evidences introduced by the plaintiff in the instant case, the court deemed no necessity in having a different decision from the appealed decision of this court, except, of course maybe its change of date, so it was already wise and unmistakable to just re-write and adapt the decision of this Court dated November 2, 1995 by the then Honorable Antonio V. Tiong, Municipal Trial Judge.

From the evidence adduced by the [respondent], it has clearly been established that the [petitioners] obtained a loan from [respondent] Rural Bank of Bolinao, Inc., with office address at Poblacion, Bolinao, Pangasinan, in the sum of EIGHTY-ONE THOUSAND PESOS (₱81,000.00), on October 20, 1983, as evidenced by a promissory note duly signed and executed by the herein [petitioners] spouses Annabelle dela Peña and Adrian Villareal at the place of business of the [respondent] as a banking institution in the presence of the witnesses of the [respondent], namely Cederico C. Catabay and Maximo Tiangsing who are both employees of the [respondent], that the [petitioners] have paid a part of the principal loan with a remaining outstanding balance of ₱77,772.67, but has from then defaulted in the last payment of the loan which has and have matured on October 14, 1984 (Exh. "A"). Accordingly, letters of demand by Mateo G. Caasi, then General Manager of the respondent Rural Bank of Bolinao, Inc., were sent by registered mail to [petitioners] at their given address but turned deaf eared (Exh. "C" & "D"); that, as a result of the utter disregard and failures of the [petitioners] in payment of their long overdue loan, the [respondent] was constrained to engage the legal services of a lawyer in the filing of the instant case for collection and has incurred litigation expenses and attorney's fees; that, together with collection fees which [respondent] is legally entitled to and the remaining unpaid balance up to the present; that the grand total amount of money the [petitioners] are obliged to pay [respondent] as of October 17, 1995, as reflected in the Statement of Account prepared and submitted by Lito C. Altezo,

Bookkeeper of the [respondent] Rural Bank is Two Hundred Twenty-One Thousand Six Hundred and Sixty-Seven Pesos and Six Centavos (₱221,667.06)- Exh. "B".[34]

WHEREFORE, clearly viewed in the light of all the foregoing considerations, the court hereby renders judgment in favor of the [respondent] and against the petitioners, to wit:

1. Ordering the [petitioners] to pay jointly and severally the [respondent] the remaining principal (obligation) loan in the sum of ₱77,722.67 outstanding as of October 17, 1995, plus interest of 3% per annum, until full payment of the principal loan is made thereof;

2. Ordering [petitioners] to pay jointly and severally the [respondent] the interest due as of October 17, 1995, in the sum of ₱105, 951.91;

3. Ordering the [petitioners] to pay jointly and severally the [respondent] the penalty due as of October 17, 1995, in the sum of ₱25,670.21;

4. Ordering the [petitioners] to pay jointly and severally the [respondent] the litigation expenses in the sum of ₱4,500.00;

5. Ordering the [petitioners] to pay jointly and severally attorney's fees in the sum of ₱7,722.27;

6. Ordering the [petitioners] to pay jointly and severally the [respondent] the collection fees in the sum of ₱50.00; and

7. To pay the cost of the suit;

SO ORDERED.[35]

We agree with the petitioners that the above decision did not conform to the requirements of the Constitution and of the Rules of Court. The decision contained no reference to any legal basis in reaching its conclusions. It did not cite any legal authority or principle to support its conclusion that petitioners are liable to pay respondent the amount claimed including interests, penalties, attorney's fees and the costs of suit.

In *Yao v. Court of Appeals*,[36] we held:

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[34] *Id.* at 82.

[35] Records, pp. 299-300.

[36] 398 Phil. 86 (2000).

Faithful adherence to the requirements of Section 14, Article VIII of the Constitution is indisputably a paramount component of due process and fair play. It is likewise demanded by the due process clause of the Constitution. The parties to a litigation should be informed of how it was decided, with an explanation of the factual and legal reasons that led to the conclusions of the court. The court cannot simply say that judgment is rendered in favor of X and against Y and just leave it at that without any justification whatsoever for its action. The losing party is entitled to know why he lost, so he may appeal to the higher court, if permitted, should he believe that the decision should be reversed. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached and is precisely prejudicial to the losing party, who is unable to pinpoint the possible errors of the court for review by a higher tribunal. More than that, the requirement is an assurance to the parties that, in reaching judgment, the judge did so through the processes of legal reasoning. It is, thus, a safeguard against the impetuosity of the judge, preventing him from deciding *ipse dixit*. Vouchsafed neither the sword nor the purse by the Constitution but nonetheless vested with the sovereign prerogative of passing judgment on the life, liberty or property of his fellowmen, the judge must ultimately depend on the power of reason for sustained public confidence in the justness of his decision.

Thus, the Court has struck down as void, decisions of lower courts and even of the Court of Appeals whose careless disregard of the constitutional behest exposed their sometimes cavalier attitude not only to their magisterial responsibilities but likewise to their avowed fealty to the Constitution.

Thus, we nullified or deemed to have failed to comply with Section 14, Article VIII of the Constitution, a decision, resolution or order which: contained no analysis of the evidence of the parties nor reference to any legal basis in reaching its conclusions; contained nothing more than a summary of the testimonies of the witnesses of both parties; convicted the accused of libel but failed to cite any legal authority or principle to support conclusions that the letter in question was libelous; consisted merely of one (1) paragraph with mostly sweeping generalizations and failed to support its conclusion of parricide; consisted of five (5) pages, three (3) pages of which were quotations from the labor arbiter's decision including the dispositive portion and barely a page (two [2] short paragraphs of two [2] sentences each) of its own discussion or reasonings; was

merely based on the findings of another court *sans* transcript of stenographic notes; or failed to explain the factual and legal bases for the award of moral damages.[37]

The CA, therefore, erred in upholding the validity of and in reinstating the MTC decision.

However, we cannot grant petitioners' plea to reinstate the RTC decision remanding the case to the MTC for further proceedings. Jurisprudence dictates that remand of a case to a lower court does not follow if, in the interest of justice, the Supreme Court itself can resolve the dispute based on the records before it.

As a rule, remand is avoided in the following instances: (a) where the ends of justice would not be subserved by a remand; or (b) where public interest demands an early disposition of the case; or (c) where the trial court had already received all the evidence presented by both parties, and the Supreme Court is in a position, based upon said evidence, to decide the case on its merits.[38]

Petitioners plead for a remand of their case to the MTC on ground that they were denied due process. They claim that they were not given an opportunity to present countervailing evidence.

The argument does not persuade.

We perused the record of the case and we failed to see the lack of due process claimed by the petitioners. On the contrary, petitioners had been afforded more than what is due them. This case was remanded to the MTC twice to give petitioners an opportunity to be heard. Lest it be forgotten, petitioners were first declared as in default on October 17, 1995 for their failure to appear at the pre-trial conference. The MTC thereafter rendered judgment in favor of the respondent. However, on appeal, the RTC set aside the judgment and remanded the case for further proceedings. Upon remand, the MTC set the case

[37] *Id.* at 105-106.

[38] *Rizza Lao @ Nerissa Laping v. People of the Philippines*, G.R. No. 159404, June 27, 2008.

for hearing, but again petitioners failed to appear at the scheduled hearing. Accordingly, respondent was allowed to present its evidence *ex parte*, and a judgment in favor of the respondent was issued. But again on appeal, the RTC set aside the MTC decision and remanded the case, for the second time, to the MTC, to give petitioners ample opportunity to present countervailing evidence. Upon remand, respondent caused the re-service of summons to petitioners, who filed their answer to the complaint. When the case was set for pre-trial conference, petitioners repeatedly moved for its postponement; and despite several postponements, petitioners still failed to appear at the pre-trial conference set on January 30, 2004.

Clearly, petitioners abused the legal processes, effectively defeating the justice which had long been denied the respondent. We note that this case was filed on September 13, 1994, and petitioners, through legal maneuverings, managed to delay its resolution. To date, this simple collection suit has been pending for more than fourteen (14) years. We will not countenance this patent flouting of the law and the rules by petitioners and counsel. Accordingly, we will now resolve the case based on the evidence before us.

Petitioners did not deny or question the authenticity and due execution of the promissory note. They, however, offered the defense that the loan obligation covered by the promissory note had already been paid.

Jurisprudence is replete with rulings that in civil cases, the party who alleges a fact has the burden of proving it. Burden of proof is the duty of a party to present evidence of the facts in issue necessary to prove the truth of his claim or defense by the amount of evidence required by law.[39] Thus, a party who pleads payment as a defense has the burden of proving that such payment has, in fact, been made. When the plaintiff alleges nonpayment, still, the general rule is that the burden rests on

[39] RULES OF COURT, Rule 131, Sec 1.

the defendant to prove payment, rather than on the plaintiff to prove nonpayment.[40]

In *Alonzo v. San Juan*,[41] we held that the receipts of payment, although not exclusive, are deemed the best evidence of the fact of payment. In this case, no receipt was presented to substantiate the claim of payment as petitioners did not take advantage of all the opportunities to present their evidence in the proceedings *a quo*. Not even a photocopy of the alleged proof of payment was appended to their answer. Verily, petitioners failed to discharge the burden. Accordingly, we reject their defense of payment.

By signing the promissory note, petitioners acknowledged receipt of the loan amounting to ₱81,000.00, and undertook to pay the same, plus interest and penalty, on or before October 14, 1984.

Records show that as of October 17, 1995, petitioners' unpaid obligation under the note is ₱77,722.67,[42] excluding interest of 12% per annum, penalty charge of 3% per annum, and attorney's fees, which they bound themselves to pay under the note.[43]

As we held in *Sierra v. Court of Appeals*,[44] and recently in *Henry dela Rama Co v. Admiral United Savings Bank*:[45]

> A promissory note is a solemn acknowledgment of a debt and a formal commitment to repay it on the date and under the conditions agreed upon by the borrower and the lender. A person who signs such an instrument is bound to honor it as a legitimate obligation duly assumed by him through the signature he affixes thereto as a token of his good faith. If he reneges on his promise without cause,

[40] See *Bulos, Jr. v. Yasuma*, G.R. No. 164159, July 17, 2007, 527 SCRA 727, 739; *Alonzo v. San Juan*, G.R. No. 137549, February 11, 2005, 451 SCRA 45, 55-56.

[41] *Supra*.

[42] See Statement of Account, records, p. 55.

[43] Records, p. 5

[44] G. R. No. 90270, July 24, 1992, 211 SCRA 785, 795.

[45] G.R. No. 154740, April 16, 2008.

he forfeits the sympathy and assistance of this Court and deserves instead its sharp repudiation.

Thus, petitioners cannot renege on their commitment to pay their obligation, including interest and penalty, to the respondent.

WHEREFORE, the petition is *DENIED.* Petitioners Annabelle dela Peña and Adrian Villareal are ordered, jointly and severally, to pay respondent Rural Bank of Bolinao, Inc. ₱77,722.67, with interest at 12% per annum and penalty charge of 3% per annum from October 14, 1984 until the loan is fully paid. In addition, petitioners are adjudged liable to pay respondent ₱40,000.00, as attorney's fees.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Chico-Nazario, and *Leonardo-de Castro,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 178647. February 13, 2009]

GENERAL SANTOS COCA-COLA PLANT FREE WORKERS UNION-TUPAS, *petitioner, vs.* **COCA-COLA BOTTLERS PHILS., INC. (GENERAL SANTOS CITY), THE COURT OF APPEALS and THE NATIONAL LABOR RELATIONS COMMISSION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW MAY BE RAISED IN A RULE 45 PETITION; APPLICATION.— Under Rule 45 of the Revised Rules on Civil Procedure, only questions of law may be raised

[*] Per Raffle dated July 30, 2008.

in a Petition for Review on *Certiorari*. There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence. The resolution of the issue must rest solely on what the law provides on a given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. If the query requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relation to one another, the issue in that query is factual. An examination of the issues raised by petitioner reveals that they are questions of fact. The issues raised, *i.e.*, whether JLBP is an independent contractor, whether CCBPI's contracting-out of jobs to JLBP amounted to unfair labor practice, and whether such action was a valid exercise of management prerogative, call for a re-examination of evidence, which is not within the ambit of this Court's jurisdiction.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; UNFAIR LABOR PRACTICE, NOT A CASE OF.— It is true that the NLRC erroneously concluded that the contracting-out of jobs in CCBPI Gen San was due to the GTM system, which actually affected CCBPI's sales and marketing departments, and had nothing to do with petitioner's complaint. However, this does not diminish the NLRC's finding that JLBP was a legitimate, independent contractor and that CCBPI Gen San engaged the services of JLBP to meet business exigencies created by the freeze-hiring directive of the CCBPI Head Office. On the other hand, the CA squarely addressed the issue of job contracting in its assailed Decision and Resolution. The CA itself examined the facts and evidence of the parties and found that, based on the evidence, CCBPI did not engage in labor-only contracting and, therefore, was not guilty of unfair labor practice. The NLRC found – and the same was sustained by the CA – that the company's action to contract-out the services and functions performed by Union members did not constitute unfair labor practice as this was not directed at the members' right to self-organization. x x x Unfair labor practice refers to "acts that violate the workers' right to organize." The prohibited acts are related to the workers' right to self-organization and to the observance of a CBA. Without that element, the acts, even if unfair, are not unfair labor practices. Both the NLRC and the CA found that petitioner was unable to prove its charge of unfair labor practice. It was the Union that had the burden

of adducing substantial evidence to support its allegations of unfair labor practice, which burden it failed to discharge.

APPEARANCES OF COUNSEL

Solon R. Garcia for petitioner.
Dela Rosa and Nograles for respondent.

R E S O L U T I O N

NACHURA, *J.*:

In this Petition for Review on *Certiorari* under Rule 45 of the Revised Rules on Civil Procedure, petitioner General Santos Coca-Cola Plant Free Workers Union-Tupas (Union) is seeking the reversal of the April 18, 2006 Decision[1] and May 30, 2007 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 80916. The CA affirmed the January 31, 2003 and August 29, 2003 Resolutions[3] of the National Labor Relations Commission (NLRC) in favor of respondent Coca-Cola Bottlers Phil., Inc. (CCBPI).

Sometime in the late 1990s, CCBPI experienced a significant decline in profitability due to the Asian economic crisis, decrease in sales, and tougher competition. To curb the negative effects on the company, it implemented three (3) waves of an Early Retirement Program.[4] Meanwhile, there was an inter-office memorandum sent to all of CCBPI's Plant Human Resources Managers/Personnel Officers, including those of the CCBPI General Santos Plant (CCBPI Gen San) mandating them to put on hold "all requests for hiring to fill in vacancies in both regular and temporary positions in [the] Head Office and in the Plants." Because several employees availed of the early retirement program,

[1] Penned by Associate Justice Teresita Dy-Liacco Flores, with Associate Justices Rodrigo F. Lim, Jr. and Ramon R. Garcia, concurring; *rollo*, pp. 55-72.

[2] Penned by Associate Justice Teresita Dy-Liacco Flores, with Associate Justices Rodrigo F. Lim, Jr. and Jane Aurora C. Lantion, concurring; *id.* at 73-76.

[3] *Rollo*, pp. 77-87.

[4] *Id.* at 56.

vacancies were created in some departments, including the production department of CCBPI Gen San, where members of petitioner Union worked. This prompted petitioner to negotiate with the Labor Management Committee for filling up the vacancies with permanent employees. No resolution was reached on the matter.[5]

Faced with the "freeze hiring" directive, CCBPI Gen San engaged the services of JLBP Services Corporation (JLBP), a company in the business of providing labor and manpower services, including janitorial services, messengers, and office workers to various private and government offices.[6]

On January 21, 2002, petitioner filed with the National Conciliation and Mediation Board (NCMB), Regional Branch 12, a Notice of Strike on the ground of alleged unfair labor practice committed by CCBPI Gen San for contracting-out services regularly performed by union members ("union busting"). After conciliation and mediation proceedings before the NCMB, the parties failed to come to an amicable settlement. On July 3, 2002, CCBPI filed a Petition for Assumption of Jurisdiction with the Office of the Secretary of Labor and Employment. On July 26, 2002, the Secretary of Labor issued an Order enjoining the threatened strike and certifying the dispute to the NLRC for compulsory arbitration.[7]

In a Resolution[8] dated January 31, 2003, the NLRC ruled that CCBPI was not guilty of unfair labor practice for contracting out jobs to JLBP. The NLRC anchored its ruling on the validity of the "Going-to-the-Market" (GTM) system implemented by the company, which called for restructuring its selling and distribution system, leading to the closure of certain sales offices and the elimination of conventional sales routes. The NLRC held that petitioner failed to prove by substantial evidence that the system was meant to curtail the right to self-organization of petitioner's members. Petitioner filed a motion for reconsideration,

[5] *Id.* at 58-59.

[6] *Id.*

[7] *Id.* at 62.

[8] *Id.* at 77-82.

which the NLRC denied in a Resolution[9] dated August 29, 2003. Hence, petitioner filed a Petition for *Certiorari* before the CA.

The CA issued the assailed Decision[10] on April 18, 2006 upholding the NLRC's finding that CCBPI was not guilty of unfair labor practice. The CA based its decision on the validity of CCBPI's contracting out of jobs in its production department. It held that the contract between CCBPI and JLBP did not amount to labor-only contracting. It found that JLBP was an independent contractor and that the decision to contract out jobs was a valid exercise of management prerogative to meet exigent circumstances. On the other hand, petitioner failed to adduce evidence to prove that contracting out of jobs by the company resulted in the dismissal of petitioner's members, prevented them from exercising their right to self-organization, led to the Union's demise or that their group was singled out by the company. Consequently, the CA declared that CCBPI was not guilty of unfair labor practice.

Its motion for reconsideration having been denied,[11] petitioner now comes to this Court seeking the reversal of the CA Decision.

The petition is bereft of merit. Hence, we deny the Petition.

Under Rule 45 of the Revised Rules on Civil Procedure, only questions of law may be raised in a Petition for Review on *Certiorari*.[12]

There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence. The resolution of the issue must rest solely on what the law provides on a given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. If the query requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relation to

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

[10] *Id.* at 55-72.

[11] *Id.* at 73-76.

[12] Revised Rules on Civil Procedure, Rule 45, Section 1.

one another, the issue in that query is factual.[13]

An examination of the issues raised by petitioner reveals that they are questions of fact. The issues raised, *i.e.*, whether JLBP is an independent contractor, whether CCBPI's contracting-out of jobs to JLBP amounted to unfair labor practice, and whether such action was a valid exercise of management prerogative, call for a re-examination of evidence, which is not within the ambit of this Court's jurisdiction.

Moreover, factual findings of the NLRC, an administrative agency deemed to have acquired expertise in matters within its jurisdiction, are generally accorded not only respect but finality especially when such factual findings are affirmed by the CA.[14]

Furthermore, we find no reversible error in the assailed Decision.

It is true that the NLRC erroneously concluded that the contracting-out of jobs in CCBPI Gen San was due to the GTM system, which actually affected CCBPI's sales and marketing departments, and had nothing to do with petitioner's complaint. However, this does not diminish the NLRC's finding that JLBP was a legitimate, independent contractor and that CCBPI Gen San engaged the services of JLBP to meet business exigencies created by the freeze-hiring directive of the CCBPI Head Office.

On the other hand, the CA squarely addressed the issue of job contracting in its assailed Decision and Resolution. The CA itself examined the facts and evidence of the parties[15] and found that, based on the evidence, CCBPI did not engage in labor-only contracting and, therefore, was not guilty of unfair labor practice.

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[13] *Juaban, et al. v. Espina, et al.*, G.R. No. 170049, March 14, 2008, 548 SCRA 588, 608, citing *Microsoft Corporation v. Maxicorp, Inc.*, 438 SCRA 224, 230-231 (2004) and *Morales v. Skills International Company*, 500 SCRA 186, 194 (2006).

[14] *Rowell Industrial Corporation v. Court of Appeals, et al.*, G.R. No. 167714, March 7, 2007, 517 SCRA 691, 706, citing *Land and Housing Development Corporation v. Esquillo*, 471 SCRA 488, 494 (2005).

[15] *Rollo*, p. 66.

The NLRC found – and the same was sustained by the CA – that the company's action to contract-out the services and functions performed by Union members did not constitute unfair labor practice as this was not directed at the members' right to self-organization.

Article 248 of the Labor Code provides:

ART. 248. UNFAIR LABOR PRACTICE OF EMPLOYERS.—It shall be unlawful for an employer to commit any of the following unfair labor practices:

xxx xxx xxx

(c) To contract out services or functions being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their right to self-organization;

xxx xxx xxx

Unfair labor practice refers to "acts that violate the workers' right to organize." The prohibited acts are related to the workers' right to self-organization and to the observance of a CBA. Without that element, the acts, even if unfair, are not unfair labor practices.[16]

Both the NLRC and the CA found that petitioner was unable to prove its charge of unfair labor practice. It was the Union that had the burden of adducing substantial evidence to support its allegations of unfair labor practice,[17] which burden it failed to discharge.

WHEREFORE, the foregoing premises considered, the Petition is *DENIED*. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 80916 are *AFFIRMED*.

SO ORDERED.

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[16] *Philcom Employees Union v. Philippine Global Communication, et al.*, G.R. No. 144315, July 17, 2006, 495 SCRA 214, 235, citing *Great Pacific Life Employees Union v. Great Pacific Life Assurance Corporation*, 303 SCRA 113 (1999) and Cesario A. Azucena, Jr., II THE LABOR CODE WITH COMMENTS AND CASES 210 (5th ed. 2004) [THE LABOR CODE WITH COMMENTS AND CASES].

[17] See *Tiu, et al. v. National Labor Relations Commission, et al.*, 343 Phil. 478, 485 (1997).

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

THIRD DIVISION

[G.R. No. 178835. February 13, 2009]

MAGIS YOUNG ACHIEVERS' LEARNING CENTER and MRS. VIOLETA T. CARIÑO, *petitioners, vs.* **ADELAIDA P. MANALO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; PROBATIONARY EMPLOYMENT, EXPLAINED.— A probationary employee or probationer is one who is on trial for an employer, during which the latter determines whether or not he is qualified for permanent employment. The probationary employment is intended to afford the employer an opportunity to observe the fitness of a probationary employee while at work, and to ascertain whether he will become an efficient and productive employee. While the employer observes the fitness, propriety and efficiency of a probationer to ascertain whether he is qualified for permanent employment, the probationer, on the other hand, seeks to prove to the employer that he has the qualifications to meet the reasonable standards for permanent employment. Thus, the word *probationary*, as used to describe the period of employment, implies the purpose of the term or period, not its length. Indeed, the employer has the right, or is at liberty, to choose who will be hired and who will be declined. As a component of this right to select his employees, the employer may set or fix a probationary period within which the latter may test and observe the conduct of the former before hiring him permanently.

2. ID.; ID.; ID.; ID.; PROBATIONARY PERIOD FOR PRIVATE ACADEMIC PERSONNEL, EXPLAINED; RELEVANT RULINGS, CITED.— For "academic personnel" in private schools, colleges and universities, probationary employment is governed by Section 92 of the 1992 Manual of Regulations for Private Schools (Manual), which reads: Section 92. *Probationary Period.* — Subject in all instances to compliance with the Department and school requirements, the probationary period for academic personnel shall not be more than three (3) consecutive years of satisfactory service for those in the elementary and secondary levels, six (6) consecutive regular semesters of satisfactory service for those in the tertiary level, and nine (9) consecutive trimesters of satisfactory service for those in the tertiary level where collegiate courses are offered on a trimester basis. This was supplemented by DOLE-DECS-CHED-TESDA Order No. 1 dated February 7, 1996, which provides that the probationary period for academic personnel shall not be more than three (3) consecutive school years of satisfactory service for those in the elementary and secondary levels. By this supplement, it is made clear that the period of probation for academic personnel shall be counted in terms of "school years," and not "calendar years." x x x The reason for this disparate treatment was explained many years ago in *Escudero v. Office of the President of the Philippines*, where the Court declared: However, the six-month probationary period prescribed by the Secretary of Labor is merely the general rule. x x x It is, thus, clear that the **Labor Code authorizes different probationary periods, according to the requirements of the particular job.** For private school teachers, the period of probation is governed by the 1970 Manual of Regulations for Private Schools x x x. The probationary period of three years for private school teachers was, in fact, confirmed earlier in *Labajo v. Alejandro, viz*.: The three (3)-year period of service mentioned in paragraph 75 (of the Manual of Regulations for Private Schools) is of course the maximum period or upper limit, so to speak, of probationary employment allowed in the case of private school teachers. This necessarily implies that a regular or permanent employment status may, under certain conditions, be attained in less than three (3) years. By and large, however, whether or not one has indeed attained permanent status in one's employment, before the passage of three (3) years, is a matter of proof. Over the years, even with the

enactment of a new Labor Code and the revision of the Manual, the rule has not changed.

3. ID.; ID.; ID.; ID.; ID.; AN ACADEMIC PERSONNEL MAY ACQUIRE THE STATUS OF A REGULAR OR PERMANENT EMPLOYEE ONLY AFTER HE HAS SATISFACTORILY COMPLETED THE PROBATIONARY PERIOD OF THREE (3) SCHOOL YEARS IN FULL-TIME SERVICE AND IS REHIRED.— [F]or academic personnel in private elementary and secondary schools, it is only after one has satisfactorily completed the probationary period of three (3) school years and is rehired that he acquires full tenure as a regular or permanent employee. In this regard, Section 93 of the Manual pertinently provides: Sec. 93. *Regular or Permanent Status.* — Those who have served the probationary period shall be made regular or permanent. Full-time teachers who have satisfactorily completed their probationary period shall be considered regular or permanent. Accordingly, as held in *Escudero*, no vested right to a permanent appointment shall accrue until the employee has completed the prerequisite three-year period necessary for the acquisition of a permanent status. Of course, the mere rendition of service for three consecutive years does not automatically ripen into a permanent appointment. It is also necessary that the employee be a full-time teacher, and that the services he rendered are satisfactory. The common practice is for the employer and the teacher to enter into a contract, effective for one school year. At the end of the school year, the employer has the option not to renew the contract, particularly considering the teacher's performance. If the contract is not renewed, the employment relationship terminates. If the contract is renewed, usually for another school year, the probationary employment continues. Again, at the end of that period, the parties may opt to renew or not to renew the contract. If renewed, this second renewal of the contract for another school year would then be the last year – since it would be the third school year – of probationary employment. At the end of this third year, the employer may now decide whether to extend a permanent appointment to the employee, primarily on the basis of the employee having met the reasonable standards of competence and efficiency set by the employer. For the entire duration of this three-year period, the teacher remains under probation. Upon the expiration of his contract of employment, being simply on probation, he cannot automatically

claim security of tenure and compel the employer to renew his employment contract. It is when the yearly contract is renewed for the third time that Section 93 of the Manual becomes operative, and the teacher then is entitled to regular or permanent employment status. It is important that the contract of probationary employment specify the period or term of its effectivity. The failure to stipulate its precise duration could lead to the inference that the contract is binding for the full three-year probationary period.

4. ID.; ID.; ID.; ID.; ID.; INSTANCES WHEN ACADEMIC PERSONNEL MAY ACQUIRE PERMANENT EMPLOYMENT EARLIER THAN AFTER THE LAPSE OF THREE YEARS.— All this does not mean that academic personnel cannot acquire permanent employment status earlier than after the lapse of three years. The period of probation may be reduced if the employer, convinced of the fitness and efficiency of a probationary employee, voluntarily extends a permanent appointment even before the three-year period ends. Conversely, if the purpose sought by the employer is neither attained nor attainable within the said period, the law does not preclude the employer from terminating the probationary employment on justifiable ground; or, a shorter probationary period may be incorporated in a collective bargaining agreement. But absent any circumstances which unmistakably show that an abbreviated probationary period has been agreed upon, the three-year probationary term governs.

5. ID.; ID.; ID.; PROBATIONARY EMPLOYEES ENJOY SECURITY OF TENURE.— [T]eachers on probationary employment enjoy security of tenure. In *Biboso v. Victorias Milling Co., Inc.*, we made the following pronouncement: This is, by no means, to assert that the security of tenure protection of the Constitution does not apply to probationary employees. x x x During such period, they could remain in their positions and any circumvention of their rights, in accordance with the statutory scheme, is subject to inquiry and thereafter correction by the Department of Labor. The ruling in *Biboso* simply signifies that probationary employees enjoy security of tenure during the term of their probationary employment. As such, they cannot be removed except for cause as provided by law, or if at the end of every yearly contract during the three-year period, the employee does not meet the reasonable standards

set by the employer at the time of engagement. But this guarantee of security of tenure applies only during the period of probation. Once that period expires, the constitutional protection can no longer be invoked.

6. ID.; ID.; EMPLOYMENT CONTRACTS MUST BE CONSTRUED IN FAVOR OF LABOR; APPLICATION.— What is truly contentious is whether the probationary appointment of the respondent on April 18, 2002 was for a fixed period of one (1) year, or without a fixed term, inasmuch as the parties presented different versions of the employment agreement. As articulated by the CA: In plain language, We are confronted with two (2) copies of an agreement, one with a negative period and one provided for a one (1) year period for its effectivity. Ironically, none among the parties offered corroborative evidence as to which of the two (2) discrepancies is the correct one that must be given effect. x x x. The CA resolved the impassé in this wise: Under this circumstance, We can only apply Article 1702 of the Civil Code which provides that, in case of doubt, all labor contracts shall be construed in favor of the laborer. Then, too, settled is the rule that any ambiguity in a contract whose terms are susceptible of different interpretations must be read against the party who drafted it. In the case at bar, the drafter of the contract is herein petitioners and must, therefore, be read against their contention. We agree with the CA. In this case, there truly existed a doubt as to which version of the employment agreement should be given weight. In respondent's copy, the period of effectivity of the agreement remained blank. On the other hand, petitioner's copy provided for a one-year period, surprisingly from April 1, 2002 to March 31, 2003, even though the pleadings submitted by both parties indicated that respondent was hired on April 18, 2002. What is noticeable even more is that the handwriting indicating the one-year period in petitioner's copy is different from the handwriting that filled up the other needed information in the same agreement. Thus, following Article 1702 of the Civil Code that all doubts regarding labor contracts should be construed in favor of labor, then it should be respondent's copy which did not provide for an express period which should be upheld, especially when there are circumstances that render the version of petitioner suspect. This is in line with the State policy of affording protection to labor, such that the lowly laborer, who is usually at the mercy

of the employer, must look up to the law to place him on equal footing with his employer.

7. ID.; ID.; EMPLOYMENT CONTRACT LIKENED INTO A CONTRACT OF ADHESION.— [T]he employment agreement may be likened into a contract of adhesion considering that it is petitioner who insists that there existed an express period of one year from April 1, 2002 to March 31, 2003, using as proof its own copy of the agreement. While contracts of adhesion are valid and binding, in cases of doubt which will cause a great imbalance of rights against one of the parties, the contract shall be construed against the party who drafted the same. Hence, in this case, where the very employment of respondent is at stake, the doubt as to the period of employment must be construed in her favor.

8. ID.; ID.; TERMINATION OF EMPLOYMENT; DISMISSAL OF EMPLOYEE; A PROBATIONARY EMPLOYEE MAY BE ILLEGALLY DISMISSED.— The other issue to resolve is whether respondent, even as a probationary employee, was illegally dismissed. We rule in the affirmative. As above discussed, probationary employees enjoy security of tenure during the term of their probationary employment such that they may only be terminated for cause as provided for by law, or if at the end of the probationary period, the employee failed to meet the reasonable standards set by the employer at the time of the employee's engagement. Undeniably, respondent was hired as a probationary teacher and, as such, it was incumbent upon petitioner to show by competent evidence that she did not meet the standards set by the school. This requirement, petitioner failed to discharge. To note, the termination of respondent was effected by that letter stating that she was being relieved from employment because the school authorities allegedly decided, as a cost-cutting measure, that the position of "Principal" was to be abolished. Nowhere in that letter was respondent informed that her performance as a school teacher was less than satisfactory. Thus, in light of our ruling of *Espiritu Santo Parochial School v. NLRC* that, in the absence of an express period of probation for private school teachers, the three-year probationary period provided by the Manual of Regulations for Private Schools must apply likewise to the case of respondent. In other words, absent any concrete and competent proof that her performance as a teacher was

unsatisfactory from her hiring on April 18, 2002 up to March 31, 2003, respondent is entitled to continue her three-year period of probationary period, such that from March 31, 2003, her probationary employment is deemed renewed for the following two school years.

9. ID.; ID.; ID.; ID.; MONETARY AWARDS TO AN ILLEGALLY DISMISSED PROBATIONARY EMPLOYEE.— [W]e rule on the propriety of the monetary awards. Petitioner, as employer, is entitled to decide whether to extend respondent a permanent status by renewing her contract beyond the three-year period. Given the acrimony between the parties which must have been generated by this controversy, it can be said unequivocally that petitioner had opted not to extend respondent's employment beyond this period. Therefore, the award of backwages as a consequence of the finding of illegal dismissal in favor of respondent should be confined to the three-year probationary period. Computing her monthly salary of ₱15,000.00 for the next two school years (₱15,000.00 x 10 months x 2), respondent already having received her full salaries for the year 2002-2003, she is entitled to a total amount of ₱300,000.00. Moreover, respondent is also entitled to receive her 13th month pay correspondent to the said two school years, computed as yearly salary, divided by 12 months in a year, multiplied by 2, corresponding to the school years 2003-2004 and 2004-2005, or ₱150,000.00 / 12 months x 2 = ₱25,000.00. Thus, the NLRC was correct in awarding respondent the amount of ₱325,000.00 as backwages, inclusive of 13th month pay for the school years 2003-2004 and 2004-2005, and the amount of ₱3,750.00 as pro-rated 13th month pay.

APPEARANCES OF COUNSEL

Grapilon Chan and Pasana Law Offices for petitioners.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari* of the Decision dated January 31, 2007 and of the Resolution dated June 29, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 93917 entitled *Magis Young Achievers' Learning Center and Violeta*

T. Cariño v. National Labor Relations Commission, 3rd Division, Quezon City, and Adelaida P. Manalo.

The pertinent facts are as follows:

On April 18, 2002, respondent Adelaida P. Manalo was hired as a teacher and acting principal of petitioner Magis Young Achievers' Learning Center with a monthly salary of ₱15,000.00.

It appears on record that respondent, on March 29, 2003, wrote a letter of resignation addressed to Violeta T. Cariño, directress of petitioner, which reads:

Dear Madame:

I am tendering my irrevocable resignation effective April 1, 2003 due to personal and family reasons.

I would like to express my thanks and gratitude for the opportunity, trust and confidence given to me as an Acting Principal in your prestigious school.

God bless and more power to you.

Sincerely yours,

(Signed)
Mrs. ADELAIDA P. MANALO[1]

On March 31, 2003, respondent received a letter of termination from petitioner, *viz.:*

Dear Mrs. Manalo:

Greetings of Peace!

The Board of Trustees of the Cariño Group of Companies, particularly that of Magis Young Achievers' Learning Center convened, deliberated and came up with a Board Resolution that will strictly impose all means possible to come up with a cost-cutting scheme. Part of that scheme is a systematic reorganization which will entail streamlining of human resources.

As agreed upon by the Board of Directors, the position of PRINCIPAL will be abolished next school year. Therefore, we regret to inform

[1] *Rollo*, p. 85.

you that we can no longer renew your contract, which will expire on March 31, 2003. Thus, thank you for the input you have given to Magis during your term of office as Acting Principal. The function of the said position shall be delegated to other staff members in the organization.

Hoping for your understanding on this matter and we pray for your future endeavors.

Very truly yours,

(Signed)
Mrs. Violeta T. Cariño
School Directress

Noted by:

(Signed)
Mr. Severo Cariño
President[2]

On April 4, 2003, respondent instituted against petitioner a Complaint[3] for illegal dismissal and non-payment of 13th month pay, with a prayer for reinstatement, award of full backwages and moral and exemplary damages.

In her position paper,[4] respondent claimed that her termination violated the provisions of her employment contract, and that the alleged abolition of the position of Principal was not among the grounds for termination by an employer under Article 282[5]

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[2] *Id.* at 86.

[3] *Id.* at 65.

[4] *Id.* at 66-76.

[5] 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;

of the Labor Code. She further asserted that petitioner infringed Article 283[6] of the Labor Code, as the required 30-day notice to the Department of Labor and Employment (DOLE) and to her as the employee, and the payment of her separation pay were not complied with. She also claimed that she was terminated from service for the alleged expiration of her employment, but that her contract did not provide for a fixed term or period. She likewise prayed for the payment of her 13th month pay under Presidential Decree (PD) No. 851.

Petitioner, in its position paper,[7] countered that respondent was legally terminated because the one-year probationary period, from April 1, 2002 to March 3, 2003, had already lapsed and she failed to meet the criteria set by the school pursuant to the Manual of Regulation for Private Schools, adopted by the then Department of Education, Culture and Sports (DECS), paragraph 75 of which provides that:

(75) Full-time teachers who have rendered three years of satisfactory service shall be considered permanent.

(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.

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

[7] *Rollo*, pp. 77-82.

On December 3, 2003, Labor Arbiter (LA) Renell Joseph R. dela Cruz rendered a Decision[8] dismissing the complaint for illegal dismissal, including the other claims of respondent, for lack of merit, except that it ordered the payment of her 13th month pay in the amount of ₱3,750.00. The LA ratiocinated in this wise:

> It is our considered opinion [that] complainant was not dismissed, much less, illegally. On the contrary, she resigned. It is hard for us to imagine complainant would accede to sign a resignation letter as a precondition to her hiring considering her educational background. Thus, in the absence of any circumstance tending to show she was probably coerced her resignation must be upheld. x x x
>
> x x x The agreement (Annex "1" to Respondent's [petitioner's] Position Paper; Annex "A" to Complainant's Position Paper) by its very nature and terms is a contract of employment with a period (from 01 April 2002 to 31 March 2003, Annex '1' to Respondent's Position Paper). Complainant's observation that the space reserved for the duration and effectivity of the contract was left blank (Annex 'A' to Complainant's [respondent's] Position Paper) to our mind is plain oversight. Read in its entirety, it is a standard contract which by its very terms and conditions speaks of a definite period of employment. The parties could have not thought otherwise. The notification requirement in the contract in case of "termination before the expiration of the period" confirms it. x x x

On appeal, on October 28, 2005, the National Labor Relations Commission (NLRC), Third Division,[9] in its Decision[10] dated October 28, 2005, reversed the Arbiter's judgment. Petitioner was ordered to reinstate respondent as a teacher, who shall be credited with one-year service of probationary employment, and to pay her the amounts of ₱3,750.00 and ₱325,000.00 representing her 13th month pay and backwages, respectively.

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[8] *Id.* at 61-64.

[9] Penned by Presiding Commissioner Lourdes C. Javier, with Commissioners Tito F. Genilo and Romeo C. Lagman, concurring.

[10] *Rollo*, pp. 53-60.

Petitioner's motion for reconsideration was denied in the NLRC's Resolution[11] dated January 31, 2006.

Imputing grave abuse of discretion on the part of the NLRC, petitioner went up to the CA via a petition for *certiorari*. The CA, in its Decision dated January 31, 2007, affirmed the NLRC decision and dismissed the petition. It likewise denied petitioner's motion for reconsideration in the Resolution dated June 29, 2007. Hence, this petition anchored on the following grounds—

I. THE COURT OF APPEALS ERRED WHEN IT CONCLUDED THAT THE RESIGNATION OF RESPONDENT MANALO DID NOT BECOME EFFECTIVE DUE TO ALLEGED LACK OF ACCEPTANCE;

II. THE COURT OF APPEALS ERRED WHEN IT RULED THAT RESPONDENT MANALO IS A PERMANENT EMPLOYEE;

III. THE COURT OF APPEALS ERRED WHEN IT RULED THAT THE CONTRACT OF EMPLOYMENT BETWEEN PETITIONER AND RESPONDENT DID NOT STIPULATE A PERIOD.[12]

Before going to the core issues of the controversy, we would like to restate basic legal principles governing employment of secondary school teachers in private schools, specifically, on the matter of probationary employment.

A probationary employee or probationer is one who is on trial for an employer, during which the latter determines whether or not he is qualified for permanent employment. The probationary employment is intended to afford the employer an opportunity to observe the fitness of a probationary employee while at work, and to ascertain whether he will become an efficient and productive employee. While the employer observes the fitness, propriety and efficiency of a probationer to ascertain whether he is qualified for permanent employment, the probationer, on the other hand, seeks to prove to the employer that he has the qualifications to meet the reasonable standards for permanent employment. Thus, the word *probationary*, as used to describe

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

[12] *Id.* at 8.

the period of employment, implies the purpose of the term or period, not its length.[13]

Indeed, the employer has the right, or is at liberty, to choose who will be hired and who will be declined. As a component of this right to select his employees, the employer may set or fix a probationary period within which the latter may test and observe the conduct of the former before hiring him permanently.[14]

But the law regulates the exercise of this prerogative to fix the period of probationary employment. While there is no statutory cap on the minimum term of probation, the law sets a maximum "trial period" during which the employer may test the fitness and efficiency of the employee.

The general rule on the maximum allowable period of probationary employment is found in Article 281 of the Labor Code, which states:

> Art. 281. *Probationary Employment.* — Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

This upper limit on the term of probationary employment, however, does not apply to all classes of occupations.

For "academic personnel" in private schools, colleges and universities, probationary employment is governed by Section 92 of the 1992 Manual of Regulations for Private Schools[15] (Manual), which reads:

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[13] *International Catholic Migration Commission v. NLRC,* G.R. No. 72222, January 30, 1989, 169 SCRA 606.

[14] *Grand Motor Parts Corporation v. Minister of Labor, et al.,* 215 Phil. 383 (1984).

[15] Pursuant to Sec. 2, B.P. 232, the Manual of Regulations for Private Schools applies to formal and non-formal education in the private sector at

Section 92. *Probationary Period.* — Subject in all instances to compliance with the Department and school requirements, the probationary period for academic personnel shall not be more than three (3) consecutive years of satisfactory service for those in the elementary and secondary levels, six (6) consecutive regular semesters of satisfactory service for those in the tertiary level, and nine (9) consecutive trimesters of satisfactory service for those in the tertiary level where collegiate courses are offered on a trimester basis.[16]

This was supplemented by DOLE-DECS-CHED-TESDA Order No. 1 dated February 7, 1996, which provides that the probationary period for academic personnel shall not be more than three (3) consecutive school years of satisfactory service for those in the elementary and secondary levels.[17] By this supplement, it is made clear that the period of probation for academic personnel shall be counted in terms of "school years," and not "calendar years."[18] Then, Section 4.m(4)[c] of the Manual delineates the coverage of Section 92, by defining the term "academic personnel" to include:

(A)ll school personnel who are formally engaged in actual teaching service or in research assignments, either on full-time or part-time basis; as well as those who possess certain prescribed academic functions directly supportive of teaching, such as registrars, librarians, guidance counselors, researchers, and other similar persons. **They include school officials responsible for academic matters**, and may include other school officials.[19]

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all levels of the educational system. This is not to be confused with the Manual of Policies and Guidelines on the Establishment and Operation of Public and Private Technical-Vocational Education and Training (TVET) Institutions, which governs tech-voc education.

[16] Technically, private tertiary education may be removed from the coverage of this Manual, since authority over higher education has been transferred from the Department of Education to the Commission on Higher Education by R.A. 7222, or the "Higher Education Act of 1994".

[17] DOLE-DECS-CHED-TESDA Order No. 1, s. 1996, Sec. 2.

[18] With this change, our ruling in *Colegio San Agustin v. NLRC,* G.R. No. 87333, September 6, 1991, 201 SCRA 398, no longer applies.

[19] Emphasis supplied.

The reason for this disparate treatment was explained many years ago in *Escudero v. Office of the President of the Philippines*,[20] where the Court declared:

> However, the six-month probationary period prescribed by the Secretary of Labor is merely the general rule. x x x
>
> It is, thus, clear that the **Labor Code authorizes different probationary periods, according to the requirements of the particular job.** For private school teachers, the period of probation is governed by the 1970 Manual of Regulations for Private Schools x x x.[21]

The probationary period of three years for private school teachers was, in fact, confirmed earlier in *Labajo v. Alejandro*,[22] *viz.*:

> The three (3)-year period of service mentioned in paragraph 75 (of the Manual of Regulations for Private Schools) is of course the maximum period or upper limit, so to speak, of probationary employment allowed in the case of private school teachers. This necessarily implies that a regular or permanent employment status may, under certain conditions, be attained in less than three (3) years. By and large, however, whether or not one has indeed attained permanent status in one's employment, before the passage of three (3) years, is a matter of proof.

Over the years, even with the enactment of a new Labor Code and the revision of the Manual, the rule has not changed.

Thus, for academic personnel in private elementary and secondary schools, it is only after one has satisfactorily completed the probationary period of three (3) school years and is rehired that he acquires full tenure as a regular or permanent employee. In this regard, Section 93 of the Manual pertinently provides:

> Sec. 93. *Regular or Permanent Status.* — Those who have served the probationary period shall be made regular or permanent. Full-time teachers who have satisfactorily completed their probationary period shall be considered regular or permanent.

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[20] G.R. No. 57822, April 26, 1989, 172 SCRA 783.

[21] Emphasis supplied.

[22] G.R. No. 80383, September 26, 1988, 165 SCRA 747.

Accordingly, as held in *Escudero,* no vested right to a permanent appointment shall accrue until the employee has completed the prerequisite three-year period necessary for the acquisition of a permanent status. Of course, the mere rendition of service for three consecutive years does not automatically ripen into a permanent appointment. It is also necessary that the employee be a full-time teacher, and that the services he rendered are satisfactory.[23]

The common practice is for the employer and the teacher to enter into a contract, effective for one school year. At the end of the school year, the employer has the option not to renew the contract, particularly considering the teacher's performance. If the contract is not renewed, the employment relationship terminates. If the contract is renewed, usually for another school year, the probationary employment continues. Again, at the end of that period, the parties may opt to renew or not to renew the contract. If renewed, this second renewal of the contract for another school year would then be the last year – since it would be the third school year – of probationary employment. At the end of this third year, the employer may now decide whether to extend a permanent appointment to the employee, primarily on the basis of the employee having met the reasonable standards of competence and efficiency set by the employer. For the entire duration of this three-year period, the teacher remains under probation. Upon the expiration of his contract of employment, being simply on probation, he cannot automatically claim security of tenure and compel the employer to renew his employment contract.[24] It is when the yearly contract is renewed for the third time that Section 93 of the Manual becomes operative, and the teacher then is entitled to regular or permanent employment status.

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[23] Sec. 93, Manual; *St. Theresa's School of Novaliches Foundation v. NLRC,* 351 Phil. 1038, 1043 (1998); *Cagayan Capitol College v. NLRC,* G.R. Nos. 90010-11, September 14, 1990, 189 SCRA 658.

[24] *Lacuesta v. Ateneo de Manila University,* G.R. No. 152777, December 9, 2005, 477 SCRA 217.

It is important that the contract of probationary employment specify the period or term of its effectivity. The failure to stipulate its precise duration could lead to the inference that the contract is binding for the full three-year probationary period.[25]

All this does not mean that academic personnel cannot acquire permanent employment status earlier than after the lapse of three years. The period of probation may be reduced if the employer, convinced of the fitness and efficiency of a probationary employee, voluntarily extends a permanent appointment even before the three-year period ends. Conversely, if the purpose sought by the employer is neither attained nor attainable within the said period, the law does not preclude the employer from terminating the probationary employment on justifiable ground;[26] or, a shorter probationary period may be incorporated in a collective bargaining agreement.[27] But absent any circumstances which unmistakably show that an abbreviated probationary period has been agreed upon, the three-year probationary term governs.

Be that as it may, teachers on probationary employment enjoy security of tenure. In *Biboso v. Victorias Milling Co., Inc.*,[28] we made the following pronouncement:

> This is, by no means, to assert that the security of tenure protection of the Constitution does not apply to probationary employees. xxx During such period, they could remain in their positions and any circumvention of their rights, in accordance with the statutory scheme, is subject to inquiry and thereafter correction by the Department of Labor.

The ruling in *Biboso* simply signifies that probationary employees enjoy security of tenure during the term of their probationary employment. As such, they cannot be removed except for cause as provided by law, or if at the end of every yearly contract

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[25] See *Espiritu Santo Parochial School v. NLRC,* G.R. No. 82325, September 26, 1989, 177 SCRA 802.

[26] *Lacuesta v. Ateneo de Manila, supra* note 24, cited in *Woodridge School v. Pe Benito,* G.R. No. 160240, October 29, 2008.

[27] See *Escorpizo v. University of Baguio,* 366 Phil. 166 (1999).

[28] 166 Phil. 717 (1977).

during the three-year period, the employee does not meet the reasonable standards set by the employer at the time of engagement. But this guarantee of security of tenure applies only during the period of probation. Once that period expires, the constitutional protection can no longer be invoked.[29]

All these principles notwithstanding, we do not discount the validity of fixed-term employment where –

> the fixed period of employment was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent, or where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter.[30]

It does not necessarily follow that where the duties of the employees consist of activities usually necessary or desirable in the usual business of the employer, the parties are forbidden from agreeing on a period of time for the performance of such activities.[31] Thus, in *St. Theresa's School of Novaliches Foundation v. NLRC*,[32] we held that a contractual stipulation providing for a fixed term of nine (9) months, not being contrary to law, morals, good customs, public order and public policy, is valid, binding and must be respected, as it is the contract of employment that governs the relationship of the parties.

Now, to the issues in the case at bench.

There should be no question that the employment of the respondent, as teacher, in petitioner school on April 18, 2002 is probationary in character, consistent with standard practice in private schools. In light of our disquisition above, we cannot

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[29] See *Escudero v. Office of the President, supra* note 20, at 793.

[30] *Brent School, Inc. v. Zamora,* G.R. No. L-48494, February 5, 1990, 181 SCRA 702.

[31] *St. Theresa's School of Novaliches Foundation v. NLRC,* 351 Phil. 1038, 1043 (1998).

[32] *Id.*

subscribe to the proposition that the respondent has acquired regular or permanent tenure as teacher. She had rendered service as such only from April 18, 2002 until March 31, 2003. She has not completed the requisite three-year period of probationary employment, as provided in the Manual. She cannot, by right, claim permanent status.

There should also be no doubt that respondent's appointment as Acting Principal is merely temporary, or one that is good until another appointment is made to take its place.[33] An "acting" appointment is essentially a temporary appointment, revocable at will. The undisturbed unanimity of cases shows that one who holds a temporary appointment has no fixed tenure of office; his employment can be terminated any time at the pleasure of the appointing power without need to show that it is for cause.[34] Further, in *La Salette of Santiago v. NLRC*,[35] we acknowledged the customary arrangement in private schools to rotate administrative positions, *e.g.*, Dean or Principal, among employees, without the employee so appointed attaining security of tenure with respect to these positions.

We are also inclined to agree with the CA that the resignation of the respondent[36] is not valid, not only because there was no express acceptance thereof by the employer, but because there is a cloud of doubt as to the voluntariness of respondent's resignation.

Resignation is the voluntary act of an employee who finds himself in a situation where he believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and that he has no other choice but to dissociate himself from employment.[37] Voluntary resignation is made with the intention

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[33] *Castro v. Solidum,* 97 Phil. 278 (1955).

[34] *Aklan College, Inc. v. Guarino,* G.R. No. 152949, August 14, 2007, 530 SCRA 40, 49.

[35] G.R. No. 82918, March 11, 1991, 195 SCRA 80.

[36] *Rollo,* p. 85.

[37] *Globe Telecom v. Crisologo,* G.R. No. 174644, August 10, 2007, 529 SCRA 811, 819.

of relinquishing an office, accompanied by the act of abandonment.[38] It is the acceptance of an employee's resignation that renders it operative.[39]

Furthermore, well-entrenched is the rule that resignation is inconsistent with the filing of a complaint for illegal dismissal.[40] To be valid, the resignation must be unconditional, with the intent to operate as such; there must be a clear intention to relinquish the position.[41] In this case, respondent actively pursued her illegal dismissal case against petitioner, such that she cannot be said to have voluntarily resigned from her job.

What is truly contentious is whether the probationary appointment of the respondent on April 18, 2002 was for a fixed period of one (1) year, or without a fixed term, inasmuch as the parties presented different versions of the employment agreement. As articulated by the CA:

> In plain language, We are confronted with two (2) copies of an agreement, one with a negative period and one provided for a one (1) year period for its effectivity. Ironically, none among the parties offered corroborative evidence as to which of the two (2) discrepancies is the correct one that must be given effect. x x x.[42]

The CA resolved the impassé in this wise:

> Under this circumstance, We can only apply Article 1702 of the Civil Code which provides that, in case of doubt, all labor contracts shall be construed in favor of the laborer. Then, too, settled is the rule that any ambiguity in a contract whose terms are susceptible of different interpretations must be read against the party who drafted

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[38] *Vicente v. Court of Appeals,* G.R. No. 175988, August 24, 2007, 531 SCRA 240, 249.

[39] *BMG Records (Phils.), Inc. v. Aparecio,* G.R. No. 153290, September 5, 2007, 532 SCRA 300.

[40] *Oriental Shipmanagement Co., Inc. v. Court of Appeals,* G.R. No. 153750, January 25, 2006, 480 SCRA 100, 110.

[41] *Blue Angel Manpower and Security Services v. Court of Appeals,* G.R. No. 161196, July 28, 2008, 560 SCRA 157.

[42] *Rollo,* p. 47.

it. In the case at bar, the drafter of the contract is herein petitioners and must, therefore, be read against their contention.[43]

We agree with the CA.

In this case, there truly existed a doubt as to which version of the employment agreement should be given weight. In respondent's copy, the period of effectivity of the agreement remained blank. On the other hand, petitioner's copy provided for a one-year period, surprisingly from April 1, 2002 to March 31, 2003, even though the pleadings submitted by both parties indicated that respondent was hired on April 18, 2002. What is noticeable even more is that the handwriting indicating the one-year period in petitioner's copy is different from the handwriting that filled up the other needed information in the same agreement.[44]

Thus, following Article 1702 of the Civil Code that all doubts regarding labor contracts should be construed in favor of labor, then it should be respondent's copy which did not provide for an express period which should be upheld, especially when there are circumstances that render the version of petitioner suspect. This is in line with the State policy of affording protection to labor, such that the lowly laborer, who is usually at the mercy of the employer, must look up to the law to place him on equal footing with his employer.[45]

In addition, the employment agreement may be likened into a contract of adhesion considering that it is petitioner who insists that there existed an express period of one year from April 1, 2002 to March 31, 2003, using as proof its own copy of the agreement. While contracts of adhesion are valid and binding,

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[43] *Id.* at 47-48. (Citations omitted).

[44] *Id.* at 87.

[45] Labor Code, Art. 3. *Declaration of Basic Policy*. The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.

in cases of doubt which will cause a great imbalance of rights against one of the parties, the contract shall be construed against the party who drafted the same. Hence, in this case, where the very employment of respondent is at stake, the doubt as to the period of employment must be construed in her favor.

The other issue to resolve is whether respondent, even as a probationary employee, was illegally dismissed. We rule in the affirmative.

As above discussed, probationary employees enjoy security of tenure during the term of their probationary employment such that they may only be terminated for cause as provided for by law, or if at the end of the probationary period, the employee failed to meet the reasonable standards set by the employer at the time of the employee's engagement. Undeniably, respondent was hired as a probationary teacher and, as such, it was incumbent upon petitioner to show by competent evidence that she did not meet the standards set by the school. This requirement, petitioner failed to discharge. To note, the termination of respondent was effected by that letter stating that she was being relieved from employment because the school authorities allegedly decided, as a cost-cutting measure, that the position of "Principal" was to be abolished. Nowhere in that letter was respondent informed that her performance as a school teacher was less than satisfactory.

Thus, in light of our ruling of *Espiritu Santo Parochial School v. NLRC*[46] that, in the absence of an express period of probation for private school teachers, the three-year probationary period provided by the Manual of Regulations for Private Schools must apply likewise to the case of respondent. In other words, absent any concrete and competent proof that her performance as a teacher was unsatisfactory from her hiring on April 18, 2002 up to March 31, 2003, respondent is entitled to continue her three-year period of probationary period, such that from March 31, 2003, her probationary employment is deemed renewed

[46] *Supra* note 25.

for the following two school years.[47]

Finally, we rule on the propriety of the monetary awards. Petitioner, as employer, is entitled to decide whether to extend respondent a permanent status by renewing her contract beyond the three-year period. Given the acrimony between the parties which must have been generated by this controversy, it can be said unequivocally that petitioner had opted not to extend respondent's employment beyond this period. Therefore, the award of backwages as a consequence of the finding of illegal dismissal in favor of respondent should be confined to the three-year probationary period. Computing her monthly salary of ₱15,000.00 for the next two school years (₱15,000.00 x 10 months x 2), respondent already having received her full salaries for the year 2002-2003, she is entitled to a total amount of ₱300,000.00.[48] Moreover, respondent is also entitled to receive her 13th month pay correspondent to the said two school years, computed as yearly salary, divided by 12 months in a year, multiplied by 2, corresponding to the school years 2003-2004 and 2004-2005, or ₱150,000.00 / 12 months x 2 = ₱25,000.00. Thus, the NLRC was correct in awarding respondent the amount of ₱325,000.00 as backwages, inclusive of 13th month pay for the school years 2003-2004 and 2004-2005, and the amount of ₱3,750.00 as pro-rated 13th month pay.

WHEREFORE, the petition is *DENIED.* The assailed Decision dated January 31, 2007 and the Resolution dated June 29, 2007 of the Court of Appeals are *AFFIRMED.*

SO ORDERED.

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

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[47] DOLE-DECS-CHED-TESDA Order No. 1, s. 1996, Sec. 2, *supra*.

[48] *Woodridge School (now known as Woodridge College, Inc.) v. Joanne C. Pe Benito and Randy T. Balaguer*, G.R. No. 160240, October 29, 2008.

THIRD DIVISION

[G.R. No. 179546. February 13, 2009]

COCA-COLA BOTTLERS PHILS., INC., *petitioner, vs.* **ALAN M. AGITO, REGOLO S. OCA III, ERNESTO G. ALARIAO, JR., ALFONSO PAA, JR., DEMPSTER P. ONG, URRIQUIA T. ARVIN, GIL H. FRANCISCO, and EDWIN M. GOLEZ,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; INDEPENDENT CONTRACTOR; LEGITIMATE JOB CONTRACTING AND LABOR-ONLY CONTRACTING, DISTINGUISHED.— A legitimate job contract, wherein an employer enters into a contract with a job contractor for the performance of the former's work, is permitted by law. Thus, the employer-employee relationship between the job contractor and his employees is maintained. In legitimate job contracting, the law creates an employer-employee relationship between the employer and the contractor's employees only for a limited purpose, *i.e.*, to ensure that the employees are paid their wages. The employer becomes jointly and severally liable with the job contractor only for the payment of the employees' wages whenever the contractor fails to pay the same. Other than that, the employer is not responsible for any claim made by the contractor's employees. On the other hand, labor-only contracting is an arrangement wherein the contractor merely acts as an agent in recruiting and supplying the principal employer with workers for the purpose of circumventing labor law provisions setting down the rights of employees. It is not condoned by law. A finding by the appropriate authorities that a contractor is a "labor-only" contractor establishes an employer-employee relationship between the principal employer and the contractor's employees and the former becomes solidarily liable for all the rightful claims of the employees.

2. ID.; ID.; ID.; CONSEQUENCES OF LABOR-ONLY CONTRACTING; APPLICATION.— [L]abor-only contracting would give rise to: (1) the creation of an employer-employee relationship between the principal and the employees of the

contractor or sub-contractor; and (2) the solidary liability of the principal and the contractor to the employees in the event of any violation of the Labor Code. x x x With the finding that Interserve was engaged in prohibited labor-only contracting, petitioner shall be deemed the true employer of respondents. As regular employees of petitioner, respondents cannot be dismissed except for just or authorized causes, none of which were alleged or proven to exist in this case, the only defense of petitioner against the charge of illegal dismissal being that respondents were not its employees.

3. ID.; ID.; ID.; TWO INDICATORS THAT LABOR-ONLY CONTRACTING EXISTS; APPLICATION.— The law clearly establishes an employer-employee relationship between the principal employer and the contractor's employee upon a finding that the contractor is engaged in "labor-only" contracting. Article 106 of the Labor Code categorically states: "There is 'labor-only' contracting where the person supplying workers to an employee does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, **and** the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer." Thus, performing activities directly related to the principal business of the employer is only one of the two indicators that "labor-only" contracting exists; the other is lack of substantial capital or investment. The Court finds that both indicators exist in the case at bar. Respondents worked for petitioner as salesmen, with the exception of respondent Gil Francisco whose job was designated as leadman. In the Delivery Agreement between petitioner and TRMD Incorporated, it is stated that petitioner is engaged in the manufacture, **distribution and sale** of softdrinks and other related products. The work of respondents, constituting distribution and sale of Coca-Cola products, is clearly indispensable to the principal business of petitioner. The repeated re-hiring of some of the respondents supports this finding. Petitioner also does not contradict respondents' allegations that the former has Sales Departments and Sales Offices in its various offices, plants, and warehouses; and that petitioner hires Regional Sales Supervisors and District Sales Supervisors who supervise and control the salesmen and sales route helpers. x x x Insisting that Interserve had substantial investment, petitioner assails, for being purely speculative,

the finding of the Court of Appeals that the service vehicles and equipment of Interserve, with the values of ₱510,000.00 and ₱200,000.00, respectively, could not have met the demands of the Coca-Cola deliveries in the Lagro area. Yet again, petitioner fails to persuade. The contractor, not the employee, has the burden of proof that it has the substantial capital, investment, and tool to engage in job contracting. Although not the contractor itself (since Interserve no longer appealed the judgment against it by the Labor Arbiter), said burden of proof herein falls upon petitioner who is invoking the supposed status of Interserve as an independent job contractor. Noticeably, petitioner failed to submit evidence to establish that the service vehicles and equipment of Interserve, valued at ₱510,000.00 and ₱200,000.00, respectively, were sufficient to carry out its service contract with petitioner. Certainly, petitioner could have simply provided the courts with records showing the deliveries that were undertaken by Interserve for the Lagro area, the type and number of equipment necessary for such task, and the valuation of such equipment. Absent evidence which a legally compliant company could have easily provided, the Court will not presume that Interserve had sufficient investment in service vehicles and equipment, especially since respondents' allegation – that they were using equipment, such as forklifts and pallets belonging to petitioner, to carry out their jobs – was uncontroverted. In sum, Interserve did not have substantial capital or investment in the form of tools, equipment, machineries, and work premises; and respondents, its supposed employees, performed work which was directly related to the principal business of petitioner. It is, thus, evident that Interserve falls under the definition of a "labor-only" contractor, under Article 106 of the Labor Code; as well as Section 5(i) of the Rules Implementing Articles 106-109 of the Labor Code, as amended.

4. ID.; ID.; ID.; CONTRACTOR'S LACK OF CONTROL OVER THE PERFORMANCE OF THE WORK OF ITS EMPLOYEES IS AN INDICATION OF LABOR-ONLY CONTRACTING.— It is also apparent that Interserve is a labor-only contractor under Section 5(ii) of the Rules Implementing Articles 106-109 of the Labor Code, as amended, since it did not exercise the right to control the performance of the work of respondents. The lack of control of Interserve over the respondents can be gleaned from the Contract of Services

between Interserve (as the CONTRACTOR) and petitioner (as the CLIENT). x x x Paragraph 3 of the Contract specified that the personnel of contractor Interserve, which included the respondents, would comply with "CLIENT" as well as "CLIENT's policies, rules and regulations." It even required Interserve personnel to subject themselves to on-the-spot searches by petitioner or its duly authorized guards or security men on duty every time the said personnel entered and left the premises of petitioner. Said paragraph explicitly established the control of petitioner over the conduct of respondents. Although under paragraph 4 of the same Contract, Interserve warranted that it would exercise the necessary and due supervision of the work of its personnel, there is a dearth of evidence to demonstrate the extent or degree of supervision exercised by Interserve over respondents or the manner in which it was actually exercised. There is even no showing that Interserve had representatives who supervised respondents' work while they were in the premises of petitioner. Also significant was the right of petitioner under paragraph 2 of the Contract to "request the replacement of the CONTRACTOR'S personnel." True, this right was conveniently qualified by the phrase "if from its judgment, the jobs or the projects being done could not be completed within the time specified or that the quality of the desired result is not being achieved," but such qualification was rendered meaningless by the fact that the Contract did not stipulate what work or job the personnel needed to complete, the time for its completion, or the results desired. The said provision left a gap which could enable petitioner to demand the removal or replacement of any employee in the guise of his or her inability to complete a project in time or to deliver the desired result. The power to recommend penalties or dismiss workers is the strongest indication of a company's right of control as direct employer. Paragraph 4 of the same Contract, in which Interserve warranted to petitioner that the former would provide relievers and replacements in case of absences of its personnel, raises another red flag. An independent job contractor, who is answerable to the principal only for the results of a certain work, job, or service need not guarantee to said principal the daily attendance of the workers assigned to the latter. An independent job contractor would surely have the discretion over the pace at which the work is performed, the number of employees required to complete the same, and the work schedule

which its employees need to follow. As the Court previously observed, the Contract of Services between Interserve and petitioner did not identify the work needed to be performed and the final result required to be accomplished. Instead, the Contract specified the type of workers Interserve must provide petitioner ("Route Helpers, Salesmen, Drivers, Clericals, Encoders & PD") and their qualifications (technical/vocational course graduates, physically fit, of good moral character, and have not been convicted of any crime). The Contract also states that, "to carry out the undertakings specified in the immediately preceding paragraph, the CONTRACTOR shall employ the necessary personnel," thus, acknowledging that Interserve did not yet have in its employ the personnel needed by petitioner and would still pick out such personnel based on the criteria provided by petitioner. In other words, Interserve did not obligate itself to perform an identifiable job, work, or service for petitioner, but merely bound itself to provide the latter with specific types of employees. These contractual provisions strongly indicated that Interserve was merely a recruiting and manpower agency providing petitioner with workers performing tasks directly related to the latter's principal business.

5. ID.; ID.; ID.; DOLE CERTIFICATION THAT A PARTY IS AN INDEPENDENT CONTRACTOR IS NOT BINDING ON THE COURT.— The certification issued by the DOLE stating that Interserve is an independent job contractor does not sway this Court to take it at face value, since the primary purpose stated in the Articles of Incorporation of Interserve is misleading. According to its Articles of Incorporation, the principal business of Interserve is to provide janitorial and allied services. The delivery and distribution of Coca-Cola products, the work for which respondents were employed and assigned to petitioner, were in no way allied to janitorial services. While the DOLE may have found that the capital and/or investments in tools and equipment of Interserve were sufficient for an independent contractor for janitorial services, this does not mean that such capital and/or investments were likewise sufficient to maintain an independent contracting business for the delivery and distribution of Coca-Cola products.

6.ID.; ID.; DISMISSAL OF EMPLOYEE; EFFECTS OF NON-COMPLIANCE WITH THE TWIN REQUIREMENTS OF PROCEDURAL DUE PROCESS.— Records also failed to

show that petitioner afforded respondents the twin requirements of procedural due process, *i.e.*, notice and hearing, prior to their dismissal. Respondents were not served notices informing them of the particular acts for which their dismissal was sought. Nor were they required to give their side regarding the charges made against them. Certainly, the respondents' dismissal was not carried out in accordance with law and, therefore, illegal. Given that respondents were illegally dismissed by petitioner, they are entitled to reinstatement, full backwages, inclusive of allowances, and to their other benefits or the monetary equivalents thereof computed from the time their compensations were withheld from them up to the time of their actual reinstatement, as mandated under Article 279 of the Labor Code.

APPEARANCES OF COUNSEL

De La Rosa & Nograles for petitioner.
Armando San Antonio for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review on *Certiorari*, under Rule 45 of the Rules of Court, assailing the Decision[1] dated 19 February 2007, promulgated by the Court of Appeals in CA-G.R. SP No. 85320, reversing the Resolution[2] rendered on 30 October 2003 by the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 036494-03. The Court of Appeals, in its assailed Decision, declared that respondents Alan M. Agito, Regolo S. Oca III, Ernesto G. Alariao, Jr., Alfonso Paa, Jr., Dempster P. Ong, Urriquia T. Arvin, Gil H. Francisco, and Edwin M. Golez were regular employees of petitioner Coca-Cola Bottlers Phils., Inc; and that Interserve Management & Manpower Resources, Inc. (Interserve) was a labor-only contractor, whose

[1] Penned by Associate Justice Rosalinda Asuncion-Vicente with Associate Justices Elvi John S. Asuncion and Enrico M. Lanzanas, concurring. *Rollo*, pp. 57-69.

[2] *Rollo*, pp. 152-157.

presence was intended merely to preclude respondents from acquiring tenurial security.

Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission (SEC) and engaged in manufacturing, bottling and distributing soft drink beverages and other allied products.

On 15 April 2002, respondents filed before the NLRC two complaints against petitioner, Interserve, Peerless Integrated Services, Inc., Better Builders, Inc., and Excellent Partners, Inc. for reinstatement with backwages, regularization, nonpayment of 13th month pay, and damages. The two cases, docketed as NLRC NCR Case No. 04-02345-2002 and NLRC NCR Case No. 05-03137-02, were consolidated.

Respondents alleged in their Position Paper that they were salesmen assigned at the Lagro Sales Office of petitioner. They had been in the employ of petitioner for years, but were not regularized. Their employment was terminated on 8 April 2002 without just cause and due process. However, they failed to state the reason/s for filing a complaint against Interserve; Peerless Integrated Services, Inc.; Better Builders, Inc.; and Excellent Partners, Inc.[3]

Petitioner filed its Position Paper (with Motion to Dismiss),[4] where it averred that respondents were employees of Interserve who were tasked to perform contracted services in accordance with the provisions of the Contract of Services[5] executed between petitioner and Interserve on 23 March 2002. Said Contract between petitioner and Interserve, covering the period of 1 April 2002 to 30 September 2002, constituted legitimate job contracting, given that the latter was a *bona fide* independent contractor with substantial capital or investment in the form of tools, equipment, and machinery necessary in the conduct of its business.

To prove the status of Interserve as an independent contractor,

[3] *Id.* at 236-242.

[4] CA *rollo*, pp. 55-69.

[5] *Id.* at 71-76.

petitioner presented the following pieces of evidence: (1) the Articles of Incorporation of Interserve;[6] (2) the Certificate of Registration of Interserve with the Bureau of Internal Revenue;[7] (3) the Income Tax Return, with Audited Financial Statements, of Interserve for 2001;[8] and (4) the Certificate of Registration of Interserve as an independent job contractor, issued by the Department of Labor and Employment (DOLE).[9]

As a result, petitioner asserted that respondents were employees of Interserve, since it was the latter which hired them, paid their wages, and supervised their work, as proven by: (1) respondents' Personal Data Files in the records of Interserve;[10] (2) respondents' Contract of Temporary Employment with Interserve;[11] and (3) the payroll records of Interserve.[12]

Petitioner, thus, sought the dismissal of respondents' complaint against it on the ground that the Labor Arbiter did not acquire jurisdiction over the same in the absence of an employer-employee relationship between petitioner and the respondents.[13]

In a Decision dated 28 May 2003, the Labor Arbiter found that respondents were employees of Interserve and not of petitioner. She reasoned that the standard put forth in Article 280 of the Labor Code for determining regular employment (*i.e.*, that the employee is performing activities that are necessary and desirable in the usual business of the employer) was not

[6] *Id.* at 78-87.

[7] *Id.* at 88.

[8] *Id.* at 89-93.

[9] *Id.* at 131.

[10] *Id.* at 94, 97, 100, 103, 106, 109. Only six Personal Data Files were attached to the Position Paper. Personal Data Files of two of the respondents, Alfonso Paa, Jr. and Edwin Golez, were not submitted.

[11] *Id.* at 95-96, 98-99, 101-102, 104-405, 107-108, 110-111. Only six Contracts of Temporary Employment were attached to the Position Paper. The Contracts for Temporary Employment of two of the respondents, Alfonso Paa, Jr. and Edwin Golez, were not submitted.

[12] *Id.* at 112-130.

[13] *Id.* at 66-69.

determinative of the issue of whether an employer-employee relationship existed between petitioner and respondents. While respondents performed activities that were necessary and desirable in the usual business or trade of petitioner, the Labor Arbiter underscored that respondents' functions were not indispensable to the principal business of petitioner, which was manufacturing and bottling soft drink beverages and similar products.

The Labor Arbiter placed considerable weight on the fact that Interserve was registered with the DOLE as an independent job contractor, with total assets amounting to ₱1,439,785.00 as of 31 December 2001. It was Interserve that kept and maintained respondents' employee records, including their Personal Data Sheets; Contracts of Employment; and remittances to the Social Securities System (SSS), Medicare and Pag-ibig Fund, thus, further supporting the Labor Arbiter's finding that respondents were employees of Interserve. She ruled that the circulars, rules and regulations which petitioner issued from time to time to respondents were not indicative of control as to make the latter its employees.

Nevertheless, the Labor Arbiter directed Interserve to pay respondents their pro-rated 13th month benefits for the period of January 2002 until April 2002.[14]

In the end, the Labor Arbiter decreed:

> WHEREFORE, judgment is hereby rendered finding that [herein respondents] are employees of [herein petitioner] INTERSERVE MANAGEMENT & MANPOWER RESOURCES, INC. Concomitantly, respondent Interserve is further ordered to pay [respondents] their pro-rated 13th month pay.
>
> The complaints against COCA-COLA BOTTLERS PHILS., INC. is DISMISMMED for lack of merit.
>
> In like manner the complaints against PEERLESS INTEGRATED SERVICES, INC., BETTER BUILDING INC. and EXCELLENT PARTNERS COOPERATIVE are DISMISSED for failure of complainants to pursue against them.

[14] *Rollo,* pp. 134-149.

Other claims are dismissed for lack of merit.

The computation of the Computation and Examination Unit, this Commission if (sic) made part of this Decision.[15]

Unsatisfied with the foregoing Decision of the Labor Arbiter, respondents filed an appeal with the NLRC, docketed as NLRC NCR CA No. 036494-03.

In their Memorandum of Appeal,[16] respondents maintained that contrary to the finding of the Labor Arbiter, their work was indispensable to the principal business of petitioner. Respondents supported their claim with copies of the Delivery Agreement[17] between petitioner and TRMD Incorporated, stating that petitioner was "engaged in the manufacture, distribution and sale of soft drinks and other related products with various plants and sales offices and warehouses located all over the Philippines." Moreover, petitioner supplied the tools and equipment used by respondents in their jobs such as forklifts, pallet, *etc*. Respondents were also required to work in the warehouses, sales offices, and plants of petitioner. Respondents pointed out that, in contrast, Interserve did not own trucks, pallets *cartillas*, or any other equipment necessary in the sale of Coca-Cola products.

Respondents further averred in their Memorandum of Appeal that petitioner exercised control over workers supplied by various contractors. Respondents cited as an example the case of Raul Arenajo (Arenajo), who, just like them, worked for petitioner, but was made to appear as an employee of the contractor Peerless Integrated Services, Inc. As proof of control by petitioner, respondents submitted copies of: (1) a Memorandum[18] dated 11 August 1998 issued by Vicente Dy (Dy), a supervisor of petitioner, addressed to Arenajo, suspending the latter from work until he explained his disrespectful acts toward the supervisor who caught him sleeping during work hours; (2) a

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

[16] CA *rollo*, pp. 150-170.

[17] *Id.* at 186.

[18] *Id.* at 193.

Memorandum[19] dated 12 August 1998 again issued by Dy to Arenajo, informing the latter that the company had taken a more lenient and tolerant position regarding his offense despite having found cause for his dismissal; (3) Memorandum[20] issued by Dy to the personnel of Peerless Integrated Services, Inc., requiring the latter to present their timely request for leave or medical certificates for their absences; (4) Personnel Workers Schedules,[21] prepared by RB Chua, another supervisor of petitioner; (5) Daily Sales Monitoring Report prepared by petitioner;[22] and (6) the Conventional Route System Proposed Set-up of petitioner.[23]

The NLRC, in a Resolution dated 30 October 2003, affirmed the Labor Arbiter's Decision dated 28 May 2003 and pronounced that no employer-employee relationship existed between petitioner and respondents. It reiterated the findings of the Labor Arbiter that Interserve was an independent contractor as evidenced by its substantial assets and registration with the DOLE. In addition, it was Interserve which hired and paid respondents' wages, as well as paid and remitted their SSS, Medicare, and Pag-ibig contributions. Respondents likewise failed to convince the NLRC that the instructions issued and trainings conducted by petitioner proved that petitioner exercised control over respondents as their employer.[24] The dispositive part of the NLRC Resolution states:[25]

WHEREFORE, the instant appeal is hereby DISMISSED for lack of merit. However, respondent Interserve Management & Manpower Resources, Inc., is hereby ordered to pay the [herein respondents] their pro-rated 13th month pay.

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[19] *Id.* at 194.

[20] *Id.* at 195.

[21] *Id.* at 201-202.

[22] *Id.* at 196.

[23] *Id.* at 197.

[24] *Rollo*, pp.152-156.

[25] *Id.* at 156.

Aggrieved once more, respondents sought recourse with the Court of Appeals by filing a Petition for *Certiorari* under Rule 65, docketed as CA-G.R. SP No. 85320.

The Court of Appeals promulgated its Decision on 9 February 2007, reversing the NLRC Resolution dated 30 October 2003. The appellate court ruled that Interserve was a labor-only contractor, with insufficient capital and investments for the services which it was contracted to perform. With only ₱510,000.00 invested in its service vehicles and ₱200,000.00 in its machineries and equipment, Interserve would be hard-pressed to meet the demands of daily soft drink deliveries of petitioner in the Lagro area. The Court of Appeals concluded that the respondents used the equipment, tools, and facilities of petitioner in the day-to-day sales operations.

Additionally, the Court of Appeals determined that petitioner had effective control over the means and method of respondents' work as evidenced by the Daily Sales Monitoring Report, the Conventional Route System Proposed Set-up, and the memoranda issued by the supervisor of petitioner addressed to workers, who, like respondents, were supposedly supplied by contractors. The appellate court deemed that the respondents, who were tasked to deliver, distribute, and sell Coca-Cola products, carried out functions directly related and necessary to the main business of petitioner. The appellate court finally noted that certain provisions of the Contract of Service between petitioner and Interserve suggested that the latter's undertaking did not involve a specific job, but rather the supply of manpower.

The decretal portion of the Decision of the Court of Appeals reads:[26]

> WHEREFORE, the petition is **GRANTED**. The assailed Resolutions of public respondent NLRC are **REVERSED** and **SET ASIDE**. The case is remanded to the NLRC for further proceedings.

Petitioner filed a Motion for Reconsideration, which the Court of Appeals denied in a Resolution, dated 31 August 2007.[27]

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[26] *Id.* at 57-68.

[27] CA *rollo*, pp. 456-457.

Hence, the present Petition, in which the following issues are raised[28]:

I

WHETHER OR NOT THE COURT OF APPEALS ACTED IN ACCORDANCE WITH EVIDENCE ON RECORD, APPLICABLE LAWS AND ESTABLISHED JURISPRUDENCE WHEN IT RULED THAT INTERSERVE IS A LABOR-ONLY CONTRACTOR;

II

WHETHER OR NOT THE COURT OF APPEALS ACTED IN ACCORDANCE WITH APPLICABLE LAWS AND ESTABLISHED JURISPRUDENCE WHEN IT CONCLUDED THAT RESPONDENTS PERFORMED WORK NECESSARY AND DESIRABLE TO THE BUSINESS OF [PETITIONER];

III

WHETHER OR NOT THE COURT OF APPEALS COMMITTED SERIOUS ERROR WHEN IT DECLARED THAT RESPONDENTS WERE EMPLOYEES OF [PETITIONER], EVEN ABSENT THE FOUR ELEMENTS INDICATIVE OF AN EMPLOYMENT RELATIONSHIP; AND

IV

WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED WHEN IT CONCLUDED THAT INTERSERVE WAS ENGAGED BY [PETITIONER] TO SUPPLY MANPOWER ONLY.

The Court ascertains that the fundamental issue in this case is whether Interserve is a legitimate job contractor. Only by resolving such issue will the Court be able to determine whether an employer-employee relationship exists between petitioner and the respondents. To settle the same issue, however, the Court must necessarily review the factual findings of the Court of Appeals and look into the evidence presented by the parties on record.

As a general rule, factual findings of the Court of Appeals are binding upon the Supreme Court. One exception to this

[28] *Rollo*, p. 330.

rule is when the factual findings of the former are contrary to those of the trial court, or the lower administrative body, as the case may be. This Court is obliged to resolve an issue of fact herein due to the incongruent findings of the Labor Arbiter and the NLRC and those of the Court of Appeals.[29]

The relations which may arise in a situation, where there is an employer, a contractor, and employees of the contractor, are identified and distinguished under Article 106 of the Labor Code:

> Article 106. Contractor or subcontractor. — Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.
>
> In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.
>
> The Secretary of Labor may, by appropriate regulations, restrict or prohibit the contracting out of labor to protect the rights of workers established under this Code. In so prohibiting or restriction, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.
>
> There is "labor-only" contracting where the person supplying workers to an employee does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

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[29] *Filipinas Pre-Fabricated Building Systems (Filsystems), Inc. v. Puente*, G.R. No. 153832, 18 March 2005, 453 SCRA 820, 826.

The afore-quoted provision recognizes two possible relations among the parties: (1) the permitted legitimate job contract, or (2) the prohibited labor-only contracting.

A legitimate job contract, wherein an employer enters into a contract with a job contractor for the performance of the former's work, is permitted by law. Thus, the employer-employee relationship between the job contractor and his employees is maintained. In legitimate job contracting, the law creates an employer-employee relationship between the employer and the contractor's employees only for a limited purpose, *i.e.*, to ensure that the employees are paid their wages. The employer becomes jointly and severally liable with the job contractor only for the payment of the employees' wages whenever the contractor fails to pay the same. Other than that, the employer is not responsible for any claim made by the contractor's employees.[30]

On the other hand, labor-only contracting is an arrangement wherein the contractor merely acts as an agent in recruiting and supplying the principal employer with workers for the purpose of circumventing labor law provisions setting down the rights of employees. It is not condoned by law. A finding by the appropriate authorities that a contractor is a "labor-only" contractor establishes an employer-employee relationship between the principal employer and the contractor's employees and the former becomes solidarily liable for all the rightful claims of the employees.[31]

Section 5 of the Rules Implementing Articles 106-109 of the Labor Code, as amended, provides the guidelines in determining whether labor-only contracting exists:

> Section 5. Prohibition against labor-only contracting. Labor-only contracting is hereby declared prohibited. For this purpose, labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies, or places

[30] *San Miguel Corporation v. MAERC Integrated Services, Inc.*, 453 Phil. 543, 566-567 (2003).

[31] *Id.* at 567.

workers to perform a job, work or service for a principal, **and any of the following elements are [is] present**:

i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work, or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; **or**

ii) The contractor does not exercise the right to control the performance of the work of the contractual employee.

The foregoing provisions shall be without prejudice to the application of Article 248(C) of the Labor Code, as amended.

"Substantial capital or investment" refers to capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work, or service contracted out.

The "right to control" shall refer to the right reversed to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end. (Emphasis supplied.)

When there is labor-only contracting, Section 7 of the same implementing rules, describes the consequences thereof:

Section 7. Existence of an employer-employee relationship.— The contractor or subcontractor shall be considered the employer of the contractual employee for purposes of enforcing the provisions of the Labor Code and other social legislation. The principal, however, shall be solidarily liable with the contractor in the event of any violation of any provision of the Labor Code, including the failure to pay wages.

The principal shall be deemed the employer of the contractual employee in any of the following case, as declared by a competent authority:

a. where there is labor-only contracting; or

b. where the contracting arrangement falls within the prohibitions provided in Section 6 (Prohibitions) hereof.

According to the foregoing provision, labor-only contracting would give rise to: (1) the creation of an employer-employee relationship between the principal and the employees of the contractor or sub-contractor; and (2) the solidary liability of the principal and the contractor to the employees in the event of any violation of the Labor Code.

Petitioner argues that there could not have been labor-only contracting, since respondents did not perform activities that were indispensable to petitioner's principal business. And, even assuming that they did, such fact alone does not establish an employer-employee relationship between petitioner and the respondents, since respondents were unable to show that petitioner exercised the power to select and hire them, pay their wages, dismiss them, and control their conduct.

The argument of petitioner is untenable.

The law clearly establishes an employer-employee relationship between the principal employer and the contractor's employee upon a finding that the contractor is engaged in "labor-only" contracting. Article 106 of the Labor Code categorically states: "There is 'labor-only' contracting where the person supplying workers to an employee does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, **and** the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer." Thus, performing activities directly related to the principal business of the employer is only one of the two indicators that "labor-only" contracting exists; the other is lack of substantial capital or investment. The Court finds that both indicators exist in the case at bar.

Respondents worked for petitioner as salesmen, with the exception of respondent Gil Francisco whose job was designated as leadman. In the Delivery Agreement[32] between petitioner and TRMD Incorporated, it is stated that petitioner is engaged in the manufacture, **distribution and sale** of softdrinks and

[32] *Rollo*, p. 199.

other related products. The work of respondents, constituting distribution and sale of Coca-Cola products, is clearly indispensable to the principal business of petitioner. The repeated re-hiring of some of the respondents supports this finding.[33] Petitioner also does not contradict respondents' allegations that the former has Sales Departments and Sales Offices in its various offices, plants, and warehouses; and that petitioner hires Regional Sales Supervisors and District Sales Supervisors who supervise and control the salesmen and sales route helpers.[34]

As to the supposed substantial capital and investment required of an independent job contractor, petitioner calls the attention of the Court to the authorized capital stock of Interserve amounting to ₱2,000,000.00.[35] It cites as authority *Filipinas Synthetic Fiber Corp. v. National Labor Relations Commission*[36] and *Frondozo v. National Labor Relations Commission*,[37] where the contractors' authorized capital stock of ₱1,600,000.00 and ₱2,000,000.00, respectively, were considered substantial for the purpose of concluding that they were legitimate job contractors. Petitioner also refers to *Neri v. National Labor Relations Commission*[38] where it was held that a contractor ceases to be

[33] Based on respondents' Personal Data files, which were kept by Interserve, respondent Regolo Oca worked in Coca-Cola in September 2000 as a salesman and his contract was renewed three more times until he was dismissed in April 2002. Respondent Ernesto Alario worked in Coca-Cola in October 2001, and his contract was renewed one more time before his dismissal in April 2002. Respondent Gil Francisco worked in Coca-cola as a Driver on August 1998 and later on as leadman in December 1998, and his contract was renewed until he was dismissed in April 2002. Respondent Arvin Urquia worked as a salesman in Coca-Cola in October 2001, and his contract was renewed in February 2002 until he was dismissed in April 2002. Lastly, respondent Alan Agito worked in Coca-Cola as salesman in May 2002, and his contract was renewed until he was dismissed in April 2002. (CA *rollo*, pp. 94, 97, 100, 103, 106, and 109.)

[34] *Rollo*, p. 283.

[35] *Id.* at 331-338.

[36] 327 Phil. 144 (1996).

[37] CA-G.R. SP No. 102442, 30 May 2008.

[38] G.R. Nos. 97008-09, 23 July 1993, 224 SCRA 717.

a labor-only contractor by having substantial capital alone, without investment in tools and equipment.

This Court is unconvinced.

At the outset, the Court clarifies that although Interserve has an authorized capital stock amounting to ₱2,000,000.00, only ₱625,000.00 thereof was paid up as of 31 December 2001. The Court does not set an absolute figure for what it considers substantial capital for an independent job contractor, but it measures the same against the type of work which the contractor is obligated to perform for the principal. However, this is rendered impossible in this case since the Contract between petitioner and Interserve does not even specify the work or the project that needs to be performed or completed by the latter's employees, and uses the dubious phrase "tasks and activities that are considered contractible under existing laws and regulations." Even in its pleadings, petitioner carefully sidesteps identifying or describing the exact nature of the services that Interserve was obligated to render to petitioner. The importance of identifying with particularity the work or task which Interserve was supposed to accomplish for petitioner becomes even more evident, considering that the Articles of Incorporation of Interserve states that its primary purpose is to operate, conduct, and maintain the business of janitorial and allied services.[39] But respondents were hired as salesmen and leadman for petitioner. The Court cannot, under such ambiguous circumstances, make a reasonable determination if Interserve had substantial capital or investment to undertake the job it was contracting with petitioner.

Petitioner cannot seek refuge in *Neri v. National Labor Relations Commission*. Unlike in *Neri*, petitioner was unable to prove in the instant case that Interserve had substantial capitalization to be an independent job contractor. In *San Miguel Corporation v. MAERC Integrated Services, Inc.*,[40] therein petitioner San Miguel Corporation similarly invoked *Neri*, but was rebuffed by the Court based on the following ratiocination[41]:

[39] CA *rollo*, p. 78.

[40] *Supra* note 30.

[41] *Id.* at 564-566.

Petitioner also ascribes as error the failure of the Court of Appeals to apply the ruling in *Neri v. NLRC*. In that case, it was held that the law did not require one to possess both substantial capital and investment in the form of tools, equipment, machinery, work premises, among others, to be considered a job contractor. The second condition to establish permissible job contracting was sufficiently met if one possessed either attribute.

Accordingly, petitioner alleged that the appellate court and the NLRC erred when they declared MAERC a labor-only contractor despite the finding that MAERC had investments amounting to ₱4,608,080.00 consisting of buildings, machinery and equipment.

However, in *Vinoya v. NLRC*, we clarified that it was not enough to show substantial capitalization or investment in the form of tools, equipment, machinery and work premises, *etc*., to be considered an independent contractor. In fact, jurisprudential holdings were to the effect that in determining the existence of an independent contractor relationship, several factors may be considered, such as, but not necessarily confined to, whether the contractor was carrying on an independent business; the nature and extent of the work; the skill required; the term and duration of the relationship; the right to assign the performance of specified pieces of work; the control and supervision of the workers; the power of the employer with respect to the hiring, firing and payment of the workers of the contractor; the control of the premises; the duty to supply premises, tools, appliances, materials and labor; and the mode, manner and terms of payment.

In *Neri*, the Court considered not only the fact that respondent Building Care Corporation (BCC) had substantial capitalization but noted that BBC carried on an independent business and performed its contract according to its own manner and method, free from the control and supervision of its principal in all matters except as to the results thereof. The Court likewise mentioned that the employees of BCC were engaged to perform specific special services for their principal. The status of BCC had also been passed upon by the Court in a previous case where it was found to be a qualified job contractor because it was a "big firm which services among others, a university, an international bank, a big local bank, a hospital center, government agencies, *etc*." Furthermore, there were only two (2) complainants in that case who were not only selected and hired by the contractor before being assigned to work in the Cagayan de Oro branch of FEBTC but the Court also found that the contractor maintained effective supervision and control over them.

Thus, in *San Miguel Corporation*, the investment of MAERC, the contractor therein, in the form of buildings, tools, and equipment of more than ₱4,000,000.00 did not impress the Court, which still declared MAERC to be a labor-only contractor. In another case, *Dole Philippines, Inc. v. Esteva*,[42] the Court did not recognize the contractor therein as a legitimate job contractor, despite its paid-up capital of over ₱4,000,000.00, in the absence of substantial investment in tools and equipment used in the services it was rendering.

Insisting that Interserve had substantial investment, petitioner assails, for being purely speculative, the finding of the Court of Appeals that the service vehicles and equipment of Interserve, with the values of ₱510,000.00 and ₱200,000.00, respectively, could not have met the demands of the Coca-Cola deliveries in the Lagro area.

Yet again, petitioner fails to persuade.

The contractor, not the employee, has the burden of proof that it has the substantial capital, investment, and tool to engage in job contracting.[43] Although not the contractor itself (since Interserve no longer appealed the judgment against it by the Labor Arbiter), said burden of proof herein falls upon petitioner who is invoking the supposed status of Interserve as an independent job contractor. Noticeably, petitioner failed to submit evidence to establish that the service vehicles and equipment of Interserve, valued at ₱510,000.00 and ₱200,000.00, respectively, were sufficient to carry out its service contract with petitioner. Certainly, petitioner could have simply provided the courts with records showing the deliveries that were undertaken by Interserve for the Lagro area, the type and number of equipment necessary for such task, and the valuation of such equipment. Absent evidence which a legally compliant company could have easily provided, the Court will not presume that Interserve had sufficient investment in service vehicles and equipment, especially since

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[42] G.R. No. 161115, 30 November 2006, 509 SCRA 332, 353 and 377.

[43] *Aboitiz Haulers, Inc. v. Dimapatoi*, G.R. No. 148619, 19 September 2006, 502 SCRA 271, 289; *Guarin v. National Labor Relations Commission*, G.R. No. 86010, 3 October 1989, 178 SCRA 267, 273.

respondents' allegation – that they were using equipment, such as forklifts and pallets belonging to petitioner, to carry out their jobs – was uncontroverted.

In sum, Interserve did not have substantial capital or investment in the form of tools, equipment, machineries, and work premises; and respondents, its supposed employees, performed work which was directly related to the principal business of petitioner. It is, thus, evident that Interserve falls under the definition of a "labor-only" contractor, under Article 106 of the Labor Code; as well as Section 5(i) of the Rules Implementing Articles 106-109 of the Labor Code, as amended.

The Court, however, does not stop at this finding. It is also apparent that Interserve is a labor-only contractor under Section 5(ii)[44] of the Rules Implementing Articles 106-109 of the Labor Code, as amended, since it did not exercise the right to control the performance of the work of respondents.

The lack of control of Interserve over the respondents can be gleaned from the Contract of Services between Interserve (as the CONTRACTOR) and petitioner (as the CLIENT), pertinent portions of which are reproduced below:

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[44] According to Section 5 of the Rules Implementing Articles 106-109, as amended:

Section 5. Prohibition against labor-only contracting. Labor-only contracting is hereby declared prohibited. For this purpose, labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies, or places workers to perform a job, work or service for a principal, **and any of the following elements are [is] present**:

i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work, or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; **or**

ii) The contractor does not exercise the right to control the performance of the work of the contractual employee.

The use of the words "any" and "or" in the foregoing provision means that the elements of labor-only contracting identified therein need not exist concurrently. The existence of one element is sufficient to establish labor-only contracting.

WHEREAS, the CONTRACTOR is engaged in the business, among others, of performing and/or undertaking, managing for consideration, varied projects, jobs and other related management-oriented services;

WHEREAS, the CONTRACTOR warrants that it has the necessary capital, expertise, technical know-how and a team of professional management group and personnel to undertake and assume the responsibility to carry out the above mentioned project and services;

WHEREAS, the CLIENT is desirous of utilizing the services and facilities of the CONTRACTOR for emergency needs, rush jobs, peak product loads, temporary, seasonal and other special project requirements the extent that the available work of the CLIENT can properly be done by an independent CONTRACTOR permissible under existing laws and regulations;

WHEREAS, the CONTRACTOR has offered to perform specific jobs/works at the CLIENT as stated heretofore, under the terms and conditions herein stated, and the CLIENT has accepted the offer.

NOW THEREFORE, for and in consideration of the foregoing premises and of the mutual covenants and stipulations hereinafter set forth, the parties have hereto have stated and the CLIENT has accepted the offer:

1. The CONTRACTOR agrees and undertakes to perform and/or provide for the CLIENT, on a non-exclusive basis for tasks or activities that are considered contractible under existing laws and regulations, as may be needed by the CLIENT from time to time.

2. To carry out the undertakings specified in the immediately preceding paragraph, the CONTRACTOR shall employ the necessary personnel like Route Helpers, Salesmen, Drivers, Clericals, Encoders & PD who are at least Technical/Vocational courses graduates provided with adequate uniforms and appropriate identification cards, who are warranted by the CONTRACTOR to be so trained as to efficiently, fully and speedily accomplish the work and services undertaken herein by the CONTRACTOR. The CONTRACTOR represents that its personnel shall be in such number as will be sufficient to cope with the requirements of the services and work herein undertaken and that such personnel shall be physically fit, of good moral character and has not been convicted of any crime. The CLIENT, however, may request for the replacement of the CONTRACTOR'S personnel if from its judgment, the jobs or the

projects being done could not be completed within the time specified or that the quality of the desired result is not being achieved.

3. It is agreed and understood that the CONTRACTOR'S personnel will comply with CLIENT, CLIENT'S policies, rules and regulations and will be subjected on-the-spot search by CLIENT, CLIENT'S duly authorized guards or security men on duty every time the assigned personnel enter and leave the premises during the entire duration of this agreement.

4. The CONTRACTOR further warrants to make available at times relievers and/or replacements to ensure continuous and uninterrupted service as in the case of absences of any personnel above mentioned, and to exercise the necessary and due supervision over the work of its personnel.[45]

Paragraph 3 of the Contract specified that the personnel of contractor Interserve, which included the respondents, would comply with "CLIENT" as well as "CLIENT's policies, rules and regulations." It even required Interserve personnel to subject themselves to on-the-spot searches by petitioner or its duly authorized guards or security men on duty every time the said personnel entered and left the premises of petitioner. Said paragraph explicitly established the control of petitioner over the conduct of respondents. Although under paragraph 4 of the same Contract, Interserve warranted that it would exercise the necessary and due supervision of the work of its personnel, there is a dearth of evidence to demonstrate the extent or degree of supervision exercised by Interserve over respondents or the manner in which it was actually exercised. There is even no showing that Interserve had representatives who supervised respondents' work while they were in the premises of petitioner.

Also significant was the right of petitioner under paragraph 2 of the Contract to "request the replacement of the CONTRACTOR'S personnel." True, this right was conveniently qualified by the phrase "if from its judgment, the jobs or the projects being done could not be completed within the time specified or that the quality of the desired result is not being achieved," but such qualification was rendered meaningless by the fact that

[45] *Rollo*, pp. 74-75.

the Contract did not stipulate what work or job the personnel needed to complete, the time for its completion, or the results desired. The said provision left a gap which could enable petitioner to demand the removal or replacement of any employee in the guise of his or her inability to complete a project in time or to deliver the desired result. The power to recommend penalties or dismiss workers is the strongest indication of a company's right of control as direct employer.[46]

Paragraph 4 of the same Contract, in which Interserve warranted to petitioner that the former would provide relievers and replacements in case of absences of its personnel, raises another red flag. An independent job contractor, who is answerable to the principal only for the results of a certain work, job, or service need not guarantee to said principal the daily attendance of the workers assigned to the latter. An independent job contractor would surely have the discretion over the pace at which the work is performed, the number of employees required to complete the same, and the work schedule which its employees need to follow.

As the Court previously observed, the Contract of Services between Interserve and petitioner did not identify the work needed to be performed and the final result required to be accomplished. Instead, the Contract specified the type of workers Interserve must provide petitioner ("Route Helpers, Salesmen, Drivers, Clericals, Encoders & PD") and their qualifications (technical/ vocational course graduates, physically fit, of good moral character, and have not been convicted of any crime). The Contract also states that, "to carry out the undertakings specified in the immediately preceding paragraph, the CONTRACTOR shall employ the necessary personnel," thus, acknowledging that Interserve did not yet have in its employ the personnel needed by petitioner and would still pick out such personnel based on the criteria provided by petitioner. In other words, Interserve did not obligate itself to perform an identifiable job, work, or service for petitioner, but merely bound itself to provide

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[46] *Brotherhood Labor Unity Movement of the Philippines v. Zamora*, G.R. No. L-48645, 7 January 1987, 147 SCRA 49, 59.

the latter with specific types of employees. These contractual provisions strongly indicated that Interserve was merely a recruiting and manpower agency providing petitioner with workers performing tasks directly related to the latter's principal business.

The certification issued by the DOLE stating that Interserve is an independent job contractor does not sway this Court to take it at face value, since the primary purpose stated in the Articles of Incorporation[47] of Interserve is misleading. According to its Articles of Incorporation, the principal business of Interserve is to provide janitorial and allied services. The delivery and distribution of Coca-Cola products, the work for which respondents were employed and assigned to petitioner, were in no way allied to janitorial services. While the DOLE may have found that the capital and/or investments in tools and equipment of Interserve were sufficient for an independent contractor for janitorial services, this does not mean that such capital and/or investments were likewise sufficient to maintain an independent contracting business for the delivery and distribution of Coca-Cola products.

With the finding that Interserve was engaged in prohibited labor-only contracting, petitioner shall be deemed the true employer of respondents. As regular employees of petitioner, respondents cannot be dismissed except for just or authorized causes, none of which were alleged or proven to exist in this case, the only defense of petitioner against the charge of illegal dismissal being that respondents were not its employees. Records also failed to show that petitioner afforded respondents the twin requirements of procedural due process, *i.e.*, notice and hearing, prior to their dismissal. Respondents were not served notices informing them of the particular acts for which their dismissal was sought. Nor were they required to give their side regarding the charges made against them. Certainly, the respondents' dismissal was not carried out in accordance with law and, therefore, illegal.[48]

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[47] CA *rollo*, p. 78.

[48] *Abesco Construction and Development Corporation v. Ramirez*, G.R. No. 141168, 10 April 2006, 487 SCRA 9, 15; *Grandspan Development Corporation v. Bernardo*, G.R. No. 141464, 21 September 2005, 470 SCRA

Given that respondents were illegally dismissed by petitioner, they are entitled to reinstatement, full backwages, inclusive of allowances, and to their other benefits or the monetary equivalents thereof computed from the time their compensations were withheld from them up to the time of their actual reinstatement, as mandated under Article 279 of the Labor Code.

IN VIEW OF THE FOREGOING, the instant Petition is *DENIED*. The Court *AFFIRMS WITH MODIFICATION* the Decision dated 19 February 2007 of the Court of Appeals in CA-G.R. SP No. 85320. The Court *DECLARES* that respondents were illegally dismissed and, accordingly, *ORDERS* petitioner to reinstate them without loss of seniority rights, and to pay them full back wages computed from the time their compensation was withheld up to their actual reinstatement. Costs against the petitioner.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 179556. February 13, 2009]

CONCORDIA MEDEL GOMEZ, *petitioner, vs.* **CORAZON MEDEL ALCANTARA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; DISMISSAL OF ACTIONS; EFFECT OF DISMISSAL OF THE CASE FOR

461, 470; *Raycor Aircontrol Systems, Inc. v. National Labor Relations Commission,* 330 Phil. 306, 334 (1996).

FAILURE TO PROSECUTE.— The dismissal of a case for failure to prosecute has the effect of adjudication on the merits, and is necessarily understood to be with prejudice to the filing of another action, **unless** otherwise provided in the order of dismissal. Stated differently, the general rule is that dismissal of a case for failure to prosecute is to be regarded as an adjudication on the merits and with prejudice to the filing of another action, and the only exception is when the order of dismissal expressly contains a qualification that the dismissal is without prejudice. It is clear from the Order dated 31 May 2000 that Civil Case No. 97-84159 was dismissed by the RTC of Manila, Branch 50, *motu proprio*, for failure of petitioner and her counsel to attend the scheduled hearing on said date. Since the order of dismissal did not contain any qualification whatsoever, the general rule under Section 3, Rule 17 of the Rules of Court shall apply and it shall be deemed to be an adjudication on the merits and with prejudice to the filing of another action.

2. ID.; ID.; ID.; TEST OF THE JUDICIOUS EXERCISE OF THE POWER TO DISMISS FOR FAILURE TO PROSECUTE.— This Court is not unaware that, although the dismissal of a case for failure to prosecute is a matter addressed to the sound discretion of the court, that judgment, however, must not be abused. The availability of this recourse must be determined according to the procedural history of each case, the situation at the time of the dismissal, and the diligence of the plaintiff to proceed therein. Stress must also be laid upon the official directive that courts must endeavor to convince parties in a civil case to consummate a fair settlement and to mitigate damages to be paid by the losing party who has shown a sincere desire for such give-and-take. Truly, the Court has held in the past that a court may dismiss a case on the ground of *non prosequitur,* but the real test of the judicious exercise of such power is whether, under the circumstances, plaintiff is chargeable with want of fitting assiduousness in not acting on his complaint with reasonable promptitude. Unless a party's conduct is so indifferent, irresponsible, contumacious or slothful as to provide substantial grounds for dismissal, *i.e.*, equivalent to default or non-appearance in the case, the courts should consider lesser sanctions which would still amount to achieving the desired end. In the absence of a pattern or scheme to delay the disposition of the case or of a wanton failure to

observe the mandatory requirement of the rules on the part of the plaintiff, as in the case at bar, courts should decide to dispense with rather than wield their authority to dismiss.

3. ID.; ID.; ID.; A PARTY CANNOT CLAIM DENIAL OF DUE PROCESS WITH THE DISMISSAL OF HER CASE; RELEVANT RULINGS, CITED.— [P]etitioner cannot claim that she was deprived of due process with the dismissal of Civil Case No. 04-111160. The right to due process safeguards the opportunity to be heard and to submit any evidence one may have in support of his claim or defense. Petitioner had the opportunity to be heard and submit evidence when she filed her first case, Civil Case No. 97-84159. Unfortunately, petitioner and her counsel failed to make use of the said opportunity, therefore losing the same due to their lack of diligence. It must be emphasized that the court is also duty-bound to protect the right of respondent to a just and speedy resolution of the case against her. In *Ko v. Philippine National Bank*, this Court upheld the dismissal of the complaint on the ground of lack of interest to prosecute for failure of therein petitioner and the latter's counsel to attend a scheduled trial. The Court explained therein that: In every action, the plaintiff is duty-bound to prosecute the same with utmost diligence and with reasonable dispatch to enable him to obtain the relief prayed for and, at the same time, minimize the clogging of the court dockets. The expeditious disposition of cases is as much the duty of the plaintiff as the court. It must be remembered that a defendant in a case likewise has the right to the speedy disposition of the action filed against him considering that any delay in the proceedings entail prolonged anxiety and valuable time wasted. x x x Petitioners had the opportunity to present their case and claim the relief they seek. But their inadvertence and lack of circumspect renders the trial court's order dismissing their case final and executory. In the fairly recent case of *Pasiona, Jr. v. Court of Appeals*, this Court struck down the argument that the aggrieved parties were denied due process of law, because they had the opportunity to be heard at some point in the proceedings, even if they had not been able to fully exhaust all the remedies available by reason of their counsel's negligence or mistake. Thus, in *Dela Cruz v. Andres*, the Court held that "where a party was given the opportunity to defend his interests in due course, he cannot

be said to have been denied due process of law, for this opportunity to be heard is the essence of due process."

4. ID.; ID.; JUDGMENT; *RES JUDICATA*; REQUISITES THEREOF, PRESENT.— [T]he Court can no longer delve into the legality and validity of the Order dated 31 May 2000 of the RTC of Manila, Branch 50, dismissing Civil Case No. 97-84159 for petitioner's failure to prosecute. Petitioner no longer appealed the denial of her Motion for Reconsideration of the said order of dismissal, thus, allowing it to become final and executory. Having failed to appeal from that judgment, petitioner may not abuse court processes by re-filing the same case to obviate the conclusive effects of dismissal. It now operates as *res judicata.* Based on the principle of *res judicata*, the petitioner is barred in another action (involving the same subject matter, parties and issues) from raising a defense and from asking for a relief inconsistent with an order dismissing an earlier case with prejudice. The requisites for *res judicata* to apply are: (1) the former judgment must be final; (2) the court which rendered said judgment or Order must have jurisdiction over the subject matter and the parties; (3) said judgment or order must be on the merits; and (4) there must be, between the first and second actions, identity of parties, subject matter and cause of action. All the requisites of *res judicata* are present in this case. For petitioner's failure to file an appeal from the order of dismissal dated 31 May 2000 by the RTC in Civil Case No. 97-84159, the order attained finality. The jurisdiction of the trial court to issue the order of dismissal is not in issue in this case. The order of dismissal in Civil Case No. 97-84159 is considered an adjudication on the merits applying Rule 17, Section 3 of the Rules of Court. There is no question that both Civil Case No. 04-111160 and Civil Case No. 97-84159 involved the same parties, subject matter and cause of action. Civil Case No. 97-84159 and Civil Case No. 04-111160 indubitably involve the same parties, herein petitioner and respondent. Both cases likewise revolve around the dispute between petitioner and respondent over Lot No. 2259-A. Reliefs sought by petitioner in both complaints are also identical and are not lost to this Court. To allow Civil Case No. 04-111160 is to effectively reinstate Civil Case No. 97-84159, consequently circumventing the final order dismissing the latter case with prejudice.

APPEARANCES OF COUNSEL

Edwin M. Joyas for petitioner.
Roberto T. Ongsiako for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to set aside (1) the Decision[1] dated 31 May 2007 of the Court of Appeals in CA-G.R. SP No. 96790, which dismissed, on the ground of *res judicata*, Civil Case No. 04-111160 before the Regional Trial Court (RTC) of Manila, Branch 27; and (2) the Resolution[2] dated 28 August 2007 of the appellate court denying the Motion for Reconsideration of herein petitioner Concordia Medel Gomez.

This case involves a dispute over the ownership of a parcel of land with an area of 373 square meters, denominated as Lot No. 2259-A, located in Lamayan, Sta. Ana, Manila.

On 15 July 1997, petitioner filed a Complaint[3] for specific performance and damages against respondent Corazon Medel Alcantara, docketed as **Civil Case No. 97-84-159**, and raffled to the RTC of Manila, Branch 50. Petitioner made the following allegations in her Complaint.

Petitioner is a daughter of the spouses Ponciano and Isabel Medel. Aside from petitioner, the spouses Ponciano and Isabel Medel had three other children, namely, Francisco, Teodora, and Margarita. Respondent is Margarita's eldest daughter.

Sometime in 1950, petitioner's father Ponciano demolished and renovated the dilapidated house standing on Lot No. 2259-B. Ponciano then told petitioner that he was giving her not just

[1] Penned by Associate Justice Arturo Tayag with Associate Justices Martin S. Villarama, Jr. and Hakim S. Abdulwahid, concurring. *Rollo,* pp. 9-17.

[2] *Rollo,* p. 7.

[3] *Id.* at 45.

Lot No. 2259-B and the house which stood thereon, but also the adjacent Lot No. 2259-A with an area of 373 square meters as his wedding gift, and that she was already the owner of the said properties. Consequently, petitioner transferred to her home at Lot No. 2259-B with an area of 800 square meters[4] in 1951 and raised her family there.

Apparently already intending to distribute his assets to his children while he was still alive, Ponciano, with his wife Isabel's consent, executed a Deed of Absolute Sale dated 2 August 1962, involving several parcels of land in San Andres, Manila, in favor of his four children. Francisco acquired a parcel of land with an area of 1,000 square meters, while Teodora and Margarita each received a parcel of land measuring 1,027 square meters. Petitioner received less in the distribution of the properties by her father, as it was her father's intention that Lot No. 2259-A would ultimately be given to her.

In 1967, Ponciano constructed a new house on Lot No. 2259-A. It was agreed that the new house and Lot No. 2259-A on which it stood would be initially registered in the name of petitioner's sister, Teodora, considering that she was the second eldest child, and still single and living with her parents. Ponciano, thus, authorized the transfer of the title to Lot No. 2259-A from his name to Teodora's. It was fully understood, however, that Teodora would hold the title to Lot No. 2259-A only in trust for petitioner. Petitioner's parents, Ponciano and Isabel, and sister, Teodora, eventually transferred to the new house on Lot No. 2559-A, while petitioner and her family remained at their old house on Lot No. 2559-B.

Petitioner's mother, Isabel, died in 1969. Upon the death of his wife, Ponciano became sickly and weak, such that he was no longer able to supervise his properties. In due time, Ponciano made Teodora the administrator of all his properties, entrusting her with the pertinent documents relating to said properties, among other valuables.

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[4] *Id.* at 25.

Ponciano passed away in 1972. After his death, Teodora lived alone at the house on Lot No. 2259-A. Not too long thereafter, respondent and her children moved in to live with Teodora.

In 1993, petitioner discovered that the title to Lot No. 2259-A had been transferred to respondent by virtue of a Deed of Donation[5] allegedly executed by Teodora in favor of respondent on 15 December 1980. Petitioner was totally unaware of the supposed donation, for it was done in complete secrecy that not even any of their other relatives knew about it.

Upon learning of the transfer of the title to Lot No. 2259-A to respondent's name, petitioner tried to settle the matter amicably with respondent, but to no avail. Hence, petitioner was compelled to institute on 15 July 1997, Civil Case No. 97-84159 for specific performance and Damages before the RTC of Manila, Branch 50, against respondent, praying mainly that she be declared as the owner of Lot No. 2259-A.

Initial trial was conducted by the RTC in Civil Case No. 97-84159, but it was suspended due to the retirement of the presiding judge at said court. Judge Concepcion Alarcon-Vergara took over the case and set the same for hearing on 31 May 2000.

Unfortunately, petitioner's counsel, as well as respondent and her counsel, failed to appear at the 31 May 2000 hearing.[6] Judge Alarcon-Vergara then, in her Order dated 31 May 2000, dismissed Civil Case No. 97-84159 for petitioner's failure to prosecute. Judge Alarcon-Vergara's Order reads:

> Records disclose that the testimony of the plaintiff was not completed at the time this case was scheduled for trial during the incumbency of the former Presiding Judge of Branch 50, for the reason, as the Order states, that her lawyer was newly hired. As seen from the records, plaintiff was not able to complete her testimony due to her own fault. The lawyer hired by her as replacement of her former counsel entered his appearance on January 8, 1999. The initial trial at which she testified was had on March 12, 1999, or after over two (2) months from the time her said lawyer entered his appearance,

[5] *Id.* at 41.

[6] *Id.* at 27.

such that the resetting of the case for the reason that her counsel was "newly hired" appears to be unfounded. Said plaintiff complained about the alleged inaction of the Court and even gave the impression that the Court was blameworthy when she said that all of those who have cases in said Branch were suffering from sleepless nights, anxiety and tension.

As soon as the Court received the referral, it lost no time in setting the case and forthwith served the notices to both parties thru their counsel. Both lawyers had to be served notices by the Process Server of Branch 49 as Branch 50 has not up to this issuance, been provided with a Process Server.

At the scheduled trial today, plaintiff was not again ready. Plaintiff, therefore, cannot properly be said as helping the speedy disposition of her case, much less could she complain about the delay for which she was contributory.

Wherefore, for failure of plaintiff to continue with her evidence in chief today, the Court is constrained to order her testimony thus far adduced stricken off the record and this case dismissed for plaintiff's failure to prosecute the same.

Let a copy of this Order be furnished the Office of the Honorable Court Administrator.[7]

Petitioner's counsel, Atty. Jaime B. Lumasag, Jr. filed a Motion for Reconsideration[8] of the 31 May 2000 Order of the RTC in Civil Case No. 97-84159, alleging that his failure to appear at the hearing set for that day was due to the very short notice given him. The Order setting Civil Case No. 97-84159 for hearing on 31 May 2000 was issued by the RTC only on 26 May 2000 and was received at Atty. Lumasag's office in the afternoon of the same day. Atty. Lumasag personally came to know of the notice of hearing in Civil Case No. 97-84159 on 30 May 2000 and the hearing was already scheduled for the next day, 31 May 2000.[9] Unfortunately, Atty. Lumasag already had a previous commitment to appear on the same date at the RTC of Malolos;

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[7] *Id.* at 53-54.

[8] *Id.* at 55.

[9] *Id.* at 27.

hence, he filed with the RTC of Manila an urgent motion to transfer the date of hearing in Civil Case No. 97-84159.

Atty. Lumasag set his Motion for Reconsideration for hearing on 30 June 2000 but, unfortunately, he came late for the said hearing. Judge Alarcon-Vergara immediately issued an Order denying petitioner's Motion for Reconsideration and declaring her Order dated 31 May 2000 final.

According to the RTC Order dated 30 June 2000:

> Today is June 30, 2000 and it is already past 8:30 a.m. Atty. Jaime Lumasag, in plaintiff's Motion for Reconsideration, specially the greeting portion of said motion, manifested that he will present his oral arguments today. This was his chosen date. His failure to appear on the exact time that he prayed in his motion for him to present his oral arguments, and considering that there was already an order dismissing this case for failure to prosecute, the Court is constrained to order, as it is hereby orders, the denial of said Motion for Reconsideration and this order is final.[10]

On 19 December 2000, RTC Branch 50 in Civil Case No. 97-84159 issued another Order which reads:

> The records show that plaintiff's counsel received a copy of the Order denying the Motion for Reconsideration dated June 30, 2000, on September 5, 2000. Thus, plaintiff had until September 20, 2000 within which to elevate the dismissal to the higher Courts. Failing to file any appeal or petition with the higher Courts, the dismissal had already attained finality.[11]

Petitioner no longer appealed the dismissal of Civil Case No. 97-84159 to the Court of Appeals.

Less than four years later, on 13 October 2004, petitioner filed another Complaint[12] for recovery of share of inheritance with damages against respondent, docketed as **Civil Case No. 04-111160**, which was raffled to the RTC of Manila, Branch 27.

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[10] *Id.* at 57.

[11] *Id.* at 93.

[12] *Id.* at 58.

In answer, respondent moved for the dismissal of petitioner's Complaint in Civil Case No. 04-111160. She set up, among others, the affirmative defense that the cause of action in Civil Case No. 04-111160 was barred by the prior judgment in Civil Case No. 97-84159, which was dismissed by the RTC of Manila, Branch 50, for petitioner's failure to prosecute. Respondent likewise pointed out that petitioner was actually seeking the same relief in Civil Case No. 04-111160 which she had earlier sought in Civil Case No. 97-84159. Respondent claimed that way back 15 November 1967, Ponciano and Isabel Medel sold Lot No. 2259-A to their daughter Teodora. OCT No. 5485,[13] in the name of Ponciano married to Isabel Medel, was cancelled; and a new title, TCT No. 90423,[14] was issued in favor of Teodora. On 15 December 1980, Teodora executed a Deed of Donation[15] over Lot No. 2259-A in favor of respondent. TCT No. 90423 in the name of Teodora was subsequently cancelled and a new one, TCT No. 155290,[16] was issued to respondent.

On 18 October 2005, Judge Teresa P. Soriaso of the RTC of Manila, Branch 27, issued an Order[17] in Civil Case No. 04-111160 denying the Motion to dismiss filed by the respondent which states:

> Considering that the Order dated October 10, 2005 was an inadvertence as it ordered another hearing on the affirmative defense on October 14, 2005 when one had already been made on July 22, 2005 and considering further that the assertions in the motions are evidentiary in nature and, therefore, will require a full-blown hearing before the same could properly be determined by the Court, the motion to dismiss (Affirmative Defenses) is denied.
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> Set this case for Pre-Trial on October 28, 2005 at 8:30 a.m.[18]

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[13] *Id.* at 90.

[14] *Id.* at 92.

[15] *Id.* at 41.

[16] *Id.* at 50.

[17] *Id.* at 63.

[18] *Id.* at 63.

In another Order dated 1 August 2006,[19] Judge Soriaso denied respondent's Motion for Reconsideration of her 18 October 2005 Order.

Respondent filed before the Court of Appeals a Petition for *Certiorari*[20] under Rule 65 with prayer for issuance of Temporary Restraining Order, docketed as CA-G.R. SP No. 96790. Respondent assailed in her Petition the Orders dated 18 October 2005 and 1 August 2006 of Judge Soriaso refusing to dismiss Civil Case No. 04-111160.

On 31 May 2007, the Court of Appeals promulgated its Decision sustaining respondent's position as follows:

> There is no question that the parties, subject matter and causes of action in the prior action, Civil Case No. 97-84159 and the present action, Civil Case No. 04-111160 are the same or at least identical. Furthermore, the dismissal of [herein petitioner's] first complaint in Civil Case No. 97-84159 for failure to prosecute was not appealed, hence, it became final and executory several years before [petitioner] filed her second complaint. The dismissal of the first complaint had, as Rule 17, Section 3 clearly provides, the effect of an adjudication upon the merits, the RTC – Branch 50, not having declared otherwise.[21]

The Court of Appeals, thus, decreed:

> WHEREFORE, in view of the foregoing, the instant petition is GRANTED. The 18 October 2005 and 01 August 2006 Orders of the Regional Trial Court of Manila, Branch 27 in Civil Case No. 04-111160 are REVERSED and SET ASIDE.
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> Accordingly, Civil Case No. 04-111160 is hereby DISMISSED on the ground of *res judicata*.[22]

Petitioner is presently before this Court raising the following issues:

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[19] *Id.* at 64.

[20] CA *rollo*, p. 2.

[21] *Rollo*, p. 14.

[22] *Id.* at 16.

A.

WHETHER OR NOT THE PRINCIPLE OF *RES JUDICATA* APPLIED IN THE PRESENT CASE CONSIDERING THAT THERE WAS NO TRIAL ON THE MERITS IN THE PRIOR ACTION, CIVIL CASE NO. 97-84159, BUT THE SAME WAS DISMISSED DUE TO TECHNICALITY.

B.

WHETHER OR NOT PETITIONER WAS DEPRIVED OF HER DAY IN COURT WHEN SHE WAS PREVENTED FROM PRESENTING HER CASE DUE TO THE GROSS NEGLIGENCE OF HER FORMER COUNSEL.[23]

The relevant rule in this case is Section 3, Rule 17 of the Rules of Court, which provides:

> SEC. 3. *Dismissal due to fault of plaintiff.* — If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

The afore-quoted provision enumerates the instances when a complaint may be dismissed due to the plaintiff's fault: (1) if he fails to appear on the date for the presentation of his evidence in chief on the complaint; (2) if he fails to prosecute his action for an unreasonable length of time; or (3) if he fails to comply with the Rules or any order of the court. The dismissal of a case for failure to prosecute has the effect of adjudication on the merits, and is necessarily understood to be with prejudice to the filing of another action, **unless** otherwise provided in the order of dismissal. Stated differently, the general rule is that dismissal of a case for failure to prosecute is to be regarded as an adjudication on the merits and with prejudice to the filing of another action, and the only exception is when the order of

[23] *Id.* at 194-195.

dismissal expressly contains a qualification that the dismissal is without prejudice.

It is clear from the Order dated 31 May 2000 that Civil Case No. 97-84159 was dismissed by the RTC of Manila, Branch 50, *motu proprio*, for failure of petitioner and her counsel to attend the scheduled hearing on said date. Since the order of dismissal did not contain any qualification whatsoever, the general rule under Section 3, Rule 17 of the Rules of Court shall apply and it shall be deemed to be an adjudication on the merits and with and with prejudice to the filing of another action.[24]

This Court is not unaware that, although the dismissal of a case for failure to prosecute is a matter addressed to the sound discretion of the court, that judgment, however, must not be abused. The availability of this recourse must be determined according to the procedural history of each case, the situation at the time of the dismissal, and the diligence of the plaintiff to proceed therein. Stress must also be laid upon the official directive that courts must endeavor to convince parties in a civil case to consummate a fair settlement and to mitigate damages to be paid by the losing party who has shown a sincere desire for such give-and-take.[25]

Truly, the Court has held in the past that a court may dismiss a case on the ground of *non prosequitur*, but the real test of the judicious exercise of such power is whether, under the circumstances, plaintiff is chargeable with want of fitting assiduousness in not acting on his complaint with reasonable promptitude. Unless a party's conduct is so indifferent, irresponsible, contumacious or slothful as to provide substantial grounds for dismissal, *i.e.*, equivalent to default or non-appearance in the case, the courts should consider lesser sanctions which would still amount to achieving the desired end. In the absence of a pattern or scheme to delay the disposition of the case or of a wanton failure to observe the mandatory requirement of

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[24] *Cruz v. Court of Appeals*, G.R. No. 164797, 13 February 2006, 482 SCRA 379, 388.

[25] *Belonio v. Rodriguez*, G.R. No. 161379, 11 August 2005, 466 SCRA 557, 580.

the rules on the part of the plaintiff, as in the case at bar, courts should decide to dispense with rather than wield their authority to dismiss.[26]

Nonetheless, the Court can no longer delve into the legality and validity of the Order dated 31 May 2000 of the RTC of Manila, Branch 50, dismissing Civil Case No. 97-84159 for petitioner's failure to prosecute. Petitioner no longer appealed the denial of her Motion for Reconsideration of the said order of dismissal, thus, allowing it to become final and executory. Having failed to appeal from that judgment, petitioner may not abuse court processes by re-filing the same case to obviate the conclusive effects of dismissal. It now operates as *res judicata*.[27]

Based on the principle of *res judicata*, the petitioner is barred in another action (involving the same subject matter, parties and issues) from raising a defense and from asking for a relief inconsistent with an order dismissing an earlier case with prejudice.[28]

The requisites for *res judicata* to apply are: (1) the former judgment must be final; (2) the court which rendered said judgment or Order must have jurisdiction over the subject matter and the parties; (3) said judgment or order must be on the merits; and (4) there must be, between the first and second actions, identity of parties, subject matter and cause of action.

All the requisites of *res judicata* are present in this case.

For petitioner's failure to file an appeal from the order of dismissal dated 31 May 2000 by the RTC in Civil Case No. 97-84159, the order attained finality. The jurisdiction of the trial court to issue the order of dismissal is not in issue in this case. The order of dismissal in Civil Case No. 97-84159 is considered an adjudication on the merits applying Rule 17,

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[26] *Rizal Commercial Banking Corporation v. Magwin Marketing Corporation*, 450 Phil. 721, 741-742 (2003).

[27] *Luzon Development Bank v. Conquilla*, G.R. No. 163338, 21 September 2005, 470 SCRA 533, 558.

[28] *Heirs of Juana Gaudiane v. Court of Appeals*, 469 Phil. 271, 282-283 (2004).

Section 3 of the Rules of Court. There is no question that both Civil Case No. 04-111160 and Civil Case No. 97-84159 involved the same parties, subject matter and cause of action. Civil Case No. 97-84159 and Civil Case No. 04-111160 indubitably involve the same parties, herein petitioner and respondent. Both cases likewise revolve around the dispute between petitioner and respondent over Lot No. 2259-A. Reliefs[29] sought by petitioner in both complaints are also identical and are not lost to this Court.

To allow Civil Case No. 04-111160 is to effectively reinstate Civil Case No. 97-84159, consequently circumventing the final order dismissing the latter case with prejudice.

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[29] Petitioner prayed in Civil Case No. 97-84159:

WHEREFORE, after due hearing, it is most respectfully prayed that –

1. An order be issued of this Honorable Court declaring/affirming the ownership and the possession of the subject premises at 2599 Lamayan Street, Sta. Ana, Manila;

2. The Defendant be required to surrender TCT No. 155290 with the Office of Register of Deeds for cancellation. Should she fail and refuse, an order be required against the Register of Deeds to cancel the same and issue an *alias* title in the name of Plaintiff, with all fees and expenses to be paid by Defendant;

3. An order be issued nullifying TCT No. 155290;

4. That Defendant be required to pay:

   a) ₱30,000 as attorney's fees plus cost of suit;

   b) ₱100,000 and another ₱80,000 as moral damages and exemplary damages. (*Rollo*, p. 48.)

On the other hand, in Civil Case No. 04-11160, petitioner prayed:

WHEREFORE, it is most respectfully prayed of this Honorable Court that after hearing the evidence, judgment be rendered on the following:

1. Declare plaintiff as the owner of the property formerly covered by TCT No. 5485 and now covered by TCT No. 155290 situated at No. 2599 Lamayan St., Sta. Ana, Manila, as part of her inheritance;

2. Order the private Defendant to surrender the owners copy of TCT No. 155290 to the Register of Deeds of Manila for cancellation and issuance of a new title in the name of the plaintiff;

3. Order private defendant to pay plaintiff moral damages of ₱20,000.00;

4. Order private defendant to pay exemplary damages of ₱10,000.00. (*Rollo*, p. 60.)

Lastly, petitioner cannot claim that she was deprived of due process with the dismissal of Civil Case No. 04-111160. The right to due process safeguards the opportunity to be heard and to submit any evidence one may have in support of his claim or defense. Petitioner had the opportunity to be heard and submit evidence when she filed her first case, Civil Case No. 97-84159. Unfortunately, petitioner and her counsel failed to make use of the said opportunity, therefore losing the same due to their lack of diligence. It must be emphasized that the court is also duty-bound to protect the right of respondent to a just and speedy resolution of the case against her.

In *Ko v. Philippine National Bank*,[30] this Court upheld the dismissal of the complaint on the ground of lack of interest to prosecute for failure of therein petitioner and the latter's counsel to attend a scheduled trial. The Court explained therein that:

> In every action, the plaintiff is duty-bound to prosecute the same with utmost diligence and with reasonable dispatch to enable him to obtain the relief prayed for and, at the same time, minimize the clogging of the court dockets. The expeditious disposition of cases is as much the duty of the plaintiff as the court. It must be remembered that a defendant in a case likewise has the right to the speedy disposition of the action filed against him considering that any delay in the proceedings entail prolonged anxiety and valuable time wasted.
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> xxx xxx xxx
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> Petitioners had the opportunity to present their case and claim the relief they seek. But their inadvertence and lack of circumspect renders the trial court's order dismissing their case final and executory.

In the fairly recent case of *Pasiona, Jr. v. Court of Appeals*,[31] this Court struck down the argument that the aggrieved parties were denied due process of law, because they had the opportunity to be heard at some point in the proceedings, even if they had not been able to fully exhaust all the remedies available by reason of their counsel's negligence or mistake. Thus, in *Dela*

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[30] G.R. Nos. 169131-32, 20 January 2006, 479 SCRA 298, 305-306.

[31] G.R. No. 165471, 21 July 2008, 559 SCRA 137, 148-149.

Cruz v. Andres,[32] the Court held that "where a party was given the opportunity to defend his interests in due course, he cannot be said to have been denied due process of law, for this opportunity to be heard is the essence of due process." In the earlier case of *Producers Bank of the Philippines v. Court of Appeals*,[33] the decision of the trial court attained finality by reason of counsel's failure to timely file a notice of appeal, and such negligence did not deprive petitioner of due process of law. As elucidated by the Court in said case, to wit:

"**The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense**. x x x. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of due process."

Verily, so long as a party is given the opportunity to advocate her cause or defend her interest in due course, it cannot be said that there was denial of due process. x x x. (Emphases supplied.)

Also, in *Victory Liner, Inc. v. Gammad*,[34] the Court held that:

The question is not whether petitioner succeeded in defending its rights and interests, but simply, whether it had the opportunity to present its side of the controversy. x x x. (Emphasis supplied.)

WHEREFORE, premises considered, the instant Petition is *DENIED* for lack of merit and the Decision dated 31 May 2007 and Resolution dated 28 August 2007 of the Court of Appeals in CA-G.R. SP No. 96790 are *AFFIRMED*. Costs against the petitioner.

SO ORDERED.

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

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[32] G.R. No. 161864, 27 April 2007, 522 SCRA 585, 590.

[33] 430 Phil. 812, 825-826 (2002).

[34] G.R. No. 159636, 25 November 2004, 444 SCRA 355, 363.

THIRD DIVISION

[G.R. No. 182426. February 13, 2009]

ZENAIDA POLANCO, CARLOS DE JESUS, AVELINO DE JESUS, BABY DE JESUS, LUZ DE JESUS, and DEMETRIO SANTOS, *petitioners, vs.* **CARMEN CRUZ, represented by her attorney-in-fact, VIRGILIO CRUZ,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; ELEMENTS THEREOF, NOT PRESENT.— [T]his Court does not find respondent's allegations in her complaint in Civil Case No. 542-M-00 to be constitutive of the elements of forum-shopping. Respondent merely described herself as a tenant of petitioners and mentioned that there was an unlawful detainer case involving the parcel of land which is also involved in the instant civil case for damages. There is forum-shopping when as a result of an adverse decision in one forum, or in anticipation thereof, a party seeks a favorable opinion in another forum through means other than appeal or *certiorari*. Forum-shopping exists when two or more actions involve the same transactions, essential facts, and circumstances; and raise identical causes of action, subject matter, and issues. Still another test of forum-shopping is when the elements of *litis pendencia* are present or where a final judgment in one case will amount to *res judicata* in another – whether in the two or more pending cases, there is an identity of (a) parties (or at least such parties as represent the same interests in both actions), (b) rights or causes of action, and (c) reliefs sought. Although there is an identity of some of the parties in the instant case for damages and the unlawful detainer case, there is, however, no identity of reliefs prayed for. The former is for recovery of damages allegedly caused by petitioners' acts on respondent's *palay* crops; while the latter case involved possessory and tenancy rights of respondent. As such, respondent did not violate the rule on forum-shopping.

2. ID.; ID.; PRE-TRIAL; DISMISSAL OF THE COMPLAINT IS TOO SEVERE A SANCTION FOR PLAINTIFF'S FAILURE

TO FILE A MOTION TO SET THE CASE FOR PRE-TRIAL.— Section 1, Rule 18 of the 1997 Rules of Civil Procedure imposes upon the plaintiff the duty to promptly move *ex parte* to have the case set for pre-trial after the last pleading has been served and filed. Moreover, Section 3, Rule 17 provides that failure on the part of the plaintiff to comply with said duty without any justifiable cause may result to the dismissal of the complaint for failure to prosecute his action for an unreasonable length of time or failure to comply with the rules of procedure. It must be stressed that even if the plaintiff fails to promptly move for pre-trial without any justifiable cause for such delay, the extreme sanction of dismissal of the complaint might not be warranted if no substantial prejudice would be caused to the defendant, and there are special and compelling reasons which would make the strict application of the rule clearly unjustified. In the instant case, the Court of Appeals correctly held that the dismissal of respondent's complaint is too severe a sanction for her failure to file a motion to set the case for pre-trial. It must be pointed out that respondent prosecuted her action with utmost diligence and with reasonable dispatch since filing the complaint – she filed an opposition to petitioners' motion to dismiss the complaint; a comment to petitioners' motion for reconsideration of the December 4, 2000 Order of the trial court; and an Answer to Counterclaim of petitioners. When the trial court issued an order dismissing the case, respondent filed without delay a motion for reconsideration; and upon its denial, she immediately filed a Notice of Appeal. Moreover, contrary to petitioners' claim that respondent was silent for one year since she filed her Answer to Counterclaim until the trial court's dismissal order, records show that between said period, both parties and the trial court were threshing out petitioners' motion for reconsideration of the December 4, 2000 Order. While "heavy pressures of work" was not considered a persuasive reason to justify the failure to set the case for pre-trial in *Olave v. Mistas*, however, unlike the respondents in the said case, herein respondent never failed to comply with the Rules of Court or any order of the trial court at any other time. Failing to file a motion to set the case for pre-trial was her first and only technical lapse during the entire proceedings. Neither has she manifested an evident pattern or a scheme to delay the disposition of the case nor a wanton failure to observe the mandatory requirement of the rules. Accordingly, the ends of justice and fairness would best

be served if the parties are given the full opportunity to litigate their claims and the real issues involved in the case are threshed out in a full-blown trial. Besides, petitioners would not be prejudiced should the case proceed as they are not stripped of any affirmative defenses nor deprived of due process of law.

3. ID.; ID.; ID.; IT IS NOW THE DUTY OF THE CLERK OF COURT TO ISSUE A NOTICE OF PRE-TRIAL UPON FAILURE OF THE PLAINTIFF TO FILE A MOTION WITHIN THE GIVEN PERIOD.— A.M. No. 03-1-09-SC or the new *Guidelines To Be Observed By Trial Court Judges And Clerks Of Court In The Conduct Of Pre-Trial And Use Of Deposition-Discovery Measures*, which took effect on August 16, 2004, aims to abbreviate court proceedings, ensure prompt disposition of cases and decongest court dockets, and to further implement the pre-trial guidelines laid down in Administrative Circular No. 3-99 dated January 15, 1999. A.M. No. 03-1-09-SC states that: "Within five (5) days from date of filing of the reply, the plaintiff must promptly move *ex parte* that the case be set for pre-trial conference. If the plaintiff fails to file said motion within the given period, the Branch COC shall issue a notice of pre-trial." As such, the clerk of court of Branch 17 of the Regional Trial Court of Malolos should issue a notice of pre-trial to the parties and set the case for pre-trial.

APPEARANCES OF COUNSEL

Dhylyne Enchon B. Espejo for petitioners.
Punzalan and Punongbayan Law Office for respondent.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This Petition for Review on *Certiorari*[1] assails the August 28, 2007 Decision[2] of the Court of Appeals in CA-G.R. CV No. 75079, setting aside the Order[3] of Branch 17 of the Regional Trial

[1] *Rollo*, pp. 3-10.

[2] *Id.* at 15-23; penned by Associate Justice Edgardo F. Sundiam and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Monina Arevalo-Zenarosa.

[3] *Id.* at 82.

Court of Malolos in Civil Case No. 542-M-2000, which dismissed respondent's Complaint[4] for failure to prosecute. Also assailed is the March 28, 2008 Resolution[5] denying petitioners' Motion for Reconsideration.[6]

The facts are as follows:

Respondent Carmen Cruz, through her attorney-in-fact, Virgilio Cruz, filed a complaint for damages[7] against petitioners for allegedly destroying her *palay* crops. While admitting that petitioners own the agricultural land she tilled, respondent claimed she was a lawful tenant thereof and had been in actual possession when petitioners maliciously filled so with soil and *palay* husk on July 1 and 2, 2000. Respondent prayed that petitioners be held liable for actual damages, moral damages, exemplary damages, litigation expenses and attorney's fees, and costs of the suit.

Petitioners filed a Motion to Dismiss,[8] which was denied by the trial court in an Order[9] dated December 4, 2000. It held that it has jurisdiction over the case because the allegations in the Complaint made a claim for damages, and not an agrarian dispute which should be referred to the Department of Agrarian Reform Adjudication Board (DARAB); and that the Complaint was properly filed because the Certification of Non-forum Shopping was signed by respondent's attorney-in-fact.

Petitioners simultaneously filed an Answer[10] to the complaint and a Motion for Reconsideration[11] of the December 4, 2000

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[4] *Id*. at 34-37.

[5] *Id*. at 31-33.

[6] *Id*. at 24-29.

[7] Carmen Cruz, represented by her attorney-in fact, *Virgilio Cruz, plaintiff v. Carlos De Jesus, Avelino De Jesus, Carlos De Jesus, Alias Supit De Jesus, Baby De Jesus, Luz De Jesus, Zanaida Polanco, and Demetrio Santos, defendants*, Civil Case No. 542-M-00.

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

[9] *Id*. at 62-63.

[10] *Id*. at 71-74.

[11] *Id*. at 64-69.

Order. However, the court *a quo* denied the motion for lack of merit in an Order[12] dated September 10, 2001. On January 9, 2002, the trial court issued an Order[13] dismissing the case due to respondent's failure to prosecute.

With the denial[14] of her Motion for Reconsideration,[15] respondent interposed an appeal to the Court of Appeals which rendered the assailed Decision dated August 28, 2007, the dispositive portion of which states:

> WHEREFORE, the appeal is hereby GRANTED. Accordingly, the Order, dated January 9, 2002, of the RTC [Branch 17, Malolos] is hereby REVERSED and SET ASIDE. Plaintiff-appellant's Complaint is hereby REINSTATED and the case is hereby REMANDED to the RTC [Branch 17, Malolos] for further proceedings.
>
> SO ORDERED.[16]

The Court of Appeals ruled that the trial court erred in finding that the parties failed to take necessary action regarding the case because the records plainly show that petitioners filed an Answer to the complaint, while respondent filed an Opposition to the Motion for Reconsideration with Manifestation Re: Answer of Defendants.[17]

With regard to the order of the trial court dismissing the complaint on the ground of failure to prosecute, the appellate court held that the previous acts of respondent do not manifest lack of interest to prosecute the case; that since filing the Complaint, respondent filed an Opposition to petitioners' Motion to Dismiss, an Answer to petitioners' counterclaim, and a Comment to petitioners' Motion for Reconsideration; that respondent did not ignore petitioners' Motion to Dismiss nor did she repeatedly fail to appear before the court; that no substantial prejudice

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[12] *Id*. at 80-81.

[13] *Id*. at 82.

[14] *Id*. at 89-90.

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

[16] *Id*. at 22-23.

[17] *Id*. at 85-87.

would be caused to petitioners and that strict application of the rule on dismissal is unjustified considering the absence of pattern or scheme to delay the disposition of the case on the part of respondent; and that justice would be better served if the case is remanded to the trial court for further proceedings and final disposition.

On March 28, 2008, the Court of Appeals denied petitioners' Motion for Reconsideration; hence, this petition based on the following ground:

WHETHER OR NOT THE DECISION OF THE HONORABLE COURT OF APPEALS IN C.A.-G.R. CV No. 75079, NULLIFYING AND/OR REVERSING AND/OR SETTING ASIDE THE ORDERS DATED JANUARY 9, 2002 AND MAY 8, 2002 ISSUED BY THE RTC-BULACAN IN CIVIL CASE No. 542-M-00, IS CONTRARY TO LAW AND PREVAILING JURISPRUDENCE.

Petitioners allege that respondent failed to comply with the mandate of the 1997 Rules of Civil Procedure to promptly move for the setting of the case for pre-trial; that "heavy pressures of work" does not justify the failure to move for the setting of the case for pre-trial; that the allegations in the Complaint which pertain to respondent's status as a tenant of Elena C. De Jesus amount to forum shopping that would extremely prejudice them. Petitioners thus pray for the nullification of the Decision and Resolution of the Court of Appeals and the affirmation of the dismissal of the Complaint by the trial court.

The petition lacks merit.

The Court of Appeals correctly noted that petitioners raised the matter of respondent's alleged forum shopping for the first time only in their Motion for Reconsideration. Issues not previously ventilated cannot be raised for the first time on appeal,[18] much less when first raised in the motion for reconsideration of a decision of the appellate court.

At any rate, this Court does not find respondent's allegations in her complaint in Civil Case No. 542-M-00 to be constitutive

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[18] *Rasdas v. Estenor*, G.R. No. 157605, December 13, 2005, 477 SCRA 538, 551.

of the elements of forum-shopping. Respondent merely described herself as a tenant of petitioners and mentioned that there was an unlawful detainer case[19] involving the parcel of land which is also involved in the instant civil case for damages.

There is forum-shopping when as a result of an adverse decision in one forum, or in anticipation thereof, a party seeks a favorable opinion in another forum through means other than appeal or *certiorari*. Forum-shopping exists when two or more actions involve the same transactions, essential facts, and circumstances; and raise identical causes of action, subject matter, and issues. Still another test of forum-shopping is when the elements of *litis pendencia* are present or where a final judgment in one case will amount to *res judicata* in another – whether in the two or more pending cases, there is an identity of (a) parties (or at least such parties as represent the same interests in both actions), (b) rights or causes of action, and (c) reliefs sought.[20]

Although there is an identity of some of the parties in the instant case for damages and the unlawful detainer case, there is, however, no identity of reliefs prayed for. The former is for recovery of damages allegedly caused by petitioners' acts on respondent's *palay* crops; while the latter case involved possessory and tenancy rights of respondent. As such, respondent did not violate the rule on forum-shopping.

Section 1, Rule 18 of the 1997 Rules of Civil Procedure imposes upon the plaintiff the duty to promptly move *ex parte* to have the case set for pre-trial after the last pleading has been served and filed. Moreover, Section 3, Rule 17[21] provides that

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[19] *Estate of Guillermo de Jesus and Elena C. De Jesus v. Carmen Cruz, and all persons claiming right under her*, SP Civil Action No. 65 for Unlawful Detainer with TRO/Injunction in Municipal Trial Court of Calumpit, Bulacan and Civil Case No. 1013-M-99 for Unlawful Detainer with TRO/ Injunction in Regional Trial Court of Malolos, Branch 14.

[20] *National Electrification Administration (NEA) v. Buenaventura*, G.R. No. 132453, February 14, 2008, 545 SCRA 277, 288-289.

[21] RULES OF COURT, Rule 17, Sec. 3: Dismissal due to fault of plaintiff. — If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his

failure on the part of the plaintiff to comply with said duty without any justifiable cause may result to the dismissal of the complaint for failure to prosecute his action for an unreasonable length of time or failure to comply with the rules of procedure.

It must be stressed that even if the plaintiff fails to promptly move for pre-trial without any justifiable cause for such delay, the extreme sanction of dismissal of the complaint might not be warranted if no substantial prejudice would be caused to the defendant, and there are special and compelling reasons which would make the strict application of the rule clearly unjustified.[22]

In the instant case, the Court of Appeals correctly held that the dismissal of respondent's complaint is too severe a sanction for her failure to file a motion to set the case for pre-trial. It must be pointed out that respondent prosecuted her action with utmost diligence and with reasonable dispatch since filing the complaint – she filed an opposition to petitioners' motion to dismiss the complaint; a comment to petitioners' motion for reconsideration of the December 4, 2000 Order of the trial court; and an Answer to Counterclaim of petitioners. When the trial court issued an order dismissing the case, respondent filed without delay a motion for reconsideration; and upon its denial, she immediately filed a Notice of Appeal.[23] Moreover, contrary to petitioners' claim that respondent was silent for one year since she filed her Answer to Counterclaim until the trial court's dismissal order,[24] records show that between said period, both parties and the trial court were threshing out petitioners' motion for reconsideration of the December 4, 2000 Order.

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action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

[22] *Olave v. Mistas*, G.R. No. 155193, November 26, 2004, 444 SCRA 479, 495.

[23] Records, pp. 99-100.

[24] *Rollo*, pp. 138, 140, 142.

While "heavy pressures of work" was not considered a persuasive reason to justify the failure to set the case for pre-trial in *Olave v. Mistas*,[25] however, unlike the respondents in the said case, herein respondent never failed to comply with the Rules of Court or any order of the trial court at any other time. Failing to file a motion to set the case for pre-trial was her first and only technical lapse during the entire proceedings. Neither has she manifested an evident pattern or a scheme to delay the disposition of the case nor a wanton failure to observe the mandatory requirement of the rules. Accordingly, the ends of justice and fairness would best be served if the parties are given the full opportunity to litigate their claims and the real issues involved in the case are threshed out in a full-blown trial. Besides, petitioners would not be prejudiced should the case proceed as they are not stripped of any affirmative defenses nor deprived of due process of law.

This is not to say that adherence to the Rules could be dispensed with. However, exigencies and situations might occasionally demand flexibility in their application.[26] Indeed, on several occasions, the Court relaxed the rigid application of the rules of procedure to afford the parties opportunity to fully ventilate the merits of their cases. This is in line with the time-honored principle that cases should be decided only after giving all parties the chance to argue their causes and defenses. Technicality and procedural imperfection should thus not serve as basis of decisions.[27]

Finally, A.M. No. 03-1-09-SC or the new *Guidelines To Be Observed By Trial Court Judges And Clerks Of Court In The Conduct Of Pre-Trial And Use Of Deposition-Discovery Measures*, which took effect on August 16, 2004, aims to abbreviate court proceedings, ensure prompt disposition of cases and decongest court dockets, and to further implement the pre-

[25] *Supra* note 22.

[26] *Republic of the Philippines v. Oleta*, G.R. No. 156606, August 17, 2007, 530 SCRA 534, 542.

[27] *Crystal Shipping, Inc. v. Natividad*, G.R. No. 154798, October 20, 2005, 473 SCRA 559, 565-566.

trial guidelines laid down in Administrative Circular No. 3-99[28] dated January 15, 1999. A.M. No. 03-1-09-SC states that: "Within five (5) days from date of filing of the reply,[29] the plaintiff must promptly move *ex parte* that the case be set for pre-trial conference.[30] If the plaintiff fails to file said motion within the given period, the Branch COC shall issue a notice of pre-trial." As such, the clerk of court of Branch 17 of the Regional Trial Court of Malolos should issue a notice of pre-trial to the parties and set the case for pre-trial.

WHEREFORE, the Petition for Review on *Certiorari* is *DENIED*. The August 28, 2007 Decision of the Court of Appeals in CA-G.R. CV No. 75079, setting aside the Order of Branch 17 of the Regional Trial Court of Malolos dismissing Civil Case No. 542-M-2000 for respondent's failure to prosecute, and its March 28, 2008 Resolution denying petitioners' Motion for Reconsideration are *AFFIRMED*. The clerk of court of Branch 17 of the Regional Trial Court of Malolos is *DIRECTED* to issue a notice of pre-trial to the parties.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and *Peralta, JJ.*, concur.

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[28] Strict Observance of Session Hours of Trial Courts and Effective Management of Cases to Ensure their Speedy Disposition.

[29] Administrative Circular No. 3-99 dated 15 January 1999.

[30] 1997 RULES OF CIVIL PROCEDURE, Rule 18, Sec. 1.

THIRD DIVISION

[G.R. No. 183270. February 13, 2009]

RUFINA L. CALIWAN, *petitioner, vs.* **MARIO OCAMPO, OFELIA OCAMPO and RHODORA PASILONA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ORDERS; INTERLOCUTORY ORDER, DEFINED.— An ***interlocutory order*** is one that does not finally dispose of the case and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court. The word "interlocutory" refers to something intervening between the commencement and the end of a suit which decides some point or matter but is not a final decision of the whole controversy. Interlocutory orders merely rule on an incidental issue and do not terminate or finally dispose of the case as they leave something to be done before it is finally decided on the merits.

2. ID.; ID.; ID.; AN ORDER DENYING A MOTION FOR WITHDRAWAL OF INFORMATION IS INTERLOCUTORY.— The June 6, 2006 Order of the Metropolitan Trial Court is an interlocutory order. Similar to an order denying a motion to dismiss, an order denying a motion for withdrawal of information is interlocutory as it does not finally dispose of the case nor does it determine the rights and liabilities of the parties as regards each other.

3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI* IS NOT THE PROPER REMEDY BEING A PROHIBITED PETITION UNDER THE RULES ON SUMMARY PROCEDURE.— The June 6, 2006 Order of the Metropolitan Trial Court being interlocutory and the case falling under the 1991 Revised Rules on Summary Procedure, the Regional Trial Court erred in taking cognizance of the petition for *certiorari* despite the clear prohibition in Section 19. Indeed, as held in *Villanueva, Jr. v. Estoque*, there can be no mistaking the clear command of Section 19 (e) of the 1991 Revised Rules on Summary

Procedure and judges have no option but to obey. When the law is clear, there is no room for interpretation. Instead of filing a petition for *certiorari*, petitioner could ventilate her defenses before the Metropolitan Trial Court during the trial of the case. In the event that the Metropolitan Trial Court's decision is adverse to her cause, she could avail of the remedy of appeal as provided in Section 21 of the 1991 Revised Rules on Summary Procedure. The 1991 Revised Rules on Summary Procedure was promulgated to achieve an expeditious and inexpensive determination of cases. It was conceptualized to facilitate the immediate resolution of cases. Respect for the Rule on Summary Procedure as a practicable norm for the expeditious resolution of cases like the one at bar could have avoided lengthy litigation that has unduly imposed on the time of the Court. We need not discuss whether the Metropolitan Trial Court erred in denying the Motion for Withdrawal of Information because to entertain said issue would, in effect, give due course to the prohibited petition for *certiorari*.

4. ID.; CRIMINAL PROCEDURE; ONCE THE COMPLAINT OR INFORMATION IS FILED IN COURT, ANY DISPOSITION OF THE CASE RESTS ON THE SOUND DISCRETION OF THE COURT.— Suffice it to say that although the institution of criminal actions depends on the sound discretion of the fiscal, once a case is filed in court, it can no longer be withdrawn or dismissed without the court's approval. Moreover, while the Secretary of Justice has the power to alter or modify the resolution of his subordinate and thereafter direct the withdrawal of the case, he cannot, however, impose his will on the court. Indeed, once a complaint or information is filed in Court, any disposition of the case, *i.e.*, its dismissal or the conviction or acquittal of the accused, rests on the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of the criminal cases even while the case is already in Court, he cannot impose his opinion on the trial court. The determination of the case is within the court's exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the sound discretion of the Court which has the option to grant or deny the same.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Emilio M. Llanes & Associates Law Office for respondents.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This petition for review on *certiorari* seeks to annul and set aside the March 17, 2008 Decision[1] of the Court of Appeals in CA-G.R. SP No. 99845 reversing the April 30, 2007 Decision[2] of the Regional Trial Court of Pasay City, Branch 119 in Special Civil Case No. 06-0020-CFM and reinstating the June 6, 2006 Order of the Metropolitan Trial Court of Pasay City, Branch 47 which denied the Motion for Withdrawal of Information filed by the Office of the City Prosecutor of Pasay City, as well as its June 5, 2008 Resolution[3] denying the motion for reconsideration.

In 2004, petitioner Rufina L. Caliwan filed a complaint[4] for attempted murder, multiple serious physical injuries, slander by deed, grave threats, and grave oral defamation against respondents SPO4 Mario Ocampo, Ofelia Ocampo, and Rhodora Pasilona before the Pasay City Prosecutor's Office. As counter-charges, respondents filed complaints for grave threats, oral defamation, alarms and scandals,[5] and physical injuries and oral defamation[6] against petitioner.

The antecedents of the case, as summarized by the Office of the Secretary of Justice are as follows:

Rufina Caliwan presents her evidence as follows: On September 4, 2004, at about 3:00 o'clock in the afternoon, while she was singing

[1] *Rollo*, pp. 44-53; penned by Associate Justice Jose C. Reyes, Jr. and concurred in by Associate Justices Jose L. Sabio, Jr. and Myrna Dimaranan Vidal.

[2] *Id.* at 57-66; penned by Judge Pedro de Leon Gutierrez.

[3] *Id.* at 200.

[4] I.S. No. 04-J-5238.

[5] I.S. No. 04-K-5343.

[6] I.S. No. 04-K-5344.

inside her house and hosting a party on the occasion of her birthday, stones were thrown on the roof of her house coming from the direction of SPO4 Mario Ocampo's house, her neighbor. She reported the incident to the *barangay* officials, which called the parties for conciliation. However, the Ocampos refused to appear at the *barangay* hall. In the evening of that date, Rhodora Pasilona and Ofelia Ocampo, presumably irked by her complaint in the *barangay*, shouted at her defamatory words like "*pokpok, puta, bobo, sira ulo, tarantada*" in the presence of her guests, who were still attending the party. Days later, and after the dismissal of the Ocampo's complaint filed before the DECS against her, SPO4 Mario Ocampo would make it a point to intercept her whenever she passes by in front of their house. With threatening looks, he usually places his hand in the position of drawing his service firearm.

The Ocampo's, on the other hand, gave their version of the incident as follows: At about 10:30 in the morning of the (*sic*) September 4, 2004, they noticed the loud voices, laughing and singing of Rufina Caliwan and her guests, which they later came to know was due to her on going birthday celebration. SPO4 Mario Ocampo was on duty at the police precinct at that time. Despite the fact that they were being disturbed by the noise, they did not anymore reacted (*sic*) to it just to avoid any misunderstanding with Rufina Caliwan. Around 10:30 in the evening of the same day, Rufina Caliwan went out of her house with her visitors. Apparently drunk, she suddenly shouted the following: "*Hoy bumaba kayong lahat dyan. Anong gusto nyo, barilan o bugbugan? Tama ang sabi ni Dahlia na mga inggetera kayo. Mga pangit kayo. Mga putang ina nyo. Masama ang mga ugali nyo. Bukas paglabas nyo pagpapatayin ko kayo*." To prevent any untoward incident, they just waited when Rufina Caliwan went inside her house and just reported the matter to the *barangay*. A conciliation proceeding was set by the barangay regarding the matter on October 14, 2004 at the *barangay* hall of Barangay 201 Kalayaan Village. After the conciliation proceedings, Ofelia Ocampo and Rhodora Pasilona were about to go home at about 12 noon, when Rufina Caliwan suddenly assaulted Rhodora Pasilona, while uttering "*Tarantada, Putang ina mo. Hayop kang bata ka*!" The *barangay* officials who were present witnessed the whole incident. Rhodora Pasilona, thereafter, went to the Pasay City General Hospital to seek medical attendance for the injuries she sustained.[7]

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[7] Resolution of the Department of Justice dated March 2, 2006; *rollo*, pp. 35-36.

The charges and counter-charges being interwoven were consolidated and investigated jointly. In its February 24, 2005 Resolution,[8] the Office of the City Prosecutor of Pasay City, through Assistant City Prosecutor Eva C. Portugal-Atienza, recommended the dismissal of the complaint filed by petitioner for lack of evidence, and recommended that petitioner be charged with light threats and slight physical injuries. Two separate Informations for light threats and slight physical injuries were filed against petitioner before the Metropolitan Trial Court of Pasay City.

Petitioner appealed to the Department of Justice (DOJ) which issued a Resolution[9] dated March 2, 2006 finding a *prima facie* case and/or probable cause for the offense of light threats against SPO4 Mario Ocampo, and for the offenses of grave oral defamation and slight physical injuries against Ofelia Ocampo and Rhodora Pasilona, and consequently ordered the filing of corresponding informations against the respondents.[10] The DOJ also ordered the dismissal of the rest of the charges, as well as the withdrawal of the Informations for light threats and slight physical injuries against petitioner.[11]

Consequently, a Motion for Withdrawal of Information[12] was filed seeking the withdrawal of the Informations charging petitioner with light threats and slight physical injuries.

However, the motion was denied by the Metropolitan Trial Court of Pasay City, Branch 47,[13] in its Order dated June 6, 2006,[14] thus:

A perusal of the records and a careful evaluation of the factual allegations in the information including the supporting documents

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[8] *Rollo*, pp. 29-32.

[9] *Id.* at 34-43.

[10] *Id.* at 41.

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

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

[13] Penned by Judge Gina M. Bibat-Palamos.

[14] *Rollo*, pp. 112-113.

attached thereto will show that there exists probable cause to continue with the proceedings of the case. The matters raised by the accused are evidentiary in nature which should be properly threshed out in a full blown trial. The findings of the Department of Justice is not a rubber stamp for the court to follow.

xxx xxx xxx

As correctly pointed to by the private prosecutor, the instant motions failed to comply with the three-day notice rule provided for under Sections 4 and 5 (*Rule 15*) of the Rules of Court. These motions are considered litigated motions as the rights of the private complainant may be clearly impaired, hence they cannot be heard *ex-parte*. As the requirement for notice was not followed, the same is fatal and the motion is just a mere scrap of paper with no legal effect.

Petitioner filed a petition for *certiorari* before the Regional Trial Court of Pasay City which granted the petition, thus:

WHEREFORE, the petition for *certiorari* of petitioner Rufina Caliwan is hereby granted. The assailed Order dated June 6, 2006 of MTC, Branch 47, Pasay City is reversed and set aside and the Motion to Withdraw Information dated March 15, 2006 of the Office of the City Prosecutor of Pasay City is granted and Criminal Case No. 05-517 CFM for slight physical injuries and Criminal Case No. 05-518 CFM of light threats against Accused Rufina Caliwan are hereby dismissed.

SO ORDERED.[15]

Respondents thus appealed to the Court of Appeals. The appellate court reversed the Decision of the Regional Trial Court and reinstated the June 6, 2006 Order of the Metropolitan Trial Court denying the motion to withdraw Information. At the same time, the court *a quo* was ordered to proceed with the trial of the case with dispatch.

Petitioner moved for reconsideration, however it was denied.

Hence, the instant petition for review on *certiorari* raising the following issues:[16]

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[15] *Id*. at 66.

[16] *Id*. at 19.

WHETHER OR NOT THE METROPOLITAN TRIAL COURT ERRED IN DENYING THE MOTION OF THE PUBLIC PROSECUTOR TO THE WITHDRAWAL OF THE INFORMATION ON THE GROUND THAT THE MOTION FILED WAS DEFECTIVE, AND WITHOUT CONSIDERATION TO THE RIGHTS OF THEREIN NAMED ACCUSED.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN REVERSING THE DECISION OF THE REGIONAL TRIAL COURT AND UPHOLDING THE DECISION OF THE METROPOLITAN TRIAL COURT.

The petition lacks merit.

The charges against petitioner are light threats[17] and slight physical injuries,[18] to which the applicable rule is the 1991 Revised Rules on Summary Procedure. Section 19 thereof provides:

SEC. 19. *Prohibited pleadings and motions*. — The following pleadings, motions, or petitions shall not be allowed in the cases covered by this Rule:

xxx xxx xxx

(g) Petition for *certiorari, mandamus,* or prohibition against any interlocutory order issued by the court;

An ***interlocutory order*** is one that does not finally dispose of the case and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court.[19] The word "interlocutory" refers to something intervening between the commencement and the end of a suit which decides some point or matter but is not a final decision of the whole controversy.[20] Interlocutory orders merely rule on an incidental issue and do not terminate

[17] Punishable by *arresto mayor*

[18] Punishable by *arresto menor*

[19] *Rudecon Management Corporation v. Singson*, G.R. No. 150798, March 31, 2005, 454 SCRA 612, 628.

[20] *Id.* at 627-628.

or finally dispose of the case as they leave something to be done before it is finally decided on the merits.[21]

The June 6, 2006 Order of the Metropolitan Trial Court is an interlocutory order. Similar to an order denying a motion to dismiss, an order denying a motion for withdrawal of information is interlocutory as it does not finally dispose of the case nor does it determine the rights and liabilities of the parties as regards each other.

The June 6, 2006 Order of the Metropolitan Trial Court being interlocutory and the case falling under the 1991 Revised Rules on Summary Procedure, the Regional Trial Court erred in taking cognizance of the petition for *certiorari* despite the clear prohibition in Section 19.

Indeed, as held in *Villanueva, Jr. v. Estoque*,[22] there can be no mistaking the clear command of Section 19 (e) of the 1991 Revised Rules on Summary Procedure and judges have no option but to obey. When the law is clear, there is no room for interpretation.

Instead of filing a petition for *certiorari*, petitioner could ventilate her defenses before the Metropolitan Trial Court during the trial of the case. In the event that the Metropolitan Trial Court's decision is adverse to her cause, she could avail of the remedy of appeal as provided in Section 21 of the 1991 Revised Rules on Summary Procedure.[23]

The 1991 Revised Rules on Summary Procedure was promulgated to achieve an expeditious and inexpensive determination of cases.[24] It was conceptualized to facilitate the immediate resolution of cases. Respect for the Rule on Summary

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[21] *Repol v. COMELEC*, G.R. No. 161418, April 28, 2004, 428 SCRA 321, 327-328.

[22] A.M. No. RTJ-99-1494, November 29, 2000, 346 SCRA 230, 234.

[23] SEC. 21. *Appeal*. — The judgment or final order shall be appealable to the appropriate Regional Trial Court which shall decide the same in accordance with Section 22 of Batas Pambansa Blg. 129. The decision of the Regional Trial Court in civil cases governed by this Rule, including forcible entry and unlawful detainer, shall be immediately executory, without prejudice to a further appeal that may be taken therefrom. Section 10 of Rule 70 shall be deemed repealed.

[24] 1991 Revised Rules on Summary Procedure, foreword.

Procedure as a practicable norm for the expeditious resolution of cases like the one at bar could have avoided lengthy litigation that has unduly imposed on the time of the Court.[25]

We need not discuss whether the Metropolitan Trial Court erred in denying the Motion for Withdrawal of Information because to entertain said issue would, in effect, give due course to the prohibited petition for *certiorari*. Suffice it to say that although the institution of criminal actions depends on the sound discretion of the fiscal, once a case is filed in court, it can no longer be withdrawn or dismissed without the court's approval. Moreover, while the Secretary of Justice has the power to alter or modify the resolution of his subordinate and thereafter direct the withdrawal of the case, he cannot, however, impose his will on the court.[26]

Indeed, once a complaint or information is filed in Court, any disposition of the case, *i.e.*, its dismissal or the conviction or acquittal of the accused, rests on the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of the criminal cases even while the case is already in Court, he cannot impose his opinion on the trial court. The determination of the case is within the court's exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the sound discretion of the Court which has the option to grant or deny the same.

WHEREFORE, the petition is *DENIED*. The assailed Decision of the Court of Appeals dated March 17, 2008 reinstating the June 6, 2006 Order of the Metropolitan Trial Court which denied the Motion for Withdrawal of Information filed by the Office of the City Prosecutor of Pasay City, as well as the Resolution dated June 5, 2008 denying the motion for reconsideration are *AFFIRMED*.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and *Peralta, JJ.*, concur.

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[25] *Santiago v. Guadiz, Jr.*, G.R. No. 85923, February 26, 1992, 206 SCRA 590, 599.

26 *Dumlao, Jr. v. Hon. Rodolfo Ponferrada*. G.R. No. 146707, November 29, 2006, 508 SCRA 426, 433.

THIRD DIVISION

[G.R. No. 183385. February 13, 2009]

EVANGELINA MASMUD (as substitute complainant for ALEXANDER J. MASMUD), *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION (First Division) and ATTY. ROLANDO B. GO, JR.,** *respondents.*

SYLLABUS

1. CIVIL LAW; CIVIL LAW; DAMAGES; ATTORNEY'S FEES, TWO CONCEPTS OF.— There are two concepts of attorney's fees. In the ordinary sense, attorney's fees represent the reasonable compensation paid to a lawyer by his client for the legal services rendered to the latter. On the other hand, in its extraordinary concept, attorney's fees may be awarded by the court as indemnity for damages to be paid by the losing party to the prevailing party, such that, in any of the cases provided by law where such award can be made, *e.g.*, those authorized in Article 2208 of the Civil Code, the amount is payable not to the lawyer but to the client, *unless* they have agreed that the award shall pertain to the lawyer as additional compensation or as part thereof.

2. ID.; ID.; ID.; VALIDITY OF A CONTINGENT FEE CONTRACT, UPHELD.— The retainer contract between Atty. Go and Evangelina provides for a contingent fee. The contract shall control in the determination of the amount to be paid, unless found by the court to be unconscionable or unreasonable. Attorney's fees are unconscionable if they affront one's sense of justice, decency or reasonableness. The decree of unconscionability or unreasonableness of a stipulated amount in a contingent fee contract will not preclude recovery. It merely justifies the fixing by the court of a reasonable compensation for the lawyer's services. x x x Contingent fee contracts are subject to the supervision and close scrutiny of the court in order that clients may be protected from unjust charges. The amount of contingent fees agreed upon by the parties is subject to the stipulation that counsel will be paid for his legal services only if the suit or litigation prospers. A much higher compensation is allowed as contingent fees because of the

risk that the lawyer may get nothing if the suit fails. The Court finds nothing illegal in the contingent fee contract between Atty. Go and Evangelina's husband. The CA committed no error of law when it awarded the attorney's fees of Atty. Go and allowed him to receive an equivalent of 39% of the monetary award.

3. ID.; ID.; ID.; THE ISSUE OF THE REASONABLENESS OF ATTORNEY'S FEES IS A QUESTION OF FACT.— The issue of the reasonableness of attorney's fees is a question of fact. Well-settled is the rule that conclusions and findings of fact of the CA are entitled to great weight on appeal and will not be disturbed except for strong and cogent reasons which are absent in the case at bench. The findings of the CA, which are supported by substantial evidence, are almost beyond the power of review by the Supreme Court.

4. ID.; ID.; ID.; IT IS ALSO THE COURT'S DUTY TO SEE THAT A LAWYER IS PAID HIS JUST FEES.— Considering that Atty. Go successfully represented his client, it is only proper that he should receive adequate compensation for his efforts. Even as we agree with the reduction of the award of attorney's fees by the CA, the fact that a lawyer plays a vital role in the administration of justice emphasizes the need to secure to him his honorarium lawfully earned as a means to preserve the decorum and respectability of the legal profession. A lawyer is as much entitled to judicial protection against injustice or imposition of fraud on the part of his client as the client is against abuse on the part of his counsel. The duty of the court is not alone to ensure that a lawyer acts in a proper and lawful manner, but also to see that a lawyer is paid his just fees. With his capital consisting of his brains and with his skill acquired at tremendous cost not only in money but in expenditure of time and energy, he is entitled to the protection of any judicial tribunal against any attempt on the part of his client to escape payment of his just compensation. It would be ironic if after putting forth the best in him to secure justice for his client, he himself would not get his due.

APPEARANCES OF COUNSEL

Diosdado E. Agcaoili for petitioners.

R E S O L U T I O N

NACHURA, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated October 31, 2007 and the Resolution dated June 6, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 96279.

The facts of the case are as follows:

On July 9, 2003, Evangelina Masmud's (Evangelina) husband, the late Alexander J. Masmud (Alexander), filed a complaint[3] against First Victory Shipping Services and Angelakos (Hellas) S.A. for non-payment of permanent disability benefits, medical expenses, sickness allowance, moral and exemplary damages, and attorney's fees. Alexander engaged the services of Atty. Rolando B. Go, Jr. (Atty. Go) as his counsel.

In consideration of Atty. Go's legal services, Alexander agreed to pay attorney's fees on a contingent basis, as follows: twenty percent (20%) of total monetary claims as settled or paid and an additional ten percent (10%) in case of appeal. It was likewise agreed that any award of attorney's fees shall pertain to respondent's law firm as compensation.

On November 21, 2003, the Labor Arbiter (LA) rendered a Decision granting the monetary claims of Alexander. The dispositive portion of the decision, as quoted in the CA Decision, reads:

WHEREFORE, foregoing considered, judgment is rendered finding the [First Victory Shipping Services and Angelakos (Hellas) S.A.] jointly and severally liable to pay [Alexander's] total permanent disability benefits in the amount of US$60,000.00 and his sickness

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[1] RULES OF COURT, Rule 45.

[2] Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Lucas P. Bersamin and Estela M. Perlas-Bernabe, concurring; *rollo*, pp. 16-28.

[3] Entitled, "*Alexander J. Masmud, substituted by Evangelina R. Masmud v. First Victory Shipping Services and Angelakos (Hellas) S.A.,*" and docketed as NLRC-NCR Case No. (M)03-07-1728-00.

allowance of US$2,348.00, both in Philippine currency at the prevailing rate of exchange at the time of payment; and to pay further the amount of ₱200,000.00 as moral damages, ₱100,000.00 as exemplary damages and attorney's fees equivalent to ten percent (10%) of the total monetary award.

[Alexander's] claim for payment of medical expenses is dismissed for lack of basis.

SO ORDERED.[4]

Alexander's employer filed an appeal before the National Labor Relations Commission (NLRC). During the pendency of the proceedings before the NLRC, Alexander died. After explaining the terms of the lawyer's fees to Evangelina, Atty. Go caused her substitution as complainant. On April 30, 2004, the NLRC rendered a Decision dismissing the appeal of Alexander's employer. The employer subsequently filed a motion for reconsideration. The NLRC denied the same in an Order dated October 26, 2004.

On appeal before the CA, the decision of the LA was affirmed with modification. The award of moral and exemplary damages was deleted.[5] Alexander's employers filed a petition for *certiorari*[6] before this Court. On February 6, 2006, the Court issued a Resolution dismissing the case for lack of merit.

Eventually, the decision of the NLRC became final and executory. Atty. Go moved for the execution of the NLRC decision, which was later granted by the LA. The surety bond of the employer was garnished. Upon motion of Atty. Go, the surety company delivered to the NLRC Cashier, through the NLRC Sheriff, the check amounting to ₱3,454,079.20. Thereafter, Atty. Go moved for the release of the said amount to Evangelina.

On January 10, 2005, the LA directed the NLRC Cashier to release the amount of ₱3,454,079.20 to Evangelina. Out of the said amount, Evangelina paid Atty. Go the sum of ₱680,000.00.

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[4] *Rollo*, p. 18.

[5] The case was docketed as CA-G.R. SP No. 88009.

[6] RULES OF COURT, Rule 65.

Dissatisfied, Atty. Go filed a motion to record and enforce the attorney's lien alleging that Evangelina reneged on their contingent fee agreement. Evangelina paid only the amount of ₱680,000.00, equivalent to 20% of the award as attorney's fees, thus, leaving a balance of 10%, plus the award pertaining to the counsel as attorney's fees.

In response to the motion filed by Atty. Go, Evangelina filed a comment with motion to release the amount deposited with the NLRC Cashier. In her comment, Evangelina manifested that Atty. Go's claim for attorney's fees of 40% of the total monetary award was null and void based on Article 111 of the Labor Code.

On February 14, 2005, the LA issued an Order[7] granting Atty. Go's motion, the *fallo* of which reads:

> WHEREFORE, premises considered, and further considering the substitute complainant's initial payment of 20% to movant-counsel of the monetary claims as paid, let the balance or unpaid twenty (20%) per cent of attorney's fees due movant-counsel (or the amount of ₱839,587.39) be recorded as lien upon all the monies that may still be paid to substitute complainant Evangelina Masmud.
>
> Accordingly, the NLRC Cashier is directed to pay movant-counsel the amount of ₱677,589.96 which is currently deposited therein to partially satisfy the lien.
>
> SO ORDERED.[8]

Evangelina questioned the February 14, 2005 Order of the LA before the NLRC. On January 31, 2006, the NLRC issued a Resolution[9] dismissing the appeal for lack of merit.

Evangelina then elevated the case to the CA *via* a petition for *certiorari*.[10] On October 31, 2007, the CA rendered a

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[7] Penned by Labor Arbiter Cresencio G. Ramos, Jr.; *rollo*, pp. 40-43.

[8] *Id*. at 43.

[9] *Rollo*, pp. 31-37.

[10] RULES OF COURT, Rule 65.

Decision[11] partially granting the petition. The dispositive portion of the decision reads:

WHEREFORE, the petition is **PARTIALLY GRANTED**. The Resolutions dated January 31, 2006 and July 18, 2006 are hereby **AFFIRMED with MODIFICATION** in that the Attorney's fees of respondent Atty. Rolando B. Go, Jr. is declared fully compensated by the amount of ₱1,347,950.11 that he has already received.

SO ORDERED.[12]

Evangelina filed a motion for reconsideration. However, on June 6, 2008, the CA issued a Resolution[13] denying the motion for reconsideration for lack of merit.

Hence, the instant petition.

Evangelina presented this issue, *viz*.:

THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR OF LAW IN ITS DECISION DATED 31 OCTOBER 2007 AND RESOLUTION DATED 6 JUNE 2008 INSOFAR AS IT UPHOLDS RESPONDENT LAWYER'S CLAIM OF FORTY PERCENT (40%) OF THE MONETARY AWARD IN A LABOR CASE AS ATTORNEY'S FEES.[14]

In effect, petitioner seeks affirmance of her conviction that the legal compensation of a lawyer in a labor proceeding should be based on Article 111 of the Labor Code.

There are two concepts of attorney's fees. In the ordinary sense, attorney's fees represent the reasonable compensation paid to a lawyer by his client for the legal services rendered to the latter. On the other hand, in its extraordinary concept, attorney's fees may be awarded by the court as indemnity for damages to be paid by the losing party to the prevailing party,[15]

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[11] *Supra* note 2.

[12] *Rollo*, p. 27.

[13] *Id*. at 29-30.

[14] *Id*. at 8.

[15] *Bach v. Ongkiko Kalaw Manhit & Acorda Law Offices*, G.R. No. 160334, September 11, 2006, 501 SCRA 419, 426.

such that, in any of the cases provided by law where such award can be made, *e.g.*, those authorized in Article 2208 of the Civil Code, the amount is payable not to the lawyer but to the client, *unless* they have agreed that the award shall pertain to the lawyer as additional compensation or as part thereof.[16]

Here, we apply the ordinary concept of attorney's fees, or the compensation that Atty. Go is entitled to receive for representing Evangelina, in substitution of her husband, before the labor tribunals and before the court.

Evangelina maintains that Article 111 of the Labor Code is the law that should govern Atty. Go's compensation as her counsel and assiduously opposes their agreed retainer contract.

Article 111 of the said Code provides:

> ART. 111. Attorney's fees. — (a) In cases of unlawful withholding of wages the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of the wages recovered.

Contrary to Evangelina's proposition, Article 111 of the Labor Code deals with the extraordinary concept of attorney's fees. It regulates the amount recoverable as attorney's fees in the nature of damages sustained by and awarded to the prevailing party. It may not be used as the standard in fixing the amount payable to the lawyer by his client for the legal services he rendered.[17]

In this regard, Section 24, Rule 138 of the Rules of Court should be observed in determining Atty. Go's compensation. The said Rule provides:

> SEC. 24. *Compensation of attorney's; agreement as to fees. — An attorney shall be entitled to have and recover from his client no more than a reasonable compensation for his services, with a view to the importance of the subject matter of the controversy, the extent of the services rendered, and the professional standing*

[16] *Traders Royal Bank Employees Union-Independent v. NLRC,* 336 Phil. 705, 712 (1997).

[17] *Traders Royal Bank Employees Union-Independent v. NLRC,* 336 Phil. 705, 724 (1997).

of the attorney. No court shall be bound by the opinion of attorneys as expert witnesses as to the proper compensation, but may disregard such testimony and base its conclusion on its own professional knowledge. *A written contract for services shall control the amount to be paid therefor unless found by the court to be unconscionable or unreasonable.*[18]

The retainer contract between Atty. Go and Evangelina provides for a contingent fee. The contract shall control in the determination of the amount to be paid, unless found by the court to be unconscionable or unreasonable.[19] Attorney's fees are unconscionable if they affront one's sense of justice, decency or reasonableness.[20] The decree of unconscionability or unreasonableness of a stipulated amount in a contingent fee contract will not preclude recovery. It merely justifies the fixing by the court of a reasonable compensation for the lawyer's services.[21]

The criteria found in the Code of Professional Responsibility are also to be considered in assessing the proper amount of compensation that a lawyer should receive. Canon 20, Rule 20.01 of the said Code provides:

CANON 20 — A LAWYER SHALL CHARGE ONLY FAIR AND REASONABLE FEES.

Rule 20.01. — A lawyer shall be guided by the following factors in determining his fees:

(a) The time spent and the extent of the services rendered or required;

(b) The novelty and difficulty of the question involved;

(c) The importance of the subject matter;

(d) The skill demanded;

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[18] Emphasis supplied.

[19] *Rayos v. Hernandez*, G.R. No. 169079, February 12, 2007, 515 SCRA 517, 530-531.

[20] *Roxas v. De Zuzuarregui, Jr.*, G.R. Nos. 152072 & 152104, January 31, 2006, 481 SCRA 258, 279.

[21] *Rayos v. Hernandez*, G.R. No. 169079, February 12, 2007, 515 SCRA 517, 530.

(e) The probability of losing other employment as a result of acceptance of the proffered case;

(f) The customary charges for similar services and the schedule of fees of the IBP Chapter to which he belongs;

(g) The amount involved in the controversy and the benefits resulting to the client from the service;

(h) The contingency or certainty of compensation;

(i) The character of the employment, whether occasional or established; and

(j) The professional standing of the lawyer.

Contingent fee contracts are subject to the supervision and close scrutiny of the court in order that clients may be protected from unjust charges.[22] The amount of contingent fees agreed upon by the parties is subject to the stipulation that counsel will be paid for his legal services only if the suit or litigation prospers. A much higher compensation is allowed as contingent fees because of the risk that the lawyer may get nothing if the suit fails.[23] The Court finds nothing illegal in the contingent fee contract between Atty. Go and Evangelina's husband. The CA committed no error of law when it awarded the attorney's fees of Atty. Go and allowed him to receive an equivalent of 39% of the monetary award.

The issue of the reasonableness of attorney's fees is a question of fact. Well-settled is the rule that conclusions and findings of fact of the CA are entitled to great weight on appeal and will not be disturbed except for strong and cogent reasons which are absent in the case at bench. The findings of the CA, which are supported by substantial evidence, are almost beyond the power of review by the Supreme Court.[24]

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[22] *Id*. at 529.

[23] *Sesbreño v. Court of Appeals*, 314 Phil. 884, 893 (1995).

[24] The following are the exceptions to the rule that the findings of facts of the CA are deemed conclusive:

(1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;

Considering that Atty. Go successfully represented his client, it is only proper that he should receive adequate compensation for his efforts. Even as we agree with the reduction of the award of attorney's fees by the CA, the fact that a lawyer plays a vital role in the administration of justice emphasizes the need to secure to him his honorarium lawfully earned as a means to preserve the decorum and respectability of the legal profession. A lawyer is as much entitled to judicial protection against injustice or imposition of fraud on the part of his client as the client is against abuse on the part of his counsel. The duty of the court is not alone to ensure that a lawyer acts in a proper and lawful manner, but also to see that a lawyer is paid his just fees. With his capital consisting of his brains and with his skill acquired at tremendous cost not only in money but in expenditure of time and energy, he is entitled to the protection of any judicial tribunal against any attempt on the part of his client to escape payment of his just compensation. It would be ironic if after putting forth the best in him to secure justice for his client, he himself would not get his due.[25]

WHEREFORE, in view of the foregoing, the Decision dated October 31, 2007 and the Resolution dated June 6, 2008 of the

(2) When the inference made is manifestly mistaken, absurd or impossible;

(3) Where there is a grave abuse of discretion;

(4) When the judgment is based on a misapprehension of facts;

(5) When the findings of fact are conflicting;

(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 are contrary to those of the trial court;

(8) When the findings of fact 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 petitioners' main and reply briefs are not disputed by the respondents; and

(10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record. (*Aklan College, Inc. v. Perpetuo Enero, Arlyn Castigador, Nuena Sermon and Jocelyn Zolina*, G.R. No. 178309, January 27, 2009.)

[25] *Bach v. Ongkiko Kalaw Manhit & Acorda Law Offices*, G.R. No. 160334, September 11, 2006, 501 SCRA 419, 434.

Court of Appeals in CA-G.R. SP No. 96279 are hereby *AFFIRMED*.

SO ORDERED.

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

EN BANC

[G.R. No. 184849. February 13, 2009]

SPOUSES PNP DIRECTOR ELISEO D. DELA PAZ (Ret.) and MARIA FE C. DELA PAZ, *petitioners, vs.* **SENATE COMMITTEE ON FOREIGN RELATIONS and the SENATE SERGEANT-AT-ARMS JOSE BALAJADIA, JR.,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; LEGISLATIVE DEPARTMENT; SENATE; A CHALLENGE TO THE JURISDICTION OF THE SENATE FOREIGN RELATIONS COMMITTEE PARTAKES THE NATURE OF A POLITICAL QUESTION.— The challenge to the jurisdiction of the Senate Foreign Relations Committee, raised by petitioner in the case at bench, in effect, asks this Court to inquire into a matter that is within the full discretion of the Senate. The issue partakes of the nature of a political question that, in *Tañada v. Cuenco,* was characterized as a question which, under the Constitution, is to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government. Further, pursuant to this constitutional grant of virtually unrestricted authority to determine its own rules, the Senate

is at liberty to alter or modify these rules at any time it may see fit, subject only to the imperatives of quorum, voting and publication. Thus, it is not for this Court to intervene in what is clearly a question of policy, an issue dependent upon the wisdom, not the legality, of the Senate's action.

2. ID.; ID.; ID.; ID.; THE SENATE COMMITTEE ON FOREIGN RELATIONS HAS JURISDICTION TO INVESTIGATE THE MOSCOW INCIDENT AND TO INQUIRE INTO THE SOURCE AND PURPOSE OF THE FUNDS CONFISCATED BY THE RUSSIAN GOVERNMENT FROM A MEMBER OF THE PHILIPPINE DELEGATION.— Paragraph 12, Section 13, Rule 10 of the Senate Rules provides: 12) *Committee on Foreign Relations.* — Fifteen (15) members. All matters relating to the relations of the Philippines with other nations generally; diplomatic and consular services; the Association of Southeast Asian Nations; the United Nations Organization and its agencies; multi-lateral organizations, all international agreements, obligations and contracts; and overseas Filipinos. A reading of the above provision unmistakably shows that the investigation of the Moscow incident involving petitioners is well within the respondent Committee's jurisdiction. The Moscow incident could create ripples in the relations between the Philippines and Russia. Gen. Dela Paz went to Moscow in an official capacity, as a member of the Philippine delegation to the INTERPOL Conference in St. Petersburg, carrying a huge amount of "public" money ostensibly to cover the expenses to be incurred by the delegation. For his failure to comply with immigration and currency laws, the Russian government confiscated the money in his possession and detained him and other members of the delegation in Moscow. Furthermore, the matter affects Philippine international obligations. We take judicial notice of the fact that the Philippines is a state-party to the United Nations Convention Against Corruption and the United Nations Convention Against Transnational Organized Crime. The two conventions contain provisions dealing with the movement of considerable foreign currency across borders. The Moscow incident would reflect on our country's compliance with the obligations required of state-parties under these conventions. Thus, the respondent Committee can properly inquire into this matter, particularly as to the source and purpose

of the funds discovered in Moscow as this would involve the Philippines' commitments under these conventions.

3. ID.; ID.; ID.; ID.; AUTHORITY OF THE SENATE BLUE RIBBON COMMITTEE TO INVESTIGATE PNP OFFICIALS, UPHELD.— Pursuant to paragraph 36, Section 13, Rule 10 of the Senate Rules, the Blue Ribbon Committee may conduct investigations on all matters relating to malfeasance, misfeasance and nonfeasance in office by officers and employees of the government, its branches, agencies, subdivisions and instrumentalities, and on any matter of public interest on its own initiative or brought to its attention by any of its members. It is, thus, beyond cavil that the Blue Ribbon Committee can investigate Gen. Dela Paz, a retired PNP general and member of the official PNP delegation to the INTERPOL Conference in Russia, who had with him millions which may have been sourced from public funds.

4. ID.; ID.; ID.; ID.; AN ARREST ORDER ISSUED BY A SENATE COMMITTEE WAS RENDERED INEFFECTUAL BY THE VOLUNTARY APPEARANCE BEFORE THE MEMBERS OF THE COMMITTEE.— The arrest order issued against the petitioners has been rendered ineffectual. In the legislative inquiry held on November 15, 2008, jointly by the respondent Committee and the Senate Blue Ribbon Committee, Gen. Dela Paz voluntarily appeared and answered the questions propounded by the Committee members. Having submitted himself to the jurisdiction of the Senate Committees, there was no longer any necessity to implement the order of arrest. Furthermore, in the same hearing, Senator Santiago granted the motion of Gen. Dela Paz to dispense with the presence of Mrs. Dela Paz for humanitarian considerations. Consequently, the order for her arrest was effectively withdrawn.

APPEARANCES OF COUNSEL

Malaya Sanchez Añover Añover and Simpao Law Offices for petitioners.

R E S O L U T I O N

NACHURA, *J.*:

This is a Petition for *Certiorari* and Prohibition[1] under Rule 65 of the Rules of Court filed on October 28, 2008 by petitioners-spouses General (Ret.) Eliseo D. dela Paz (Gen. Dela Paz) and Mrs. Maria Fe C. dela Paz (Mrs. Dela Paz) assailing, allegedly for having been rendered with grave abuse of discretion amounting to lack or excess of jurisdiction, the orders of respondent Senate Foreign Relations Committee (respondent Committee), through its Chairperson, Senator Miriam Defensor-Santiago (Senator Santiago), (1) denying petitioners' Challenge to Jurisdiction with Motion to Quash Subpoenae and (2) commanding respondent Senate Sergeant-at-Arms Jose Balajadia, Jr. (Balajadia) to immediately arrest petitioners during the Senate committee hearing last October 23, 2008. The petition thus prays that respondent Committee be enjoined from conducting its hearings involving petitioners, and to enjoin Balajadia from implementing the verbal arrest order against them.

The antecedents are as follow –

On October 6, 2008, a Philippine delegation of eight (8) senior Philippine National Police (PNP) officers arrived in Moscow, Russia to attend the 77th General Assembly Session of the International Criminal Police Organization (ICPO)-INTERPOL in St. Petersburg from October 6-10, 2008. With the delegation was Gen. Dela Paz, then comptroller and special disbursing officer of the PNP. Gen. Dela Paz, however, was to retire from the PNP on October 9, 2008.

On October 11, 2008, Gen. Dela Paz was apprehended by the local authorities at the Moscow airport departure area for failure to declare in written form the 105,000 euros [approximately ₱6,930,000.00] found in his luggage. In addition, he was also found to have in his possession 45,000 euros (roughly equivalent to ₱2,970,000.00).

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[1] *Rollo,* pp. 3-21.

Petitioners were detained in Moscow for questioning. After a few days, Gen. Dela Paz and the PNP delegation were allowed to return to the Philippines, but the Russian government confiscated the euros.

On October 21, 2008, Gen. Dela Paz arrived in Manila, a few days after Mrs. Dela Paz. Awaiting them were subpoenae earlier issued by respondent Committee for the investigation it was to conduct on the Moscow incident on October 23, 2008.

On October 23, 2008, respondent Committee held its first hearing. Instead of attending the hearing, petitioners filed with respondent Committee a pleading denominated *Challenge to Jurisdiction with Motion to Quash Subpoena*.[2] Senator Santiago emphatically defended respondent Committee's jurisdiction and commanded Balajadia to arrest petitioners.

Hence, this Petition.

Petitioners argue that respondent Committee is devoid of any jurisdiction to investigate the Moscow incident as the matter does not involve state to state relations as provided in paragraph 12, Section 13, Rule 10 of the Senate Rules of Procedure (Senate Rules). They further claim that respondent Committee violated the same Senate Rules when it issued the warrant of arrest without the required signatures of the majority of the members of respondent Committee. They likewise assail the very same Senate Rules because the same were not published as required by the Constitution, and thus, cannot be used as the basis of any investigation involving them relative to the Moscow incident.

Respondent Committee filed its Comment[3] on January 22, 2009.

The petition must inevitably fail.

First. Section 16(3), Article VI of the Philippine Constitution states: *"Each House shall determine the rules of its proceedings."*

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[2] *Id*. at 28.

[3] *Id*. at 126-137.

This provision has been traditionally construed as a grant of full discretionary authority to the Houses of Congress in the formulation, adoption and promulgation of its own rules. As such, the exercise of this power is generally exempt from judicial supervision and interference, except on a clear showing of such arbitrary and improvident use of the power as will constitute a denial of due process.[4]

The challenge to the jurisdiction of the Senate Foreign Relations Committee, raised by petitioner in the case at bench, in effect, asks this Court to inquire into a matter that is within the full discretion of the Senate. The issue partakes of the nature of a political question that, in *Tañada v. Cuenco*,[5] was characterized as a question which, under the Constitution, is to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government. Further, pursuant to this constitutional grant of virtually unrestricted authority to determine its own rules, the Senate is at liberty to alter or modify these rules at any time it may see fit, subject only to the imperatives of quorum, voting and publication.

Thus, it is not for this Court to intervene in what is clearly a question of policy, an issue dependent upon the wisdom, not the legality, of the Senate's action.

Second. Even if it is within our power to inquire into the validity of the exercise of jurisdiction over the petitioners by the Senate Foreign Relations Committee, we are convinced that respondent Committee has acted within the proper sphere of its authority.

Paragraph 12, Section 13, Rule 10 of the Senate Rules provides:

12) *Committee on Foreign Relations.* — Fifteen (15) members. All matters relating to the relations of the Philippines with other nations generally; diplomatic and consular services; the Association of Southeast Asian Nations; the United Nations Organization and

[4] See *Morrero v. Bocar*, 37 O.G. 445.

[5] 100 Phil. 101 (1957).

its agencies; multi-lateral organizations, all international agreements, obligations and contracts; and overseas Filipinos.

A reading of the above provision unmistakably shows that the investigation of the Moscow incident involving petitioners is well within the respondent Committee's jurisdiction.

The Moscow incident could create ripples in the relations between the Philippines and Russia. Gen. Dela Paz went to Moscow in an official capacity, as a member of the Philippine delegation to the INTERPOL Conference in St. Petersburg, carrying a huge amount of "public" money ostensibly to cover the expenses to be incurred by the delegation. For his failure to comply with immigration and currency laws, the Russian government confiscated the money in his possession and detained him and other members of the delegation in Moscow.

Furthermore, the matter affects Philippine international obligations. We take judicial notice of the fact that the Philippines is a state-party to the United Nations Convention Against Corruption and the United Nations Convention Against Transnational Organized Crime. The two conventions contain provisions dealing with the movement of considerable foreign currency across borders.[6] The Moscow incident would reflect

[6] Art. 14(2) of the **United Nations Convention Against Corruption** provides—

State parties shall consider implementing *feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital*. Such measures may include a requirement that individuals and businesses report the cross border transfer of substantial quantities of cash and appropriate negotiable instruments.

The **United Nations Convention Against Transnational Organized Crime** provides—

Art. 7(1), Each State Party:

(a) *Shall institute a comprehensive domestic and regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money-laundering*, within its competence, in order *to deter and detect all forms of money-laundering*, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions;

on our country's compliance with the obligations required of state-parties under these conventions. Thus, the respondent Committee can properly inquire into this matter, particularly as to the source and purpose of the funds discovered in Moscow as this would involve the Philippines' commitments under these conventions.

Third. The Philippine Senate has decided that the legislative inquiry will be jointly conducted by the respondent Committee and the Senate Committee on Accountability of Public Officers and Investigations (Blue Ribbon Committee).

Pursuant to paragraph 36, Section 13, Rule 10 of the Senate Rules, the Blue Ribbon Committee may conduct investigations on all matters relating to malfeasance, misfeasance and nonfeasance in office by officers and employees of the government, its branches, agencies, subdivisions and instrumentalities, and on any matter of public interest on its own initiative or brought to its attention by any of its members. It is, thus, beyond cavil that the Blue Ribbon Committee can investigate Gen. Dela Paz, a retired PNP general and member of the official PNP delegation to the INTERPOL Conference in Russia, who had with him millions which may have been sourced from public funds.

Fourth. Subsequent to Senator Santiago's verbal command to Balajadia to arrest petitioners, the Philippine Senate issued a formal written Order[7] of arrest, signed by ten (10) senators, with the Senate President himself approving it, in accordance with the Senate Rules.

Art. 7(2):

State Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments. (Underscoring supplied.)

[7] *Rollo*, pp. 138-139.

Fifth. The Philippine Senate has already published its Rules of Procedure Governing Inquiries in Aid of Legislation in two newspapers of general circulation.[8]

Sixth. The arrest order issued against the petitioners has been rendered ineffectual. In the legislative inquiry held on November 15, 2008, jointly by the respondent Committee and the Senate Blue Ribbon Committee, Gen. Dela Paz voluntarily appeared and answered the questions propounded by the Committee members. Having submitted himself to the jurisdiction of the Senate Committees, there was no longer any necessity to implement the order of arrest. Furthermore, in the same hearing, Senator Santiago granted the motion of Gen. Dela Paz to dispense with the presence of Mrs. Dela Paz for humanitarian considerations.[9] Consequently, the order for her arrest was effectively withdrawn.

WHEREFORE, the petition is *DISMISSED* for lack of merit and for being moot and academic.

SO ORDERED.

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

[8] Publication was made in the October 31, 2008 issues of the *Manila Daily Bulletin* and the *Malaya*.

[9] *Rollo,* p. 143.

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Land registration court — As an incident to its authority to settle all questions over the title to the subject property, it may resolve the underlying issue of whether the subject property overlaps petitioner's properties without necessarily having to declare the survey plan. (SM Prime Holdings, Inc. *vs.* Madayag, G.R. No. 164687, Feb. 12, 2009) p. 371

— Has the duty to determine whether the issuance of a new certificate of title will alter a valid and existing certificate of title considering the fact than an application for

registration of an already titled land constitutes a collateral attack on the existing title which is not allowed by law. *(Id.)*

Rights of registered owner — His title is indefeasible and his rights of dominion over the land can no longer be challenged. (Heirs of Jose T. Calo *vs.* Calo, G.R. No. 156101, Feb. 10, 2009) p. 51

LEGISLATIVE DEPARTMENT

Principle of non-delegation of powers — Basis; rule and exceptions. (Dagan *vs*. Phil. Racing Commission, G.R. No. 175220, Feb. 12, 2009) p. 406

— Test for validity. *(Id.)*

LOCAL GOVERNMENT CODE (R.A. NO. 7160)

Ordinance — The concurrence of a local chief executive in the enactment of an ordinance requires not only a flourish of the pen, but the application of judgment after meticulous analysis and intelligence. (Regidor, Jr. *vs*. People, G.R. Nos. 166086-92, Feb. 13, 2009) p. 714

— The minutes of a session are accorded great weight in resolving conflicting claims of parties. *(Id.)*

MALVERSATION OF PUBLIC FUNDS

Commission of — Elements. (Regidor, Jr. *vs*. People, G.R. Nos. 166086-92, Feb. 13, 2009) p. 714

(Loguinsa, Jr. *vs*. Sandiganbayan, G.R. No. 146949, Feb. 13, 2009) p. 635

MARRIAGE, ANNULMENT OF

Psychological incapacity as a ground — Each case must be judged, not on the basis of a priori assumptions, predilections or generalizations but according to its own facts. (Te *vs*. Yu-Te, G.R. No. 161793, Feb. 13, 2009) p. 666

— Each case must show a link, medical or the like, between the acts that manifest psychological incapacity and the psychological disorder itself. *(Id.)*

— Infliction of physical violence, constitutional indolence or laziness, drug dependence and psychosexual anomaly are manifestations of a sociopathic personality anomaly. *(Id.)*

— Marriage shall be declared null and void where both parties are found afflicted with grave, severe and incurable psychological incapacity. *(Id.)*

MURDER

Commission of — Elements. (Pat. Herrera *vs*. Sandiganbayan, G.R. Nos. 119660-61, Feb. 13, 2009) p. 511

OBLIGATIONS, EXTINGUISHMENT OF

Application of payment — Debtor's right to apply is not mandatory and it may be waived by agreement. (Premiere Dev't. Bank *vs*. Central Surety & Insurance Co., Inc., G.R. No. 176246, Feb. 13, 2009) p. 827

— Equitable principle of waiver of the creditor's right to apply payment is not applicable. *(Id.)*

PARRICIDE

Commission of — Imposable penalty. (People *vs*. Español, G.R. No. 175603, Feb. 13, 2009) p. 793

PARTIES TO CIVIL ACTIONS

Indispensable party — Their joinder is mandatory but not a ground for dismissal of action; the remedy is to implead said parties or its failure will lead to dismissal of the action. (Nocom *vs.* Camerino, G.R. No. 182984, Feb. 10, 2009) p. 214

Parties-in-interest — Defined. (Excellent Quality Apparel, Inc. *vs*. Win Multi Rich Builders, Inc., G.R. No. 175048, Feb. 10, 2009) p. 94

PARTNERSHIP

Partners — Rights and obligations. (Mendoza *vs*. Engr. Paule, G.R. No. 175885, Feb. 13, 2009) p. 809

PERCENTAGE TAX

Coverage — Pawnshops are not included in the term lending investors for the purpose of imposing the 5% percentage tax. (Agencia Exquisite of Bohol, Inc. *vs*. Commissioner of Internal Revenue, G.R. No. 150141, Feb. 12, 2009) p. 359

PHILIPPINE RACING COMMISSION (P.D. NO. 420)

Creation of — Hurdles the test of completeness and standards sufficiency. (Dagan *vs*. Phil. Racing Commission, G.R. No. 175220, Feb. 12, 2009) p. 406

PLACEMENT AND RECRUITMENT

Illegal recruitment — Committed in case of accused's misrepresentations concerning her purported power and authority to recruit for overseas employment and the collection from the complainant of various amounts. (Lapasaran *vs*. People, G.R. No. 179907, Feb. 12, 2009) p. 474

PLEADINGS, SERVICE OF

Personal service and filing of — Considered a general rule, and resort to other modes is an exception. (Reyes *vs*. NLRC, G.R. No. 180551, Feb. 10, 2009) p. 145

PRE-TRIAL

Motion to set the case for pre-trial — Dismissal of the complaint is too severe a sanction for failure to file said motion; it is the duty of the Clerk of Court to issue a notice of pre-trial upon failure of plaintiff to do so. (Polanco *vs*. Cruz, G.R. No. 182426, Feb. 13, 2009) p. 952

PROSECUTION OF OFFENSES

Information — When may be amended. (Pat. Herrera *vs*. Sandiganbayan, G.R. Nos. 119660-61, Feb. 13, 2009) p. 511

Prosecution — The evidence to be presented by the prosecution during the trial depends solely upon the discretion of the prosecutor. (Loguinza, Jr. *vs*. Sandiganbayan [5th Div.], G.R. No. 146949, Feb. 13, 2009) p. 635

PUBLIC LAND ACT (C.A. NO. 141)

Free patent — Land acquired through patent or grant may be repurchased by the patentee, his widow, or legal heirs within five years from date of sale; rationale. (Capistrano *vs*. Limcuando. G.R. No. 152413, Feb. 13, 2009) p. 650

Redemption — Right to repurchase of a patentee shall not be sustained when the exercise of said right is not consistent with the ultimate objective of the Act. (Capistrano *vs*. Limcuando. G.R. No. 152413, Feb. 13, 2009) p. 650

PUBLIC OFFICERS AND EMPLOYEES

Dishonesty — Classified as grave offense; imposable penalty. (Miel *vs*. Malindog, G.R. No. 143538, Feb. 13, 2009) p. 594

— Committed in case of making untruthful statements or concealment of any information in the Personal Data Sheet. *(Id.)*

Duties — A public servant must exhibit at all times the highest sense of honesty and integrity. (Miel *vs*. Malindog, G.R. No. 143538, Feb. 13, 2009) p. 594

Three-fold liability rule — Construed. (Regidor, Jr. *vs*. People, G.R. Nos. 166086-92, Feb. 13, 2009) p. 714

QUALIFYING CIRCUMSTANCES

Treachery — Its essence is the deliberate and sudden attack that renders the victim unable and unprepared to defend himself. (Pat.Herrera *vs*. Sandiganbayan, G.R. Nos. 119660-61, Feb. 13, 2009) p. 511

QUITCLAIMS

Nature — Not per se invalid or against public policy. (Coats Manila Bay, Inc. *vs*. Ortega, G.R. No. 172628, Feb. 13, 2009) p. 768

RAPE

Anti-Rape Law of 1997 (R.A. No. 8353) — Applicable for statutory rape committed in 2001. (People *vs*. Basmayor, G.R. No. 182791, Feb. 10, 2009) p. 194

Commission of — Established in case at bar. (People *vs.* Sulima, G.R. No. 183702, Feb. 10, 2009) p. 238

— Resistance of the victim is not an element of the crime. (People *vs.* Sulima, G.R. No. 183702, Feb. 10, 2009) p. 238

Prosecution for — Guiding principles in the prosecution of rape cases. (People *vs.* Sulima, G.R. No. 183702, Feb. 10, 2009) p. 238

(People *vs.* Basmayor, G.R. No. 182791, Feb. 10, 2009) p. 194

Qualified rape — Elements. (People *vs.* Basmayor, G.R. No. 182791, Feb. 10, 2009) p. 194

— Imposable penalty. *(Id.)*

RES JUDICATA

Principle — Based on public policy and necessity. (La Campana Dev't. Corp. *vs.* DBP, G.R. No. 146157, Feb. 13, 2009) p. 612

— Requisites. (Gomez *vs.* Alcantara, G.R. No. 179556, Feb. 13, 2009) p. 935

RIGHTS OF THE ACCUSED

Right to cross examine witnesses — Not violated where the parties' counsel conducted an extensive examination of the witnesses. (Pat. Herrera *vs.* Sandiganbayan, G.R. Nos. 119660-61, Feb. 13, 2009) p. 511

ROBBERY

Commission of — Elements. (Consulta *vs.* People, G.R. No. 179462, Feb. 12, 2009) p. 464

Intent to gain — Not established by mere taking of necklace given the undenied sour relationship between the accused and victim. (Consulta *vs.* People, G.R. No. 179462, Feb. 12, 2009) p. 464

Simple robbery — Defined. (Sazon *vs.* Sandiganbayan, G.R. No. 150873, Feb. 10, 2009) p. 35

— Imposable penalty. *(Id.)*

ROBBERY WITH HOMICIDE

Commission of — The intent to rob must precede the taking of human life and the killing may occur before or after the robbery. (People *vs*. Algarme, G.R. No. 175978, Feb. 12, 2009) p. 423

Conviction — Since the original criminal design to commit robbery was not duly proven, accused should be held liable for separate crimes of homicide or murder and theft. (People *vs*. Algarme, G.R. No. 175978, Feb. 12, 2009) p. 423

RULES OF PROCEDURE

Construction — Liberally construed to secure a just, speedy and inexpensive disposition of every action. (Reyes *vs*. NLRC, G.R. No. 180551, Feb. 10, 2009) p. 145

— The Supreme Court may, in the interest of its equity jurisdiction, disregard procedural lapses so that a case may be resolved on its merits. (La Campana Dev't. Corp. *vs*. DBP, G.R. No. 146157, Feb. 13, 2009) p. 612

Raffling of cases — Rule in case the judge hearing the case is transferred to another branch. (Heirs of Sps. Jose and Concepcion Olarga *vs*. Judge Beldia, Jr., A.M. No. RTJ-08-2137, Feb. 10, 2009) p. 16

SALES

Perfection of contract of sale — Purchase orders constituted accepted offer when the seller delivered the materials. (Manila Mining Corp. *vs*. Tan, G.R. No. 171702, Feb. 12, 2009) p. 398

SELF-DEFENSE

As a justifying circumstance — Negated by the number of wounds inflicted on the victims. (Pat. Herrera *vs*. Sandiganbayan, G.R. Nos. 119660-61, Feb. 13, 2009) p. 511

— Requisites. *(Id.)*

— Threat to accused's life is not sufficiently serious to justify shooting the victims who were both handcuffed and unarmed. *(Id.)*

SENATE

Senate Blue Ribbon Committee — Has the authority to investigate PNP Officials. (Sps. PNP Dir. Dela Paz *vs*. Senate Committee on Foreign Relations, G.R. No. 184849, Feb. 13, 2009) p. 981

Senate Foreign Relations Committee — A challenge to the jurisdiction of the Committee partakes the nature of a political question. (Sps. PNP Dir. Dela Paz *vs*. Senate Committee on Foreign Relations, G.R. No. 184849, Feb. 13, 2009) p. 981

— Has the jurisdiction to investigate the Moscow incident and to inquire into the source and purpose of the funds confiscated by the Russian Government from a member of the Philippine delegation. *(Id.)*

SOLE PROPRIETORSHIP

Nature — No juridical personality separate from the owner of the enterprise. (Excellent Quality Apparel, Inc. *vs*. Win Multi Rich Builders, Inc., G.R. No. 175048, Feb. 10, 2009) p. 94

SUMMARY JUDGMENT

Nature — Elucidated. (Nocom *vs*. Camerino, G.R. No. 182984, Feb. 10, 2009) p. 214

— Not proper in the presence of genuine issues. (*Id.)*

— When may be availed of. *(Id.)*

TARIFF AND CUSTOMS CODE

Entry for immediate exportation — Requisites. (Commissioner of Customs *vs*. CTA, G.R. Nos. 171516-17, Feb. 13, 2009) p. 758

Importation — Takes place when merchandise is brought into the customs territory of the Philippines with the intention of unloading the same at port; exception. *(Id.)*

Seizure of article — Seized articles may not be released under bond if there is prima facie evidence of fraud. *(Id.)*

TAXES

Percentage tax — Pawnshops are not included in the term lending investors for the purpose of imposing the 5% percentage tax. (Agencia Exquisite of Bohol, Inc. *vs*. Commissioner of Internal Revenue, G.R. No. 150141, Feb. 12, 2009) p. 359

TREACHERY

As a qualifying circumstance — Its essence is the deliberate and sudden attack that renders the victim unable and unprepared to defend himself. (Pat.Herrera *vs*. Sandiganbayan, G.R. Nos. 119660-61, Feb. 13, 2009) p. 511

UNFAIR LABOR PRACTICES

Commission of — Not established when employer's action to contract-out the services and functions performed by union members was not directed at members' right to self-organization. (General Santos Coca-Cola Plant Free Workers Union-TUPAS *vs*. Coca-Cola Bottlers Phils., Inc. [General Santos City], G.R. No. 178647, Feb. 13, 2009) p. 879

UNLAWFUL DETAINER

Pleadings allowed — Rule under the Rule on Summary Procedure. (Mariano *vs.* Nacional, A.M. No. MTJ-07-1688, Feb. 10, 2009) p. 6

Proceedings — Judgment shall be rendered within 30 days after receipt of affidavits and position papers, or expiration of the period for filing the same. (Mariano *vs*. Nacional, A.M. No. MTJ-07-1688, Feb. 10, 2009) p. 6

— Rule for prompt resolution of cases. *(Id.)*

VISITING FORCES AGREEMENT

Nature — An implementing agreement of the RP-US Mutual Defense Treaty of August 30, 1951, as such, it is not necessary to submit it to the US Senate for advice and consent but merely to the US Congress under the Case-Zablocki Act within 60 days of its ratification. (Nicolas *vs*. Sec. Romulo, G.R. No. 175888, Feb. 11, 2009) p. 262

— Provision of Art. XVIII, Sec. 25 of the Constitution is complied with by virtue of the fact that the presence of the US Armed Forces through the VFA is a presence "allowed under" the RP-US Mutual Defense Treaty. *(Id.)*

— The Agreement was duly concurred in by the Philippine Senate and has been recognized as a treaty by the United States and attested and certified by the duly authorized representative of the US Government. *(Id.)*

— The fact that the VFA was not submitted for advice and consent of the US Senate does not detract from its status as a binding international agreement or treaty recognized by said State. *(Id.)*

WITNESSES

Credibility — Findings by trial court, accorded with great respect. (People *vs.* Español, G.R. No. 175603, Feb. 13, 2009) p. 793

(Pat. Herrera *vs*. Sandiganbayan, G.R. Nos. 119660-61, Feb. 13, 2009) p. 511

(People *vs.* Algarme, G.R. No. 175978, Feb. 12, 2009) p. 423

(People *vs*. Sulima, G.R. No. 183702, Feb. 10, 2009) p. 238

— Police operatives are presumed to be performing their regular duties and with no improper motive imputed. (People *vs*. Encila, G.R. No. 182419, Feb. 10, 2009) p. 165

— Procedure for out-of-court identification and test to determine its admissibility. (People *vs*. Algarme, G.R. No. 175978, Feb. 12, 2009) p. 423

— Stands in the absence of ill-motive to falsely testify against the accused. (Pat. Herrera *vs*. Sandiganbayan, G.R. Nos. 119660-61, Feb. 13, 2009) p. 511

(People *vs.* Algarme, G.R. No. 175978, Feb. 12, 2009) p. 423

(People *vs.* Basmayor, G.R. No. 182791, Feb. 10, 2009) p. 194

— Testimonies of young rape victim are upheld especially when consistent with the medical findings. *(Id.)*

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